



# **Whose Land Is It Anyway?**

## **A Rationalization of and Proposal for a Devolved Institutional Structure for Land Administration in Zimbabwe**

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**SESSION 4: INSTITUTIONAL STRUCTURES FOR LAND REFORM:  
OPPORTUNITIES FOR AND OBSTACLES TO LAND DELIVERY SERVICES  
DELIVERING LAND AND SECURING RURAL LIVELIHOODS:  
POST-INDEPENDENCE LAND REFORM AND RESETTLEMENT IN  
ZIMBABWE**

*Project website: <http://www.wisc.edu/ltc/zimpfl.html>*

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**March 2003**

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This output was made possible in part through support provided by the US Agency for International Development (USAID), under the terms of USAID/ZIMBABWE CA 690-A-00-99-00270-00.

The Land Tenure Center of the University of Wisconsin-Madison and the Centre for Applied Social Sciences, University of Zimbabwe provide technical assistance, training, capacity building, and research in support of Zimbabwe's Land Reform and Resettlement Program II.

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## **ABSTRACT**

Zimbabwe is going through its second major land reform and resettlement phase with a thrust towards achieving social justice and economic empowerment. The main strategy is redistribution of former (mainly white) commercial farmland for the benefit of the black majority using two distinct models (A2 and A1 with variants). Like phase one (1980-98) the planning and implementation of the program is centralized and not accompanied by an institutional reorientation especially regarding structures for land administration. This is notwithstanding that starting with the Rukuni Commission, leading to the 1998 Donors' conference and the draft National Land Policy Framework Paper, among others, broadening spaces for citizen participation in land reform has been discussed as central to enhancing the performance of the reform program. This paper rehashes the rationale for and proposes a devolved institutional structure for land administration to foster attainment of land reform objectives, obviate the excesses of centralization and improve rural development and governance. The structure is based on fieldwork findings in Zimbabwe, a tour to Tanzania and Botswana as well as broader international experiences.

# **WHOSE LAND IS IT ANYWAY?**

## **A RATIONALIZATION OF AND A PROPOSAL FOR A DEVOLVED INSTITUTIONAL STRUCTURE FOR LAND ADMINISTRATION IN ZIMBABWE**

by

**Kudzai Chatiza**

### **INTRODUCTION**

Zimbabwe is in the process of implementing a land reform and resettlement program, second phase. The program's precursor was a two-year Inception Phase Framework Plan (IPFP) for 1999 to 2000 designed to acquire and redistribute some 1 million hectares of privately owned commercial farmland. The IPFP was not as successful as anticipated and considerable arguments are presented as to how and why this was so. Suffice to note that the slow pace of land delivery, political pressure and limited financial resources to acquire land and to place settlers thereon upon proper planning and infrastructure development all played varied but significant parts. Frustration over the failure of IPFP led to government introducing a fast-track program in mid-2000 with the objective of acquiring not less than 5 million hectares on which it would settle people with minimal to no basic infrastructure, GoZ (2001). Planning and plot demarcation was done in retrospect. A new institutional dispensation was established to manage the program with the program, in both policy intent and political rhetoric, retaining its emphasis on land redistribution for social justice and economic empowerment. Other principal objectives of the program as derived from the National Land Policy include democratizing land tenure systems, ensuring security of tenure, providing for participatory management processes in land use planning as well as the promotion of sustainable use and management of land.

Critical reflection on the stated Land Policy objectives (above) as well as the specific objectives of the land reform program itself (below) shows that a process of institutional reorientation, from top-down centralized strategic and operational mindsets to bottom-up decentralized bases for policy formulation and development management ought to be a centerpiece of Zimbabwe's land and agrarian reform efforts. This is in addition to the need for increased human, financial and other resources needed for the program. Institutional and

organizational arrangements in the management of the land reform and resettlement program and beyond are critical for success. The objectives of the program are:

- To acquire not less than 8.3 million hectares from the Large Scale Commercial Farming (LSCF) areas for redistribution.
- To decongest the overpopulated and overstocked wards/villages for the benefit of landless people under A1 (villagized, self-contained & three-tier).
- To indeginize LSCF through Model A2.
- To reduce the extent and intensity of poverty among rural families & farmworkers by providing them with adequate agricultural land.
- To increase the contribution of agriculture to GDP and foreign currency earnings.
- To promote environmentally sustainable use of land through ecotourism & agriculture.
- To develop and integrate small-scale farmers into the mainstream of commercial agriculture.
- To create conditions for sustainable economic, political and social stability.

Source: GoZ (April 2001).

## **WHY A DEVOLVED INSTITUTIONAL STRUCTURE FOR LAND ADMINISTRATION?**

This paper arises from a study that explored the prospects for establishing a devolved land administration system in Zimbabwe. Fieldwork in three provinces of Mashonaland East, Masvingo and Matabeleland North (in which two districts per province were selected) was complemented by a regional study tour to Tanzania and Botswana as well as a review of literature on international experiences focusing on Botswana, Tanzania, The Philippines and Brazil<sup>1</sup>. The analysis of the field evidence, literature and international experiences inform this paper. The paper proceeds from a rationalization of why a devolved land administration system is essential for Zimbabwe before presenting the proposed institutional structure with details on functions and relationships. The paper asserts that a comprehensive process of establishing a devolved institutional structure for land administration will further the main

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<sup>1</sup> Two papers, one by Mamimine and another joint paper by Jacobs and Chavunduka are based on and present the field findings as well as the theory of decentralization and the international experiences respectively.

objectives of Zimbabwe's land reform program, which is the starting point of the paper. The land reform program in Zimbabwe has not had a complementary institutional reform component to support it Cousins and Robins (1993), Rukuni (1994). Institutional reform is key because tenure *per se* does not constitute a binding restriction to productivity but security thereof, Bruce et al (1998), Rukuni (1994). Security of tenure significantly depends on use and occupation, Shivji (1994) as well as the resolve and ability of social and technical institutions to protect and uphold land rights accorded to individuals or groups. A devolved land administration system brings decision-making processes and structures within reach of the land rights holder and thus makes them more accessible and amenable to the control of the lowest level citizen, in this instance the farmer. At law and in practice ownership (of land) implies powers to control, manage and administer, Shivji (1997) and if these powers are vested in government officials (via presidential delegation) given the absence of political accountability, bureaucratic aloofness sets in and the people significantly lose control over their prime resource.

On the other hand state control of the planning and implementation of earlier resettlement schemes in Zimbabwe has been criticized extensively. The institutional structures have been criticized for having retained a centralized (*colonial*) land administration system, Government of Zimbabwe (GoZ) (1998) as well as for being deficient, prone to conflict, churning out unfocused policies and strategies whose execution is not properly coordinated, Rukuni (1994). Direct state control of processes and structures for land administration has not necessarily and of itself resulted in increased productivity and security of tenure. The principal Ministries and state departments involved in land administration essentially operate in an overlapping maze that confuses unsophisticated service users (farmers) in terms of which to approach for what and is a drain on their limited time and other resources, Masvingo Provincial Workshop (2003). Responsibility for land issues is dissipated between the President's Office on the one hand and the Minister of Lands and that of Local Government on the other with other Ministers like that of Environment having responsibility over certain land functions, GoZ (1998). Essentially the problems of land administration have often been simplified and presented as arising from ministerial and intra-governmental authority overlaps and ambiguities with regards to authority hierarchies, Shivji (1997). Invariably the solution has been tinkering with institutional titles and mandates at times superficially while retaining or centralizing and concentrating power over land in the executive. Granted institutional overlaps need unraveling and synchronizing it is however critical to note that

without dealing with the power issues and ultimate ownership of land (the tussle) between the state versus the land user land administration will remain problematic and land rights will remain vulnerable to executive whims. In Zimbabwe the three key Ministries of Lands, Rural Resources and Local Government have overlapping functions both at Ministerial and Departmental levels. At district level civil servants owe more operational and strategic allegiance to their parent Ministries than to the local (land and planning) authorities or Rural District Councils. Given the centralized budget system and resource allocation process, the bottom-up planning process has essentially suffocated local aspirations dismissing them as inconsequential 'shopping lists'. However the formal (de jure) ownership of land and performance of functions by the state vis-à-vis land administration have traditionally been counterbalanced by the resilient (de facto) performance of similar or related functions by traditional leaders.

The Presidential Commission into Land Tenure established that the most serious conflicts over land took place in communal areas and were exacerbated by the breakdown of administrative structures, erosion of authority and responsibility, Rukuni (1994) epitomized by tension and active conflict between traditional and elected leadership especially over land allocation, Marongwe (2002). Changes envisioned and being effected within the framework of the Traditional Leaders Act of 1998 are being received with skepticism and guarded enthusiasm. Having been sidelined at independence for co-option (and perhaps abuse) as instruments of indirect rule by the colonial administration, the timing of the fuller definition of the roles of traditional leaders (including a reward system) in land administration is seen as part of the state's intention to retain control of the rural population and not democratizing rural governance, Masvingo Provincial Workshop (2003). The reward system brings traditional leaders firmly under state control and effectively makes them civil servants susceptible to manipulation as they become dependent on the executive. It is also possible to assert that it is more of the political establishment (ZANU-PF) rather than the state perse pursuing its political ambitions through the use of the institution of traditional leaders to firmly control rural citizens. Traditional leadership has therefore been compromised, in our view, by both the colonial and post-colonial state to a point where an alternative dispensation is needed. The extension of the control of traditional leadership institutions into resettlement areas where land allocation is largely devoid of the patronage of chiefs and headmen and where the sociocultural and economic statuses of beneficiaries vary significantly is a test case in terms of their effectiveness and acceptability.

Global trends towards participatory development planning and management are filtering into official rhetoric (and perhaps policy intentions) in Zimbabwe as evidenced by reference to empowering locals and indigenizing commercial agriculture against a background of previously (colonial and post-colonial) discriminatory, marginalizing and impoverishing policy formulation processes, Bruce (1998). Pursuing these trends will require increasing people's participation in land administration and devolution as a mode of decentralization offers more effective and considerable promise than other mechanisms. This is because existing land administration processes exclude the community from participation in the development and implementation of land administration, decision-making is opaque, unaccountable and geographically removed from where people live, GoZ (1998).

Significant research focusing on institutional dynamics has dwelt on natural resources and in view of most natural resources being land-based the conclusions arrived at and insights offered are relevant to the discussion on institutional structures for land administration. One view is that it is unrealistic to proceed on the assumption that there should be one composite institution responsible for natural resources management at the local level, Sithole and Bradley (1995). The alternative view urges the need for institutional synchronization and/or harmonization in recognition of the fact that a multiplicity of institutions lends itself to the development and recurrence of counter-productive institutional conflicts Moyo et. al. (1991, 1992), Sithole and Bradley (1995). Institutional conflict while a feature of socioeconomic development and invariably positive in terms of generating desired outcomes can, if unchecked, undermine sustainable utilization of natural resources. Institutional multiplicity and role-jurisdictional overlaps largely result from a sector approach to planning and implementation of rural development projects (e.g. water, forestry, wildlife and land). Extensive literature on different types of conflicts at the local level exists, GoZ et al (1998), Marongwe (2002), Matondi (2001). These conflicts forestall development especially because time invested in dealing with them could be better spent. Experience from Botswana, Mozambique, Zambia, South Africa and Zimbabwe shows that the state shapes and reshapes the form and structure as well as the evolution of state and non-state local level institutions involved in land and natural resource management. As such the conflicts (or lack thereof) amongst the institutions can also be moderated by the state through policy directives and legislative amendments. It is therefore generally in the state's power and indeed a modern day function to facilitate the smooth functioning of local citizen-controlled decentralized structures within an overall national policy framework (the enabling role of the state).

Success stories in relation to local level institutions involved in community-based natural resource management require careful examination as therein might lie the key success factors that could be applied to land allocation, management and administration. The typology of institutions involved in the management of common property resources or various forms of resources and development initiatives include Community Property Associations and Trusts in South Africa, Land Boards in Botswana, Communal Area Management Program For Indigenous Resources (CAMPFIRE) committees in Zimbabwe, ADMADE in Zambia and Tchuma Tchato in Mozambique, and among others, project committees involved in NGO or government-funded rural development activities. The way these institutions are constituted is as varied as the institutions constituting them. While local-level citizen-controlled institutions have received justified raving reviews they are also prone to corruption, elite control and bureaucratic tendencies which have to be checked if the virtues arising from proximity to service users are to lead to effective service delivery. The wave of and interest in participatory development planning in general and its application through community-based natural resource management approaches arises from a bottom-up development paradigm, which acknowledges that the state alone is and should not be the only development actor. The question is therefore around how a positive relationship can be structured to ensure community empowerment. Essential in this respect is the empowerment of communities to manage the land and land-based resources upon which their livelihoods are based. As an approach the bottom-up participatory planning and institutional configurations can achieve efficiency by eliminating the problems of rural development particularly the challenges of coordination, intervention relevance, implementation and sustainability. Another critical dimension is that of resourcing development interventions in terms of the extent to which locals are willing and able to contribute (in cash and/or kind) towards their own development. This is invariably referred to as ‘the dependency syndrome’ and dealing with it depends significantly on the perceived legitimacy of the institutions facilitating the interventions notwithstanding their track record or past performance in generating benefits. Application of participatory frameworks in institutional set-ups in this respect can therefore be a panacea to the rural development questions of institutional coordination, intervention sustainability and the dependency syndrome.

Space for and involvement of non-state agencies in development planning and management in Zimbabwe was given some form, content and significantly aided by the promulgation of a new planning framework through the 1984 Prime Minister’s Directive on decentralization

and development, which created subnational structures supportive of public participation. The objective of the directive was:

To define the administrative structures at provincial and district level...  
relationships and channels of communication between all participants...in order  
to achieve coordinated development of provinces and districts in Zimbabwe,  
Makumbe (1996).

The fundamental tenets of these structures remained the same over the years until the Traditional Leaders Act. The Act has tried to reconcile the overlaps and the role/authority conflict between traditional leaders and the representative structures of village development and ward development committees (headed by a VIDCO Chairperson and Councilor respectively). The new structures and institutional arrangements respond to some of the Land Tenure Commission recommendations especially regarding the establishment of village and ward assemblies, Rukuni (1994). However some of the new structures are still evolving and have not been fully established in some parts of the country. This state of flux is posing a number of challenges and prompts different responses from the different actors and beneficiaries of rural development services.

Critics and skeptics have however noted that some of the consultative processes are smokescreens and ends rather than means of arriving at decisions based on a collective vision. In short, as envisioned and effected, the structures have not empowered communities. The criticisms have been on the basis of a number of points, Murombedzi (1997). First, the structures did not respect the existing territorial jurisdictions as they defined planning units using demography rather than geography and in the process disturbed the boundaries that defined associational life and identities. The traditional village forms a viable basis for relationships and identity both of which are critical for defining communities and act as central components of social capital essential for planning and managing community/rural development. Second, the rampant abuse of the structures by bureaucrats who use them as means of community mobilization, institutions of rubber stamping and policy implementation rather than vehicles for land administration and participatory development planning. Central government functionaries dominate local structures like the Rural District Development Committee (RDDCs), and thus essentially crowd out locals. Center-local relationships are weak and often conflictual with some CEOs resenting being monitored by DA's, for instance, Brand (1991), Mutizwa-Mangiza (1991). The DA's responsibility to chair the RDDC (a council structure) is codified into law but given that DA's are not members of council, their

participation is for monitoring (if not policing) on behalf of central government. As such, therefore, the structures are not ideal for a devolved land administration system. Current systems and institutional arrangements therefore do not link local planning processes to the national budgeting process, which has remained centralized.

The current land reform and resettlement program has been controversial in terms of both substantive and procedural issues. Certain institutions' roles were frozen, receded or extended creating relative confusion. One of the commonplace problems has been multiplicity of allocating authorities leading to the problem of multiple allocations either in terms of one person being given more than one piece of land or one piece of land being allocated to more than one person. Institutional responsibilities and procedures established as part of the program with respect to land identification, allocation, beneficiary selection and settler emplacement were followed to varying degrees of detail in different parts of the country and even within the same administrative areas. Key stakeholders in the Land Identification Committees like War Veterans, politicians and other powerful citizens at both national and subnational levels exerted themselves differently on the formal land administration structures. The Rural District Council (RDC) has in some areas been sidelined despite being the land and planning authority in terms of local government legislation, RDC Amendment Act (1998). As such a thorough review is needed to close gaps and to create administrative and procedural safeguards that will curtail elite self interest and the general pursuit of political aspirations at the expense of effective (fair, equitable) land administration after "fast-track". Previous reviews of institutional structures for land administration have been ad hoc and essentially failed to remove duality and discrimination across tenure regimes, GoZ (1998).

## **CONCEIVING A DEVOLVED LAND ADMINISTRATION STRUCTURE**

The above constitute some of the reasons why we argue in this paper that a devolved institutional structure for land administration is key to the stabilization of the rural socioeconomic fabric post fast-track land redistribution. A devolved land administration system will also act to remove the negative fast-track components while consolidating or regularizing positive aspects of the program. Such a system will also empower rural landholders and their institutions as well as broadly increase and safeguard democratic spaces available in the arena of rural development and governance. In view of security of tenure being, in part, a function of the institutions protecting land rights, a devolved land

administration system will also enhance people's rights to and over land as a socioeconomic asset and basis for agro-based livelihoods.

The other relevant objectives of the proposed structure relate to removing the field of land administration from the terrain of political maneuvering while at the same time entrenching Rural District Councils into the primary role of service provision in a unified structure as opposed to retaining central government service provision structures at the district level. Our focus on these objectives is based on the fact that both the Rukuni Commission and the National Land Policy Framework paper dwelt a lot on the issues of a unified land law regime as well as the need for a national land policy, points which need no overemphasis. Our view is therefore that the time is opportune for developing a national land administration structure that responds to local needs and aspirations as effectively and efficiently as is possible. The proposed structure places due emphasis on the local level and is premised on the primacy of the traditional village as a basis for land administration and basic unit for specific and general planning of interventions. To this end, the critical preoccupation of the land administration system should be protecting village land from alienation, for instance, which could lead to landlessness. As such a land administration system that allows for effective service delivery as well as protecting the land rights of the poor and powerless is critical for the country's social development. A view permeating this proposal is that, as little institutional inhibitions as is possible should be put in the interaction between people and their land.

Devolution as a concept is used in this paper in reference to an institutional framework where authority is transferred from central government to autonomous local level units with a corporate and/or legal persona bequeathed and guaranteed through formal national legislation. If all land matters are public matters and people are allowed to take (an active) part in land administration, Shivji (1994), then it is our view that a devolved structure best suits such a dispensation. The institutions or structures to which the authority is transferred will exist and function in clearly distinguishable (spatial) areas and performing public functions. A devolved land administration system essentially limits state roles to land policy formulation as well as removing direct state control from land administration thus creating a basis for democratic land governance. Regarding land administration the key functions relate to allocation (or deallocation) of land rights, resolving conflicts over land and land-related resources (i.e. protection of group and individual land rights), liaising with outside bodies on land matters in connection with alienation of land, land-use planning, beneficiary selection and implementation of resettlement and other support programs. It also encompasses the

managing or conserving of the land resource to enhance its productivity. These are functions that are better performed by institutions close to farmers to obviate transaction costs, improve turnaround time for decisions, and increase accountability and transparency, which are critical for the legitimacy of public institutions involved in land administration, Rukuni (1994), GoZ (1998).

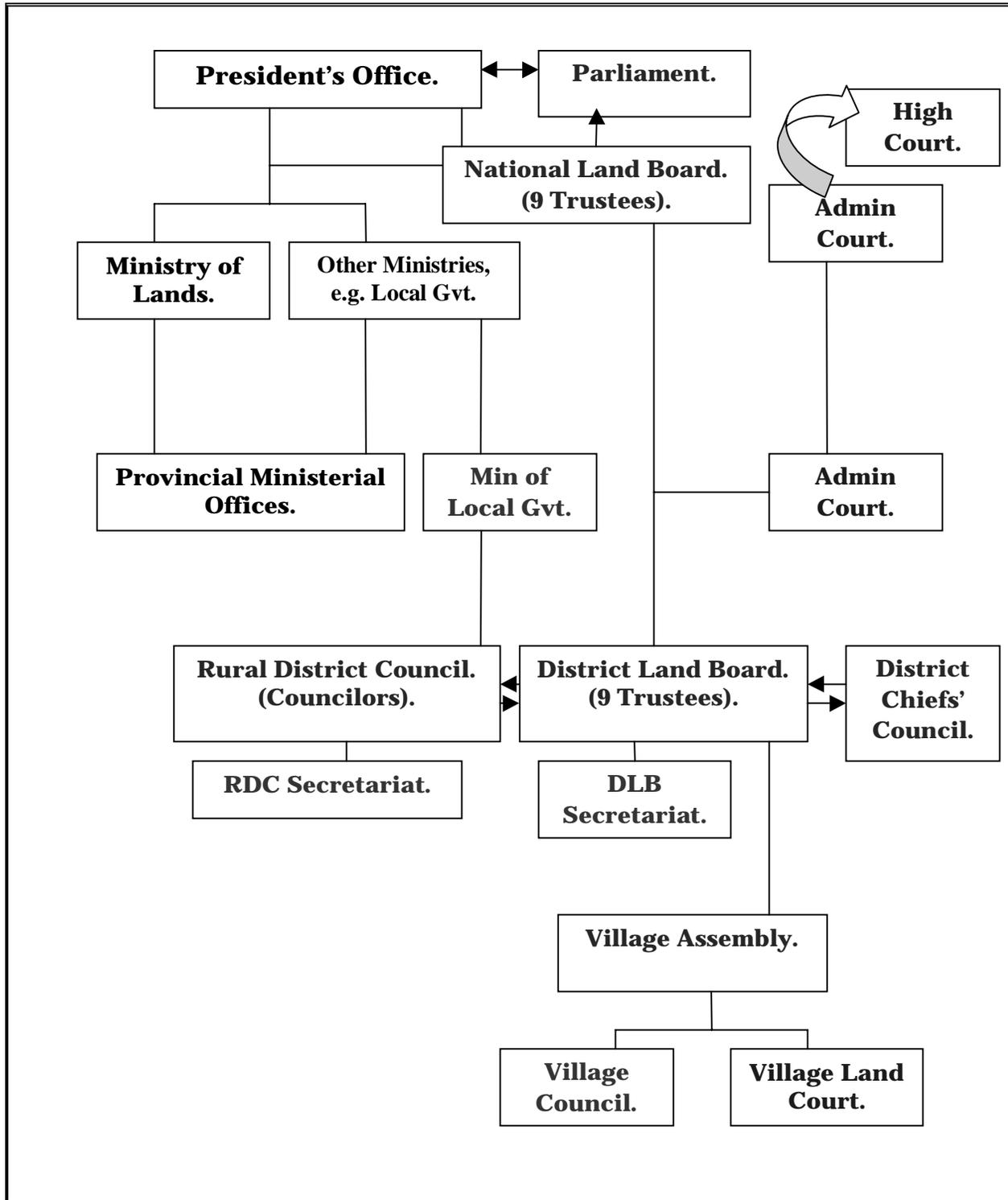
It is our considered view, corroborated by previous studies as well as field evidence that a case for more devolved and effective structures for land administration has been made and a number of proposals submitted for policy consideration. Key reference in terms of broader land policy and particularly with regards to land administration has to be made to the Land Tenure Commission (commonly referred to as The Rukuni Commission) and the National Land Policy Framework paper of 1994 and 1998 respectively, which made far-reaching recommendations with some of which having been implemented. The institutional structures being proposed in this paper are based on a number of principles and values as outlined below.

- ***Accountability and transparency:*** relate to the existence of checks and balances regarding decision-making procedures, information dissemination especially on how land services can be accessed as well as being open to public probing. Accountability and transparency determine the extent to which an institution is accessible to its clientele as well as whether they perceive of it as legitimate. Support to and use of an institution's services depend on perceptions of legitimacy (or recognition).
- ***Change and continuity:*** relate to being responsive to changing aspirations of landholders and other stakeholders in terms of service delivery structures and focus (vision and mission). The latter might involve doing away with certain or creating new organizations to deliver land services. Such changes should at best be incremental to obviate 'throwing the baby with the bath water' as well as confusing service users. Despite weaknesses, Botswana has retained its system of Land Boards for over a generation instituting strategic and continuous improvements in the process.
- ***Vesting local structures with legal/corporate personalities:*** includes divestiture of radical (ultimate) title over communal and resettlement land from the state as a first step to empowering local institutions. Removing all institutional hindrances to the operations of local-level land administration institutions i.e. state receding into regulatory functions and acting in an advisory capacity is also key.

- ***‘Farmer first’ institutional and policy (re)formulation:*** institutional frameworks that provide for the active, equitable and meaningful participation and consultation of farming families (male and female headed) respond better to people’s needs and are generally perceived as legitimate. Enforceable safeguards against discrimination on the basis of gender, status or political orientation, awareness raising and building the strategic capacities of people have to be an integral and continuous part of a devolved land administration system.
- ***Political neutrality and insulation from partisan politics:*** institutions involved in land administration need protection from partisan politics as citizenship and other non-partisan criteria ought to be the determining factor for accessing land and related services. Without being politically neutral or at least being seen to be, the public image of an institution will suffer and with it its acceptability and legitimacy. Political neutrality can be guaranteed through establishing direct institutional accountability channels with Parliament.

The figure below presents the proposed structure/organogram for land administration in Zimbabwe.

Figure 1: Institutional Structure for Land Administration in Zimbabwe



For this institutional structure for land administration to work effectively the following fundamental prerequisites should be in place:

- A clear/concise national land policy constantly updated in keeping with changing imperatives. In the above (proposed) structure, facilitating the development and/or revision of a national land policy will be a cardinal function of the National Land Board.
- Unified land law (e.g. a principal land act) and relevant constitutional provisions. Many commentators have made a case for a unified land law to obviate confusion and ambiguities.
- The same can also be said about Zimbabwe's local government legislation whose streamlining will remove a lot of overlaps and contradictions and in the process help to steer the capacity building of the local government system in the country to benefit land reform and other rural development interventions.
- Streamlined institutions without any ambiguities and overlaps.
- Well-resourced institutions/organizations (financial, technical and human resources) with resources coming from a combination of national budget, revenue generation, taxes and levies as appropriate. A clear policy and legal framework has to be established to facilitate institutional viability.
- Synergy in terms of both the pace/timing and policy visions of reform processes e.g. local government and civil service reforms, land reform and local government reform etc. This will ensure that changes in one sector do not contradict or render inoperable changes in another.

The first two prerequisites have received considerable attention since the Rukuni Commission of 1994 but as many commentators have observed in the case of Zimbabwe as well as in Tanzania reforming land law and institutional arrangements without an alignment with or accompanying local government institutional and legislative reforms is addressing a fundamental problem in a piecemeal and ad hoc fashion. The plan of action proposed in the conclusion to this paper therefore focuses on a local government reform program sensitive to developments in the land reform sector and designed to pursue complementary objectives especially with regard to the democratization of rural governance.

At national level a National Land Board (NLB) will be created independent of or not the same as the Agricultural Settlement (ARDA) Board. The National Land Board will be an

extra-Ministerial body reporting to the Parliament of Zimbabwe through the Office President, GoZ (1998). It is proposed that the membership of the board be set at nine trustees drawn in such a way as to represent the interests of the diverse land stakeholdership consisting of and resourced by central government ministries, farmers' unions and the business community. Members to the board will be nominated by the relevant parliamentary committee through extensive public consultations and ratified by Parliament. At least 30% of the members of the National Land Board should be women and members should generally be persons knowledgeable in land matters, of high standing, integrity and be outside state employ, not political party leaders and members of parliament. The NLB will be a land policy melting pot and focal point for managing the land resource in the country. It is our view that the detailed recommendations of the National Land Policy Framework paper with respect to the structure of the NLB (executive not advisory) and its secretariat (divisions and functions) are quite relevant as well as the principle of safeguarding lower tiers of land administration from the NLB e.g. protection of village lands from NLB interference. However the divisions and units proposed in the policy paper (although a matter of detail) require further cleaning out to ensure coherence and obviate overlapping functions.

At the district level a District Land Board (DLB) will be instituted as a land policy and watchdog institution representing the interests of Traditional Leadership (with a District Chiefs' Council as the repository of such interests), the RDC (full Council) and the citizens (Village Assemblies and Farmers' Unions). Regarding formulation and functional spirit the DLB will operate like the national Tripartite Negotiating Forum, which pits government, labor and business as equal social partners. The Board will be autonomous and independent of both the Chiefs' and the Rural District Councils so that it provides an unbiased and legitimate platform for discussing and executing land administration functions. Unlike in Botswana where Land Boards are a state creation and the executive largely appoints members, Zimbabwe's subnational Land Boards will be free of executive meddling. It is proposed that the membership be nine with two people being from full council (RDC), one representative of the traditional leadership in the district, a representative of the farming unions with a presence in the district and five members elected from Village Assemblies (i.e. from amongst the members of the Village Councils or Village Governments)<sup>2</sup>. The RDC Chief Executive Officer will be an ex officio member of the DLB. The secretariat of the DLB

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<sup>2</sup> No particular quarrel with the NLPF suggestions but strengthening farmer representation.

shall have a Board Secretary heading the administration of the DLB and the secretariat shall be structured to provide services to Village Assemblies in land administration matters. The primary functions of such a Land Board will be the issuance and protection of rights over communal and resettlement land for the benefit of village land applicants on the advise of Village Assemblies (VA's). The board will also generally support and advise VA's in the allocation of land and general management of their land resources, formulate bylaws, relevant regulations and policies within the overall national land policy framework and in consultation with VA's, the NLB and other stakeholders. The DLB will also offer training and general capacity building on land rights issues to relevant institutions (e.g. VA's and district citizens). Disputes over matters of procedure or 'political disagreements' in relation to land matters between traditional leaders and citizens, RDCs and traditional leaders or such other disputes will be brought to the attention of the District Land Board. To ensure transparency in the administration of land, allocations will be on the basis of formal applications on DLB approved stationery and submitted through the Village Council for onward transmission to the VA. Once the VA's agree to allocate land in keeping with prevailing priorities, bylaws and land policy considerations the form will be forwarded to the DLB with a note from the relevant VA's for DLB confirmation and registration. Should the DLB not be satisfied with the recommendation or decision of a VA's to allocate land such decision will be communicated through the VC's.

It is important to emphasize that RDCs or local authorities in general are critical in servicing or developing land in support of people's livelihoods. To this end their centrality in this regard justifies a restructuring process to make them more efficient by removing all conceivable technical, institutional and resource encumbrances. Institutional hindrances to the thriving of RDCs include ministerial conflicts and lack of coordination played out at district level. To obviate such problems it is being proposed to keep Ministerial overlaps and conflict as far away from the local level as is possible through restricting Ministerial institutional presence to national and provincial tiers only. This creates a basis for an unencumbered local government system where all technical and professional staff working in the districts falls within the complete employ of Rural District Councils. The Presidential Commission made a related recommendation through the proposed District Secretary's Office, which was not taken on board. It is our view that the proposal by the Commission was weak in that it implied a co-ordinatory function as opposed to a full-fledged executive responsibility empowered in relevant (revised and unified) local government legislation. The

proposed restructuring and strengthening of RDCs will be done with a view to ensure that there is no overlap between the proposed District Land Boards (DLBs) and the RDC. To ensure this is the case RDCs will be restricted to administering land in planned areas/settlements while all other land outside planned areas will be the responsibility of the DLB. For their part RDCs will have a land subcommittee which will formulate council perspectives on land for contribution to DLB deliberations as the latter will be the ultimate authority in matters of land policy at district level. A lot has been said about RDCs lacking the requisite capacity to deliver effective services to communities while other commentators cite the need to counterbalance their relative power vis-à-vis communities. All in all, however, the assertion that RDCs are weak largely comes from central government invariably to justify central presence (and meddling) in local affairs. With the restriction of Ministries to the province a lot of qualified staff currently working for line ministries within and outside districts will be released as well as other resources for reallocation/assignment to RDCs. The chiefs' council and the DLB will together act to counterbalance RDC powers and enhance transparent service delivery as well as accountability.

In keeping with the principle of change and continuity and also in recognition of the provisions of the Traditional Leaders' Act, Village Assemblies (being established throughout the country) will be the basic land administration units and will comprise of all adults (people over 18 years of age) residing within a village whether with or without a piece of land properly allocated to them. Quorums for Village Assembly meetings shall be 60% of the villagers with at least 40% of those present being women. A VA shall meet at least twice yearly to plan, review developments and consider any matters brought to its attention by the Village Council or any other bona fide residents of the village, writing minutes of every meeting. An elected adult member of the village shall chair the VA meetings with the village head being an advisor and ex officio member of the assembly. A properly constituted VA shall have the mandate to elect six members of the Village Council from amongst eligible adult villagers and at least a third of the VC shall be women. The village head (the seventh member) shall chair all VC meetings and report on its deliberations to the VA's as a way of ensuring transparent and accountable traditional leadership. As the Village Government the VC shall administer all village land for and on behalf of the Village Assembly, liaise with all extra-village stakeholders within the framework set by the village assembly and pursuant to the aspirations and interests of the villagers. The council shall operate on the basis of subcommittees as decided upon or needed by the villagers with the subcommittees having the

leeway to co-opt other villagers and technical people to assist in performing specific tasks before reporting to the VC and subsequently to the VA. Other functions of the VC shall be to develop and maintain a village land register complete with a community map (however rudimentary), collect and disseminate information to villagers as well as arrange meetings where outsiders visit the village.

The incidence of land conflicts going unresolved for lack of a dedicated and devolved institutional structure is a cause for concern. While insufficient field evidence was gathered to firm up a proposal, it is our view that a land conflict resolution structure be established aligned to but administratively separate from the hierarchy of courts in Zimbabwe. To this end the lowest court with original jurisdiction over matters of land conflict should be a Village Land Court (VLC). The VLC shall hold public hearings with five members in attendance of which at least two shall be women. All members shall be VA-elected and at least one DLB-trained in land rights and legal matters. Familiarity with the customs of the area as well as the general land policy will be important for any VLC members. In the event that a matter presided over by a VLC is not satisfactorily dealt with, or if it is a matter transcending one village the District Land Board will handle the matter referring unresolved matters to the Admin Court (decentralized to Province) and subsequently referred through the hierarchy of courts as depicted in figure 1 above.

Recognizing the resilient and important role of traditional leaders at district level in Zimbabwe but without unduly detracting from the intention to democratize land administration, a district chiefs' council will be established, nominating members (one each) to represent its interests in Council as well as the Land Board. The chiefs' council will be the repository of customary wisdom brought to bear on RDC and DLB decision-making in the form of recommendations presented by representatives. Given the reality that they are now essentially civil servants (as is the case in Botswana in many respects), traditional leaders' roles in the community and customary court system should be strengthened and formalized with a referral system for all land matters to the VA and the DLB.

## **CONCLUSION AND FRAMEWORK FOR A CAPACITY BUILDING PLAN**

A resilient question with regards to local level institutional structures always relates to their funding. Sources of funding can be limited largely because of the desire to obviate loss of autonomy arising from 'dirty' money coming with strings and eventually eroding any policy/strategic and operational independence and/or institutional legitimacy. To this end

therefore the funding for the proposed institutional structures ought to be a combination of district level levies, taxes and other RDC charges complimented by contributions from farmers' organizations, annual government grants, business sector contributions and DLB-fundraising efforts. The contributions of government beyond huge set up outlays ought to be reduced to a level where self-secured resources (alternative funding) contribute say 60-70% of DLB annual budgets.

As noted earlier, the devolution of institutional structures for land administration is not something the government of Zimbabwe violently opposes. However the nature of the party-political establishment in terms of its ambitions and strategies or influences act to postpone if not derail progression towards autonomous land administration and broader rural governance institutions. The curtailment of open public debate over land has detracted Zimbabwe from laying clear land policy contours protected from executive and ruling party unilateralism. Read in conjunction with the almost complete merger (perceived and actual) of the party and government frustrates reform efforts in terms of the policy formulation regime as well as the outlook of the actual policies themselves and the institutions with a mandate to execute them. In keeping with the slant maintained in this paper the following next steps will engender a new dispensation in the country. The proposed activities include:

- Adopting a devolved institutional structure for land administration as proposed in this paper with necessary modifications arising from public debate over issues. Such a structure will then be a reference point for the administrative and legislative changes enacted to ensure that it functions as effectively as is possible. Previous reform processes invariably saw government adopting components of a structure and selectively applying recommendations associated therewith. It is our view that the starting point ought to be the structure followed by catalyzing debate aimed at creating national consensus and a firm basis for proceeding to evolve the legislative safeguards and other aspects necessary for executing the structure.
- Developing a program of action complete with a budget with Parliament taking a lead in executing the plan of action including accountability for resources availed for the execution of the plan. The state ought to be able to provide sufficient space for and resources to execute this plan (upto a minimum of 40%) to ensure ownership and identification with the outputs of the program of action whose main features of necessity have to include the following.

- A streamlined national land policy without the “fast-track” induced confusion and ambiguities. One of the often quoted ‘policy positions’, which in our view both misleading and leads to lots of pressure being visited upon land administration institutions relates to ‘land to all people’. As a finite resource land will never be availed to all who need it and the land policy as well as those executing it need to be emboldened to begin informing their actions accordingly:
- A unified/streamlined land law regime (legislation) taking account of existing legislation, national land policy objectives and people’s aspirations.
- Related to the above is a process of ensuring that the local government legislative environment is also streamlined to establish and empower new structures as well as remove overlaps and other institutional constraints. The land law and local government legislative reviews ought to be coordinated to enhance process synergies and symmetries essential for effective service delivery in view of the fact that both focus on the same constituents.
- A capacity building program (including actual setting up of institutions) drawn in relation to the new local government and land policy and legislative imperatives. The starting point in this capacity building should ideally be at district level and with institutions at this level i.e. the restructured RDC, the DLB and subsidiary structures as well as the structures associated with the Traditional Leadership. The process will then cascade upwards building a grassroots anchored national consensus on the key policy issues and institutional arrangements.

An essential caveat to all this worth repeating relates to the fact that the Parliament of Zimbabwe ought to be leading this process as much as is possible to ensure accountability for and legitimacy of both the processes and the outcomes. Essential values that need to be embedded in the process include empowerment of people through provision of adequate information and legislative guarantees for effective citizen participation and consultation in public policy formulation, monitoring and review.

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