

Full Length Research

THE CONTROVERSIES OF DEVOLUTION IN ZIMBABWE

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Devolution of powers from the centre has always presented challenges for unitary states. Unlike in federal states where the polity configuration allows for such dispensation, in unitary states such as Zimbabwe, devolution of power comes with different ramifications. The concept and practice of devolution has courted a lot of controversy in Zimbabwe with legal court challenges from the Mthwakazi political outfit. Lack of political will to put the wheels of devolution into motion has ruffled the feathers of sections of people in the western region of Matabeleland who have approached the ConCourt to compel the State to take appropriate measures to implement devolution. It would be incumbent upon the legislature and executive to set aside their political considerations and adopt a more restrained way of implementing the devolutionary provisions of the new constitution in letter and spirit. This paper recommends the need to align and harmonise existing local governance legislation with the new constitution to facilitate devolution

Keywords: Zimbabwe, devolution, sovereignty, secessionism, local governance, constitution, decentralisation.

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INTRODUCTION

The inclusion of Local Governance in the new Constitution of Zimbabwe, especially the evolution of the concept and practice of devolution of power to subnational levels (at least in principle) has changed the face and power matrix of national politics. Through devolution, provinces are now able to make their own developmental decisions in line with the dictates of the resource-base theory. The proponents of the resource-base theory attempt to explain why certain regions develop while others fail to show evidence of development [Todaro and Smith, (2004); Munck and O'Hearn, (1999); Ghatak, (1998); Healey and Ilbery, (1996)]. This is the premise on which devolution is based where development would be on regional basis, depending on available resources. In the presentation and discussion of devolution, this paper incorporates a critical analysis of Section 264 of the new Constitution of Zimbabwe which provides for the

devolution of governmental powers and responsibilities. It is the same clause from the Constitution which have courted controversy over the need to speed up the implementation of devolution in the country. The recent incorporation of local governance into the new Constitution has enabled Zimbabwe's local government system to be transformed from being a creature of statute to a constitutional provision.

Consequently, local councils are like 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 in the new devolutionary discourse. This paper deliberates on the enigma of devolution as a tenet of democratic local governance. 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 huddles 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.¹

Local Governance and the Dynamics of Power

Local government has been described as a lower level of public administration that uses delegated powers and functions to manage local affairs and provide services through local councils². Consequently, urban councils are conduits through which services are provided to local communities and a form of decentralization and devolution of powers from central government to localities. Devolution is the most far-reaching form of decentralisation comprising of the transfer of administrative, political and fiscal powers, whereas delegation and de-concentration only include the transfer of administrative powers (Steiner, 2005). Treisman (2002) notes that decentralisation can be analysed from a static or dynamic time perspective, involving a dichotomous or continuous point of view of decentralisation to different degrees. The dynamics of power in local governance manifests itself in different practices that revolve around who holds power and what role the public plays in this power matrix. As a result the form of local governance is informed by whether the power to make decisions is *centralised*, *decentralised*, *delegated* or *devolved*. This paper discusses devolution and how it has impacted on the local governance discourse in Zimbabwe.

Centralisation in local governance is when most decision-making powers are vested in central government with local authorities having no or very little power to make independent decisions. In that case, local authorities are there to implement central government policies and ideologies. On the other hand, decentralisation is the antithesis of centralisation and entails empowering lower tiers of government with decision-making powers. Political reforms across the globe have come to support decentralization as a viable option against centralised systems of local government. Decentralized political systems have been characterized by power-sharing structures between central and local

government structures³. In decentralization, central government

transfers or delegates legal and political responsibility for planning, management and resource use and allocation from the central government and its agencies to field organisations of these agencies, subordinate units of government, semi-autonomous public corporations, area-wide regional or functional authorities, or non-governmental private or voluntary organisations⁴.

In organisations decentralisation

means a choice between different types of public institutions, which vary in terms of the areas over which they have jurisdiction, the range of functions delegated to local institutions and the level of discretion allowed, as well as the manner in which decision-makers are recruited, so producing institutions that are primarily political or bureaucratic or a mixture of both⁵

In summary decentralization denotes that transfer of authority or power from a higher to a lower level of government, quasi-government or non-governmental organisations to execute and manage public activities or functions⁶. This is the premise on which the paper regards power and functional dynamics in Zimbabwe's local government system and the extent to which the responsible Minister exercises these powers. This is in tandem with the dictates of devolution where enabling institutions and powers are devolved or delegated to lower levels of government. In devolution, local authorities have the mandate to make decisions without seeking central government approval. This paper therefore discusses the concept and practice of devolution and how it is likely to reconfigure the face of local governance in Zimbabwe.

Advocates of devolution find 'good governance' as

³Mawhood (1993 "Decentralisation: The Concept and the Practice" in Mawhood, P (ed), Local Government in the Third World, John Wiley and Sons, Chichester.

⁴ Cameron (1995: 396-397); Rondinelli, D.A. (1981: 137) 1981, "Government Decentralisation in Comparative Perspective: Theory and Practice in Developing Countries" in International Review of Administrative Sciences, Vol. 47, No. 2.

⁵ Smith (1997: 400) 1997, "The Decentralisation of Health Care in Developing Countries: Organisational Options" in Public Administration and Development, Vol. 17, No. 4.

⁶ Smith (1997: 400) 1997, "The Decentralisation of Health Care in Developing Countries: Organisational Options" in Public Administration and Development, Vol. 17, No. 4.

¹A detailed discussion of secessionism is provided below.

²Councillors Induction Handbook (2009:5)

encompassed in devolution which they claim yields improved public accountability, environmental sustainability and the empowerment of the poor and vulnerable groups (Anderson & Ostrom, 2008). The concept of 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 facing consequences (Bovens, et al, 2008). 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 (Court, 2006b). 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 (Moore & Putzel, 1999; Blair, 2000; Hutchcroft, 2001; Johnson, 2001; Bardhan, 2002; OECD, 2004; Jutting, Corsi et al, 2005).

Local Government and Modern States

Three major modes of governance that have come to characterize modern states are found in federal states, unitary states and devolved unitary states (Human Rights Constitutional Watch 6/2000)⁷. A federal system of governance is found in a country that is divided into two or more states with their own governments which then agree to have one national government (Constitution Watch 6/2010; Elazar, 1995). In federal forms of government "legal sovereignty is shared between the central and the sub-national levels of government⁸ with each level or sphere of government, having constitutional authority to make some decisions independently of the other⁹. Citizens of a federal state remain subject to the authority of both the central and the state (sub-national) governments, each of which impacts directly on the citizen¹⁰. Additionally, in federal states, the formal stipulations are contained in the constitution and help to define the authority of governmental institutions at

⁷ "Human Rights: Constitution Watch 6/2010" in *The Zimbabwean*, 21 May 2010. Available at <http://www.thezimbabwean.co.uk/human-rights/31122/-constitution-watch-62010.html>

⁸Hague, R & Harrop, M. (1987) ., *Comparative Government and Politics: An Introduction*, MacMillan Education Limited, London.

⁹Mahler, G S (1995). *Comparative Politics: An Institutional and Cross-National Approach*, Prentice Hall, Englewood Cliffs, New Jersey.

¹⁰Gildenhuis *et al*, (1991 : 165)

federal, state (regional/provincial) and local levels.¹¹

In a unitary system of government, power is vested in central government which controls all the political and administrative institutions.¹² A unitary system usually comprises of one level of government above the local level unlike in federal states where there is another sphere of government which is the provincial or regional government. In unitary states, Parliament has the power to grant the cities or counties more influence, or to take away policy jurisdiction they may already control.¹³ The power dynamics in unitary states is such that sub-national governments, whether regional or local, may make policy as well as administer it, but they do so at the pleasure of the national government.¹⁴

One characteristic of the unitary system of government is that "...relations are mostly the result of enforced duties as prescribed by the constitution or statutes which control lower authorities by virtue of the centralised control of authority".¹⁵ In unitary systems of government, it is legislation that prescribes the general principles, leaving all the detail to be stated in regulations which regulations will have been made by central government, and usually administered through public servants.¹⁶ This leaves public servants with a great deal of authority, including in many cases the authority to change local decisions or even to set them aside.¹⁷ This is the scenario in Zimbabwe where the Minister of Local Government exercises legislative power as provided for by the Urban Councils Act (as amended in 2008).

A devolved state exists within a unitary system where political and administrative power is shared between a national government and lower level spheres of the state,

¹¹Cameron, R (1996) "The Democratisation of South African Local Government" in *Local Government Studies*, Vol. 22, No. 1.

¹² Constitution Select Committee (COPAC), (2011). What systems of national government should Zimbabwe have? - Ensuring a People-Driven Constitution- Zimbabwe". Available at <http://www.copac.org.zw/talking-points/talking-points/61-4-systems-of-government.html>

¹³ Mahler, G S (1995)., *Comparative Politics: An Institutional and Cross-National Approach*, Prentice Hall, Englewood Cliffs, New Jersey.

¹⁴ Hague, R & Harrop, M. (1987). *Comparative Government and Politics: An Introduction*, MacMillan Education Limited, London.

¹⁵Gildenhuis, J S H,(1991)., *Public Macro-Organisation*, Juta and Company Limited, Cape Town.

¹⁶Craythorne: D L (1990)., *Municipal Administration: A Handbook*, Juta and Company Limited, Cape Town.

¹⁷ Mahler, G S (1995), *Comparative Politics: An Institutional and Cross-National Approach*, Prentice Hall, Englewood Cliffs, New Jersey.

for example, provinces and local authorities¹⁸. Unlike the South African Constitution which provides for constitutionally-protected local government powers, previously in, the Zimbabwean constitution did not deal with local governance, leaving local government affairs at the mercy of the Minister of Local Government, Rural and Urban Development (MLGRUD). In the old local government legislative dispensation, the power of local authorities was given through an Act of Parliament, namely the Urban Councils Act and the Rural Councils Act both of which vested considerable power to the Minister of Local Government. Consequently, local government was an exhibition of residual powers of the central government which played a critical role in the affairs of local government institutions and gave enormous powers to the Minister of Local Government, Rural and Urban Development (MLGRUD) to preside over the affairs of local authorities. Despite the perceived autonomy of local authorities, central government played a domineering role in the everyday administration of local authorities. However, the new constitutional dispensation provides local government as a separate entity with community/citizen participation being at the epi-centre of the governance process. While centralization has been curtailed in the new constitutional order, decentralization and devolution have been given prominence as these seek to promote community participation in local governance processes.

Local government system is a dominant feature in most federal and unitary states. However the major difference is the way power is dispensed to local authorities by central government. Power can either be delegated or retained through constitutional provisions as in federal state systems or power can be dispensed through legislative provisions as is common in unitary systems of government. In federal states the constitution is used to empower local authorities to make laws and operate in a way that makes them autonomous and sustainable entities. On the other hand, in unitary states legislation is enacted by parliament and used to delegate power to local authorities. In the latter case, central government retains dominance in the affairs of local authorities.

Local Government and the Democratic Discourse

The bottom line within the democratic discourse is that in making decisions that affect the generality of citizens, there has got to be input from the very people concerned. Paul (2005) cited in Folsher (2007:247) concurs that "...initiatives that encourage citizen participation in public

decision-making are more successful in societies that adhere to democratic governance, are open to public debate and criticism of those in authority, and allow independent civil society organisations to take root". Leftwich (1993:9) notes that democracy is based on the simple principle that when making an important public decision, the majority vote should prevail because the will of the majority outweighs the wants of the minority. Consequently in a democracy, citizens (including grassroots people) must be given an equal opportunity to influence the process of government, and participate in whatever decision that is taken (Diamond & Morlino, 2004:93). By devolving its operations, central government seeks to empower local communities in determining their destiny. Current debates on the deepening and consolidation of democracy have a distinct bias towards participatory approaches that enable citizens to take up their citizenship rights (Esau, 2006; Gaventa, 2006; Klandermans, Roef & Olivier, 2001). This is what devolution endeavours to do, at least in the context of this paper.

The notion of participatory spaces emanated from debates on the best way to "...involve citizens more actively in shaping decisions that affect their lives" (Cornwall, 2002:49), where innovative experiments in governance have opened up spaces for public involvement in deliberation over policies (Fung & Wright 2000) and a greater degree of control over the utilisation of resources (Goetz & Gaventa, 2001). Local government's role in the political system has been considered primarily in terms of its relationship with central government. Observers from a liberal democratic standpoint have stressed two bases upon which such relationships have been formulated since the nineteenth century. First, local government has been considered important to the encouragement of political education and participation, and the basis upon which services could be provided according to local needs. Hence, relationships with the centre have been based on the partnership of free democratic institutions. Secondly, local government has been seen as rational from an administrative point of view since it allows for the efficient provision of public services at the point of service need under the direction of the centre. On this basis local government is seen as the agent of central government for the implementation of public policies and as drivers of ideologies held by the ruling elites. Political participation therefore stems from the strong community identity underpinning commune local government, and a strong relationship between the operations of local government and the interests of the state.

However, local government has also lost most of its many responsibilities to non-elected local non-state actors created or encouraged by central government, so much so that the local political arena has increasingly been conceptualized as local governance, in which local

¹⁸Human Rights: Constitution Watch 6/2010" in *The Zimbabwean*, 21 May 2010. Available at <http://www.thezimbabwean.co.uk/human-rights/31122/-constitution-watch-62010.html>

government is reduced to the status of one player among many ((Fung & Wright 2000). In the context of Zimbabwe the appointment of special interest councillors as provided for under the old legislative dispensation, violated democratic practice by denying residents to be involved in deciding whether special interest councillors are necessary or not and if so, to be involved in their election or appointment.

Local Governance as a Creature of Statute

Smarting from decades of delegated local governance and associated challenges, 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 to the 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, 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 MLGRUD to arbitrarily appoint 'special interest' councillors 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.¹⁹ 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

¹⁹See 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.

dynamics.²⁰

Colonial Administration and Regionalisation

In tandem with the dictates of the divide-and-rule tactic of the British colonial administration, the categorisation of the country into tribal regions (or provinces) set the wheels of devolution in motion, though vaguely. The provinces that were created included Mashonaland (geographical areas where the Shona are a majority), Matabeleland, a predominantly Ndebele area as well as Manicaland where the Manyika people are dominant. Lastly the Midlands Province was created at the centre of the country where all tribal groups would meet due to its industrial propensity. In the minds of the colonial administrators, regionalisation of Zimbabwe through the creation of 'provinces' would enable easy administration while on the other hand would provide tribal distinctions and exacerbate tribal differences. The loose form of devolution that was created exacerbated hostilities among tribal groups. However, the provinces so created were mere geographical configurations directed from the centre. All the decision-making power emanated from the centre. The configuration and historical background of Matabeleland manifested unwillingness to subdue to British colonial rule, more than the other provinces. Consequently, the concepts and practicalities of sovereignty and devolution have had an enduring impact on the Matabeleland region. This could partly be emanating from the perceived political hegemony, military might of the Ndebele State of the 19th century as well as its attendant incisive economic prowess, attributes that the people of the region had enjoyed prior to their migration into Zimbabwe from Zululand. This could explain why in this part of the country, devolution has been interpreted to imply sovereignty and/or secession and any claim to devolution has been viewed with suspicion by the establishment (Tsododo, 2014).

Claiming Sovereignty and Demanding Accelerated Devolution

Available literature (Jackson, 2001; Diamond & Morlino, 2004; Mahler, 1995; Gerald et al, 2002) have tended to view sovereignty and devolution as two sides of the same coin. While sovereignty alludes to the complete and exclusive control of all people and property within a given

²⁰Africa in Fact (2015). "ZANU (PF) in no hurry to remodel laws" *New Zimbabwe*, 9 June 2015. Available at: <http://www.newzimbabwe.com/news-23040-Zanu+PF+in+no+hurry+to+remodel+laws/news.aspx>

geographical location²¹ (Jackson, 2001), devolution on the other hand refers to the statutory granting of powers from the central government of a sovereign state to government at subnational level (Diamond & Morlino, 2004: 93). The issue of sovereignty and sovereign states have become very intense, especially in the age of globalisation. Globalisation has transformed the face of politics across the globe and the content of the notion of "sovereignty" is continuously changing, especially in recent years. Jackson (2003) has noted that the old "Westphalian" concept in the context of a nation-state's "right" to monopolize certain exercises of power with respect to its territory and citizens has been discredited in many ways.²² The transformation of the world has also benefited citizens by bestowing upon them the power to make decisions on matters that affect their lives. Expressed loosely, state sovereignty denotes the complete and exclusive control of all people and property within a given geographical location. This definition provides a broader and more encompassing picture concerning states. From a miniature level, sovereignty would also imply claiming of autonomy by regions or provinces within a polity, which translates to devolution. Devolution on the other hand is the statutory granting of powers from the central government of a sovereign state to government at a subnational level, such as a regional, local, or state level (Mahler, 1995). This is the context in which this paper provides a critical analysis of the concept and practice of devolution emanating from the new Constitution of Zimbabwe. What has incited the author to equate a state and a province is the allegations and claims of secession that have emanated from the western province of Matabeleland where legal action have been initiated against the Zimbabwean state for failing to facilitate the implementation of devolution as provided for in the Constitution.

While at global level, under the concept of state sovereignty, no state has the authority to tell another state how to control its internal affairs (Gerald et al, 2002). Jackson (2003) argues that the core of sovereignty-the "monopoly of power" entails certain linkages and "slop-over penumbra" of the other sovereignty dimensions. It is the confession of this paper that the 'other' dimension of sovereignty is devolution where people from a specific geographic location would have the freedom to determine their own destiny, which is the essence behind devolution. It is the same claim and clause which provinces would like to interpret the concept and practice of devolution. On the contrary, while

²¹ John H. Jackson (2001). *The WTO "Constitution" and Proposed Reforms: Seven "Mantras" Revisited*, 4]. INT'L ECN. L. 67

²² Jackson, H (2003) "Sovereignty - Modern: A New Approach to an Outdated Concept" 97 *American Journal of International Law* 782-802 (2003).

sovereignty both grants and limits power, it gives states complete territorial jurisdiction.²³ Interpreted in the context of devolution, this would mean that the state is weary and reluctant to give unfettered powers to provinces. This could be the major reason for the lack of political commitment in Zimbabwe to align and harmonise existing legislation to the new constitution so as to delegate powers to and empower provinces to administer their own affairs with central government playing an oversight role.

Given the political landscape in the country on the backdrop of an enduring tribal configuration of the western region of Matabeleland, it is not surprising that the demands for devolution are emanating from this side of the country. The Ndebele State of the 19th century had always claimed hegemony and sovereignty in the local wars with the Shona and other local groups during which they subdued these tribal groups. Their encounter with the British army in the Anglo-Ndebele War of 1893 culminated in defeat but that was not the end. A few years later, in league with the Shona in the Uprisings of 1896-97, their combination showed beyond any doubt the resilience of indigenous groups to achieve freedom and sovereignty. The indigenous people may have been defeated but had showed resistance against British military fire power.

Postcolonial Case Laws on Devolution

It has been argued that certain sections of society canvas for sovereignty mainly to court controversy. Jackson (2003) postulates that national government leaders and politicians, as well as special interest representatives, too often invoke the term "sovereignty" to forestall needed debate. This is taking into cognisance the fact that the central government would not allow ceding power to regions. In the post-colonial period once a civil strife surfaced under still controversial circumstances. With the advent of the new constitution in 2013, the concept of devolution once again resurfaced and this time around it has courted a lot of controversy. However, the slow pace at which the implementation of devolution has taken place has been attributed to lack of political will to implement the constitutional provision on devolution and this has culminated in court challenges by people of the western region of Matabeleland. There are basically two case laws both challenging the State to observe the content and provision of the Constitution (2013) on devolution. First was the court challenge by Paul Siwela of the *Mthwakazi*, a quasi-political outfit claiming to fight for a secessionist state and subsequent resurrection of

²³ Kreijen, Gerald et al. eds., (2002). *State Sovereignty as Social Construct*

the extinct Ndebele State.²⁴ The case law *Paul Siwela vs Minister Justice, Legal and Parliamentary Affairs* sought to compel the State to expeditiously attend to the constitutional provision on devolution.

Secondly came the Constitutional Court (ConCourt) challenge by a former Cabinet Minister, one Sipepa Nkomo of the Movement for Democratic Change (MDC) political outfit, who claims that the implementation of the constitutional provision on devolution is well overdue and should be activated forthwith (see *The Legal Monitor* April 2015). In the case, Sipepa Nkomo, bemoans the delay and attendant lack of political will to implement the provisions of the new constitution on devolution. By approaching the Constitutional Court (herein the ConCourt) to compel the Government of Zimbabwe to align existing legislation and eventually, this was meant to pile pressure on Government to put in place mechanisms for the implementation of devolution in different parts of the country. In his legal arguments, Sipepa Nkomo argues that provinces must be given the powers to administer their own affairs as a matter of urgency. As a result the issue of devolution has courted a lot of controversy in Zimbabwe's political landscape. However, the fact that the demand for devolution are coming from the western region has not been surprising, given many similar escapades such as the Anglo-Ndebele War (1893), the 1896-97 Uprising combining with indigenous people from Mashonaland as well as post-colonial skirmishes²⁵, all having presented the

western region as being at the forefront of demands for devolution.

The Enduring Thread of Sovereignty and Devolution in Zimbabwe

While sovereignty has been a national claim to self-determination prior to and during the liberation struggle, the claim for devolution and its attendant benefits seem to have been more regional. This is evidenced by the different wars and similar skirmishes in the region of Matabeleland, with notable events having been events around the Anglo-Ndebele War of 1893 which was an exhibition of initial tinctures of claiming sovereignty of the Matabeleland region by the Ndebele. The Uprisings of 1896-97 were a further manifestation of the desire by indigenous tribal groups to claim sovereignty over their geographical spaces. However the major difference between the initial Ndebele resistance of 1893 and the 1896-97 was that while the former assumed a regional latitude, the latter assumed a national face, thereby indicating that indigenous tribal groups enjoy and can exploit similar interests to their advantage. This was a national and almost wholesale claim to sovereignty. The essence behind the concerted effort by the two major national tribal configurations was that they desired self-determination and displayed a quest for devolution in order to exercise powers over their resources.

Devolution and the new Constitution

Section 264 of the new Constitution of Zimbabwe provides for devolution. Taking a cue from the South African Constitution, the Zimbabwe Constitution of 2013 is considered as the most democratic in the constitutional history of the country. However, the interpretation of devolution has courted a lot of controversy with the Matabeleland region expressing impatience and anxiety over the delay in implementing devolution in the country. Sections of Matabeleland through the Mthwakazi have taken the issue of devolution a gear up by demanding secession thereby politicising devolution and being

²⁴Gabriel Nkomo (2013). "Treason Judgement for 'Mthwakazi' Siwela Set for Tuesday" *Zim Eye*

December 2, 2013. Available at <http://www.zimeye.org/treason-judgement-for-mthwakazi-siwela-set-for-tuesday/#sthash.grneYFcJ.dpuf>;

Benny Tsododo (2014). "The folly of Secessionist, Tribal Politics" *The Herald*, 22 January 2014. Available at <http://www.herald.co.zw/the-folly-of-secessionist-tribal-politics/>

²⁵ The post-colonial civil unrest (herein skirmishes) assumed a regional dimension when some disgruntled militants in Matabeleland took up arms against the new political establishment. The concept, causes and course of the civil unrest remains controversial with a myriad of conspiracy theories being floated around. *See* "Gukurahundi was a Western Conspiracy, Says Vice President Mphoko" *Newsdze Zimbabwe*. Available at:

<http://www.newsdzezimbabwe.co.uk/2015/02/gukurahundi-was-west-conspiracy-says-vp.html>;

Ndlovu-Gatsheni (2011). "The Construction and Decline of *Chimurenga* Monologue in Zimbabwe: A Study in Resilience of Ideology and Limits of Alternatives" *Paper presented under Panel 109: Contestations over Memory and Nationhood: Comparative Perspectives from East and Southern Africa at the 4th European Conference on*

African Studies (ECAS4) on the theme: African Engagements: On Whose Terms? held at Nordic Africa Institute, Uppsala, 15-18, June 2011] as well as "The post-colonial state and Matabeleland: Regional perceptions of civil-military relations, 1980-2002" by the same author. On the contrary see "Gukurahundi: Mugabe innocent, Mphoko" *New Zimbabwe* 14 February 2015; Lloyd Mbiba (2015). "Mphoko savaged over Gukurahundi" *Daily News*, 16 February 2015.

labelled 'a secessionist political party'²⁶ with leaders of the said political party being arraigned before courts of law.²⁷ This presents contradictions because secessionism is prohibited in the new Constitution. The major thrust of section 264 is devolution of governmental powers and responsibilities to provincial and metropolitan councils and local councils.²⁸ However, what is not clear are the conditions under which devolution would take place. This is the weak point which has caused controversy because the constitution does not give a timeframe under which devolution should be implemented. Devolution of governmental powers and responsibilities seems to rest in the hands of central government which can consider a region 'appropriate'²⁹. It is therefore not surprising that Matabeleland may be found to be 'inappropriate', given that the Mthwakazi political party has mixed up its political ambitions with devolution. To the government, such ambitions would be tantamount to secessionism. Additionally, the clause 'whenever appropriate' creates anxiety within local governance circles as it entails that central government has the mandate to put in place institutions for devolution at a time appropriate to it. This raises fears as to what would happen if central government deems the situation inappropriate for devolution in a particular region. On the other hand, delays in implementing devolution may culminate in confusion and mayhem, and in some cases, overlap and duplication of tasks, since legislative and constitutional provisions would be operating simultaneously. Given that scenario, it is evident that central government may not voluntarily devolve the powers on a silver platter. It is the author's conviction that there may rise situations when central government may deem it inappropriate to devolve power and responsibilities, thereby making a mockery of participatory democracy as enshrined under this section of the new constitution. It therefore remains to be seen to what extent central government is committed to implement the devolution and the new constitution in letter and spirit. It also remains to be seen what would happen with devolution if central government 'finds' that some local councils are not 'competent to carry out those

responsibilities efficiently and effectively'³⁰. Maybe central government will have to put in place a framework to determine levels of competency and potential for efficiency and effectiveness before power and responsibilities can be devolved to provinces. It therefore remains to be seen whether precedence will be set in this regard, given that the new constitution is yet to be tested.

The constitution also seeks to empower communities and enhance their participation in making decisions that affect them.³¹ However, the provision is not precise as to whether there are any conditions under which such powers may not be bequeathed to such local councils.

Additionally, while emphasis has been put on the need to promote and build a democratic local governance dispensation, this has been over-emphasised. The provision

*to promote democratic, effective, transparent, accountable and coherent government of Zimbabwe as a whole*³²

while very impressive and portraying a very promising picture, is dependent on political commitment and availability of resources, taking cognisance of existing economic challenges. Transparency and accountability has always been absent in local governance over the years, as exhibited by certain section of local government legislation, notably section 4 A of the Urban Councils' Act which mandated the Minister of Local Government to appoint 'special interest councillors'. In some studies, the intervention by the Minister has been viewed as the "Achilles Heel" of local authorities, presenting a major weakness in the administration of local governance in the country.³³

While equitable distribution of resources resonates with democratic practice, but the fact that it is enshrined in the new Constitution of Zimbabwe³⁴ does not mean that it will be an easy task. The precedence set by diamond mining in the Manicaland Province of Zimbabwe which only benefited a few people³⁵ is indicative of the fact that equitable distribution of resources is likely to present challenges. It would therefore be a mammoth challenge for central government to be able to:

*ensure the equitable sharing of local and national resources*³⁶

²⁶Gabriel Nkomo (2013). "Treason Judgement for 'Mthwakazi'

Siwela Set for Tuesday" *Zim Eye*

December 2, 2013. Available at

<http://www.zimeye.org/treason-judgement-for-mthwakazi-siwela-set-for-tuesday/#sthash.grneYFcJ.dpuf>

²⁷Benny Tsododo (2014). "The folly of Secessionist, Tribal Politics" *The Herald*, 22 January 2014. Available at <http://www.herald.co.zw/the-folly-of-secessionist-tribal-politics/>

²⁸ Section 264 (1), Constitution of Zimbabwe (2013).

²⁹ Section 264 (1), Constitution of Zimbabwe (2013).

³⁰ Section 264 (1), Constitution of Zimbabwe (2013).

³¹ Section 264 (2) (a), Constitution of Zimbabwe (2013).

³² Section 264 (2) (b), Constitution of Zimbabwe (2013).

³³ Bland G. "Overcoming a Decade of Crisis: Zimbabwe's Local Authorities in Transition" (2011) *Journal of Public Administration and Development* 31 (4) 342.

³⁴ Section 264 (2) (e), Constitution of Zimbabwe (2013).

³⁵ Chitiyo, K (2009). *Making the Case for Security Sector Reform in Zimbabwe*

³⁶ Section 264 (2) (e), Constitution of Zimbabwe (2013.)

Resource allocation to local authorities would be a ground-breaking development, given the precedence in the local government legislation where local authorities have operated with no resources with central government having made no contingent plans to bail out councils in distress. It also remains to be seen whether central government will be able to:

*transfer responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.*³⁷

What further makes it doubtful is that in most cases, central government is bedevilled by economic challenges such that it is most likely not able to transfer resources to local authorities. It also remains to be seen whether central government will contend with the idea of devolving power to local authorities and citizens whose new status under the new constitution will enable them to be partners in policy implementation. Additionally devolution makes local authorities (and citizens) participants in developmental initiatives with central government acting as a regulatory partner.

Recent Political Developments in Zimbabwe

Recent political developments in Zimbabwe has transformed local governance from being a creature of statute to a constitutional component with wide ranging powers being accorded to local authorities. This has resulted in local authorities having a constitutional standing and mandate to make decisions that affect their localities and at the same time curtailing the excessive powers of central government over local authorities. Zimbabwe has two types of local authorities, namely urban councils and their rural counterparts. Urban councils look after the interests of those living in cities and towns and can be divided into four categories, namely cities, municipalities, town and local boards depending on the size of population, infrastructure, services offered and social development³⁸.

Local government is generally used “to imply a greater degree of local decision-making, in particular in regard to what to do as opposed to how to do it” (Jordan, 1984:7). This leaves central government with room to dictate terms and conditions of how things should be done and to be involved in decision-making processes. The role of central government in local government affairs is further confirmed by Jordan (1984:7) who points out that “the powers of urban councils derive from and is limited by central government”. This scenario puts central

government, notably the Minister of Local Government, Urban and Rural Development at the centre of most decision-making processes and appointments of both senior and *ex-officios*. The powers of urban councils are contained in Chapter 214 which lists a cumulative total of 53 powers ranging from service delivery to provision of facilities and granting limited freedoms to municipalities to act on matters that affect them, notably the appointment of senior council officials, councillors and mayors as well as deciding on their tenure. However, most of local authorities’ powers are still usurped by the Minister of Local Government whose authority transcends those of all local authorities, given that alignment of the old legislation to the new constitution has not yet taken place. The trend of unlimited authority by the Minister of Local Government was further been exacerbated by the recent amendment to the Urban Council Act where central government has through statutory instrument 79/2010 has vested authority in the Minister of Local Government to arbitrarily appoint additional councillors-special interest councillors who do not represent any constituency. Although there is silence over this appointment of special interest councillors, further delay in aligning local government legislation to the new constitution will one day see the Minister of Local Government reverting back to the old legislation. However all local government amendments have been temporarily rendered futile by the new Constitution until alignment takes effect.

CONCLUSION

It is most likely that implementing the new constitution under existing condition would be a mammoth task, especially for a country whose local government system has never held any constitutional status. Therefore constitutionalising local governance in a unitary state such as Zimbabwe would present challenges at implementation. It is common knowledge that central government in a unitary state is highly centralised and devolving powers to regional and local levels would be difficult. Therefore the unitary nature of Zimbabwe makes it difficult to fully realise the fruits of devolution. It should therefore be noted that the major difference between local governance as a creature of statute and as a constitutional provision is that in the former, power is minimally delegated from the centre to local councils while in the latter case, there is a thread of community participation that runs from the centre to communities through local councils. Claims and allegations of secessionism and devolution tend to create sensationalisation and a possible cause for panic, especially taking cognisance of the fact that different regions in the Zimbabwean society have different interpretations of devolution. This has resulted in allegations of treason levelled against some regions. On

³⁷Section 264 (2) (f), Constitution of Zimbabwe (2013).

³⁸At the Coalface-Zimbabwe (2009:70)

the other hand, politicisation of devolution has also led to more divisions, contrary to the dictates of the new constitution which call for unity in the country. It therefore remains to be seen whether a more amicable solution to devolution will be found. It is therefore this author's conviction that devolution should be supported by a carefully designed set of policies to achieve meaningful devolution devoid of tribal accusations and counter-accusations.

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