

Review

De-politicising the Local Government Landscape: Evidence from the Law and Practice of Local Government in Zimbabwe

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Political neutrality is one of the cardinal conditions for the success of democratic local governance. Local government demands from its employees, not only political neutrality but also integrity and impartiality of conduct. This paper provides a critique of Section 266 of the Constitution, which juxtaposes the right of metropolitan, provincial and local council employees to take part in political activities, with the State's duty that of seeking to depoliticise local governance, hence this paper provides the need for political neutrality. The discussion focuses on Section 266 of the Constitution of Zimbabwe (2013) which provides for political neutrality on local government employees during the dispensing of their official duties. Politicisation of local government functions by responsible officials would tend not only compromise efficiency and effectiveness but would eventually jeopardise the local government system in general and corruption is most likely to creep in. This paper outlines the constitutional ethical framework pertaining to non-partisan conduct of employees of metropolitan, provincial and local council employees. These employees have a responsibility to act legally and politically neutral in carrying out their duties in compliance with the principles outlined in the Constitution and the local governance legislation. Through desk research, this paper comes up with a model for balancing rights of council employees with public administration and good governance principles as outlined in Section 9 of the Constitution.

Key words: local governance, political neutrality, regulatory framework, effectiveness

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INTRODUCTION

This paper provides a critical analysis of Section 266 of the Constitution of Zimbabwe (2013), which speaks of the need for political neutrality by employees in the execution of the local government duties. Basically, local government is a sphere of government nearest to local communities and as such is an extension of the political dispensation (Mapuva, 2016). It therefore begs the question that those people mandated to execute and

implement it should be apolitical. Working within a political environment calls for being apolitical. It is evident that this section of the Constitution on neutrality has the footprints of the Movement for Democratic Change (MDC), the opposition political outfit which formed a coalition with ZANU PF in a Government of National Unity (GNU) in Zimbabwe from 2009-2013. The MDC, being a partner in the GNU, played a crucial role in the

constitution-making process of the same period. It is the same MDC which, prior to the writing of the new constitution, had cried foul over the highly politicised local government landscape. However, it remains to be seen how the State will achieve neutrality by public officials who had been used to operating in highly politicised environments. Over the years, ZANU PF has settled well operating in a highly politicised local government system where they would appoint pundits to propel their party ideology and interests. Local government under the old dispensation had degenerated into a conduit through which party pundits would be rewarded as councillors, District Administrators, and even Provincial Administrators. It therefore became impossible to de-politicise the operations of such political appointees. The appointment of special interest councillors by ZANU PF as provided for by Section 4 A of the Urban Councils' Act of 2008 was one such ploy to increase their numbers in local councils under the guise of incorporating expertise and improving the efficiency and effectiveness of councils. This was part of politicisation of local governance. The new Constitution of 2013, through Section 266 seeks to override the politicisation of local governance and this is discussed in details below.

Exploring the doctrine of neutrality

According to Tanwir & Fennell (2010), public administration theory places emphasis on the requirement of political neutrality of public officials. The theory has since the 17th century been the foundation for limitations on the political activity of all levels of government employees, including provincial and local government workers. In line with the British bureaucracy model which was adopted by Zimbabwe as a result of its Anglophone colonial history, public officials are supposed to be independent of the government of the day and should provide frank and fearless advice and impartial service without any political biases and prejudices.

Political neutrality is centred on the requirement that employees of metropolitan, provincial and local councils must be apolitical when carrying out their duties and exercising their powers. This is an established constitutional convention in Zimbabwe as provided in Section 266 of the Constitution, which is cited above. Matheson et al (2007), argues that political neutrality is a principle that places an obligation on public officials to act in a politically neutral manner in the course and scope of their duties, in order to curb political interference in council business. This means, that employees of urban, rural, provincial and metropolitan councils must 'keep their jobs out of their politics and their politics out of their jobs'. Political neutrality implies that the council business is above politics and should not

be aligned to any party or display bias towards or against any political party. Loyalty is supposed to be to the residents and public and not to one political personality or party.

Iheme (2003), adds that political neutrality implies that there should be no political interference in appointments of public officials since appointments must be made on the basis of merit and competence. Where political neutrality is adhered to, it gives the local government employee a sense of security since assignment to posts is based on merit not political patronage. That is why there is need to spare local governance from political intervention and pressures that can compromise efficiency and professionalism. It should be noted that political neutrality is critical since politicians come and go but public officials remain to provide continuity and stability. If a public official is a party member, he becomes partisan resulting in instability of tenure since party interests are likely to take precedence over official duties resulting in conflict of interest and prejudice to non-political affiliates.

In support of the doctrine of political neutrality, the former President of the United States of America, Woodrow Wilson suggested separation of the administrative and political realms of public administration in order to strengthen each sector independently. According to Wilson (1897), the administrative sector is expected to carry out the policies laid out by democratically elected officials, without any external political influence. This is where the importance of political neutrality in public administration is rooted. This neutrality is the basis for regulating the political activities of government workers. Political neutrality means that public employees must abstain from activities that "impair or seem to impair their impartiality or the impartiality of the sector as a whole". This is a broad definition, with prohibitions that have traditionally expanded beyond the workplace into the personal lives of local government workers since even outside the work place a public official is expected to act in a politically non-controversial manner in terms in conduct, speech or other forms of expression.

Max Weber in his discourses on the bureaucracy also discussed the issue of political neutrality amongst other public administration norms. According to Weber (1968) the bureaucrat is expected to conform to norms of rationality, specialisation, political neutrality, and meritocratic recruitment among other characteristics. The notion of political neutrality which is set out in the Weberian framework requires the bureaucracy to be indifferent to the political party in power and to ensure that their actions are based on neutrality and impartiality with regard to all political parties. The bureaucrat is regarded as a public official who operates solely in the interest of the public and should not bow to pressure from the political process or parties. The Weberian

construction of the ideal bureaucrat as a rational, efficient, and achievement-oriented public servant provides the template for evaluating the actions and effectiveness of the bureaucrat. The Weberian bureaucrat is regarded as an agent of the state; an agent who is characterised as functioning not on an inherent sense of motivation but on an externally imposed set of criteria. The implication is that the actions of the bureaucrat should not be driven by any extrinsic factors such as benefits emanating from political patronage.

In line with Weber's school of thought, Cheema & Sayeed (2006), bring in a historical perspective by arguing that the notion of political neutrality is based on the theory and historical experience of Western European states, which went through a separation of church, state and society, through the course of the 18th and 19th centuries. Since then, this notion of political neutrality has been taken as a characteristic with which to evaluate the ability and performance of the bureaucracy in developing countries. The bureaucrat is regarded as successful in the Weberian sense, if public service is provided without any favours being granted to the political establishment and without interference from any political quarters. The reality in many developing countries such as Zimbabwe is that political interference and alignment are the norm rather than the exception.

It is therefore the aim of this paper to highlight implications of political neutrality on local governance as well the lacunae which need to be addressed through further legal and policy interventions. The paper critiques the traditional model of political neutrality, which defines the relations between employees of various tiers of government and other actors in the political system. It also highlights the clash between the traditional public administration theory which prioritises the public interest with the human rights theory gives which precedence to individual rights of local government employees.

Constitutionalisation of local governance

de Visser et al (2010), highlight that by 2007 the Ministry that was responsible for local government had come up with a framework for a single local government Act. This framework was then resuscitated six years later through constitutionalisation of local governance in Chapter 14 of the 2013 Constitution. In 2015 a new Local Government Bill was developed taking into account the local government framework which was ushered in by the Constitution of 2013. The reasoning behind this harmonisation of local government legislation was the desire to eliminate perceived disparities in levels of autonomy, and to provide for a uniform legal framework for rural and urban local authorities. The Constitution of Zimbabwe now provides for a devolved system of governance where local government is the lowest tier.

This devolution framework was influenced by the 1984 Prime Ministers Directive on decentralisation and the 1996 adoption of the Thirteen Principles of Decentralisation by Cabinet. Section 5 of the Constitution provides for three tiers of government as follows:

- a) the national government
- b) provincial and metropolitan councils; and
- c) local authorities, that is to say
 - (i) urban councils, by whatever name called, to represent and manage the affairs of people in urban areas; and
 - (ii) rural councils by whatever name called, to represent and manage the affairs of people in rural areas within the districts into which the provinces are divided.

The Constitution defines the key governance parameters including definition of rights and obligations of citizens; organisation of the different arms of the State namely the executive, legislative, judiciary as well as the other frameworks for the functioning of the state such as provincial and local government institutions which are provided for in Sections 264-279 of the Constitution. Chapters 1 and 2 of the Constitution provide founding provisions and national objectives which also have a bearing on the functions of provincial and local government structures. Section 266 buttresses political neutrality and impartiality which are demanded of council employees since provincial and local government councils play a significant role in both local and national development. Partisan conduct is therefore not condoned since it can result in discrimination on the basis of political affiliation in violation of Section 56 (3) of the Constitution.

The above-mentioned constitutionalisation of local governance which superseded the piecemeal legislative framework that was in existence prior to adoption of the 2013 Constitution, consolidated the role and function of local government institutions in the development of Zimbabwe. However, constitutional theory highlights that constitutionalisation without implementation of the said provisions does not result in spontaneous realisation of rights bestowed therein. This is evident in Zimbabwe where constitutionalisation of local governance has not automatically produced an enabling effective local government system. It simply created more certainty around the existence of local government as an institution of a multi-tiered state.

However, the biggest challenge since the Constitution came into being in 2013 is the lack of political will needed for enactment of the local government legislation which has the potential of making the 'new' local government system work. Section 266 which enshrines political neutrality in local governance is just but one of the numerous constitutional provisions which have not yet been implemented through an Act of Parliament since

2013. It is disappointing to note that the status quo still remains. It was hoped that constitutionalisation of local government would decisively deal with the subjugation of local government to the form and political orientation of central government due to excessive powers by the executive in relation to the creation, functioning, and dissolution of local government units.

Content of Section 266 of the Constitution of Zimbabwe

The said provision states that:

- 1) Employees of provincial and metropolitan councils and local authorities must act in accordance with this Constitution and the law.
- 2) No employees of a provincial council or a local authority may, in the exercise of their functions –
 - (a) act in a partisan manner
 - (b) further the interests of any political party or cause
 - (c) prejudice the lawful interests of any political party or cause; or
 - (d) violate the fundamental rights or freedoms of any person
- 3) Employees of provincial and metropolitan councils and local authorities must not be office bearers of any political party.
- 4) An Act of Parliament must make provision to ensure the political neutrality of employees of provincial and metropolitan councils and local authorities.

Interrogating the Practicalities of Neutrality in Local Governance

Over the years, the portfolio of the Minister of Local Government has been very sensitive and usually allocated on political favouritism. The current status of the doctrine of political neutrality in Zimbabwe's local governance system is assessed through an examination of the extent to which the conduct of local government employees adheres to or departs from the traditional model of bureaucratic political neutrality which places emphasis on de-politicisation of public institutions. The prima facie view is that the present operations of metropolitan, provincial and local councils are not in accordance with the traditional doctrine of political neutrality. There are indications that public officials are actively involved in the political process in the sphere of political partisanship.

Apart from the constitutional prohibition of partisanship in local governance provided for in Section 266 of the Constitution, there is no other legislative framework which specifically outlines the scope of the

prohibition or the modalities for enforcement. This is the position in spite of the provision in Section 266 (4) of the Constitution which implicitly states that an Act of Parliament must make provision to ensure the political neutrality of employees of local authorities, provincial and metropolitan councils. The existing local governance statutes namely the Rural District Councils Act [Chapter 29:13], the Urban Councils Act [Chapter 29:15] and the Provincial and District Councils Act [Chapter 29:11] only provide for issues to do with employment of council employees and other general ethical considerations but there is no specific mention of political neutrality.

This constitutional provision on political neutrality in councils sparks heated debate amongst human rights lawyers, political scientists and bureaucratic policy makers. Human rights defenders are questioning the propriety of prohibiting employees from local government, metropolitan and provincial councils from participating in partisan politics yet contemporary practices support promotion of the democratic freedoms of local government workers. Human rights activists and academics argue that public officials should be permitted to exercise the same political rights as other citizens since a large proportion of the population of Zimbabwe is employed in local government institutions. Restricting the political activism of this big segment of the population is viewed as constraining the rights of a significant portion of the population. There is also concern that these types of restrictions may prevent many informed and educated citizens from joining the local government sector.

Section 67 of the Constitution provides for political rights. It states that every Zimbabwean has the right-

- 1 (b) to make political choices freely.
- 2 (a) to form, join and to participate in the activities of a political party or organisation of their choice;
 - (b) to campaign freely and peacefully for a political party or cause;
 - (c) to participate in peaceful political activity ;
 - (d) to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.

An analysis by this author, highlights the fact employees of local government institutions, provincial and metropolitan councils as citizens of Zimbabwe have the same political rights as any other citizens. Since human rights, including political rights, by their very nature are inalienable, they therefore cannot be taken away by any person or authority as stated in Section 44 of the Constitution. Being a council employee does not divest one of the above mentioned political rights as provided for in Section 67 of the Constitution. A constitutional

dilemma therefore arises as to which of the two between enjoyment of political rights outlined in Section 67 and the obligation to be politically neutral as outlined in Section 266 takes precedence. Section 67 guarantees political rights to all Zimbabweans while Section 266 demands political neutrality from council employees who are also Zimbabweans with political rights covered in Section 67. Section 266 (2) can therefore be viewed as a 'claw back' provision which takes away constitutionally guaranteed political rights enshrined in Section 67 by stating that no employee of a provincial or metropolitan or local authority may, in the exercise of their functions act in a partisan manner and further the interests of any political party or cause or become office bearers of any political party.

Section 67 is part of the Declaration of Rights which codifies the rights and fundamental freedoms of all Zimbabweans and these rights are supposed to be promoted and protected without distinction. Section 56 (3) prohibits discrimination on the basis of several grounds including one's political affiliation. Section 11 of the Constitution enjoins the State to take all practical measures to protect the fundamental rights and freedoms which are enshrined in Chapter 4 and to promote their full realisation and fulfilment. Chapter 4 of the Constitution covers Sections 44-85. Section 44 clearly states that the State and every person, including juristic persons, and every institution agency of the government at every level must respect, protect, promote and fulfil the rights and freedoms set out in the Declaration of Rights. Further Section 45 reiterates that the Declaration of Rights binds the State and all executive, legislative and judicial institutions and agencies of government at every level. This includes local government institutions.

On the other hand, Section 45 (3) of the Constitution states that all persons, be they juristic or natural are entitled to the rights and freedoms set out in the Declaration of Rights, to the extent that those rights and freedoms can be appropriately extended to them. It can therefore be argued that Section 67 entitles council employees enjoyment of political rights, these rights cannot be enjoyed *in toto* since public officials have an obligation to deliver non-partisan service and refrain from violating the fundamental rights or freedoms of any other person whose political affiliation differs from theirs as indicated in Section 266(2) (d).

Mensch (2010), agrees with the above view point. He makes reference to the human rights theory which is in favour of individual rights and places emphasis on freedoms as the goal rather than the ground of human rights. Mensch (2010) further reiterates that the achievement of the conditions for freedom is humanity's overriding moral obligation. In line with the above argument a question has been asked whether the political neutrality provision violates fundamental freedoms of council employees such as freedoms of expression, assembly and association. The following

case law from the United Kingdom answers the above question. In the case of ***Ahmed and Others v UK (1999) 188 ECHR*** the matter was heard before the European Court of Human Rights under the European Convention on Human Rights. The Court ruled in favour of the Government in a challenge to the political restrictions regime, brought by five council workers on human rights grounds. The Court held that:

"The restrictions on the political activities of certain categories of local government officials contained in the Local Government Officers (Political Restrictions) Regulations 1990 did not give rise to a breach of the right to freedom of expression under Article 10 of the European Convention on Human Rights since the interference with the employees' rights had been shown to be prescribed by law, in pursuance of legitimate aims within the meaning of Article 10(2) and were "necessary in a democratic society" to attain them

The Court found that the legislation restricting political activity was not in breach of the Convention's provisions for freedom of expression and association as the public have the right to expect public officials to be politically neutral. This judgment was delivered in line with the traditional public administration theory as propounded by Wilson (1897), which calls for strict separation of the administration function from politics in order to protect interests of the public. However, in Zimbabwe the issue of political neutrality is still open for debate. It has also courted criticism by giving precedence to public interest at the expense of individual rights. By public interest reference is being made to consideration of a broader conception of social common interests versus individual self-interests. As far back as 1949, the British Masterman Committee on the Political Activities of Civil Servants concurred with the need to protect the public interest and stated in its report that, "The Public interest demands the maintenance of political impartiality in the Civil Service and has confidence in impartiality as an essential part of the structure of Government". The Committee went on to give a warning that any weakening of the existing tradition would be the first step in the creation of a 'political civil service' and such a system would be contrary to the public interest and the Civil Service itself.

Status quo on political neutrality in Zimbabwe's local governance system

It is a fact that most local government employees in Zimbabwe are actually politicians in council offices who strive to move the agenda of their political parties as

opposed to advancing the objectives of their employers.

Metropolitan and local councils in Zimbabwe have become political battlegrounds where the minister, an appointee from the ruling party rides on unconstitutional local government pieces of legislation in order to frustrate elected officials and members of opposition parties who work in metropolitan and local councils. Unwarranted dismissals of both elected officials and council employees with a different political affiliation have been witnessed, for example in Chitungwiza during the era of former Minister of Local Government, Saviour Kasukuwere who was accused of abusing his ministerial powers to settle political scores with the opposition (Nehanda Radio, 26/04/17).

With the birth of the opposition, Movement for Democratic Change in 2000, political participation by council employees escalated. Since the urban local authorities are strongholds of the MDC, this provided room for employment of a substantial number of opposition party supporters and sympathisers, some of whom failed to balance politics with the demand for non-partisan conduct and political activism. The same happened in rural district councils which are in ZANU PF strongholds. ZANU PF supporters got preferential treatment in terms of employment and access to humanitarian assistance which is distributed by councillors. Reports by the Zimbabwe Human Rights Commission on partisan distribution of food aid by councillors which emanated from investigations in Mazowe, Bikita, Buzura North and South as from 2016-2017 indicated discrimination on the basis of political affiliation by council employees who favoured members of their parties. Further, when councils conduct drought mitigation programmes, commonly known as 'food for work', they give first preference to cadres from their own political parties.

Over the years Zimbabwe has suffered from political interference in the public service and local councils especially during promotion of individuals to higher office. Some promotions have not been based on qualification, experience and innovativeness but one's membership of a certain political party. When such appointments turn partisan it means people capable of holding key public positions are denied opportunities for progression. With this politicisation of local councils especially metropolitan councils the relevance of Section 266 into the 2013 Constitution is underscored in order to distance local governance from any kinds of political interferences and pressure which impinge on professionalism and efficiency.

Extent to which the implementation of Section 266 improve good local governance

It is important to have an understanding of what good local governance entails before delving into the crux of

the question of whether political neutrality enhances good local governance or not. Good local governance is understood with reference to local governance indicators which are diverse depending on the institution which crafted them. Some of the institutions which have crafted local governance indicators are the World Bank, United Nations Development Programme (UNDP), Good Governance for Local Development (GOFORGOLD) and Local Governance Barometer (LGB). The Local Governance Barometer indicators include; effectiveness, transparency, rule of law, accountability, participation, civic engagement and equity. For the GOFORGOLD, the local government indicators include representation, participation, accountability, transparency, effectiveness, security and equity (UNDP, 2009). There are substantial similarities in the local governance indicators put forward by LGB and GOFORGOLD. If these local governance indicators are actionable they can inform local priorities and put the needs of users, that is citizens and/or local decision-makers on the development agenda.

In relation to political neutrality and good local governance, non-partisan local governance is said to have a bearing on sustainable development and establishment of a culture of trust between central and local government institutions. Strict adherence to political neutrality is recommended as a way of enabling appointed council management to be impartial and fair in all matters and to serve elected officials, staff and residents equally regardless of political affiliation. When council management serves only in the role in which they were appointed to fill, there is no doubt or confusion about whose interests they are serving and no ambiguity over their role in any given interaction. This conforms with the good local governance indicators of accountability, transparency, equity and effectiveness.

Failure to conform with the local governance indicators cited above leads to impartiality, prejudice and discrimination. The Widdecombe Review Report (2004), from the United Kingdom highlighted the effects of political partiality in local governance as follows:

“At its worst, politics can be a malign influence. It can operate as a means of distributing spoils rather than serving the community, as indeed characterised the early development of politics in the 18th and early 19th century. Spoils can be distributed in local government through for example the appointment of political allies to officer posts, misuse of planning and development powers and decisions to fund outside bodies that are supportive of the policies of the majority party. Similarly there is a danger of services being channelled towards particular sectional groups or areas simply in order to win votes rather than on a balanced assessment of the merits.”

The above quote highlights that partisan politics threatens good governance. The report emphasised that a strong and apolitical local government system is key in providing stability and good governance (Hyden et al, 2003). In line with the above view, Section 9 of the Constitution provides for good governance as one of the key principles which guides Zimbabwe. It highlights that the State must adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution, especially on public appointments which should be made primarily on the basis of merit. The section also provides that measures should be taken to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and public offices.

Akwasi (2015), states that good governance which results in development within a state depends on the actions and inactions of the public officials who work in public institutions such as in local government. These institutions play a very vital role in the governance and the development of the people in the state. The roles that they play are very significant such that they cannot be removed from office when there is change in government, unlike the elected officials who have tenure of office. The continuity and permanence of civil servants is very relevant and hence the need to always remain politically neutral. Loyalty is also very significant for local government workers to ensure good governance and development. Total loyalty is very essential for the achievement of purpose for every government. Remaining loyal to a political party and being partisan undermines implementation of good and sound policies. Neutrality of local government employees promotes objectivity and solid advice to any political party that wins power.

The implications of political neutrality on good governance are as follows:

- Remaining politically neutral means council officials give out their best equally to any party in power, without being influenced by political affiliation.
- Political neutrality enhances effective job performance as an outcome in local governance.
- It promotes fairness and even distribution of competence on the part of the employees in the performance of their duties.
- It reduces interference in the promotion and dismissal of public officials.
- Political neutrality safeguards confidentiality of institutional information since public officials are usually in possession of classified security

material, the release of which can seriously threaten the local governance system. The temptation to share classified or confidential information with party affiliates is great hence the demand to be apolitical.

Lizak & Skuza (2015), share experiences from the Polish Civil Service on political neutrality and governance. They highlight that the process of enforcing political neutrality of public officials includes putting in place legal regulations which are aimed at distancing the civil service from any kind of political influences and pressure which can raise suspicions as to partial actions. Such regulations were followed by the introduction of basic ethical principles in particular the principle of political and official neutrality and impartiality. This was meant to instil loyalty and reliability in the performance of professional tasks. It also ensures that employees openly distance themselves from any political influences and pressure as well as refraining from any actions which can benefit political parties. In Poland it was evident that de-politicising local governance reduced the distance between the bureaucracy and the people they serve. In local governance, political neutrality builds social trust between the councils and residents, leading to a cooperative working relationship where residents can freely participate in decision-making and input into both local and national development without suspicions of the intentions and genuineness of the actions of council officials. It was confirmed that failure to adhere to the doctrine of political neutrality is a threat to the practice of good governance.

How the delay in the alignment of various local government legislation hindered the effectiveness and accountability in local governance

Vosloo, Kotze and Jeppe (1974) define local government as a 'decentralised, representative institution with general and specific powers, devolved upon it and delegated to it by central or regional government in respect of a restricted geographical area within a nation or state and in the exercise of which it is locally responsible and may to a certain degree act autonomously'.

The main reasons for the establishment of local government by many governments are:

- the provision of services at affordable cost to local communities in a more responsive and efficient manner;
- the promotion of public participation in government as a means of enabling and encouraging people to exercise their rights and responsibilities as citizens;

- the regulation of the conduct of individuals and organizations in areas under their jurisdiction.

Subsequently, the delay in aligning the various pieces of legislation to the new constitution has equally delayed other processes. Ikhide (1999) remarks that 'the extent to which any local government is able to provide services is highly related to the efficiency with which the political and administrative mechanisms are put in place'. Prior to 2013, the local government framework in Zimbabwe was not constitutionalised. Different pieces of legislation governed the operations of urban and rural local authorities such as the Urban Councils Act [Chapter 29:15] and the Rural District Councils Act [Chapter 29:13]. There were also good governance concerns emanating from excessive ministerial powers in both pieces of legislation. The 2013 Constitution ushered in a constitutionalised local governance framework in Chapter 14. This meant that the existing pieces of legislation were supposed to be made compliant with the provisions in the Constitution (alignment of the laws to the Constitution). However, the alignment process has not yet been finalised five years after adoption of the 2013 Constitution. The government of Zimbabwe has put into place the necessary legal framework and institutional arrangements to operationalise a local government system which was constitutionalised as is the case in other African countries such as South Africa, Ghana and Uganda. There is a Local Government Bill which has been gazetted and has been pending since 2015.

The objective of the Local Government Bill is to amend the Rural District Councils Act [Chapter 29:13] and the Urban Councils' Act [Chapter 29:15] so as to align certain provisions of those acts with Section 278 (2) and (3) of the Constitution of Zimbabwe. There are however concerns over the proposed Local Government Bill. Some of the concerns are as follows:

- The amendment of Section 157 to the Rural Districts Act which speaks to the suspension and removal of councillors from office. Section 114 of the Urban Councils' Act is amended and Section 114A is added, and speaks about the independence of urban and rural district councils so that they can make decisions on their own.
- Scope of Alignment: The Bill is said to be too narrow in its scope as it leaves out key issues that have been raised before concerning local government laws such as excessive ministerial powers. The Minister of Local Government, Public Works, and National Housing retains excessive power and authority over the running of local authorities.
- Piecemeal alignment: The proposed amendments to the Urban Councils Act and

Rural District Councils Act do not promote the spirit, letter and object of the Constitution.

- Acts of Misconduct: The acts of misconduct in the Urban Councils Act are similar to those proposed in the Bill. The Bill talks about Acts of misconduct for councillors who can be dismissed for gross misconduct but there is no definitions section to show what amounts to gross misconduct. The determination of gross incompetence for instance is subject to the minister's discretion and there is risk of abuse.
- The Independent Tribunal: With regards to handling of misconduct cases of elected officials the Bill provides for the setting up of an independent tribunal to make a determination on the allegations. According to the gazetted Bill the independent tribunal, Section 157A (2) is made up of; a chairperson appointed by the Minister from a list of at least three and not more than nine registered legal practitioners with at least five years' experience in private or public practice, who shall be nominated by the Judicial Service Commission. The cause of disagreement is that the Bill seeks to give the Minister the power to convene an independent tribunal to adjudicate on the suspension and removal from office of mayors, chairpersons and councillors and the Minister has the power to appoint some of the members of the independent tribunal.
- No Devolution model proffered by Constitution:

The Preamble to Chapter 14 of the Constitution on Provincial and Local Government says (c) the equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas; there must be devolution of power and responsibilities to lower tiers of government in Zimbabwe. The Constitution does not however indicate the form of devolution to be adopted in Zimbabwe. The new local government framework will therefore have to provide an appropriate model without guidance from the Constitution which is silent on the issue.

- Non-inclusion of political neutrality in the draft bill
- Section 266 is not included in the Bill since operationalisation of this provision requires enactment of a new Act of Parliament. This lack of regulatory framework for partisan local governance has intensified partisan politics in councils especially metropolitan councils.
- Exclusion of sections 268-270 from the Bill: The elimination of these chapters in the Bill raises eyebrows that the responsible ministry is not concerned with professionalism and good

governance.

- **Exclusion of Sections 271 and 272 from the Bill:** These provisions on Committees and Chairpersons of provincial councils were not included in the Bill since an Act of Parliament is required for them to be established.
- **Exclusion of Section 279 from the Bill :** The Section provides for procedure of local authorities. It highlights that An Act of Parliament must provide for the procedure to be followed by councils of local authorities.

Implications of non-alignment of local governance to the Constitution

Zimbabwe's failure to align the different legislation to the Constitution as shown above has resulted in the malfunctioning of local government institutions. This shortcoming has been linked to the increasing politicisation of public institutions (World Bank,1998). In such an environment public officials fail or neglect to follow the organisational rules because of extrinsic benefits emanating from their political affiliation which can also lead to corruption.

• **Decline in efficiency of local government systems**

Politicisation of councils is one of the key causes of the decline of efficiency and accountability in local government systems. Efficiency is also compromised by the lack of job security due to politically motivated decisions on recruitment, promotion and dismissal and the lack of career perspective for the staff. The ever-increasing number of posts subject to political appointments contribute to demotivation of non-affiliated employees and declining efficiency of the local government system. The incentive to work hard, to be fair, to be efficient is eroded in such contexts. The link between performance and reward is broken and individual merit is relinquished by political interventions. Efficiency and productivity of the organisation are compromised yet these are essential for national development. In a situation where these positions are awarded to political loyalists and not to those who are the best equipped for the job, economic development is held also hostage yet Section 13 of the Constitution places an obligation on all levels of government to promote national development.

• **Decline in access to and quality of service delivery**

Without legislation prohibiting partisan conduct in the local government sector, council employees who are politically aligned pursue personal benefits and also

serve the interests of selected individuals, resulting in unequal access to services, prejudicing residents.

• **Failure to expedite the devolution process**

If alignment had taken place, the pending Local Government Bill was supposed to define and coordinate legal and functional relationships between and among the various actors in local government, who are supposed to be the key enablers to development. The delayed legislative alignment process has stalled the process of devolution since the Constitution only provides for devolution without clarifying the model to be adopted as well the guiding framework which should be expanded on by an Act of Parliament which is not yet in place since 2013, when the current Constitution came into being.

Observations

In conclusion, it cannot be over-emphasised that political neutrality of council employees in the execution of their duties is paramount in the development of every State. Metropolitan, provincial and local council employees have a longer tenure of office as compared to the elected officials so workers should be in a position which enables them to serve any government without fear of intimidation or political reprisal. On the other hand, the public is entitled to expect the highest standards of conduct from all employees who work for local government. The Minister of Local Government should therefore legislate on the issue of political neutrality so that there is a statutory code of conduct for employees of local authorities in Zimbabwe. For implementation purposes, provisions of the statutory code should be included in employees' contracts of employment and any breaches of the code should be dealt with under each authority's local disciplinary procedures.

In coming up with the statutory code for political neutrality in the local government sector, lessons can be drawn from other jurisdictions such as the United Kingdom where there is a particular piece of legislation which regulates political activities of public officials namely the Prohibition on Government Employee Engagement in Political Activity Act of 2006. The Act applies to the civil service but the principles of political neutrality in central and other tiers of government are similar, hence the reference to it. According to Section 4 (a) of the said Act, prohibited political activities include, but are not limited to:

- using official authority or influence to interfere with an election;
- soliciting or discouraging political activity of anyone with business before their agency;

- soliciting or receiving political contributions on services on government property;
- soliciting funds for a political organisation or candidate ;
- being a candidate for public office in partisan elections;
- wearing partisan political buttons, badges, or t-shirts on duty;
- distributing political campaign literature in a government office;
- allowing one's official title to be used in conjunction with a fundraising activity;
- giving a list of names , residential addresses or telephone numbers of District government employees to any person knowing that such list will be used for the purposes of soliciting contributions from, or mailing political campaign literature or advertising to, or calling such employee; or
- using government time, facilities, equipment, or supplies in support of a political activity or to promote the candidacy of someone for public office in partisan election.
- transporting political campaign literature in a government vehicle or using a government vehicle for any campaign activity;
- standing for, and holding elected office
- holding office in a political party
- speaking or writing in public in a personal capacity in a way that might be regarded as engaging in political debate.
- canvassing at elections

Section 4 (b) of the above mentioned Act adds that no employee may participate in political activity while on duty, in a government office, wearing an official uniform or using a government vehicle. It appears that the political neutrality provision in Section 266 of the Constitution was borrowed from this British system as part of the colonial legacy. Following the British tradition, the public service of Zimbabwe continues to be characterised by permanence, anonymity and neutrality. According to Ihome (2003), permanence means that public officials are career officers and can therefore expect to remain in service for their entire working lives in spite of changes in government so as to ensure continuity. Anonymity means that public officials are expected to work behind the scenes and place their skills at the disposal of their political policy makers, who make the final decisions. Neutrality which is at the centre of this discussion means that public officials are prohibited from having political affiliations. They are expected to faithfully and impartially serve any government in power.

In this way, there is certainty as to what exactly constitutes political activity on the part of employees of metropolitan, provincial council and local councils. With such a clear regulatory framework, enforcement of the prohibition of partisan politics in local government institutions becomes easier, resulting in easier regulation of political conduct.

CONCLUSION

This constitutional provision on local governance in Zimbabwe is a landmark development as it has sought to empower citizens including de-politicising decision-making and enforcing impartiality and non-partisanship, which traits have over years, tarnished the image and face of local government in Zimbabwe. In essence, local governance has been notorious for its partisan nature with politicisation of decision-making being some of its most prominent characteristic. It raises questions as to whether the ZANU PF parliamentary majority will have the audacity to implement such a constitutional provision. While on paper the provision is very sound, but on the ground, it remains to be seen whether the dynamic nature of Zimbabwean politics would spare it. Given the penchant for constitutional amendments, it also remains to be seen whether the ZANU PF legislative majority will spare this section of the Constitution, especially in times when their hegemony is under threat from the increasingly popular MDC. It also remains to be seen whether the blame-game, which was often characterised by poor service delivery will not re-surface on the face of dismal economic performance of the Second Republic. Over the years, the blame has been placed on the shoulders of the MDC-dominated councils for failure to deliver, while a ZANU PF Minister of Local Government would be presiding over this failure and in most cases, sabotaging local council operations through dismissing of councillors. Despite these fears and apprehension, this constitutional provision has at least provided a framework for possible adoption by different parties to provide for political neutrality in local government operations.

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