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The Impact of Legal and Regulatory Framework on SMEs Development: Evidence from Zimbabwe

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Abstract
This desktop and library study aims at reviewing the impact of legal and regulatory framework on SMEs development in Zimbabwe in the 21st century. The focus on SMEs was motivated by the fact that most governments in both developed and developing countries are putting emphasizes on the contributions of SMEs to the economy. It was evident from the reviewed literature that policy, regulatory and institutional framework reforms have not always emancipated SMEs but rather suppress their growth potential. The study recommends that the government of Zimbabwe must benchmark its pro-SMEs policies with her neighbouring country Botswana. SMEs in Botswana are fully supported by the government and the environment is conducive for doing business especially for SMEs.
Keywords: Legal, regulatory framework, SMEs, Zimbabwe

1.0 . Introduction

SMEs are considered to be the backbone of the economy because of its capacity and ability to absorb millions jobless (employment creation) by economist and policymakers world over. SMEs, world over are viewed as nursery grounds for large Multinational Corporation, and the fuel of national economic engines (Angwu & Emeti, 2014; Amoako *et al* 2014; Gono, 2013). In reality, SMEs has become a centre of debate in various forums by different stakeholders mainly due to its prophesied contributions to national economy, poverty reduction and GDP (Amoako *et al* 2014). Scores of litirature reviewed acknowledge that SMEs serve as a source of livelihood to the poor, decentralise economy, create jobs, generate revenue (pay taxes) and contribute immensely to economic growth (Mwobibia, 2012; Nkwe, 2013; OECD 2010; Dixon, 2006; Coglianese , 2012; Gono, 2013). In other words, SMEs is veiwed as a catalyst to economic breakthrough and innovation , efficient and job creators, the nursery bed for large business and the vehicle of national economies (Nkwe, 2013; OECD, 2012; Hou, 2006)

Authors point out that SMEs face a number of obstacles despite their perceived benefits to accelerate growth and tranform economy, SMEs are still facing many challenges include: lack of skilled manpower, limited access to credit, multiplicity of regulatory agencies and overbearing operating environment, information asymmetry, taxes, over concentration on one market, inadequate market research, inability to separate business and family or personal finances, lack of business strategy, inability to distinguish between revenue and profit, inability to procure the right plant and machinery, inability to engage or employ the right calibre of staff, cut-throat competition, lack of succession plan, high utility tariffs, infrastructure, competitions, high interest rates and prohibitive collateral (Angu & Emeti, 2014, Nkwe, 2012, Mwobobia 2012; Hou, 2006; Onugu, 2005).

Other barriers noted in the literature include: high rate of enterprise mortality (vicious cycle of market failure), societal and attitudinal problems, integrity and transparency problems, restricted market access, lack of skills in international trade; bureaucracy (Maseko and Manyan, 2011; Angwu & Emeto, 2014). These challenges among other impacted negatively on SMEs growth potential and potential to revive the economy. Literature reviewed shows that there are various factors that have catalysed SMEs glitches and include perceived high risk nature of SMEs (default in previous credit arrangements), small portfolios (small equity base), lack of experienced personnel and high transaction cost that the financial institutions go through in processing credit appraisal (Yoshino & Taghizadeh-Hesary, 2016; Angwu & Emeto, 2014; Sentsho *et al* 2009). .

Due to numerous contributions of SMEs to the economy, the effects of legal and regulatory framework on aggregate economic performance caught the attention of both policymakers and other key players in recent years (Mabonga & Daniel 2015; ACCA, 2010; Parliament of Zimbabwe report, 2010). After recognising the growing potential in the SME sector, many countries rolled out a number of policies (Yoshino & Taghizadeh-Hesary, 2016) to promote SMEs growth and development.. These initiatives were meant to assist SMES access funding, training programmes and technological development (Hou, 2006). Zimbabwe like other countries in Africa and other developed countries, accorded high priority to SMEs from the very beginning and pursued support policies to make these enterprises viable and vibrant and overtime these have become major contributors to GDP (Maseko & Manyan, 2011). Viewed SMEs as potential engines to revive the sinking economy (Gono, 2013; Parliament of Zimbabwe, 2010). This implies that any government wishing to transform its negative economy should support the proliferation of SMEs and invest in them (OECD, 2010). The government launched many interventions to stimulate the growth of this giant promising sector.

Despite numerous protection and policy measures (such as the establishment of the Ministry of Small and Medium Enterprises and Cooperatives, Small Enterprise Development Corporation (SEDCO), Venture Capital

Company of Zimbabwe (VCCZ) and the recent Small and Medium Enterprise Act Chapter 24:12 and the prioritisation of the SME sector is echoed in almost every economic blueprint document such as Zimbabwe Programme for Economic and Social Transformation (1998-2000), Indigenisation Policy, Mid Term Plan 2011-2015, Monetary Policy 2013, Zim-ASSET 2013-2018) and the Credit Guarantee Company of Zimbabwe (CGCZ) for the past so many years, apparently the majority of SMEs are still experiencing operational challenges in respect of legal system, management and service agencies, tax preferences, credit and guarantee system, financial assistance, financing system and financing structure (Chirisa *et al* 2012; Maseko & Manyan 2011).

Notwithstanding numerous government SMEs support programs and interventions as well as policy reforms (Mwobibia, 2012; Nkwe, 2013; OECD 2010; Dixon, 2006; Coglianese , 2012; Gono, 2013), there is no evidence that the sector is growing in Zimbabwe (Parliament of Zimbabwe, 2010). There is still a gap in the SMEs as a whole which calls for government and policymakers to re-consider legal and regulatory framework (OECD 2004). However, little is known about the extent to which the legal and regulatory framework (support programs and government interventions), specific to the development of SMEs is implemented and workability business environment in the case SMEs sector. Royal Government of Cambodia, (2004) and OECD (2010) stress that SMEs are often constrained by opaque discretion, and overbearing regulations. It is within this background that the study intents to explore the extent to which legal and regulatory framework directed to SMES affects the SMEs in terms of growth and competiveness and to determine the extent they have been implemented. Are they having negative or positive impact on SMEs performance and growth?

2.0. Literature Review

2.1. Small and Medium Enterprises defined

There is no universal definition of Small and Medium Enterprises (SMEs), different countries use different definitions of SMEs. The term SMEs covers widely different types of firms. Everything is included, from fragile zero growth, micro firm (employing up to a couple of workers generating subsistence level revenues) to fast growing medium firms with up to 250 employees (Wattanpruttipaisan, 2002/03). A common definition of SMEs as established by European Commission is based on the total number of employees, annual volume of the turnover, the total assets and the degree of independence (legal persona) (Amoako *et al* 2014). According to Small Business Act for Europe, 2008, “A small concern...shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.”

In Zimbabwe SME is defined as business organisation that employees less than seventy five employees (Finscope MSME Survey Zimbabwe 2012). The MSME classifies business into micro-enterprises (informal sector), small enterprises (employees 1-50 employees) and medium enterprise (employees 51-75 people) and large (employees above 75 people) (Angwu & Emeti, 2014; Amoako *et al* 2014; Chirisa etal, 2012).

Its associated problems and other characteristics are distinguishing features of SMEs from large firms and include; labour intensive, poor access to vital information, family business, small size (usually unregistered), lack of access to international market, use out dated technology, high cost of production, over dependence on imported products and materials, poor managerial capacity, poor quality of products, poor recording keeping, poor documentation, and no research and development among others (Chirisa etal, 2012) to the problems are known to play a major role in social economy development.

The SMEs sector plays an important role in addressing unemployment challenges in Zimbabwe as it has absorbed millions of unemployed graduates and ordinary citizen.Literature shows that a total of 5.7 million people working are deemed to be in the sector (Finscope Survey, 2013). SMEs created many jobs as depicted by the following statistics: in high-income countries, SMEs and Informal enterprises account for over 60% of GDP and 70% of total employment in low-income countries and contribute over 95% of the total employment and about 70% of GDP in middle-income countries (Mabonga & Daniel, 2015; Angwu & Emeti, 2014; Amoako *et al* 2014). Furthermore, the sector contributes significantly to poverty alleviation (Fatoki, 2014). Although the effects on wealthy creation are limited (OECD, 2004; OECD, 2010), given the low levels of income among the majority of MSME owners (survivalist), business play a vital role as buffer against poverty, reducing individual and household vulnerability (Finscope Survey, 2012).

World Bank identifies the following as factors that block SMEs achieve its full potential: regulatory and legal framework (include registration requirements, licensing requirements, commercial legal framework), access to finance (include collateral and land titling, leasing, information asymmetry, SME accounting) and SME support activities (include business development service, access to markets and linkages) (Yoshino & Taghizadeh-Hesary, 2016; Economic and Social Commission for Asian and the Pacific (ESCAP), 2012; Bailey, 2008). The following are common SMEs constraints include: lack of capital, human resources, technology, and information in procuring raw materials, marketing, and distribution, high transport costs; problems caused by cumbersome and costly bureaucratic procedures especially in obtaining the necessary licenses; and policies and regulations that generate market distortions (Waweru & Ngugi, 2014; Fatoki, 2014; Angu & Emeti 2014 ; Maseko *et al,* 2012). Empirical research shows that the challenges faced by SMEs are of a recurrent nature

(Wattanpruttipaisan, 2002/03)) and governements seem not to care for this “fragile” sector.

2.2. Legal and Regulatory frameworks Overview

The OECD (2004) traced the emerge of regulatory policy, and highlighted that it started life as deregulation in 1970 and 1980s, following the rapid growth of regulation through most of twentieth century and the downing realisation that accumulation of this regulatory stock was harmful to business, stifling entrepreneurship and innovation.

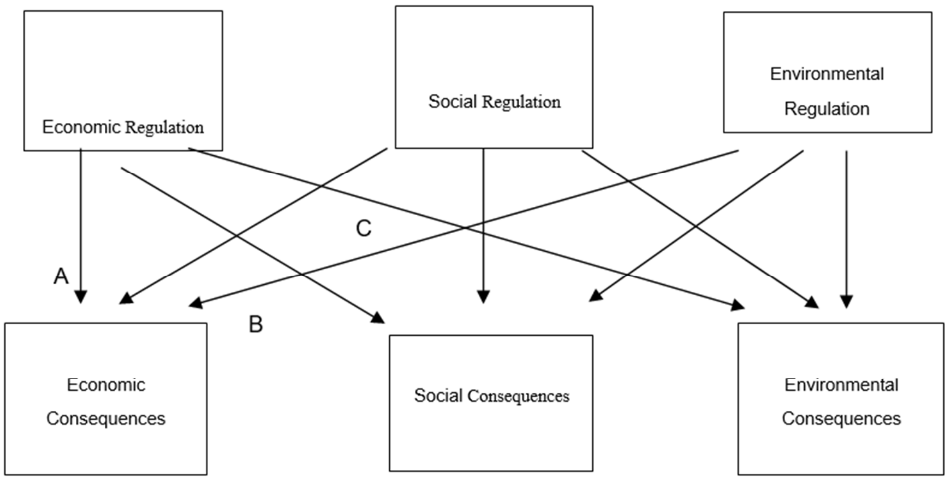
A regulation may be defined as instrument by which governments, their subsidiary bodies, and supranational bodies (such as EU or the WTO) set requirements on citizens and business that have legal force (OECD, 2010). The term may thus encompass a wide range of instruments from primary law and secondary regulations to implement primary laws, subordinate rules, administrative formalities and decisions that give effect to high-level regulations (for example, the allocation of permits or licensing), and standards (OECD, 2010). Rules or norms adopted by the government and backed up by some threats of consequences and usually carries a cost or penalty directed to business and these were referred to as regulations. Regulations can be imposed on any entity including non-profit organisations, government departments and even individual entrepreneurs (Fatoki 2014). Castro (2012) states that regulation styles vary considerably from country to country and from industry to industry. Regulations can also be derived from parliaments or legislatures, ministries or agencies, or even voters themselves through various kinds of referendums (Ibid). Given their variety, regulations can be described using many different labels: constitutions, statutes, legislation, standards, rules, and so forth (OECD, 2012)

Regulations set market conditions such as price controls, market conditions, products requirements and contract terms, or obligations such as environmental control, safety regulations or advertising and labelling (Castro, 2011). The Cabinet Office (2000:12) further grouped regulations into three categories:

- *command and control instruments:* these directly regulate behaviour, typically through permit and authorising procedures
- *incentive based instruments* these modify behaviour using incentives and disincentives, which are usually financial
- *other instruments* these often contain a non-mandatory element and aim to affect behaviour by (i) improving the supply of information (ii) raising the voluntary commitment, both at an individual and collective level, to change existing practices

In summary the following are the different types of regulations: economic regulation, social or distributional regulation, and environmental regulation as postulated by the Cabinet Office, (2000) highlights the linkages on a diagram:

Fig 1 Linkages between Economic, Social and Environmental Regulation



***Source*: Cabinet Office Better Regulation Task Force (2000) *Principles of Good Regulation*.**

2.3. Role of legal and regulatory framework in general

Coglianese (2012) OECD (2010) and OECD (2004) conclude that the objective of regulations is to make improvements by changing individual or entities behaviour in a way that generate positive results in terms of solving societal and economic issues or challenges. Extant literature shows that regulations are imposed to change or monitor certain behaviour of individuals (either natural or legal persons) so as to minimise potential damages or exploitation to the environment and other businesses (Coglianese 2012) during their economic activities.

Dixon *et al* (2006:6) assert that "regulation originates with a public concerns regarding the impact of one or more businesses' actions on employees, customers, other individuals or organisations, the physical environment or ecological resources. Good Social corporate responsibility maintains that in a new regulatory environment business pursue their objectives while responding to regulations and other outcomes (e.g. Social environment)" (OECD 2010). Castro (2011) postulates that the impact of regulations on the economy in general depends on the nature of the regulation and how effectively and efficiently it is implemented. Thus regulations facilitate firm's entry and exit- along with relatively open trade policies and contribute to greater degree of completion, lower prices, and more consumer choices (Fatoki, 2014;). Regulations are also imposed to limit the ability of private sector business to harm or to take advantage of other organisations, people or the environment (whether intentionally or unintentionally) (Dixon *et al* 2006) during the course of conducting business.

2.4. Legal and regulatory framework and SMEs development

Cuong *et al* (2008) cited in Tumbunan (2009) contemplate that despite many reforms in the past years, the legal framework on SMEs development still suffering from overlapping, complexity, contractions, slow implementation, ineffective mechanisms for commercial disputes resolutions, burdensome administrative procedures and above all poor rule of law. These have made the business environment unappealing (Ibid) for the actors in SMEs Sector . ACCA (2010: 11) propounds that the "Think Small First" principle entails that policy makers should give due consideration to SMEs during the early stage of policy formulation if at all possible, rules affecting business should be created from the SMEs' point of view or in this regard SMEs should be viewed by government as being 'prime customers' as far as business regulation is concerned. Mumbengegwi (1993) argues that an enabling environment for the SMEs development is created only when a government drift from regulations of the economy to a market oriented policy. Scores of reviewed literature underscore that the removal of government controls improve business environment, enabling entrepreneurs to respond quickly to market opportunities and promote competition that improves efficiency and productivity gains (see Mutua, 2015; Ntim, Oteng & Anthony, 2014; Agwu & Emeti, 2014; Olatunji, 2013; Maseko & Manyan, 2011).

The literature reviewed discloses that the government plays a leading role in creating enabling legal and regulatory environments that encourage SMEs find opportunities to grow in different sectors of the economy (Kusi, Opata & Narh, 2015). The government should come up with pro-SMEs policies and create conduce business environment that enable SMEs to grow and drive the economy forward (Mutua, 2015). Evidence from the reviewed literature highlights key features of an ideal friendly business environment that promote SMEs and include: stability of the legal, political and policy framework, publicity of the rules and laws, clarity and certainty of the legal framework, predictability in the application of the law (i.e. minimizes the risks linked to changing explanation, implementation or enforcement of the law), and fairness, possibility of legal options, and due process (see Olatunji, 2013; Small Business Act for Europe, 2008; Qimiao ,2003; Government of Kenya Better regulation policy guide, n.d).

2.5. Methodology

This paper adopted a literature review approach, in which related literature were perused and analyzed. The paper used the following sources of information journals, newspaper articles, books, government websites and policy documents.

2.6. Findings, Conclusions and Recommendations

This paper established that:

(a) There are multiple of regulatory to be followed by a start-up SMEs. The burdensome procedure for registering and commencing business are key deterrent to SMEs growth and development in Zimbabwe.
(b) Some recent policies (Buy Zimbabwe Campaign or antitrust legislation) are meant to incentivise large business. For instance the Statutory Instrument (SI) 64 discourages the importation of second hand clothes (Bhero) and some products (agriculture products, cooking oil, mealie meal, building materials e.g. cement etc) which are locally produced. Literature shows that this has adversely affect SMEs operations in Zimbabwe because locally produced products are expensive.
(c) The government of Zimbabwe offer selective exemption and special treatment in excise duties. ZIMRA heavily tax goods that are imported from other countries which are locally produced and this blocked their growth potential. Some of these products are heavily taxed 40% which disincentivise SMEs from trading. This in turn promotes smuggling and corruption.
(d) Due to cash crisis in Zimbabwe government come up with fiscal incentives and protective fiscal policies (cash limits) that restrict free movement of cash. These policies are meant to discourage SMEs from trading outside the country and favour large business. Large business have bargaining power than SMEs when it approaching central bank- Reserve Bank of Zimbabwe (RBZ).
(e) Most SMEs are failing to stock due to lack of hard cash, as the government adopted a cashless

transaction system (digitalised transaction system) most of the trading transactions are done using either debit card (SWIPE as commonly referred in Zimbabwe) or ecocash. This entails that policies are made without consulting the institutions directly affected such that inconsistencies often exist in their interpretations

(f) Hostile tariffs has propelled many SMEs into informal sector (black economy) as a strategy to irke a living and stay in business.

(g) Poor co-ordination of government policies and policy reversals, the government of Zimbabwe at one time allowed free trade to SMEs and other players in most parts of the country, and recently in October 2017, the same government embarked on a "clean-up operation". Policy inconsistencies inhibit SMEs to strategize, hence forth stagnation or extinction. Repressive State Apparatus (RSA) such as council police and Zimbabwe Republic Police (ZRP) used force to push out SMEs from Central Business District (in most towns and cities), the resultant effect is disempowering and killing potential entrepreneurs.

(h) Literature shows that generally in Zimbabwe there is insecurity of lives and property, inconsistent monetary, fiscal and industrial policies, limited access to markets, multiple taxation and levies, and harsh operating environment (highly politicised environment).

(i) Towards elections the ruling party (ZANU PF) will roll out new pro-SMEs policies (relaxed policies) and objectives in order to drum up support and history shows that after election the same policies will be immediately revamped and overhauled.

(j) There is generally lack of support of SMEs products by government and agencies. This may be attributed to harsh prevailing economic condition in the country. Literature reviewed shows that policies meant to benefit SMEs in Zimbabwe are poorly implemented.

(k) Doing business in Zimbabwe is risky because the economic climate is not enabling. In summary there is lack of enabling environment includes political, legislative, macroeconomic, inconsistent policies, and bureaucratic obstacles.

(l) Researchers argued that the regulation and supervision to SMEs support scheme in Zimbabwe were questionable and incomplete citing political influence as the inhibiting factor.

Based on the literature reviewed, it can be concluded that legal and regulatory are important for business growth in general, and the development of SMEs in particular. Thus government focus should be given to the enabling policy and institutional environment that influence development of SMEs. It was evident from the reviewed literature that policy, regulatory and institutional framework reforms have not emancipated SMEs but rather suppress their growth potential. If government are not committed to roll out pro-SMEs policies, the sector would continue to experience a lethargic growth if not outright extinction from the market.

This paper recommends that Zimbabwe must learn lessons from Botswana government. She (Botswana) made several pro-SMEs reforms ranging from the provision of entrepreneurial development support, an enabling business environment, financial institutional support and export promotion, all these meant support and promote targeted sectorial development (Nathan *et al* 2015; Mwobobia, 2012). This implies that SMEs in Botswana are working within the ambit of a business-friendly environment. Henceforth the government of Zimbabwe must:

(i) Involve SMEs sector in crafting policies that affect the sector.

(ii) There must be a demarcation between political interests ('vote banking') and economic interests ('fueling economy"), and clearly come up with policies that will revive the entire economy. Not populist policies to drum support and destroy veritable engines of economic growth in terms of employment creation.

(iii) Ensure the implementation and enforcement of regulations is fair, efficient and transparent and that regulatory mechanisms are available and expedient to all business regardless of size and provinces or political affiliation.

(iv) Promote and build business culture and friendly environments for starters, SMEs and large business starting from WARD level , provincial levelto national level.

(v) Sensitise and educate the actors in the SMEs on the various pieces of legislation addressing issues of labour laws, health laws, employment laws, NSSA, environmental law, Income Taxes etc. Some of the pieces of legislation need an overhaul so that they will be aligned to the current technological trend.

(vi) Align SMEs policies and laws with current constitution and digitalisation trend (era).

(vii) Create conducive, transparent (corruption free, political free, non-racial prejudiced environment), and less complicated legal and regulatory frameworks coupled with moderate bureaucracy.

(viii) Strengthen the nation's legal framework and adopt anti-discrimination policies to facilitate universal access to finance lessons from developed countries like China.

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