CALR
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The Law & the Management of Public Assets

EDITORIAL

When one hears of the phrase 'public assets', it is inevitable for one to immediately form an image of an abstract notion of bureaucratic 'things' that have nothing to do with the individual or collective well-being of a society. However, nothing can be further from the truth. In a world that is increasingly acknowledging the role of the State as 'protector and provider', aspects to do with the efficient and judicious management of 'public assets' are becoming more relevant.

Indeed, this discourse, amongst other things, led to the coining of the term 'developmental state' to describe the role of the state in the development of economies. While the concept was popularized by developmental events in some of the then developing economies of Latin America and Asia; we are seeing it emerging (although with some modifications and resistance) in hitherto unlikely countries such as the United States of America. The policies of the Barack Obama Administration, for example, have arguably been skewed towards some components of the Keynesian economic model that emphasizes the role of the State in ensuring 'growth and equity' where free market forces fail to produce desired outcomes.

In Zimbabwe, like many other developing countries, the need to effectively embrace the 'developmental state' concept is intensifying. This is particularly so, given the myriad of socio-economic challenges facing the population. It is a well-documented fact that access to socio-economic public goods such as clean water and sanitation, public health, education etc., has diminished considerably over the past decade. While neo-liberal thinking may rightfully argue that the provision of these public goods is dependent on the restoration of a functional economy; this however does not necessarily negate the role of the State as 'protector' and 'provider', especially in situations of crisis. Some critics have also argued that in order for the State to play its role as 'protector' and 'provider', it requires the economic and financial wherewithal to do so. Notwithstanding the nobility of this argument; it is perhaps equally true that the provision of these public goods is probably not only dependent on the health of the government's 'financial balance sheet'; but perhaps has more to do with the efficient management and use of public assets for the benefit of society.

Indeed, what is envisaged is not a simplistic case of the government 'parcelling out' free goods and services that it cannot afford. Rather it is about the public's 'shareholding' stake in public assets being utilized judiciously and efficiently for their benefit, no matter how little. This is because public assets are assets owned by the people as a sovereign collective, and held in trust by the State. These assets include: some natural resources such as land, wildlife and biological resources, rivers, treasures of the earth such as minerals etc.; supplied goods such as taxes and profits made by the State and State enterprises; and infrastructural assets such as buildings, works etc. (these can be *treasury property* whose marketability is limited, or they can be *business property* that is freely marketable or transferrable). While the administrative management and organization of these assets is undertaken by the State at national level, and by the local government at local government level; the underlying presumption is that they are being so managed for the benefit of the public and in the public interest. Having said this, the public has a legitimate and reasonable expectation to expect 'dividends' or a 'return', in the form of public goods and services, at a level commensurate to their 'investment'.

The Public Finance Management Act [Chapter 22:19]

defines public resources as Public money and State property. The same law, in turn, defines public money as revenues (i.e. taxes, fees and other income of the State), and all other money received and held [by a representative of the State]. State property, on the other hand, is defined as, property which is owned by the State or property for the custody and care of which the State is responsible.

This topic is fastidiously appropriate at this time, given the content and discussions around the 2013 National Budget Statement presented to Parliament by the Minister of Finance on the 15th of November 2012; juxtaposed with the increasing need for the State to effectively perform its fiduciary function. The budget, dubbed a 'developmental budget' by some, attempts to balance the use of existing public assets and the need to ensure the provision of public goods and services in various sectors of the economy, to promote growth and equity.

The theme concerning the management of public assets has been written about and discussed before. However, such dialogue has generally tended to evade the significance and role of the law in ensuring the judicious management of public assets for the benefit of the public. The law, in such conversations, has generally been viewed as an 'abstract' tool required to create an 'enabling environment' for the administration of public assets. In this sense it has generally been seen as a 'means to an end' without linking the normative and institutional components of the 'means' with the desired 'end' (i.e. the provision of public goods and services).

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This edition of the CALR Law & Development Bulletin focuses on some of these issues. It contains four articles that provide an *expose* on some of the existing (and pending) legislation on the management of public assets. The articles speak to two broad roles of the law in development, namely; the need to recognize and implement the basic principles of 'good public asset management' such as the principles of accountability and transparency in the administrative discharge of the State's duty in managing public assets; and the need to emphasize a human rights approach to ensure that the public's access to public goods and services is not viewed as a benevolent gesture by the State, but as a clear socio-economic human right that the public inherently possesses as a collective. These articles are not exhaustive, by themselves, to provide a comprehensive assessment of the role of the law in promoting the effective management of public assets for the benefit of the public. Rather they provide insights into some of the issues, with the purpose of promoting further debate and attention on the matter by government, the private sector, academics, civil society, and the general public

Realizing Socio-Economic Well-being in Zimbabwe: What Can the Law Do?

General Comment 3 (1990): The Nature of States Parties' Obligations under (Article 2(1) of the ICESCR (Fifth Session, 1990, U.N. Doc E/1991/23 at para 9)

The concept of progressive realisation constitutes a recognition of the fact that full realisation of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. . . Nevertheless… [this] should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective…which is to establish clear obligations for States Parties in respect of the full realisation of the rights…It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.

At the International Conference on Popular Participation in the Recovery and Development Process [Arusha Tanzania,1989], it was declared that, "…the crisis currently engulfing Africa is not an economic crisis but also a human, legal, political and social crisis...manifested not only in abysmal declines in economic indicators and trends but in the suffering ,hardship and impoverishment of the vast majority of African people;...socio-economic development has been characterised by... impediments to the effective participation of the overwhelming majority of the people". Almost a quarter of a century after this 'Arusha Charter' was drawn up, the slogan 'popular participation in public resources' has earned considerable lip service in African political and development theory including in Zimbabwe.

As a sequel to participating in similar conferences, the Government of Zimbabwe (GoZ) is party to several treaties, charters and covenants that enshrine the broad values of socio economic human rights that create specific responsibilities for which citizens should hold the government accountable in its management and distribution of public assets. These instruments include International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child (CRC), inter alia.

Despite being party to these conventions, however, statistics and economic indicators on the ground reveal a totally different picture of the socio economic status of the citizens of Zimbabwe. In the health sector for example, while policies on reproduction and national HIV/AIDS strategic frameworks exist, the maternal and infant mortality rate remains high. In 2012, the under-five mortality rate increased to 96 per 1000 live births due to rising poverty levels and HIV/AIDS according to the United Nations Country Profile Report. Furthermore, the percentage of underweight infants rose to 15% in 2010. These facts reflect the proportions then identified in the Arusha Charter's overview of the African situation many years ago. With 58% of the people living below the food poverty line and 1,7 million people in need of food aid (Zimbabwe Vulnerability Assessment Report, 2012), this indicates a worsening of the macro-economic outlook. This is confirmed by the Human Poverty Index (HPI) which has declined from 0.654 in the 1990s to 0.513 after 2000, thereby indicating the deteriorating macro-economic situation.

Against the backdrop of these indicators, it is perhaps pertinent to pose and interrogate the role that the law can play in contributing to the restoration and realization of the country's socio-economic well-being. There are two broad ways through which the law can be utilized for this purpose. The first approach emphasizes on reforming existing laws to incorporate and mainstream the recognition of socio-economic human rights. The second approach, on the other hand, emphasizes on using existing legislation while placing emphasis on litigation approaches to claim citizens' socio-economic human rights

The first approach, which involves the establishment of a normative framework of socio-economic human rights in either the Constitution or legislation, has been used successfully in countries such as South Africa. The South African Constitution (Section 27 (1)), for example, provides for citizens' right to health care services and reproductive health care, sufficient food and water as well as social security including appropriate social assistance. It places an obligation on the State to take reasonable legislative and other measures, within the available resources, to achieve the progressive realisation of these rights. The South African parliament has since enacted several laws that are aimed to achieve the objectives of these rights, such as the Water Services Act which provides for citizens' human right of access to water supply and basic sanitation. The effectiveness of this approach was tested and proved on several occasions. The celebrated case of *Mazibuko and Others v City of Johannesburg and Others* for example, provided the South Africa Constitutional Court with an opportunity to establish what it means to ensure the realization of citizens' socio-economic human rights in practice. The case involved a claim by some residents of Johannesburg of their human right of access to basic water supply. The South African Constitutional Court in deciding the case; recognized that, while a human right of access to water supply does not necessarily require the State to provide every person with sufficient water upon demand; it nonetheless requires the State to take reasonable legislative and other measures to progressively realise the achievement of such a right within the confines of available resources. The court, in this case, acknowledged that the human right to water supply places a constitutional obligation on the State to actively undertake social programmes that will result in citizens having access to water.

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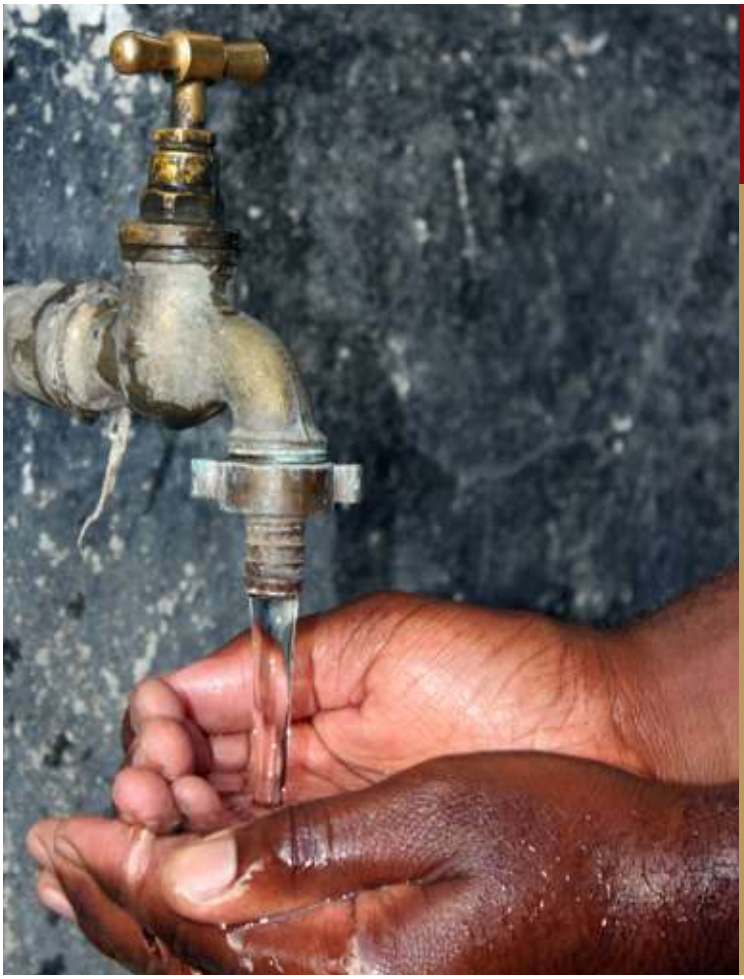
The South African approach, described above, does not currently obtain in Zimbabwe (at least under the present Constitution). This is because the Constitution's bill of rights does not include socio-economic human rights. It predominantly contains civil and political human rights. However, the COPAC Draft Constitution contains normative provisions establishing socio-economic human rights such as the right to education, right to food and water, social security and care, adequate and safe housing and adequate health services, amongst others. If the COPAC Draft Constitution is adopted, it may provide an opportunity for citizens to require the State to ensure the realization of their socio-economic well-being within the confines of the State's available resources, as a human right.

The second approach, which involves the active use of litigation approaches to realise socio-economic human rights, has been successfully used in Botswana. The Constitution of Botswana, like the current Constitution of Zimbabwe; does not contain socio-economic human rights. That notwithstanding, litigation based on a broad interpretation of civil and political human rights such as the 'right to protection against inhuman and degrading treatment', has been used to protect citizen's socio-economic interests. The 2011 case of *Matsipane Mosetlhanyane & Others v The Attorney General* for instance, presented an opportunity for the Botswana Court of Appeal to give a wide interpretation to this constitutional provision. The case involved the forced eviction of the San and Bakgalagadi community (the Basarwa community) from the Central Kalahari Game Reserve by the government by means of denying them access to water. The Basarwa community claimed that the decision by the government to deny them water violated their socio-economic human rights. While acknowledging the absence of socio-economic human rights in the Constitution, the Court of Appeal noted that the government of Botswana had violated the Botswana Constitution by denying the community access to water which was contrary to the constitutional provision protecting individuals from inhuman and degrading treatment. The Court was of the opinion that denial of access to water constitutes inhuman and degrading treatment.

Zimbabwe's current Constitution has a similar provision that protects citizens against inhuman and degrading treatment (section 15(1)). The question that could be asked then is whether the citizens of Zimbabwe can require the State to ensure the realization of their socio-economic well-being, as a human right, since not doing so will be similar to subjecting them to inhuman and degrading treatment. This approach is still to be tested in Zimbabwe however, particularly on whether the Supreme Court will also adopt a wide and purposive interpretation of this provision to protect citizens' socio-economic human rights; as occurred in Botswana.



The Legal Duty of Local Authorities to 'Provide'

For the past decade or so, the local media has been awash with news concerning the state of 'service delivery' by local authorities across the country. These range from challenges relating to water supply and sanitation in urban areas, to the dilapidated state of infrastructuresuch as roads etc., in rural areas. These concerns have raised questions among the general public, not least the question of the role and capacity of local authorities to dispense of this function. The captivating effect of these news stories has generally been accentuated by public health risks that are associated and aggravated by non-delivery of services, such as the cholera and typhoid outbreaks. These questions (and the debates thatensue from them) have however tended to circumvent the role of the law in addressing some of the service delivery challenges.

Local authorities, both urban councils and rural district councils, have a general legal obligation to provide certain public services to residents. This obligation is based on two legal premises, namely; a contractual relationship between them and residents, and an administrative obligation imposed on them by law to dispense of service delivery functions as public bodies. They are expected, in doing so, to manage and utilize the public assets that they control (i.e. immovable property, infrastructure (water works, sewage and drainage works etc.), public money (levies, fees) etc.) for the benefit of residents.

The law (viz, the Urban Councils Act and the Rural District Councils Act) bestows legal authority upon local authorities to impose tariffs, charges and levies on residents for the provision of specific services. These fees are charged and payable as 'consideration' for the services rendered by local authorities.

Section 219 (1) of the Urban Councils Act and Section 76 of the Rural District Councils Act

(1) A council may, by resolution passed by a majority of the total membership of the council - (a) fix tariffs or charges for- (i) the supply of … water or of refuse removal services; or (ii) the conveyance of sewage or trade effluent in public sewers and its treatment at a sewage treatment works; or (iii) any other services which a council may provide in terms of this Act; (b) fix charges to be payable in respect of certificates, licences or permits issued, inspections carried out, services rendered or any act, matter or thing done by the council in terms of this Act; (c) fix deposits to be paid in connection with any services provided by the council in terms of this Act.

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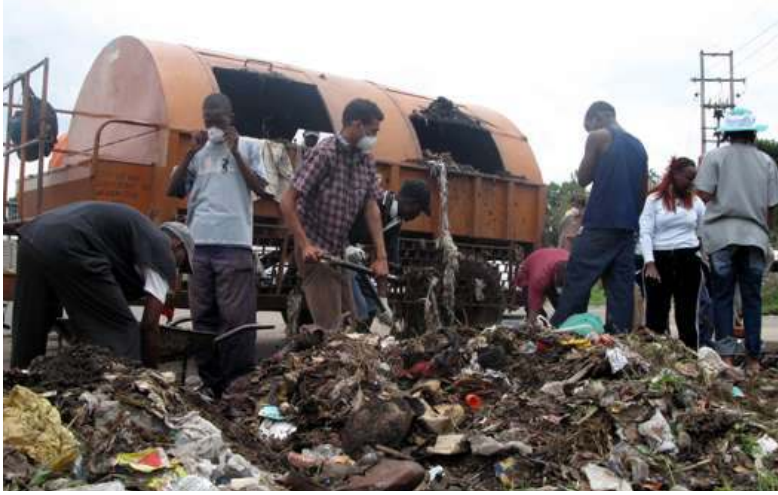
In essence, once residents accept to receive services (by concluding a water supply contract with the authorities for instance) and tender payment for that purpose, this in effect establishes a contractual relationship between them and local authorities; where local authorities assume a personal right to receive payment, on one hand, and residents assume a corresponding personal right to receive services in exchange, on the other.

The contractual relationship that exists in this context allows residents (individually and/or collectively) to enforce their personal right to claim delivery of services, in the same way as it allows local authorities to enforce their personal right to claim payment. However, what is evident in practice (based on an analysis of case law) is that it is usually the local authorities that enforce their personal right in the event of non-payment through the use of remedies such as disconnection of water supply or through other actions intended to recover unpaid service bills. Residents, on the other hand, have generally not been ardent in equally enforcing their personal rights to claim delivery of services for payment rendered, yet it is within their rights and interest to do so. The appropriate legal remedy that is available for residents in this regard is the remedy of specific performance (where local authorities can be compelled to perform a specific activity envisaged under the contract e.g. to provide the services).

While the legal correctness of this approach is unquestionable, it is perhaps the manner in which the courts are inclined to interpret such actions, that is still to be tested in Zimbabwe. It is not inconceivable for instance for the courts to refuse to grant an order for specificperformance on the basis of impossibility (i.e. that it is impossible, in the circumstances, for the local authority to provide the services). That notwithstanding this is one clear manner through which the law can play a role in addressing non-delivery of services by local authorities.



Sections 64 (1) and 66 of the Public Health Act

64 (1) Every local authority, when required to do so by the Minister, shall provide and maintain, or cause to be provided and maintained as far as may be reasonably possible, a sufficient supply of wholesome water for drinking and domestic purposes… and may construct, equip and maintain any works necessary for collecting, pumping or storing water
66 All water works vested in any local authority shall be maintained by the local authority in a condition for the effective distribution of a supply of pure water for drinking and domestic purposes

Sections 6(1) (b) and 6 (2) (d) of the Water Act

6 (1) (b) For the purposes of this Act, the functions of the Minister shall be…to ensure the availability of water to all citizens for primary purposes…
6 (2) (d) In the performance of his functions… it shall be the duty of the Minister…to secure the provision of affordable water to consumers in under-privileged communities
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Further to compelling performance, it will perhaps coerce local authorities to take measures to ensure that public money received (i.e. tariffs, charges, and levies) intended for service delivery are 'ring-fenced' within council budgets and utilized for the intended purpose.

In addition to the legal obligation based on contract, local authorities also have an administrative obligation to provide services to residents.This obligation stems from the responsibility placed upon them by laws such as the Urban Councils Act, the Rural District Councils Act, the Water Act, the Zimbabwe National Water Authority Act, and the Public Health Act. While in other countries such as South Africa, this obligation is also constitutionally guaranteed, in Zimbabwe it is established by statute without accompanying constitutionally guaranteed socio-economic human rights (under the current Lancaster House Constitution) that can be claimed by residents and the public in the event of non-delivery. Although socio-economic human rights are not guaranteed by the current constitution, the imperative nature of the administrative obligation to 'provide' reflects the intention to ensure that the public has access to these services as a basic requirement for community well-being and survival. As such, residents and the general public have a reasonable and legitimate expectation to have such services delivered. When such delivery does not occur however, as has happened in the past decade in some cases, residents have recourse in administrative law. Such recourse entails holding local authorities and related public bodies accountable for the administrative functions they are expected to deliver in terms of the law. The remedies that are available under administrative law (the Administrative Justice Act) against irregular administrative action (such as non-delivery of services) include recourse to the High Court for an order: (a) directing a local authority/public body to undertake the expected administrative action (i.e. service delivery) within a specific period specified by law or by the court; (b) giving directions that are necessary or desirable to achieve compliance by the local authority/public body; and (c) directing the local authority/public body to supply reasons for its administrative action (i.e. non-delivery of services) within a specific period specified by law or by the court.

Section 3 (1) of the Administrative Justice Act

An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall (a) act lawfully, reasonably and in a fair manner; and (b) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and (c) where it has taken the action, supply written reasons therefor within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned.

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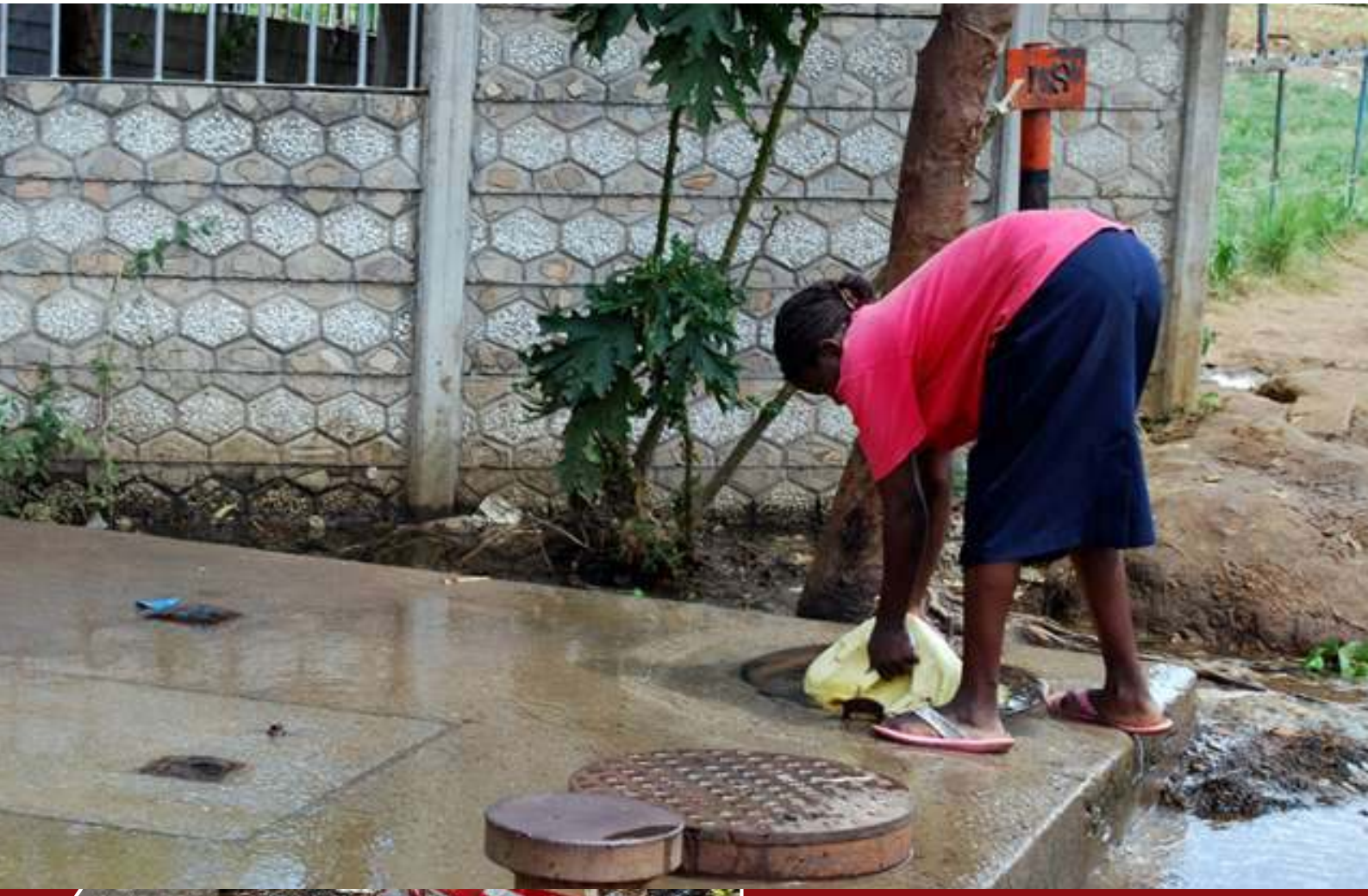
The significance of the remedies available in administrative law is not only premised on compelling local authorities to provide services they are expected to provide under the relevant laws, but also in inducing these public bodies to be accountablefor their actions by providing reasons for their administrative inaction. This involves enabling residents to have access to any record in the custody or control of a public body that can reflect the reasons for non-delivery of services in accordance with the Access to Information and Protection of Privacy Act (AIPPA). These records can include budgetary information concerning tariffs, charges and levies received for service delivery, and information on how such public money has been expended. This particular remedy has an important consequential, but corrective effect of ensuring that local authorities and relevant public bodies are held accountable for the management of public assets intended for service delivery.

The approach of using the law, in the manner described above, to address service delivery challenges naturally has their own critics. Some have argued for instance that no amount of legal action or enforcement of legal rights can be a substitute for funds that are required for local authorities to dispense of their function. They argue that the main challenge that local authorities face has to do with lack of financial resources to undertake their mandate. While this argument, cliché as it is, may have merit in some cases; it ignores the fact that what is being contested is not the right to free services, but the right to access services that residents have paid for. As such, this ceases to be an issue of the quantum of funds received from the Consolidated Revenue Fund, but becomes an issue of the effective management and use of public money received directly from residents for service delivery. In these circumstances, the law can play an important role in ensuring that local authorities adhere to the basic principles of accountability and transparency that are crucial in the management of public assets for service delivery.



Linking Natural Resource Management & Development: A Rights - Based Approach

The management of natural resources (such as land, wildlife and biological resources, rivers and minerals) as a public asset is a growing concern in many countries. The manner in which these natural resources are managed has implications on the development of a nation as well as its ability to fulfil citizens' human needs. In Zimbabwe, a number of laws are used to regulate the management of these natural resources and these include inter alia; Public Finance Management Act read together with the Finance Act; the Indigenization and Economic Empowerment Act; Zimbabwe Mining Development Corporation Act; the Minerals Marketing Corporation of Zimbabwe Act and the Gold Trade Act; the Forest Act; the Water Act; and the Agricultural and Rural Development Authority Act. These instruments provide a legal framework for the management of natural resources. However, their effectiveness can be enhanced if they embraced a human rights-based approach. A human rights-based approach is a framework that emphasizes on 'human rights' as an inherent legal entitlement that people possess due to fact that they are human beings; as opposed to altruistic privileges that people receive as a gesture of generosity. This approach promotes citizens' claim to their inherent rights in a way that holds the State and non-State actors accountable for non-fulfilment of those rights.

The application of the human rights-based approach to natural resource management does not only promote conservation values, but also upholds development efforts by introducing multidimensional linkages between conservation and use, on one hand; and development, on the other. Largely drawn from regional and international best practices, the approach integrates human rights into human development initiatives. Under this approach; development plans, policies and processes are grounded on a system based on rights and obligations. The approach defines citizens as rights holders and the State as the duty bearer and in this context fosters citizens' empowerment to claim their rights, and in the same vein compels duty bearers to meet their obligations. In relation to natural resource management, this would entail the coming together of the State and the citizens to find ways to effectively manage the available but finite resources.

This approach has recently been given impetus by the May 2012 African Charter on Human and People's Rights' (ACHPR)'s *Resolution on a Human Rights-Based Approach to Natural Resources Governance.* The Resolution establishes the State's responsibility to ensure that public resources are administered in a manner that serve the public interest and in conformity with international human rights principles. As the duty bearer, the State has an obligation to ensure the respect, fulfilment and protection of the human rights of its citizens in relation to its role as the 'protector'. As such, the State is expected to desist and to ensure that other non-state actors also desist from interfering with citizens' enjoyment of their inherent human rights, as they go about their business of managing and using natural resources. This means that when the state and non-state actors for instance, are in the process of exploiting natural resources, due diligence ought to be taken to ensure that local communities continue to enjoy the same rights they had before the activities were commenced.

An often cited, albeit classical, case in Zimbabwe where this approach could have made a difference, is the 1950s case relating to the displacement of the Tonga community from the Zambezi Valley to make room for construction of the Kariba Dam. The social and economic life of the Tonga people was largely disrupted as they relied mostly on the Zambezi Valley ecosystem services for livelihood. They were moved to a different geo-cultural environment that required them to adopt new and different forms of food security approaches, amongst other socio-economic imperatives. A more recent case is the displacement of parts of the Chiadzwa community from the Marange area, to facilitate mining operations. If a human rights-based approach was adopted in these cases, the State as the 'protector' would be guided by basic human rights principles, such as those contained in the ACHPR (e.g. Articles 15, 16, 17) and the International Covenant on Economic, Social and Cultural Rights (e.g. Articles 11, 6, 12, 13) that guarantee the right to shelter, food, work, adequate standard of living, health and education (where school children are concerned); when relocation occurs.

The principle of public participation, which is an integral component of the human rights-based approach, gives leverage to the objective of linking natural resources management and development. The principle provides for a participatory approach to natural resources conservation and use, where communities and other stakeholders are given an opportunity to meaningfully input into development processes including policy formulation. This is supported by Principle 10 of the 1992 Rio Declaration on Environment and Development that states in part: 'Environmental issues are best handled with the participation of all concerned citizens, at the relevant level'; and Principle 22 of the same declaration that states in part: *'Local communities have a vital role in environmental management and development and, as a result, their identity, culture and interests must be protected.'* In practice, this would imply public engagement (through structures such as community leaders in affected areas) before projects like wildlife management, mining operations, and constructions of dams are implemented. Involvement of the community will help foster a sense of ownership and responsibility and will contribute to improved conservation

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and use of resources. Once communities identify with an initiative and are participating, they may add value by infusing traditional knowledge and practices in managing the conservation and use of natural resources, in a manner that enhances the sustainability of the project.

While the involvement of communities in the utilization of natural resources is crucial, this can be enriched by ensuring that they are aware of what their rights are and how to claim them. This is particularly pertinent in Zimbabwe, where efforts have been made to ensure community participation in development processes, through initiatives such as the relatively recent Indigenization and Economic Empowerment programme (IEE), and older programmes such as the Community Areas Management Programme for Indigenous Resources (CAMPFIRE). However, despite the good intentions of such programmes, they can only be meaningful if communities are aware of their rights and entitlement therein. The IEE, for example, provides for community share ownership trusts (and these have been launched in a number of districts); however, the majority of the general public is still not aware of how the scheme works and the manner through which they can participate and benefit from the same. This naturally brings to the fore accountability and transparency issue in the governance of public assets. Lack of public awareness (particularly access to information on these matters) has implications on the public's ability to bring the State and non-state actors involved in natural resource management and use, to account for the resources they are managing on behalf of the public.

As discussed above, the human rights based approach has potential to contribute to improved natural resources management and development through the various dimensions it brings to the implementation and monitoring of development initiatives. The approach empowers people to effectively participate in and benefit from shared management of natural resources. It can also be used to establish benchmarks upon which management of natural resources can be evaluated and improved for the benefit of public good as well as sustainability.

Assessing the role of law in Corporate Governance of Public Enterprises

The President in his opening speech of the last session of the current Parliament announced that one of the Bills to be tabled for consideration is the 'State Enterprises and Parastatals Management Bill'. This statement was probably ignored with relative ease by the public, given the seemingly uninteresting nature of matters to do with 'State Enterprises and Parastatals' in Zimbabwe today. To their defence though, the public's indifference on these matters may have been influenced by what appears (at least from newspaper reports in the public domain) to be a perennial tendency by some state enterprises and parastatals to default on delivering on their mandate to their detriment. Perhaps, what should have motivated their enthusiasm in relation to this announcement was the fact that the Bill is intended to contribute towards enhanced efficiency and performance of these state entities for their ultimate benefit. This is because state enterprises are expected to play an important role in the country's economy through generating revenue for the government and being instruments of social and economic development. Indeed, they are bestowed with the responsibility of being the custodians of public assets as well as delivering public goods and services that are considered to be essential for national, regional and local development. As such, the public has an inherent interest and stake in the viability of these entities.

The announcement of the tabling of the 'State Enterprises and Parastatals Bill', is perhaps more revealing of the current state and performance of public entities, than it reveals hope for the future. Evidence, for instance, shows that state enterprises are

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currently not performing at optimum level. While they have been expected to play a vital role in the country's socio-economic recovery, it appears that they have not been as effective. The Ministry of Finance reported, for example, that although some progress has been made in tackling inflation, reviving key sectors of the economy and restoration of some social services such as health and education, the government is still crippled with low financial inflows into its Consolidated Revenue Fund to meet socio-economic development expenditures. The 2010 budget estimated the country's total revenue (including income and profits, tax revenue, customs and excise duty, sales tax and non-tax revenue) to be USD 2,339,056,919.76, while the corollary expenditure was USD 2,171,559,108.00. This was despite higher annual revenue projections mainly from State/Public enterprises engaged in mining, agriculture and manufacturing sectors. The Finance Minister also mentioned in his 2013 budgetary statement that socio-economic recovery is continuously being retarded by state enterprises' under-performance, which if they were operating efficiently would contribute to about 40% of the country's Gross Domestic Product (GDP).

While it is acknowledged that the factors that contribute to diminished revenue inflows from public enterprises and consequently their failure to perform their public service delivery functions are generally varied; the existence of a good corporate governance framework for public enterprises is a critical factor for their continued viability. This is one of the features expected to be introduced by the 'State Enterprises and Parastatals Bill'. Presently, the cooperate governance framework for public enterprises is fragmented and drawn from different pieces of legislation which include, amongst many others: the Acts establishing Parastatals, the Companies Act, the Procurement Act, the Labour Act and the Public Finance Management Act. The Bill (if enacted into law) is intended to codify provisions of the 'Corporate Governance Framework for State Enterprises' and institutionalise principles, policies and practices of good corporate governance in these entities.

These elements are anticipated to infuse principles of transparency and accountability in the governance of public entities. For example, the bill is expected to amongst other matters, provide for the duties, functions and responsibilities of the Minister responsible for State Enterprises and Parastatals with respect to areas of corporate governance and accountability mechanisms. Although this may sound like a 'solution', experience from the implementation of other existing laws reveal that the enactment of a law is only, but part of the solution. The Public Finance Management Act of 2009, for instance also attempts to establish a framework for good corporate governance for state enterprises. This Act, inter alia, intends to regulate the control and management of public resources and it also intends to provide for the regulation of public entities.

Public entities are defined broadly by the Public Finance Management Act to include Parastatals, State Enterprises and their subsidiaries, private companies in which the state has a controlling stake, partnerships and joint ventures between the State and any private entity.

The Act makes it a requirement for every public entity to adhere to and implement the principles of sound corporate governance procedures, policies and practices. However, despite the 'high sounding' intentions of this law and the good provisions contained in it, State enterprises have continued to fall short of implementing good corporate governance practices. For example, some of the audited reports of state enterprises that were reviewed by the Public Accounts Committee of Parliament earlier this year reflect that some of the enterprises do not have adequate financial management systems that are in compliance with the provisions of the law thereby creating room for corrupt practices and mismanagement. This is happening despite the existence of clear and explicit provisons in the law requiring public entities to maintain effective, efficient and transparent systems of financial and risk management. What aggravates the situation further, is the fact that non-compliance continues to exist even though the law contains provisions establishing criminal sanctions against offenders.

Perhaps, the question that needs to be posed and pondered is not necessarily 'How to make good laws' (such as the State Enterprises and Parastatals Bill), but perhaps more fundamentally: 'How to ensure that the normative objectives of a law are effectively implemented and enforced?' This is because the effectiveness of a law should not be judged by what it seeks to achieve but by what is succeeds in achieving. If this question is accorded appropriate attention, it may go a long way in allaying the scepticism that generally grips the public when they hear an announcement of 'yet another Bill' being tabled before parliament. For the general public, what matters is not only the contents of a law, but whether what was intended to be achieved by the law has been or is indeed being delivered.

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