

# Exploring the Uncharted Territory of Devolution in Zimbabwe

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## Abstract

Devolution, which was incorporated into the Constitution of Zimbabwe through section 264, is a new phenomenon in Zimbabwe. This incorporation came about because of the need for participatory governance and the devolution of power away from the centre. Over the years, local governance has been informed by a plethora of pieces of legislation that do not provide an enabling environment for citizen participation, giving Zimbabwe's local government a chequered history that excludes citizens from participating in public affairs that affect their lives. An analysis of section 264 of the Constitution revealed that devolution has the propensity to enhance transparency, efficiency and effectiveness as well as the fulfilment of central government's responsibilities at provincial and local levels. This article argues that the belated implementation of the devolution of power has delayed improved service delivery, effectiveness, efficiency and accountability within local governance. This article further seeks to explain how the implementation of section 264 of the Constitution can bring about good local governance.

**Keywords:** devolution; decentralisation; local governance; effectiveness; efficiency; accountability

## Introduction

Local governance in Zimbabwe, having been a creature of statute since colonial days, has a chequered history. Various pieces of legislation governing local governance in Zimbabwe have failed to decentralise power and functions away from the centre. This article seeks to unpack devolution and its implementation in Zimbabwe, as contained in section 264(1) of the Constitution of the Republic of Zimbabwe (hereafter the Constitution). It is currently one of the much talked about constitutional provisions as people want to see to what extent local communities will be empowered and how



devolution will transform the structure of governance in Zimbabwe and alter the political landscape in the country. What further makes devolution in Zimbabwe interesting is that although the necessary infrastructure by way of the creation of provinces has always been in place, the commandist approach to governance has been the hindering factor in the devolution of power, given that the ruling elites have earned notoriety for not wanting to cede any measure of power. This has created anxiety: people want to see how the existing political leadership will deal with the dictates of devolution.

## **Background**

Devolution is a form of decentralisation that is more extensive than other forms of decentralisation, such as de-concentration or delegation, as it transfers authority for decision-making, finance, and administrative and resource management from central government to semi-autonomous lower tiers of government (White 2011). Generally, decentralisation entails transferring power to popularly elected local representatives, thus providing local governments with greater political authority and better prospects to deliver on accountability as they are closer to the electorate. Therefore, local governance should be democratic and empower those in authority to deliver on their mandate (Neil Levine 1998). Through the transfer of resources and power to lower levels, central government seeks to empower local communities to be able to participate in projects that affect their daily lives. This is the essence of the phenomenon of devolution.

In Zimbabwe, the establishment of local government dates back to the colonial period and to the formation of the Salisbury Sanitary Board by the British South Africa Company in the 1890s, a board that is generally regarded as the first local government board. Later this board developed into full urban and rural councils. It is common knowledge that devolution fairs well in federal states where appropriate demographic and geographic configuration facilitates such desired arrangement. Section 264 of the Constitution provides for the devolution of governmental powers and responsibilities (Government of Zimbabwe 2013). Against the backdrop of liberalising local governance in Zimbabwe, history also played a part in the introduction of devolution in Zimbabwe. The dominant Ndebele State of the 19th century had an enduring impact on the history of the country. Despite its demise in the aftermath of colonisation from the 1890s, its legacy has lingered on in the country. It therefore comes as no surprise that there has been a long-standing desire by sections of the Matabeleland province to have more local powers, to the extent that it sought to break away from central government as shown in the Mthwakazi court case. In the minds of some people, the concept of devolution is thus an attempt to compromise on the push to break away, while, on the contrary, the preamble to the Constitution speaks of “unity.” The delay in implementing devolution has also been an indication of unwillingness by the ruling elites to cede power to provinces as they allege that devolution smacks of secessionism, a demand made by the Mthwakazi political outfit in its court challenge to force the government to implement devolution. This challenge has shown the level of impatience endured by some sections of the Zimbabwean society as a result of the lack of political will to

implement devolution. Now that the new political dispensation has shown some semblance of political will to devolve powers to provinces, it remains to be seen whether this willingness is genuine or just a facade. The establishment may also want to consider the alignment and harmonisation of the plethora of legislation governing local government, a process that is long overdue. This alignment will incorporate the subordinate pieces of legislation to operate in tandem with the Constitution, and therefore better serve the will of the people. It will also remove any unnecessary contradictions in administering the various Acts of Parliament and improve efficiency, effectiveness and accountability in the local governance system of the country.

## **Local Governance as a Creature of Statute in Zimbabwe**

Smarting from decades of delegated local governance and associated challenges, Zimbabwe seems to be clueless about how to activate the new devolutionary local governance provisions contained in the new Constitution. This apparent quagmire and display of a lack of political will are evidenced by the failure of the legislature to realign, reconcile and harmonise the myriad of local governance legislation of the previous legislative regime to form a new constitutional dispensation. This failure has tended to create two centres of power: one emanating from legislative provisions and the other from constitutional provisions. Subsequently, this scenario has caused confusion and contradictions and the overlap and duplication of tasks. A cursory examination of the previous local governance legislation shows that the Minister of Local Government, Rural and Urban Development has exercised and enjoyed enormous executive powers and authority in the implementation of local government policy. A case in point is section 4A of the Urban Councils Act that empowers this minister to arbitrarily appoint “special interest” councillors in all urban councils (Mapuva 2012). Of concern to all democracy-loving people is the fact that these powers were applied arbitrarily, culminating in controversy, mayhem and discontent among residents and civil society stakeholders. Studies on the appointment of such councillors have revealed that the incumbents were not appointed on the basis of expertise or their potential contribution to local governance, but on partisan lines.<sup>1</sup> It is the conviction of the authors of this article that the cited piece of legislation required strong dedication and selflessness on the part of the executive. In addition to the lack of political will to realign existing legislation to the new Constitution, there are also practical challenges that include lack of adequate financial resources and expertise, as well as skewed priorities (i.e. focusing on a political tug-of-war and power dynamics).<sup>2</sup>

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1 See Mapuva, J. 2013. “Putting Democratic Urban Governance to Test through the Appointment of Special Interest Councillors.” *Public Policy and Administration Research* 3 (2): 110–29; as well as De Visser, J., and J. Mapuva. 2013. “Special Interest Councillors in Zimbabwe: A Review of Law and Practice in Terms of the 2013 Constitution.” *Law, Democracy and Development Journal* 17:157–76.

2 Africa in Fact. 2015. “ZANU (PF) in No Hurry to Remodel Laws.” *New Zimbabwe*, June 9, 2015. <http://www.newzimbabwe.com/news-23040Zanu+PF+in+no+hurry+to+remodel+laws/news.aspx>.

The coming on board of the government of national unity from 2009 to 2013 saw deliberations for a participatory democratic form of governance, which required the writing of a new constitution, which, among other things, incorporated tenets of good and participatory democracy. One such tenet is devolution, which is contained in section 264. By constitutionalising local governance and devolution, local governance gains more legal force and its issues will be viewed as rights issues beyond specific Acts of Parliament that are administered by line ministries. By entrenching local government in the Constitution, it gains power and recognition in relation to other institutions of government. Section 264 states that:

Whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively.

This provision seems to suggest that the timeframe for implementation of the devolution is at the discretion of central government, which has taken its time to implement devolution since 2013 when the current Constitution was crafted (Government of Zimbabwe 2013). There has been a lack of political will on the part of central government to effect and implement devolution, and the country has not seen the benefits of devolution over the years.

## **Interrogating the Concept of Devolution**

The major and key constituent of local governance is decentralisation, which, in essence, is the process of distributing or dispersing functions, powers, people or things away from a central location or authority (Chigwata 2011). There are three major forms of administrative decentralisation, namely de-concentration, delegation, and devolution. Each of these has its own distinct features and characteristics. Decentralisation is about the devolution of powers by the central authority to lower levels. The central authority may withdraw the devolved powers at will, hence it can be regarded as delegated powers (Machingauta 2010; Mushamba 2010). In contrast, in federalism, powers are constitutionally divided. Devolution is common in federal state systems such as in the United States of America, Germany, Nigeria and South Africa. It has been noted that the most famous example of devolution is in the United Kingdom, where Scotland, Wales and Northern Ireland exercise authority over their own lands, but still retain their place as part of the United Kingdom.

Advocates of devolution view “good governance” as encompassed in devolution, which, they claim, yields improved public accountability, environmental sustainability and the empowerment of the poor and vulnerable groups (Andersson and Ostrom 2008). The concept of public accountability refers in general to the relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, while the forum can pose questions and pass judgement, and the actor can face consequences (Bovens and Hart 2005). Governance refers in general to the nature of

rules that regulate the public realm where state, economic and societal actors interact to make decisions. Core principles of “good governance” are participation, fairness, decency, accountability, transparency, and efficiency (Kelsall 2000), concepts which are constantly referred to in this article. In general, both the relations between the local and central government and the extent to which enhanced participation establishes accountability of local governments seem to determine decentralised performance (Johnson 2001).

Chege (1989) cites devolution as highly contested and, in some cases, divisive. While devolution has been advanced as a means of managing diversity and the failures of the centralised state, it is surprising that there is no agreement on how to devolve power to local communities (Chege 2015). In the Zimbabwean context, it appears the implementation of devolution is intended to overshadow the failure of the state, especially in the management of the economy and tribalism. The Mthwakazi case is testimony to this school of thought, where some sections of the Ndebele society view devolution as secession and/or the restoration of the defunct/extinct Ndebele State. Of much concern is the contestation over the advantages and pitfalls of devolution (Chege 2015); in the Zimbabwean case, politicians fantasise about the propensity of devolution to provide solutions to resource management and economic challenges that communities face. Devolution is the mere transfer of power to territorial units, yet there are pros and cons associated with this transfer of power. For example, the issue of what happens to territorial units that are deficient in natural resources is not cited adequately.

Consequently, local councils are likely to benefit from devolution of governmental powers and responsibilities, and cease to depend on delegated powers in their decision-making processes. Devolution is a paradigm shift from previous local governance legislation that gave most executive powers to the minister responsible for local government. For the first time in the history of local government, citizen participation and empowerment are the major elements of the new devolutionary discourse. This article deliberates on the enigma of devolution as a tenet of democratic governance and its propensity to enhance service delivery. The recent transformation of local governance from a creature of statute to a constitutional provision has seen the inclusion of devolution as an alternative to democratic local governance. However, there have been hurdles as to how the constitutional provisions, practice and process of devolution are to take place. This is against the backdrop of historical mistrust in the Matabeleland region, where there is talk of devolution as an opportunity for a separate state, a behaviour that smacks of secessionism (Tsododo 2014). It is expected that once fully operationalised, devolution will see the country witnessing a gradual but comprehensive transfer of power, responsibilities and resources from the central government to local governments (Korir 2013). This will involve the devolution of major functional responsibilities, such as primary education, health, water and sanitation, and rural feeder roads, from the central government to local governments (Korir 2013).

## Objectives of Devolution in the Constitution

Section 264 of the Constitution itemises six objectives of devolution. These objectives are an indication of what the Constitution hopes will be achieved through devolution and what could presumably not be achieved effectively and efficiently under a centralised system. The first objective of devolution is *to give powers of local governance to the people and strengthen their participation in state matters relating to making decisions that affect them.*

Local governance involves the formulation and execution of collective action at the local level. It defines the framework for citizen-to-citizen and citizen-to-state interactions, collective decision-making and, most importantly, service delivery to the public (Abe and Monisola 2014). This objective therefore aims to empower local people to participate in decision-making and its execution as it pertains to their lives. By devolving powers to local authorities, the Constitution tries to facilitate the participation of people and structures at grassroots level in decision-making on local issues that affect them.

The second objective is *to promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole.* This objective expresses the desire to promote the values of democratic governance, openness and responsibility in governance issues across the country. Since local government is nearest to communities, the population will experience government presence if these values are adhered to at that level of governance. Transparency demands that the local governments ought to be open to the citizens and allow scrutiny of their activities as well as provide information to residents regularly. Openness in turn tends to promote accountability (Gaventa and Valderrama 1999). Elected local leaders should be held accountable to their electorate.

The third objective of devolution is the *preservation and fostering of peace, unity and the indivisibility of Zimbabwe.* In this objective, one could read a fear of division, tribalism and disintegration of society, which, in essence, smack of secessionism. Hence the Constitution impresses upon the population to shun secessionism, a strategy which the Mthwakazi political outfit has always campaigned for. However, what has allayed the ruling elites' fears of devolution is the fact that central government, in transferring powers and responsibility, still retains overall responsibility of all governance processes. The Constitution also provides a framework for devolution, ensuring uniformity of operations in all provinces. Section 264 further upholds unity and peace in Zimbabwe. Entrusting communities with their destiny provides them with a sense of responsibility and ownership of resources available in their geographical space. When people are in charge of the decisions affecting them at a local level they are less likely to feel alienated, and therefore may live more peacefully.

The fourth objective provides for *the right of communities to manage their own affairs and to further their development.* Referring to it as a *right* makes the declaration

protective and justifiable; thus it has the force of law. In essence, the objective is to allow local people to manage their own affairs and take charge of their own development in their districts and provinces. This objective is most significant because people need to feel that their development is in their hands. It gives them a sense of ownership and propels them to work hard and united with one accord.

The fifth objective relates to the intention *to ensure equitable sharing of local and national resources*. Equitable distribution of resources is in line with the resource-base theory and forms the hallmark of devolution. Local authorities and provincial councils will have more control over available resources in their localities. However, to achieve equity, the central government may design equalisation grants to support local governments in economically disadvantaged geographical areas.

Finally, the sixth objective clearly stipulates that responsibilities and resources will be transferred from central government *to establish a sound financial base for each province, metropolitan province and local authority*. Financial resources are a determining factor in the success or failure of devolution. This objective implies that central government will provide mechanisms to ensure that the different lower levels of government develop their financial bases. This may mean that central government will distribute resources in the form of grants to support the lower levels of government, especially in those provinces that have a low resource base. The formula for the disbursement of such grants may need to be developed to ensure equity. The Constitution states clear and precise objectives of devolution and what is to be achieved, and this has come at a time when there is a dire need for sanity in the management of the ministry of local government in the country. It is a ministry that is highly politicised, and politicians use it as a tool to gain political mileage. The dismissal of councillors by the minister, and the much publicised land frauds, have all tainted this ministry. Devolution would be one way of ensuring that people manage their own affairs and that accountability is improved.

## **Implementation of Section 264 of the Constitution**

There are several ramifications in the event of failing to comply with the dictates of section 264 of the Constitution. While the Constitution is clear about devolution, events on the ground tell a different story. On the ground, the provinces and districts (herein referred to as sub-units) to which powers and responsibility will be devolved, have been in existence for a long time, but, in practice, this devolution has only existed on paper since the new Constitution was drawn up in 2013. These sub-units are generally stable in terms of boundaries and population percentages except for Harare, which seems to grow more rapidly than other places. The delay to implement devolution since 2013 has irked sections of society. Structures at the provincial level have not been put in place and resultantly have not functioned, save for the recent appointment of provincial chairpersons, which appointment has been viewed as unconstitutional and running *ultra vires* section 264. There is already talk of an amendment to the Constitution to

accommodate and regularise these unconstitutional appointments. Amending the Constitution, especially at this early stage of implementing devolution, heralds doom as one would expect more partisan constitutional amendments to accommodate political interests.

After the 2013 elections, the party lists for candidates for the proportional representative members of provincial councils were submitted, but nothing further than that was effected. The provincial councils were not sworn in and no powers or responsibilities were transferred to provinces. Instead, ministers of state for provincial affairs were appointed by central government and the old centralised system was retained. This was indicative of failure by the political elites to uphold the Constitution of the country.

Key decisions and responsibilities remained in the hands of central government, and, in fact, some responsibilities that resided with local governments were taken back by central government. A central government directive took away responsibility for the water and sanitation function from local governments and gave it to the Zimbabwe National Water Authority (ZINWA), stripping the local authorities of a function that generated up to 80 per cent of their revenue in some cases (Muchadenyika 2014). Additionally, in 2010, the central government directed that the Zimbabwe National Roads Authority (ZINARA) take over collection and management of motor vehicle fees from local authorities. These two directives are examples of increased trends of centralisation, resulting in the weakening of local governance structures as they lost sources of revenue while retaining substantial functions, especially in road construction and maintenance. This is the premise on which one would be justified to doubt the potential of devolution, given the greedy nature of some elites. Haphazard and impromptu decisions will dislocate the success of devolution. Devolution is all about public ownership and utilisation of resources and participation of local communities in decision-making.

In terms of affording people the opportunity to participate in making decisions on issues that affect them, there was not much change on the ground. When people elect leaders to represent them and then the leaders are not afforded the chance to exercise the duties and responsibilities that they are elected to carry out, the whole exercise of going through elections is tantamount to mere tokenism. Members of provincial councils were selected both in 2013 and in 2018 but they have not had the opportunity to take up office as the transfer of powers and responsibilities had not been regularised. As in 2013, central government appointed ministers of state for provincial affairs to represent central government at provincial level and to literally run the affairs of the province. According to Arnstein (1969), citizen participation can range from a very low level where there is manipulation and therapy, to a slightly higher level where citizens are simply informed or there is nominal consultation and placation, to a more meaningful level where citizens are considered as partners, or they have delegated power, or where there is outright citizen control. Citizen participation entails that individuals or communities take an active role in decision-making at each step of the development process (Africa



Community Publishing and Development Trust (ACPD) 2006). However, sometimes authorities hoodwink residents into passive participation where they are made to make choices from predetermined limited alternatives (Makumbe 1996). In the case of the appointment of provincial ministers it would appear the central government is hovering around manipulation, therapy and outright hoodwinking: people select their representatives and feel they have participated, yet the selected representatives are political party functionaries. While there is a lot of talk about how central government is planning to effect devolution, there is not much movement or evidence of it on the ground. Centrally appointed authorities are still dominating decisions at provincial level, and their allegiance is more inclined towards the centre. In situations like this, there is limited accountability to the local people, and the needs of the people may be left unattended. The decision-making process ceases to be transparent as it consists mostly of directives from the centre, as was shown in the ZINWA and ZINARA examples cited above. This is a result of the lack of clear distinction between the state and the ruling party/government of the day in terms of transparency. This practice gives credence to the ZANU PF's skewed attitude that the party should give direction and form policies for implementation by the government.

There is little evidence on the ground about the recognition of the right of communities to manage their own affairs and their development as provided for in section 264 of the Constitution. The centre remains dominant, with many functions still centralised in Harare, the capital, especially the making of major political decisions. The retention of most powers at the centre is seen in how local communities are not able to benefit from the natural resources in their areas. A typical example was the expropriation and exploitation of diamonds at Marange diamond fields, where local communities did not benefit from the proceeds and had nothing to show for it; not the communities in Marange, neither those in the provincial capital of Mutare. This shows lack of equitable sharing of natural resources, and, furthermore, most of these resources support development at the centre. Given such a scenario, one would have doubts about whether the situation would change once devolution is institutionalised. Once resources are received at the centre, there is no set mechanism to channel them back to the local government at provincial or district level for use by the local communities. Instead, resources are allocated back through centrally controlled structures like government ministries and national programmes controlled from Harare, for example, presidential input schemes, command programmes, and health and education programmes. Many resources (e.g. minerals and wildlife) are still controlled centrally. Because of the paucity of sources of income at lower levels of government, there has not been much development of sound financial bases for the provinces. It therefore remains to be seen whether the situation will dramatically change at the institutionalisation of devolution. Even under devolution, ZANU PF still wants to dictate the pace and modus operandi of development. Of note is how local communities were cheated by central government through the presentation of a dummy \$10 million cheque by mining companies (through President Mugabe, an arm of the Executive) for their development project. Under

devolution, such direct involvement of the Executive in the developmental affairs of communities would have been met with resistance.

It can therefore be argued that by delaying the regularisation of devolution, the centre has managed to retain a strongly centralised system, which does not support devolution.

### **Potential of Section 264 to Improve Good Local Governance**

Despite the stability and peace in Zimbabwe, there are potential challenges, notably economic challenges, for the success of devolution in the country. A cursory examination of the law and practice of devolution paints a gloomy picture in a country that is in dire financial straits and suffers from economic distress. This is because devolution appears to be capital intensive.

While it is generally agreed that the implementation of provisions of section 264 of the Constitution can improve good local governance in Zimbabwe, the challenges that the country faces can impinge on its success. Local governance provides the framework for citizen-to-citizen and citizen-to-state interactions, collective decision-making and, most importantly, service delivery to the public (White 2011). Good local governance brings government closer to the grassroots communities and affords these communities opportunities to participate in political processes that affect their daily lives. Therefore, local governance should play a critical role in promoting democracy and mass participation in decision-making processes (Mawhood 1983). When devolution is conceived and implemented properly, it promotes democratic local governance, giving both the local governments and the residents they govern the authority, resources and skills to make the right choices, which will make them accountable. While advanced local governance promotes the desire and capacity of individual citizens and groups to take responsibility for their communities and actively participate in goal setting, implementation and monitoring, the advancement of these activities by local citizens promotes more effective democratic local governance (Neil Levine 1998). It can therefore be said that the general lack of the implementation of the rule of law in Zimbabwe and high levels of corruption make it difficult to implement this section of the Constitution, given the greedy nature of most politicians, and their inclination not to let go of any opportunity that has the potential to create wealth for communities.

It is assumed that the implementation of section 264 will enhance local democracy. Instituting provincial councils and transferring powers to them will make significant changes related to natural resource exploitation and utilisation for the benefit of the local population because decisions will be taken at provincial and local levels. Proceeds from exploiting and using natural resources will go to the relevant provinces and will in all likelihood be channelled into the development of their residents and in accordance with their preferences. As decisions are made locally and closer to people at grassroots level, these proceeds are more likely to be used towards meeting the felt and expressed needs of the local people. It is easier for provincial and local councils to appreciate the needs

of people in their districts and deploy the proceeds accordingly. Development conceived at central level is more likely to lead to economic development that may not be equitable across the geographical regions of the country, whereas, when it is driven by the different local authorities across the country, there will be more equitable human development and it will have a better chance to succeed. The case of the Marange diamond fields where proceeds did not benefit local communities serves as an example that control from the centre does not benefit local communities.

Once devolution is implemented in letter and spirit, the provincial councils and local authorities will provide platforms for local communities to participate in the governance of their affairs, thus promoting local democracy and ensuring that the local people have a say in decisions that affect their daily lives, which will promote easier access to resources. Local democracy engenders the sharing of decisions involving power and resources in a way that is perceived as fair. Involvement of people in the processes of socio-economic transformation and democratisation is a critical factor in the development process and has the potential to yield better results in terms of human development. When development is conceived in terms of economic and political freedoms, the agency of residents to influence their own development becomes central (Sen 1999). Promoting local democracy is pivotal in promoting the agency among local residents to take control of their own development and welfare. In this sense, local governance can promote local economic development.

Devolution can also be viewed as a panacea for local democracy as it entails individuals and communities playing an active role in decision-making at each step of the development process (ACPD 2006). However, Makumbe (1996) cautions that residents may be hoodwinked into passive participation where they are made to make choices from predetermined limited alternatives. Devolution will promote residents' power to effect changes and processes and to determine the end that they desire. Residents will get opportunities to play key roles in sharing information, setting goals, allocating resources, implementing programmes, and so forth. Devolution will also increase the level of participation of residents in, for example, local government elections, budget crafting, consultative forums and public hearings. According to Arnstein (1969), citizen participation can range from a very low level where there is manipulation and therapy to a slightly higher level where citizens are simply informed or there is nominal consultation and placation, to a more meaningful level where they are considered as partners, or they have delegated power, or where there is outright citizen control. Citizens will feel a stronger sense of belonging and identify more with governance structures. The assumption here is that residents know what is best for them, and if they are given the responsibility they will deliver as required and will develop a sense of ownership of the process (Abe and Monisola 2014).

If managed well, devolution will lead to the realisation of development goals across all geographical locations. The local governance structures will be empowered to utilise resources within their jurisdiction for developmental purposes. However, where such

resources are collected but not applied to provide for the development of residents, or where the local government structures are incompetent, the local authorities become predatory, resulting in residents paying for services that are not delivered. Devolution can lead to better prospects for economic development in local areas. Local governments can achieve both economic and social development through stimulating private investment, promoting job creation, facilitating infrastructure investment, and providing affordable housing and social amenities (Morgan 2009).

Issues related to sustainability and the environment can best be handled where residents are involved in the decision-making platforms as any measures taken should be interpreted in the context of protecting the citizens. Local governments are generally in charge of the provision of services like education, recreation, health, clean water and sanitation facilities. By devolving such services, better service delivery can be provided for the enjoyment of residents of local government areas.

## **Ramifications of Delaying the Alignment of Local Government Legislation**

Arguably, the delay to align local government legislation with the 2013 Constitution has had ramifications for the efficiency, effectiveness and accountability of local governance.

Many pieces of legislation exist that influence the functioning of local government in Zimbabwe. These have not been aligned with provisions in the country's 2013 Constitution, causing confusion that has had negative implications for local governance performance. Efficiency relates to the levels to which the local government minimises the wastage of resources, and effectiveness has to do with achieving goals. These two aspects determine local authorities' achievement of their developmental and service delivery goals at the least possible cost. On the other hand, accountability refers to the answerability for one's actions or behaviour. Public officials have an obligation to serve the public, and their service represents the value that citizens extract for conferring discretion and policy responsibility upon public officers (Dunn 2003). When public officers take action, they should account for it to those on whose behalf they take this action. In the context of local governance, they are accountable to the people residing in the local authority's jurisdiction.

While section 264 provides for the devolution of powers and responsibilities to provincial councils and local authorities, some pieces of legislation militate against such practice, and provide for central government to retain authority. There is therefore a need to regularise such legislation or align it to the Constitution.

In a devolved system of local governance, the management of roads, water, education and health for example, is handed over to local governments. As mentioned earlier, the administration of roads and licencing of vehicles, which were moved to the central body,

should be returned to local authorities. Revenue collected from vehicle licences is typically used for the maintenance of roads, and ZINARA should play an oversight role. Currently, despite this fraudulent move of many functions related to roads from local authorities to ZINARA, local authorities are still expected to maintain roads but do not collect vehicle licences; this has seriously hampered local authorities' effectiveness. The state of roads in most rural areas is deplorable, with some fast becoming literally impassable. In the urban areas many roads are in a state of disrepair and are characterised by potholes. Although ZINARA collects licence fees and toll fees, the disbursement of the revenue for upgrading and repairing roads remains shrouded in mystery, as is characteristic of most of the operations of centrally managed systems. There is therefore a need to review the Roads Act (Chapter 13:18) and the Vehicle Registration and Licensing Act (Chapter 13:14) to allow for a clear demarcation of roles and responsibilities between local governments, provincial councils and the central road authority. One way would be to assign the responsibility for national roads to ZINARA, provincial roads to provincial councils and local roads to local authorities. A formula can be developed for sharing the various fees collected so as to capacitate the different levels of government to construct, upgrade and repair roads. The alignment of such processes to the Constitution would curtail duplication and overlaps.

Another piece of legislation that has had a gross negative impact on the effectiveness and efficiency of local governments is the Zimbabwe National Water Authority Act (Chapter 20:25). Local governments used to be in charge of water supplies to residents in their jurisdiction. However, with the promulgation of the said Act, this responsibility was moved to the central body, which assumed the role of managing the country's water resources and also collecting the relevant revenue. Local governments therefore lost a key source of revenue and also its ability to deliver water to residents. One glaring example of the inefficiencies that occur with the centralisation of resources is the water challenges that were experienced in Harare when ZINWA took over water and sanitation. The system was so ineffective that there was an outbreak of cholera, and central government had to revert to the old system and allow the Harare City Council and other larger urban authorities like those in Mutare, Gweru and Bulawayo to retain responsibility for water treatment and reticulation for their respective cities.

Additionally, social services, such as the provision of education and health facilities, would best be dealt with at local level and would be best suited in a devolved locality. Hence there is a need for the alignment of the Education Act (Chapter 25:04). Currently, there are different categories of schools, namely government schools, council schools, private aided schools and private/trust schools. These schools are characterised by having different resources. Even if these schools are in the same locality, the difference in terms of their resources is striking. Government schools, for example, are generally better resourced than council schools. This is because central government provides more resources, including a full complement of paid employees, to government schools. On the other hand, the council schools receive no salaries for workers other than teachers. In a devolved system, the management of schools falls under local government while

the central government, through the relevant line ministry, focuses on quality control. Resources meant for use by the schools will be channelled through the local government, which is the nearest to the schools and communities. However, this can also present challenges especially in terms of capacity of local governments to manage the schools.

The provision of water is yet another area which would most likely benefit from devolution. The Zimbabwe National Water Authority Act (Chapter 20:24) needs to be aligned to the constitutional provisions of section 264. For example, the said Act gives extensive powers to the minister responsible for its administration to declare the areas in which rural district councils and urban councils have jurisdiction over water resources. Furthermore, the minister responsible for local government appoints catchment councils that manage specific catchment areas and has the power to change these councils and to set their allowances. Such provisions move the management of water from the elected representatives of residents of the districts or urban areas in which the water resources are, to bodies that serve at the pleasure or the mercy of the minister. Water is a basic need, and access to it should be regarded as a basic right. Disempowering local people from being involved in issues of water resource management is not at all in the spirit of devolution. It is therefore critical that such legislation be aligned to the constitutional provisions relating to devolution. Delays in such alignment disempower local governments in that they are unable to manage water resources in their jurisdiction, which consequently affects their ability to serve the local people.

Other pieces of legislation that equally need to be aligned to the Constitution, notably to section 264, include the Rural District Councils Act, the Urban Councils Act and the Regional Town and Country Planning Act (Chapter 29:12). These Acts govern the functioning of the local authorities and are administered by the minister responsible for local government, national housing and development. Additionally, through alignment, the powers of various ministers need to be capped, especially in relation to the local government board. Members of this board are appointed by the minister, who has the power to fire them. While the members are appointed from lists recommended by different bodies, the members of these bodies are not elected. The minister also appoints members from the public service and former public servants, including the chair of the board (Government of Zimbabwe 2013). This local government board has power over the management of the human resources council, especially its senior officers, and therefore allows for interference in the management of council affairs by the minister because the board is more inclined to be accountable to the minister rather than to the elected representatives in the council. Delays in aligning this legislation have resulted in interference in appointments of senior officers of councils by the minister as exemplified by the appointment of the town clerk of the Harare City Council. The candidate appointed by the council, whose councillors are predominantly from the opposition MDC party, failed to assume duty due to conflicts between the Ministry of Local Government, Public Works and National Housing and the local government board

on the one side and the council on the other. The candidate appealed the case in court, won and had to be paid damages. The costs ended up being paid for by ratepayers for no service received. Such inefficiencies affect the effectiveness of councils, especially as regards their service delivery. Furthermore, the council had to operate without a substantive town clerk for a lengthy period of time, which had negative consequences for the efficiency and effectiveness of the local government.

Over the years, the minister of local government has had the power to suspend any or all councillors on suspicion of misconduct as outlined in the Rural Districts Councils Act (Government of Zimbabwe 2002a). Many urban councils, for example those of Harare, Chitungwiza, Mutare, Kwekwe, and Rusape, have had all their councillors suspended and replaced by commissioners appointed by the minister. While this is provided for in the Urban Councils Act (Government of Zimbabwe 2002b), the actions of the minister are generally perceived as interference in council matters, where the council is predominantly made up of councillors from the opposition political party. This militates against participatory democracy and affects accountability. The appointed commissioners, by virtue of their status and their appointing authority, are bound to be accountable to the minister and not to the ratepayers.

## **Conclusion**

Established democracies, such as the United States of America, the United Kingdom and South Africa, are success stories in terms of devolution, and have witnessed its benefits. Given that Zimbabwe is yet to implement the laws on devolution, it has not had any experience with devolution. It would therefore not be fair to make a comparative analysis of the potential for the success of devolution in Zimbabwe, or to compare the country with established democracies that have experienced devolution and learnt lessons for its improvement.

Despite the dynamic but despotic nature of Zimbabwean politics, there is a need to give devolution a chance. The law and practice of devolution in Zimbabwe have already caused a lot of controversy and excitement especially among the general citizenry. Questions have been raised as to how the ruling elites, with their insatiable appetite for power, will manage to cede power to provinces. If successful, this will be the first time that such a development is experienced in the country. What will further complicate matters is the historical nature of some of the ruling elites whose approach to governance is commandist. Given that devolution is very different from the partisan form of governance that has characterised local governance, it remains to be seen how the establishment will contend with the dictates of devolution. The delay in implementing devolution has been an indication of unwillingness by the ruling elites to cede power to provinces. Following a demand made by the Mthwakazi political outfit in a court challenge to force the government to implement devolution, the ruling elites alleged that devolution smacked of secessionism. This challenge showed the level of impatience endured by some sections of the Zimbabwean society as a result of the lack of political

will to implement devolution. Now that the new political dispensation has shown some semblance of political will to devolve powers to provinces, it remains to be seen whether this willingness is genuine or just a facade. The establishment may also want to consider the alignment and harmonisation of the plethora of legislation governing local government, a process which is long overdue. This alignment will bring subordinate pieces of legislation in line with the Constitution through incorporation, which will therefore better serve the needs of the people. It will also remove any unnecessary contradictions in administering the various Acts of Parliament, and improve efficiency, effectiveness and accountability within the local governance system of the country.

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