

A CRITICAL ANALYSIS OF CIVIC RIGHTS IN THE URBAN COUNCILS ACT (CHAPTER 29:15) THE NEED FOR AMENDMENT AND THE EXTENT OF PARTICIPATION IN LOCAL GOVERNANCE BY HARARE RESIDENTS TRUST (HRT) - 10 March 2011

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1. Introduction:

The current Zimbabwe Constitution does not have any Chapter which deals with Local Government but rather everything to do with Local Government is contained in several Acts of Parliament. The local government system in Zimbabwe is a legislative rather than a constitutional creature. The Urban Councils Act [Chapter 29:15] and the Rural District Councils Act [Chapter 29:13] establish urban and rural local authorities respectively, as well as provide for the supervisory and monitoring roles of national government in the running of local authorities. Practically speaking, this means Local Government does not operate independently of Central Government; the latter which determines the composition of its administrative structures and functions. The activities of local government units are coordinated by the Ministry of Local Government. This situation is not desirable as it is not in line with democratic forms of governance. The ideal situation is whereby Local Government administration is regulated by the Constitution rather than Acts of Parliament since local governance issues need the protection of the Supreme Law of the Land. So the starting point should be to include local governance issues in the new Constitution to be drafted in Zimbabwe if Harare residents are to actively participate in local governance issues in line with international human rights standards.

Model constitutions have included issues of local governance in them. With regard to other African Constitutions; South Africa, Kenya, Rwanda, Malawi and Uganda, to mention just a few have included a chapter on Local Government in their National Constitutions. Below in tabulated form, is information on how the various constitutions starting with local Draft Constitutions have dealt with one topic under Local Government namely Principles of local Government. It is against such background that a critical analysis has to be made of the Urban Councils Act to see whether it meets the grade. For ease of reference the relevant sections which need to be amended have also been placed in tables with a column for analysis or comments.

2. Local Government in Other Jurisdictions:

2.1. Republic of South Africa: The executive and legislative authority of a municipality is vested in its Municipal Council. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions. A municipality must structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote

the social and economic development of the community; and participate in national and provincial development programmes.

2.2. Kenya: County governments established under this Constitution shall reflect the following principles:

county governments shall be based on democratic principles and the separation of powers; county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

2.3. Uganda: The following principles apply to the local government system: the system shall be such as to

ensure that functions, powers and responsibilities are devolved and transferred from the Government to local government units in a coordinated manner; decentralization shall be a principle applying to all levels of local government and, in particular, from higher to lower local government units to ensure peoples' participation and democratic control in decision making; the system shall be such as to ensure the full realization of democratic governance at all local government levels; there shall be established for each local government unit a sound financial base with reliable sources of revenue; appropriate measures shall be taken to enable local government units to plan, initiate and execute policies in respect of all matters affecting the people within their jurisdictions; persons in the service of local government shall be employed by the local governments; and the local governments shall oversee the performance of persons employed by the Government to provide services in their areas and to monitor the provision of Government services or the implementation of projects in their areas. The system of local government shall be based on democratically elected councils on the basis of universal adult suffrage in accordance with the Constitution.

2.4. Malawi: Local government authorities shall be responsible for the representation of the people over whom

they have jurisdiction, for their welfare and shall have responsibility for (a) the promotion of infrastructural and economic development, through the formulation and execution of local development plans and the encouragement of business enterprise; (b) the presentation to central government authorities of local development plans and the promotion of the awareness of local issues to national government; (c) the consolidation and promotion of local democratic institutions and democratic participation.

2.5. Rwanda: Districts, Municipalities, Towns and the City of Kigali are decentralized entities with legal status

and administrative and financial autonomy and are the foundation of community development.

They shall be entitled to become members of national and international organizations which promote development through decentralization.

3. Zimbabwe's Constitutional Drafts in Relation to Local Government:

3.1.Principles of Local Government:

a. The 2000 Rejected Constitutional Draft:

The following principles apply to the local government system of Zimbabwe:

1. Provincial councils and local authorities must be democratically elected;
2. Provincial councils and local authorities must be given as much autonomy as is compatible with good governance;
3. Functions and responsibilities must be decentralized and transferred from the central Government to provincial councils and local authorities in a co-ordinated manner;
4. Decentralization must be a principle applying to all levels of local government so that there is participation by the people and democratic control in decision-making;
5. Each provincial council and local authority should have a sound financial base with reliable sources of revenue;
6. Provincial councils and local authorities must be enabled to plan, initiate and execute policies in respect of all matters affecting their communities;
7. Co-operation between and among provincial councils and local authorities and coordination of their activities must be encouraged; and
8. Incorporation of traditional leaders in local government structures.

b. Kariba Draft

Same as the 2000 Constitutional Commission Draft

c. NCA Draft

The purpose of local government will be:

1. To provide democratic and accountable government for local communities.
2. To promote social and economic development
3. To provide participation by the people in decision-making.
4. Local government institutions must be given as much autonomy as is conducive for the attainment of the objects of local governance.
5. Traditional leaders will be incorporated in local government structures.

d. Law Society Constitutional Model

Similar to the NCA Draft but leaves out issue of the incorporation of Traditional Leaders in local government structures.

e. Comments and Analysis:

In the majority of the draft Constitutions presented above, decentralization or devolvment of power as well as participation by the generality of the local population are the key words.

4. Conclusion:

The laws relating to Local Government should be such that they ensure that there is transparency and accountability on the part of elected officials who should control what unelected employees do in the course of their duties because at the end of the day it is the elected official who has to answer the electorate's queries on local governance. The law should not allow the relevant Minister to be a law unto himself or herself by being answerable to no one so to speak. If local governance issues find their origin in the Constitution which is any nation's Supreme Law, the Minister will be bound by it and cannot override the Constitution; neither can any provisions which breach fundamental rights and human freedoms ensconced in the Bill of Rights survive in an Act of Parliament when they are clearly ultra-vires the Constitution.