

Developing a Democratic Constitutional Framework through a People-Driven Constitution Making Process for Zimbabwe

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Abstract: *This research paper is on a study of how Zimbabwe can produce a democratic people-driven constitution as a permanent solution to the country's problems of poor governance, violent political conflicts, economic collapse, social disintegration, and international isolation. The purpose of the study was to explore a people-driven democratic constitution-making process that Zimbabweans want. Two groups of research units comprised of 1 120 individuals and 67 institutions were used. The inquiry discovered contextual meaning of six phenomena associated with a people-driven democratic constitution-making process. The study recommends a constitution-making process model that Zimbabwe should adopt to produce a people-driven constitution democratically.*

Keywords: people-driven constitution, constitution-making process, Zimbabwe constitution model.

1. Introduction

In the past two decades the people of Zimbabwe have been grappling with the question of how a people-driven democratic national constitution can be authored as a way of solving the country's serious problems of governance, violent political electoral conflicts, sham elections, governmental illegitimacy, economic mismanagement, social disintegration, and international isolation.

All citizens of Zimbabwe are in agreement that the country needs a people-driven constitution, an indication that the new constitution must be democratic. The process of making a people-driven constitution is as important as the democratic constitution itself. However, there is disagreement, as has been the case in the past, among the citizens of the country on the constitution-making process to be used.

This study discovers what the people of Zimbabwe mean when they say that they want “a people-driven democratic constitution-making process” for them to produce a people-driven constitution for the country. The primacy and importance of a constitution-making process is underwritten by the values of a people-driven democratic constitution itself as the end product of the process.

In Zimbabwe, a democratic constitution is central to the creation of a new political, economic and social culture of a multiparty constitutional democracy – a system of government in which fundamental rights of citizens, peace and security, good governance, rule of democratic constitutional law, and sustainable development can take place, be protected and observed. Zimbabwe needs a legitimate, democratically elected constitutional government to take charge, and be in control, of the nation's official public business. A democratic constitution is a precondition for this. It begins and ends with a people-driven democratic constitution-making process. A defective process will not produce a desired constitution.

The collective role of the people in the process is central [1]. This applied research study prescribes elements of the desired people-driven democratic constitution-making process for Zimbabwe.

2. Review of Related Literature

While different nations of the world have used various methods to produce their constitutions, there is no existing literature on the particular method that Zimbabweans have chosen. This study is therefore dealing with inventive research and that being the case, there is no literature on principles of a people-driven process of making a constitution to review. However, Zimbabwe has made four attempts at making a people's constitution in the past but without success. The unsuccessful constitution-making processes constitute literature that is related or similar to the subject nature of this study. The review of these related unsuccessful constitution-making processes helps to expose the knowledge gap that this study aims to fill.

2.1 The Lancaster House Colonial Constitution-Making Process

The current Lancaster House Colonial Constitution being used as a principal instrument of national governance in Zimbabwe was written by the British government in 1979. The draft constitution document emanated from the British parliament as a schedule to the Zimbabwe Constitution Order of 1979 (Statutory Instrument 1979/1600 of the United Kingdom).

Following the enactment of that legislation the United Kingdom government organized a Negotiation Conference on Zimbabwe, then known as Rhodesia or Zimbabwe-Rhodesia. The British Colonial Empire had decided to give independence to its colony, Rhodesia, a territory that was colonized in 1890 by Cecil John Rhodes of the Pioneer Column.

The British government invited two groups of delegations from Zimbabwe to attend the Negotiation Conference. At the Lancaster House Conference, the draft Zimbabwe Constitution Order from the British parliament was used as the basis for negotiation. At the conclusion of the negotiations the parties to the conference adopted the draft constitution document as part of the agreement. The document was imported into Zimbabwe as the inherited Lancaster House Colonial Constitution of Zimbabwe when the country was given its independence by Britain in 1980.

2.2 The Constitutional Commission (CC) Constitution-Making Process

The government of Zimbabwe set up a Constitutional Commission in response to public pressure on the issue of a new democratic constitution in 1999. The government appointed 400 individuals, of which 150 were members of parliament, to the commission. All the commissioners were appointed by the country's president and they were all from the ruling political party. The Commission was headed by the Chief Justice of the Supreme Court of Zimbabwe. The CC was asked to gather, analyze, and evaluate data from the people on the constitution and to produce a final draft constitution for presentation to the government for adoption. The CC consulted some people through thematic committees established for the purpose. The outreach program of the CC was heavily decampaigned, rejected and boycotted by the majority of the people in the country. However, the CC went ahead with its government-driven constitution-making process that produced a draft constitution which was presented to the government for consideration. The government adopted the draft constitution before organizing a referendum where the draft was offered to the people to either accept or reject through the vote. In February 2000 the people of Zimbabwe rejected the draft constitution with a majority "NO" vote.

2.3 The National Constitutional Assembly (NCA) Constitution-Making Process

The National Constitutional Assembly (NCA), a civil society constitutional lobby movement was formed in mid 1997 to campaign for a new democratic constitution for Zimbabwe. The NCA comprised political parties, workers trade unions, churches, student bodies, human rights organizations, professional associations, women's groups, youth movements, and individual citizens.

By the time the government of Zimbabwe appointed the Constitutional Commission (CC) in 1999 the NCA had already done a lot of work in conscientising the people on the need for a democratic constitution as a way of solving the country's problems. The NCA rejected the manner in which the government's CC was established, the appointment of partisan commissioners, and the government's control of the constitution-making process. The NCA argued that the Commission's constitution-making process was not people-driven since the process was owned, managed and controlled by the ruling political party and its government.

After rejecting the government-driven constitution-making process the NCA began a parallel process of consulting the people on the constitutional issue. During the process of consultation the NCA also started to gather the people's views on the constitution. After collecting the data, the assembly analyzed and evaluated it before producing its own draft constitution. At the February 2000 referendum for the government's draft constitution the NCA members cast a "NO" vote. The NCA draft constitution was not put to a referendum because it was not officially accepted by the government.

2.4 Constitution Parliamentary Select Committee (COPAC) Constitution-Making Process

On 29 March to 27 June 2008 the nation of Zimbabwe held bloody violent harmonized elections using the current Lancaster House colonial constitution as amended. The results of the harmonized elections were withheld for close to two months before they were announced. Overwhelming public perception in Zimbabwe is that the election results were manipulated in order to prevent the announcement of the outright winners. Because of a constitutional requirement that if the results of a presidential election were less than 50%+1 of the total votes cast, then a presidential election run-off between the two candidates who secured the highest number of votes in the first election would be conducted within ninety (90) days of the announcement of the results, a re-run presidential election in which the two candidates who secured the most votes was held on 27 June 2008. It was during the presidential run-off election that animated political violence unprecedented in African history was witnessed. In the aftermath some three political parties decided to enter into an agreement codenamed "Global Political Agreement (GPA)" on 15 September 2008. The GPA agreement was signed by the presidents of the three political parties and the Southern African Development Community (SADC) Facilitator as a witness on 15 September 2008.

In ARTICLE VI of the GPA the three political parties agreed to appoint a select committee of parliament (COPAC) composed of representatives of the parties whose terms of reference include holding public hearings and consultations as it may deem fit in the process of public consultation over the making of a new constitution for Zimbabwe. The COPAC constitution-making process produced its compromised draft constitution that was negotiated in secret by the 3-political parties in the GPA on 18 July 2012. The negotiated compromised partisan draft constitution caused irreconcilable sharp disagreements between the 3-political parties which led to one of the parties to produce its own draft constitution based on two hundred (200) amendments that it proposed should be included into the COPAC draft. On 21 – 23 October 2012 COPAC held its second all stakeholders' conference where the proposed amendments were submitted, considered, and adopted.

The Herald of 22 October 2012 reports that the heads of the 3-political parties in COPAC, as GPA principals, instructed their subordinate members of parliament attending the second all stakeholders' conference to

surrender the amended COPAC draft constitution to them so that the principals can scrutinize it for further amendments before a referendum on the document can be organized.

A referendum on the COPAC draft constitution was conducted on 16 March 2013 and 3 079 966 members of the three GPA political parties voted for the draft while 179 489 voted against it. The COPAC draft constitution was enacted by the GPA Parliament as an amendment number 20 to the Lancaster House Colonial Constitution of Zimbabwe on 22 May 2013.

3. Methodology

The research methodology of this study is guided by a realization that the research is original with regard to the phenomena under inquiry and the intended objective. There is no known established principle or theory on the subject of “a people-driven democratic constitution-making process”, and specifically “for the people of Zimbabwe”. It is a situation of a unique constitution-making process for a unique nation of Zimbabwe. For these reasons, the study adopted mixed research paradigms that use exploratory, descriptive, and inductive social research techniques. For the aims and objectives of this applied research study to be achieved, the people of Zimbabwe were classified into two research segments of individuals and institutions as units of inquiry.

Since the social phenomena being studied relate to the constitution and the process of making it, the primary concern of the study is that of political power and the rights of citizens in the constitution-making process and in constitutional governance. This particular research design approach of study population segmentation was chosen because of its perceived significance in capturing important data from a wide spectrum of both natural and juristic persons as stakeholders and actors in the constitution-making process in Zimbabwe. The segmentation of the people of Zimbabwe into specific research groups was instrumental in capturing data from the expression of ideas, views and values representing various actors and interests in the constitution-making process. It was possible to validate data by making inter and intra segmental comparisons. The study used a non probability purposive/judgmental sampling method to select research entities that were put into the samples. The sampling method was chosen because of the diverse nature and parameter of the research population.

A sample of 1 120 individuals drawn equally from ten provinces of Zimbabwe and 67 institutions was selected for the study. Institutions comprised 8 political parties, 33 human rights organisations, 14 educational and professional bodies, 10 industrial associations of business enterprises, 1 government, and 1 Diaspora association of Zimbabweans. Individual participants completed a questionnaire while institutions were interviewed and observed. Descriptive statistics of frequencies and percentages were used to analyze and interpret collected data. Qualitative data were analyzed using logical and rational evaluation techniques based on the researchers' mental model conceptual framework of operational

definition of terms. The study was conducted during the period from December 2011 to December 2012 in Zimbabwe.

4. Results and Discussion

The main findings of the study are:

4.1 Discovery of contextual meaning of six constitution-making process phenomena:

- **The People** – collective minds of all Zimbabweans put together as a source of ideas on the constitution-making process. It is a social phenomenon embedded in a natural phenomenon. The people phenomenon on the constitution-making process is a social concept of human ideas. Ideas are perceptions of the nature of human life. Ideas are facts of life. They are knowledge.
- **The Constitution** – an embodiment of the people's ideas. It represents collective social intellectual property of the people in a country. A constitution is knowledge about life and that knowledge resides in the human mind. It is an intangible product of a people-driven democratic constitution-making process.
- **Constitution-Making** – the act of giving ideas from which a constitution is produced. The act of giving constitutional ideas is a mental process of thinking that is performed directly by individual persons as part of the people. Constitution-making occurs in the human mind.
- **Democratic Constitution-Making Process** – open popular people participation, involvement, and inclusion in all stages and at all times from the start to the end of a people-driven constitution-making process. There must be abundant freedom of thought, speech, association, assembly, and expression without fear of violence, intimidation, coercion, and threats.
- **People-Driven** – action taken, done, based on, or derived from the collective ideas gathered from the people.
- **Constitution-Making Structure** – the implementing organizational mechanism of a people-driven democratic constitution-making process.

The discovery of contextual meaning of the six constitution-making process phenomena is a major output of the study because it lays the foundation to the development of a theory on the subject of a people-driven democratic constitution-making process. Definition of key concepts constitute a principle that would guide implementation of a constitution-making process if the desired end result of producing a people-driven democratic constitution is to be achieved in Zimbabwe. The four constitution-making processes reviewed in section two above did not have guiding theoretical frameworks derived from the people and probably that could be the main reason why they failed to produce a people-driven constitution.

4.2 Ideas make a constitution

A constitution is made up of ideas, not papers. This result came from 94.1% of individual respondents in the study.

Those who thought a constitution is a piece of paper was only 1.0%. This finding dismisses any notion, as has often been heard in general talk in Zimbabwe, that a constitution is a mere piece of paper. Ideas are intangible phenomena; consequently, a constitution is an intangible phenomenon. It has no physical substance. It represents collective intellectual property of the people in a country. Another alternative view is to consider a constitution as an intangible national investment from the people.

4.3 Source of a constitution

The source of a constitution is the people. This view came from 85.3% of the participants. A constitution is sourced from the people and it is produced by the people. The people phenomenon produces the constitution phenomenon. In other words, a constitution is a creature of the people and not vice versa. It is not possible for a constitution to create the people. If a constitution is made up of ideas and ideas come from the people, it is fact that ideas cannot create people.

This conclusion is important when considering the functions of institutions that are created by a constitution such as government, parliament, judiciary, executive, president, and cabinet. These institutions or establishments are creations of a constitution and since a constitution is a creation of the people the institutions cannot produce both a constitution and the people. Organizations or institutions exist as groups because they have people in them, and without the people, the groups do not exist, therefore, as nonentities no ideas can ever come from them because they are nothing. Ideas can only be produced by individual persons who collectively constitute the people.

4.4 Making a constitution

The people make a constitution (83.3%) by giving ideas through a direct mental process of thinking (93.2%). The constitution-making process occurs in the human mind or brain which is then manifested by giving ideas through a medium of communication, eg, written, oral, and sign. The constitution-making phenomenon is an intangible thing. This characteristic is common to both the people and the constitution phenomena. A common denominator of the three phenomena, namely the people, the constitution, and constitution-making, is the concept of ideas. The three phenomena therefore are, and they represent, human ideas about life and its natural surroundings on the constitution-making process in Zimbabwe. Ideas are knowledge, and therefore intangible phenomena. In his glossary [2] defines knowledge "as actionable information or tacit or explicit knowledge". The constitution-making phenomenon is about giving human ideas that, in turn, make up a constitution. It is a social process that is undertaken by the people collectively as task actors.

4.5 Thinking entities

The people think and originate ideas as individuals (73.5%) not groups, institutions, or organisations (17.6%). The brain, head, and mind are concepts of the people

phenomenon that combine to produce ideas. The human brain, head, and mind perform the thinking task of the people phenomenon. It is the human brain, head, and mind that supply the constitution phenomenon with ideas. Since ideas originate and are sourced, from the human brain, head, and mind, it is these three synonyms that represent the people phenomenon on constitution-making for Zimbabwe. It is the individual persons who are thinking entities not groups of individuals.

The people phenomenon is a group concept and therefore the phenomenon cannot perform the act of thinking. A group is a nonentity. The task of thinking is performed by the individual person as a contribution to group ideas. It follows that since the people phenomenon represents collective action that gives rise to the phenomenon of the constitution and constitution-making, the people concept must have the participation or membership of individual persons for the collective ideas to become the output of the people group phenomenon on constitution-making in Zimbabwe. The person phenomenon operationalizes the people phenomenon on the constitution-making process. Without the active participation of the person phenomenon, the people phenomenon cannot exist.

Consequently, the phenomena of the constitution and constitution-making cannot exist too. However, the individual person phenomenon cannot make or write a constitution. Constitution-making and the constitution are products of the people phenomenon.

4.6 Institutions and Organizations are Not People

Institutions or organizations are not people; therefore, they cannot make, write, or author a constitution. It is revealing that even some of the institutional respondents that informed the study like political parties, government, and human rights organizations did not describe themselves as the people on the constitution-making in Zimbabwe. From this result alone it can be concluded that institutions or organizations are not people. This conclusion supports [3] when he defines an organization "as a group of people who exist to achieve a common purpose". A group being an assemblage of two or more people is itself not people. It can be concluded that a group is not a people entity within the context of constitution-making in Zimbabwe.

Therefore, institutions and organizations are not parts or elements of the people phenomenon. Organizations or institutions do not have human brain, head, and mind so they cannot perform the act of thinking on their own without the agency of a group of natural human beings. Institutions and organizations are juristic creations of natural human beings. They cannot think of ideas. They are not created to do so and they can never have such an attribute. Organizations and institutions are social human-made abstractions that are not housed by a natural phenomenon. Without a membership of natural human beings, institutions and organizations are nonentities.

4.7 Driving force

The people's ideas are the driving force behind a people-driven (73.5%) democratic constitution-making process. It is concluded that the people-driven phenomenon is a

process that is directed by the collective ideas of the people phenomenon. The people's ideas are the driving force behind a democratic constitution-making process for Zimbabwe. This is the meaning of the people-driven phenomenon on the constitution making process as shown by the study results.

4.8 Implementing structure

It is clear from these study results that a people-driven democratic constitution-making process requires an organizational structure for implementation. An organization is a group of people who exist to achieve a common purpose [4]. The issues of how a constitution-making process should be organized and who should be in charge have triggered the aspect of operationalizing the constitution-making process phenomena in the real world. Reality on the ground demands that for successful implementation of the constitution-making process, the question of social order must be addressed. It is not possible for all Zimbabweans to take part directly in the implementing structure. Reality dictates that a manageable smaller group of people should be appointed by Zimbabweans only for the purposes of leading a constitution-making process in a representative capacity. The implementing constitution-making organizational structure must be independent, neutral, and non partisan in its operations. The structure must be appointed by all the people of Zimbabwe at a special purpose election organized by the entire citizenry and supported by their institutions of goodwill. The mandate of the constitution-making implementing structure is to facilitate and coordinate the process of collecting ideas and to format the ideas into the required form or manner of a people's democratic constitution.

4.9 Funding

Zimbabweans must fund (73.6%) their own people-driven democratic constitution-making process that leads to the production of their own people-driven constitution. This research finding clearly indicates that the people of Zimbabwe must finance their own people-driven democratic constitution-making process that leads to the production of their own people-driven constitution. This study result dismisses the notion that is being peddled in Zimbabwe that the country should beg for money from foreign donors to finance the constitution-making process. A country endowed with rich mineral resources like diamond, platinum, coal, and gold, just to name a few, surely cannot fail to raise the required financial resources that are needed to fund such an important process as the constitution-making process.

5. Conclusion and Recommendation

5.1 Elements

The research outcome identifies six factors or elements as the building blocks of a people-driven democratic constitution-making process. The six factors are: the people; the constitution; constitution-making; democratic constitution-making; people-driven; and constitution-making structure.

5.2 Process

The six factors or elements of a people-driven democratic constitution-making for Zimbabwe can be arranged in a methodical sequence that represents a process. A process is a coordinated series of events, activities, and tasks that leads to a desired outcome. The desired outcome of a people-driven democratic constitution-making process is to produce a people-driven constitution for Zimbabwe. An attempt to serialize the six factors produces a picture depicted in Figure 1.

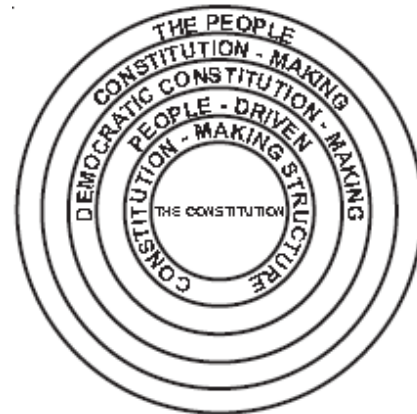


Figure 1: Constitution-making process

Figure 1 shows that the constitution-making process starts with the people in the outer circle followed by constitution-making; democratic constitution-making; people-driven; constitution-making structure; and the constitution. From the outer to the inner circle, the first four stages occur first indicating that the constitution-making structure is only needed as a conduit to channel the outputs of the first four stages into the final stage of the constitution. The sequencing of the stages of the constitution-making process is based on the role of the factors in the process.

5.3 Variables

The findings of this descriptive exploratory phenomenological study have identified the six building blocks of a people-driven democratic constitution-making process for Zimbabwe as the variables of the process. A closer look at the constitution-making process variables suggests that relationships between variables exist.

The people variable is an independent variable that causes and influences the other variables. The dependent variables are: the constitution; constitution-making; democratic constitution-making; people-driven; and constitution-making structure. The order in which the independent variable affects the dependent variables is as indicated in Figure 1: constitution-making process, above.

Further more, the study identifies five intervening or mediating constitution-making process variables. These are consultation, democracy, participation, governance, and transparency. A pictorial depiction of the order of impacts between the independent variable and the intervening and dependent variables is shown by Figure 2 which is based on path analysis.

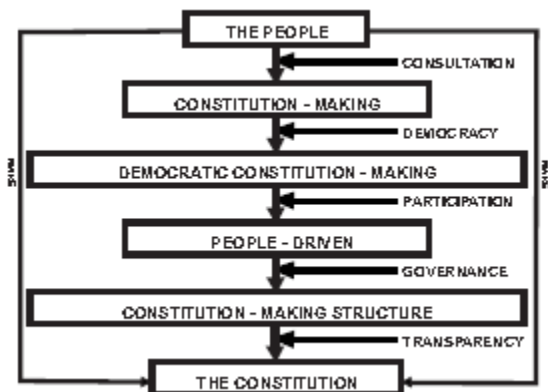


Figure 2: Constitution-making process variables

Figure 2 shows that the independent variable impacts on the intervening variable, which in turn, impacts on the dependent variable, which in turn, impacts on another mediating variable, and so on, up to the last variable. The last border line arrows linking the independent variable with the last dependent variable indicate a relationship that the people make the constitution.

The consultation mediating variable includes communication. Democracy intervening variable includes peace, freedom of thought, openness, and fairness. Participation variable includes involvement and inclusion. Governance mediating variable includes leadership, management, decision-making, and control. The transparency intervening variable includes accountability and disclosure.

5.4 Model

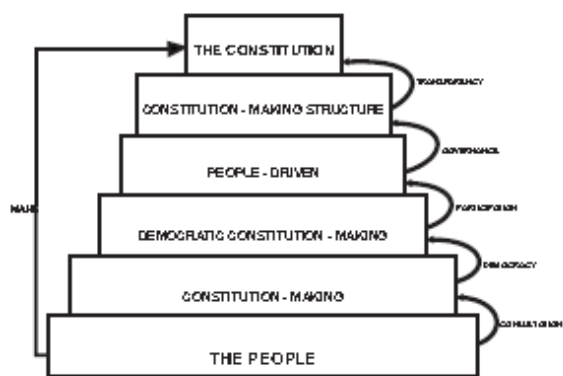


Figure 3: Peopled-driven constitution-making process model for Zimbabwe.

Figure 3 show that the people make the constitution. The people are the foundation of the constitution. Through consultation the people embark on constitution-making by giving ideas and through democracy the ideas are given freely, openly, and democratically. Through participation the people's ideas drive the constitution-making process. Through governance the people establish a constitution-making structure and through transparency the structure channels and molds the people's ideas into the desired constitution which is then enshrined in a constitution document.

The constitution-making process model indicates that it is not necessary to hold a referendum which asks the people to either accept or reject the constitution. In a people-driven democratic constitution-making process, the people merely approve and adopt their ideas as works on the constitution emanating from the implementing task of the constitution-making structure. It is not possible for the people to reject their own ideas once given in a democratic constitution-making process exercise. A referendum that asks the people to reject their own ideas is therefore a contradiction of a people-driven process. A constitution is merely approved and adopted by the people in a democratic people-driven constitution-making process.

The final outcome of this research study has proved that it is possible to create a democratic constitutional framework through a people-driven constitution-making process in Zimbabwe. It is feasible and possible to produce a people-driven democratic constitution through a constitution-making process that is driven by the people of Zimbabwe. Figure 3 shows a research deliverable of a people-driven democratic constitution-making process model for Zimbabwe from this study. The researchers recommend the adoption of the constitution-making process model in order that a people-driven democratic constitution can be produced in Zimbabwe.

6. Challenges Encountered in the Study

The study was undertaken at a time when the 3-Political Parties Select Committee of Parliament (COPAC) constitution-making process was in progress in Zimbabwe. COPAC constitution-making process brought confusion and political polarization that caused most organizations to adopt a wait-and-see attitude on the outcome of the process. Because most institutional research units fell into one of the two major political camps of the GPA partners, the interviewed organizations were not at liberty to give their positions on a people-driven democratic constitution-making process under investigation in this study. Their behavior was subdued by the ongoing COPAC constitution-making process. However, most organizations did not have a formal policy response on the topic under inquiry. To overcome the challenge, the researchers relied heavily on the observatory method of data collection to study the behavior of institutional respondents in the study. Unlike most institutional respondents that were undecided, individual participants were able to inform the study adequately on all material aspects of the research study.

Another challenge encountered in the study was that of political violence which is prevalent in Zimbabwe. Political violence may have worked to discourage more individuals and institutions from participating freely in the study for fear of political victimization. Overall the objectives of the study were met because the researchers used mixed methods approach to data collection, analysis, interpretation, and research methodological design.

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