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Jephias Mapuva and George P. Miti

*Full Length Research Paper*

# Exploring the uncharted territory of devolution in Zimbabwe

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**Devolution is a new phenomenon which Zimbabwe has incorporated in its constitution through Section 264 of the Constitution of Zimbabwe of 2013. This is as a result of the urge for participatory governance to devolve power. Over the years, local government has been informed by a plethora of pieces of legislation which have not provided an enabling environment for citizen participation, giving Zimbabwe's local government a chequered history which excluded citizens from participating in public affairs. An analysis of Section 264 of the Constitution of Zimbabwe has revealed that devolution has the propensity to enhance transparency, efficiency and effectiveness as well as improve responsibilities of central government to provincial and local levels. It is assumed that the belated implementation of devolution has delayed improved service delivery, effectiveness, efficiency, and accountability within local governance. This paper seeks to explore the provisions of Section 264 of the Constitution and how the implementation of this constitutional provision can improve local governance.**

**Key words:** Devolution, decentralisation, local governance, effectiveness, efficiency, accountability, Section 264 of the Constitution of Zimbabwe.

## INTRODUCTION

Local governance in Zimbabwe has a chequered history, having been a creature of statute since colonial days. Various areas of legislation governing local governance in Zimbabwe have failed to decentralise power and functions away from the centre. This paper seeks to discuss the concept of devolution and how it would play in Zimbabwe, given that it is contained in the Constitution of Zimbabwe under Section 264. Currently, devolution is one of the most-talked about constitutional provisions. People are eager to experience self-governance at local

level and to utilise natural resources in their communities for their development. What further makes devolution in Zimbabwe interesting is that the country already is divided into provinces. However, the fact that the country is still a unitary state raises questions as to how Central Government, notable for its restrictive approach to governance, and having earned notoriety for not wanting to cede any measure of power, is going to deal with the dictates of devolution.

In Zimbabwe, local government dates back to the

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colonial period, and the establishment of the Salisbury Sanitary Board by the British South Africa Company in the 1890s is generally regarded as the first local government board established. Later this developed into full urban councils, European rural councils and Native councils all which were strongly controlled by the central government and were generally meant to control the indigenous population in Zimbabwe (Mapuva, 2012). The post-independence local governance system in Zimbabwe saw reforms that included the creation of Village Development Committees (VIDCOs) and Ward Development Committees (WADCOs). Later the amalgamation of all local authorities in rural areas were governed by the Rural District Councils Act (Chapter 29:13) while Urban Councils fell under the Urban Councils Act (Chapter 29:15). However, the VIDCOs and WADCOs while being in place did not get resources to support their work and in most cases lacked the requisite skills. Interference from central government in terms of their operation and decision making was also rife and presented challenges (Muchadenyika, 2014). In addition, a plethora of other statutes affected and still affects the working of local authorities e.g. The Environmental Management Act [Chapter 20:27], Public Health Act [Chapter 15:09], Shop Licences Act [Chapter 14:17], Vehicle Registration and Licensing Act [Chapter 13:14], Education Act [Chapter 25:04], the Roads Act [Chapter 13:18], Communal Lands Act [Chapter 20:04], Road Traffic Act [Chapter 13:11], the Traditional Leaders Act [Chapter 29:17], Water Act Chapter [20:24] among other statutes. The MLGPWNH retained powers to influence the activities of the council and evidence of such interference by government abound (Muchadenyika, 2014; Mapuva, 2012; Machingauta, 2010).

It is common knowledge that devolution performs well in federal states where appropriate demographic and geographic configuration facilitates such desired arrangement. Section 264 of the Constitution of the Republic of Zimbabwe provides for devolution of governmental powers and responsibilities (Government of Zimbabwe, 2013). Devolution is a form of decentralisation that is considered to be the most extensive form as it transfers authority for decision making, finance, and administrative management and resources from central government to semi-autonomous lower tiers of government more than the other forms like de-concentration or delegation (White, 2011). Generally, decentralization 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. Local governance should therefore 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 behind the phenomenon of devolution.

### Local governance as a creature of statute

Having experienced delegated powers in local governance, Zimbabwe seems to be clueless on how to activate the new devolutionary local governance provisions in the new constitution. This seemingly quagmire and possible lack of political will is evidenced by the failure by the legislature to realign, reconcile and harmonise the myriad of local governance legislation from the previous legislative regime. This scenario has caused confusion, contradictions, 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 exercised and enjoyed the enormous executive powers and authority in the implementation of local government policy. One such case is that of Section 4 A of the Urban Councils Act (2008) which empowered the Ministry of Local Government, Rural and Urban Development to appoint 'special interest' councillors arbitrarily in all urban councils. 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 this author's conviction 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 which include lack of adequate financial resources, expertise as well as skewed priorities with more focus being on political tug-of-wars and power dynamics.<sup>2</sup>

### Interrogating the concept of devolution

The major and key constituency in 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; Mushamba, 2010). There are three major forms of administrative decentralization, namely de-concentration, delegation, and devolution. Each of these has its own distinct features and characteristics. Devolution is common in federal state systems such as in the USA,

<sup>1</sup> See Mapuva J (2013). "Putting Democratic Urban Governance to Test through the Appointment of „special interest Councillors" *Public Policy and Administration Research* 3 (2) 110-129; as well as De Visser, J and Mapuva, J (2013). " Special Interest Councillors in Zimbabwe: A Review of Law and Practice in Terms of the 2013 Constitution" *Law, Democracy and Development Journal*, (17) 157-176.

<sup>2</sup> Africa in Fact (2015). "ZANU (PF) in no hurry to remodel laws" New Zimbabwe, 9 June 2015. Available at: <http://www.newzimbabwe.com/news-23040Zanu+PF+in+no+hurry+to+remodel+laws/news.aspx>

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 places as components of the U.K.

Advocates of devolution find “good governance” as encompassed in devolution which they claim yields improved public accountability, environmental sustainability and empowerment of the poor and vulnerable groups (Anderson and Ostrom, 2008). The concept of public accountability in general refers 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 facing 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), which concepts are constantly referred to in this paper. 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).

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 the previous plethora of local governance pieces of legislation which kept 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 paper 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 has been huddle as to how the constitutional provisions, practice and process of devolution are to take place. This is on the backdrop of historical mistrusts in some regions, with some parts of the country taking it as an opportunity for a separate state, a behaviour that smacks of secessionism (Tsododo, 2014).

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

Local government in Zimbabwe has always been highly centralised with very little or no delegated powers away from the centre. The coming on board of the Government of National Unity (GNU) from 2009 to 2013 saw

deliberations for a participatory democratic form of governance, which required the writing of a new constitution among other things. By constitutionalising local governance and devolution the local governance gains more legal force and its issues will be viewed as rights issues beyond specific acts of parliaments 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 which states that:

*“Whatever 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.”*

Section 264 does not provide a timeframe for implementation of the devolution. It means there has to be political will on the part of central government to effect and implement devolution when it deems appropriate. It should be noted that competency does not necessarily imply political will.

The devolution provided for in Section 264 will be applicable at two key levels of governance, namely provincial or metropolitan level, and to local authority level. Zimbabwe has ten provinces two of which are metropolitan provinces, Harare and Bulawayo (Government of Zimbabwe, 2013). The local authorities are also classified as either Urban Councils or Rural District Councils. Devolution of powers and responsibilities therefore will be to these provinces and metropolitan provinces at second tier level and local authorities at third tier level. The last part of this provision implies that these levels of government are competent to carry out the said responsibilities efficiently and effectively. It is not clear whether the provision is making a declarative statement that these levels of government already have the competence or that they will need first to be capacitated, or even that those that are deemed not to be competent will not have the powers and responsibilities devolved to them. One hopes that the first assumption would be that all local authorities will be capacitated with the requisite competencies to utilise the devolved powers and responsibilities efficiently and effectively.

Efficiency has to do with minimising waste and maximising value from given resources, that is achieving more with less, while effectiveness would involve achieving set objectives (Dunn, 2003). These two combine to reflect the level of productivity of an organisation. The local authorities are therefore expected in this provision to be able to achieve their set goal with minimum waste of resources in the process. Section 264 outlines set objectives of devolution that it will seek to achieve.

## Objectives of devolution in the constitution

Section 264 itemises six objectives for devolution. These objectives are an indication of what the constitution hopes will be achieved through devolution and presumably could 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 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 seeks to empowering local people to participate in decision making and execution of these as they pertain to their lives. By devolving powers to local authorities, the constitution tries to facilitate the participation of grassroots people and structures in decision making on local issues that affect them.

The second objective: *“to promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole”*. This objective presents 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, if these values are adhered to at that level of governance, the population will experience government presence. Transparency demands that the local governments ought to be open to the citizens and allow scrutiny of their activities as well as providing 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 *preservation and fostering of peace, unity and the indivisibility of Zimbabwe*. In this objective, one would read a fear for division, tribalism and disintegration of society which in essence smacks of secessionism. Hence the Constitution impresses upon the population to shun secessionism which the Mthwakazi political outfit has always campaigned for. However, what has allayed the fears of the ruling elites on devolution is the fact that central government, in transferring the powers and responsibility still retains overall responsibility of all governance processes. The constitution also provides the framework for devolution which ensures 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 the geographical space. When people are in charge of the decisions affecting them at local level they are less likely to feel

alienated and therefore may live more peacefully.

The fourth objective provides for local people in their districts and provinces to manage their own affairs and take charge of their own development. This is one of the most significant parts in that people need to feel that their development is in their hands. This sense of ownership propels them to work hard and united in one accord. This objective refers to *“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 and have the force of law.

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 for devolution. Local authorities and the provincial councils will have more control over available resources in their localities. To achieve equity however the central government may design equalization grants to support those local governments in economically disadvantage 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 determinant factor in the success or failure of devolution. This implies that central government will provide mechanisms to ensure that the different lower levels of government develop their financial base. This may mean that central government will distribute resources in the form of grants to support the lower levels of government, especially those provinces with a low resource base. The formula for the disbursement of such grants may need to be development to ensure equity.

## Implementation of Section 264 of the Constitution

There are several ramifications to compliance with and failing to comply with the dictates of Section 264 of the Constitution of Zimbabwe. While the constitution is clear about devolution, events on the ground seem to show lack of political will to implement devolution for fear of losing power to local communities. In practice, devolution of powers and responsibilities to lower tiers has remained on paper for a long time since the new constitution came to life in 2013. What seems to be the major reason for lack of political will for implementation of devolution is that the current crop of political leaders does not want to share power with provinces, as will be the case once the wheels of devolution are set in motion. Structures at the provincial level have not been put in place and resultantly have not functioned since then, save for the recent appointment of provincial chairpersons which appointment has been viewed as unconstitutional and runs *ultra vires* Section 264. There is already talk of 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 affected. 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 to central government. This phenomenon is typified by the management of water resources, roads and motor vehicle licencing. A central government directive took away responsibility for water and sanitation function from local governments to Zimbabwe National Water Authority (ZINWA) and stripped the local authorities of a function that generated up to 80 percent of their revenue in some cases (Muchadenyika, 2014). Again in 2010 central government directed that Zimbabwe National Roads Authority takes over collection and management of motor vehicle fees from local authorities. These two directives show a trend towards more centralisation and not decentralisation and resulted in weakening of the local governance structures as they lost sources of revenue yet they retained 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 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 do then 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 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 (2006) citizen

participation can range from a very low level where there is manipulation and therapy to a slightly higher level where they 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. Citizen participation therefore entails that individuals or communities take an active role in decision making at each step of the development process (ACPD, 2006). However sometimes authorities hoodwink residents into passive participation where they are made to make choices from predetermined limited alternatives (Makumbe, 2006). In the case of the appointment of Provincial Ministers it would appear the central government is hovering around manipulation, therapy and outright hoodwinking as 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, on the ground there is not much movement or evidence to show. Decisions at provincial level are still being dominated by centrally appointed authorities 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 remain unattended to. 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.

There is little evidence on the ground about recognition of the right of communities to manage their own affairs and their development as provided in this Section 264. There remains a dominance of the centre with many functions still centralised in Harare, the capital, especially 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 locality. The typical example is that of the diamonds expropriation and exploitation at Marange diamond fields where local communities did not benefit from the proceeds and have nothing to show for it in Marange, nor in the provincial capital of Mutare. This shows lack of equitable sharing of natural resources as 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, health and education programmes etc. Many resources are still controlled centrally like minerals, wildlife, etc. 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. 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**

Section 264 holds much potential for good local governance for Zimbabwe. Despite the stability and peace in Zimbabwe, notably economic challenges, there is potential for challenges for the success of devolution in the country. A cursory examination of the law and practice of devolution paints a gloomy picture due to the fact that devolution appears to be capital intensive, in a country in financial dire straits and suffering from economic distress.

While it is generally agreed that the implementation of provisions of Section 264 of the Constitution can improve good local governance in Zimbabwe, the above factors can impinge on its success. Local governance defines 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. Local governance therefore should play a critical role in promoting democracy and mass participation in decision making processes (Mawhood, 1993). When devolution is conceived and implemented properly, it promotes democratic local governance. Both the local governments and the residents that they govern will gain authority, resources and skills to make the right choices and to be 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; and advancement in these activities by local citizens promotes more effective democratic local governance (Neil Levine, 1998).

It is assumed that the implementation of Section 264, local democracy is enhanced. Instituting provincial councils and transferring powers to these will make significant changes related to natural resource exploitation and utilisation for the benefit of the local population because decisions will be taken at the provincial and local level. Proceeds from the ventures in these resources are utilised within the province and are more likely to be directed for the development of the residents in areas of their preference. As decisions are made locally and closer to the grassroots the proceeds from these resources are more likely to be directed

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 which may not be equitable across the geographical regions of the country whereas when it is driven by the different local authorities across the country; more equitable human development has a better chance to succeed. The case of the Marange Diamond fields where proceeds did not benefit local communities is a precedence that shows 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 governance of their affairs thus promoting local democracy and ensuring that the local people have a say in decisions that affect their daily lives and promote easier access to resources. Local democracy engenders the sharing of power decisions and resources in a way that is perceived as fair. Involvement of people in the processes for 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 this agency among local residents who will take control of their own development and welfare. Local governance to this extent can promote local economic development.

Devolution can also be viewed as a panacea to 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 (2006) has thrown caution to the wind by noting that residents may be hoodwinked into passive participation where they are made to make choices from predetermined limited alternative. 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 information sharing, setting goals, allocation of resources, implementation of programmes etc. Devolution will also increase level of participation of residents in local government elections, budget crafting, consultative forums, public hearings etc. According to Arnstein (2006), citizen participation can range from a very low level where there is manipulation and therapy to a slightly higher level where they 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 themselves and given the responsibility they will deliver that and develop a sense of ownership of the process (Abe and Monisola, 2014).

If managed well, devolution will lead to 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 are not applied to provide for development of residents or where the local government structures are incompetent, the local authorities become predatory with residents paying for services that are not delivered. Devolution can result in better prospects for economic development for local areas. Local governments can achieve both economic and social development through stimulating private investment, promote job creation, facilitate infrastructure investment, and provide affordable housing and social amenities (Morgan, 2009). Issues related to sustainability and 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 provision of services like education, recreation, health, clean water and sanitation facilities. Residents of local government areas enjoy such services and by devolving, we can provide better service delivery.

### **Ramifications of delaying the alignment of local government legislation**

It can be arguably noted that the delay to align different local government pieces of legislation since the coming on board of the Constitution of Zimbabwe in 2013 has had ramifications on efficiency, effectiveness and accountability in Local Governance.

In existence, there has been a litany of pieces of legislation that influence the functioning of local government in Zimbabwe. The legislation has not been aligned with provisions of the 2013 Constitution of Zimbabwe and the confusion that this causes has had negative implications for local governance performance. Efficiency relates to the levels to which the local government minimises waste of resources, while effectiveness is to do with achieving goals. When taken in tandem, the two refer to local authorities achieving 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. It speaks to the obligation owed by public officials to the public and represents the value that citizens extract for conferring discretion and policy responsibility upon public officers (Dunn, 2003). When public officers take actions, they should account for it to those on whose behalf the action is taken and in the context of local governance the accounting should be to residents of the local authority's

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

In a devolved system for example management of roads, water, education and health is devolved to local governments. As discussed elsewhere, the administration of roads and all licencing of vehicles which had been moved to the central body would be returned to local authorities. Revenue collected from vehicle licences typically is used for maintenance of roads and ZINARA should play an oversight role. Currently, despite this fraudulent move of most functions of local authorities such as roads to ZINARA, local authorities are still expected to maintain roads but do not collect vehicle licences and this has seriously hampered their 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 such a deplorable state of disrepair characterised by potholes everywhere. Although ZINARA collects licence fees and toll fees, the disbursement of the revenue for upgrading and repairing roads remain shrouded in mystery, as is characteristics of most of operations of centrally managed systems. There is therefore need to rationalise 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 central road authority. One way would be to designate national roads which will be catered for by ZINARA, provincial roads which will be catered for by provincial councils and local roads which will be catered for by local authorities. A formula will then be developed for the sharing of the various fees collected so that the different levels of government get capacitated to construct, update and repair roads. Alignment of such processes to the constitution would curtail duplication and overlaps.

Another piece of legislation that has grossly impacts negatively the effectiveness and efficiency of local governments is the ZINWA Act Chapter [20:25]. Local governments used to be in charge of water supplies to residents in their jurisdiction. However, the advent of ZINWA saw this responsibility moved to the central body, which assumed the role of managing the country's water resources and also to collect the requisite 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 visit local governments when such centralisation takes away resources but fails to deliver is the water challenges that happened 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 Harare City Council and other larger

urban authorities like Mutare, Gweru, Bulawayo etc to retain responsibility for water treatment and reticulation for the respective cities.

Additionally, social services such as the provision of education and health facilities would best be dealt with at local level and would best suited in a devolved locality. Hence there is need for the alignment of the Education act, Chapter 25:04. Currently schools have different categories namely government schools, council schools, private aided schools and private/trust schools. These schools are characterised by having different resources. While these schools are found in the same locality, the difference in terms of 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 becomes the purview of local government while 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 nearest 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 Water Act Chapter [20:24] legislation needs to be aligned to the constitutional provisions of Section 264. The Water Act, for example, gives sweeping 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 which manage specific catchment areas and has the power to change these councils and to set their allowances. Such provisions totally remove the management of water from the elected representatives of residents of the districts or urban areas in which the water resources are and place it under bodies that serve at the pleasure or mercy of the Minister. Water is a basic need for all and access to it should be held as a basic right. Disempowering local people from 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 for devolution. Delays in such alignment disempower local governments from being able to manage water resources in their jurisdiction and consequently 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 both 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 Boards. Members to this board are appointed by the Minister and he/she has the power to fire them. While the members are appointed from lists recommended by different bodies, these bodies are not of elected members. The Minister also appoints members from the Public Service and former public servants including the chair of the board (Government for Zimbabwe, 2013). The Board has power over the management of the human resources of Council especially the senior officers and therefore such a provision allows for interference in the management of council affairs by the Minister because the Board is more inclined to be accountable to him/her more than to the elected representatives in council. Delay in aligning this legislation has resulted in interference in appointments of senior officers of councils by the Minister as exemplified by the appointment of the Town Clerk of 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 MLGPWNH and the Local Government Board on one side and the Council on the other hand. The candidate appealed and won his case at the courts and council paid him damages. Such costs end up being paid for by rate payers for no service received and cause serious inefficiencies and affect the effectiveness of council especially in service delivery. The council went for a lengthy period without a substantive town clerk and this has negative consequences on efficiency and effectiveness of local governance.

The Minister of Local Government has over the years enjoyed powers to suspend any or all councillors on suspicion of misconduct as outlined in the act (Government of Zimbabwe, 2002). Many Urban Councils for example Harare, Chitungwiza, Mutare, Kwekwe, 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 the action of the Minister is 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 appointing authority, are bound to be accountable to the Minister and not to the rate payers.

## CONCLUSION

The law and practice of devolution in Zimbabwe has courted 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 was experienced in the country. What will further complicate issues is the historical nature of some of the ruling elites whose approach to governance is restrictive. Given that devolution is a deviation from the partisan form of governance that has characterised local governance, it remains to be seen whether the establishment will contend with the dictates of devolution. The delay in implementing devolution has also been an indication of unwillingness by the government to cede power to provinces, alleging that devolution smacks of secessionism, a demand made at some point 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 due to 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 façade. The establishment may also want to consider the alignment and harmonisation of the plethora of legislation governing local government, which is overdue. This alignment will incorporate the subordinate pieces of legislation 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 on efficiency, effectiveness and accountability within the local governance system of the country.

## CONFLICT OF INTERESTS

The authors have not declared any conflict of interests.

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