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Exploring the prospects for more effective citizen participation
in local government operations based on the new Constitution
of Zimbabwe.

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1.0 Introduction

Zimbabwe adopted a new constitution in 2013. This new law provides a framework for far reaching governance reforms. It contains key provisions that enhance deep and broad citizen participation in governance generally. This paper engages with the prospects for enhancing citizen participation in provincial and local government processes. In using Zimbabwe's new constitution it is however important to avoid a 'bee-line' to Chapter 14 as most local government experts tend to do. This paper places emphasis on sections of the new constitution both in Chapter 14 and other parts of the supreme law of Zimbabwe. This approach is adopted to advance the notion that Chapter 14 was drafted, has to be interpreted and thus applied as an integral part of the whole constitution. This is more critical when considering issues of citizen participation because the overall thrust of the new constitution's expansive bill of rights and provisions regarding national objectives and how public institutions are supposed to relate to the people provide a new impetus for citizen participation that is potentially more fundamental than before. The paper speaks to potential full realization of deep and broad citizen participation on account of the need to have transformative local government law and administrative practices currently absent in Zimbabwe. New law is needed to replace what the Minister of responsible for local government referred to as legislation from the past, fragmented, misaligned and inadequate in relation to current challenges (Chombo March 20th 2014¹).

This paper is based on an optimistic perspective that provincial local government law and administrative reforms and capacity building envisaged under the new constitution are inevitable and while they will take time and will be resisted they will eventually be successful. This based on the experience that the new constitution itself went through. Barring the domination by political parties and its negotiated status the manner of crafting and the actual outcomes of the constitutional process planted seeds of a democratic dispensation. Based on this optimism this paper makes a contribution to a process of defining the broad contours of new local government law based on the new constitution with a particular focus on citizen participation. The process is part of LGCCBT's response to an invitation by central government's Ministry responsible for local government for constructive and fruitful ideas as well as the request by the Parliamentary Portfolio Committee responsible for local government for support relevant to law making meant to operationalize the new constitution.

The paper premises the debate on expanding citizen participation on the notions of participation as means and end or responsibility and right. As responsibility, citizen participation enhances the quality and outcomes of governance processes while as a right it is about enabling citizens to hold public institutions to account through taking direct and meaningful in governance. As responsibility, citizen participation is critical particularly in a context where policy making and implementing bodies lack information, analytical capabilities and actual resources to respond to citizens' demands through effective policies and programmes. Zimbabwean policy makers and by extension the spaces or bodies responsible for that function are currently too open to political party bullying and manipulation which act to degrade the quality and outcomes of debate. High quality and

¹ Official opening of the Local Governance Community Capacity Building Trust policy seminar at Pandhari Lodge, Harare.

legislated citizen participation will help in the rehabilitation of policy spaces and public administration.

In this paper participation is looked at as 'the taking of meaningful and voluntary action in development spaces, structures and processes' (Chatiza 2008:2), which 'can be direct, through local organizations, stakeholder institutions or through elected, appointed and/or traditional, religious and other categories of representatives' (Ibid). This conceptualization is used to reflect a broad notion that the meaningfulness of participation is a product of the agency of citizens on one hand and the institutions (rules of the game, both formal laws and informal norms), social structures, norms and values on the other (UNRISD 2014). Organizational interaction initiates and sustains citizen participation and is critical to its meaningfulness and voluntariness (Chatiza 2008). For Stiefel and Wolfe (1994) participation refers to '...organized efforts to increase control over resources and regulative institutions...on the part of groups and movements of those hitherto excluded from such control' (1994:5). This explains why in this paper a broad conception of participation is used to expand the debate on how and whether Zimbabwe's local government can initiate alternative social, political and economic development models, appropriately integrate local traditions of participation and save citizen agency from political party misappropriation while broadly changing the ownership structure and culture of local governance (Chatiza 2010). In this paper the new constitution and more generally Chapter 14 is used to expand on this debate using the concept of devolution that is used as an underlining policy framework for public administration in Zimbabwe.

Devolution is generally understood as a form of decentralization. As such, decentralization becomes a key concept to unpack first to understand how the devolution variant differs from others. Decentralization refers to the transfer of public authority, resources and personnel from the national level to sub-national jurisdictions (Ndegwa 2002). It is not necessarily the opposite of centralization particularly when considering that all systems of government combine both decentralization and centralization suggesting that these two are 'hypothetical poles on a continuum that can be calibrated by many different indices' (Turner and Hulme 1997: 152). The different forms of decentralization are de-concentration, delegation, devolution and privatization (Cheema and Rondinelli, 1983). All concern themselves with appropriately structuring organizational relationships and interaction (space, function, power and performance) to meet a society's needs through balancing central control and local autonomy (Turner & Hulme, 1997; Cheema and Rondinelli 1983; Conyers, 2002; Crook and Manor, 1998; Mawhood 1983). Devolution entails the creation or strengthening of independent levels of government outside direct and regular central control and performing specific functions (Cheema and Rondinelli, 1983). They further add that devolved governance requires clear and legally recognizable boundaries, corporate statuses, powers to secure resources, performance of public functions within the delineated territories and reciprocal interaction with other units of government. Turner and Hulme (1997) observe that to many, devolution is seen as the ideal type of decentralization. The constitution of Zimbabwe resonates with the core ideals of devolution. The test is however in the development and adoption of relevant legislation to translate the constitutional aspirations into reality. This is where some anxieties have been expressed (BPRA 2013) and experience bears such anxieties out as local autonomy is often highly curtailed in practice and in terms of the law (Enemuo 2000).

The paper focuses on how the new constitution frames and grounds participation in Chapters other than 14 as a way of elaborating the fact that the structures and processes defined in Chapter 14 have to be read in the light of these prior sections. This provides a basis for discussing Chapter 14 in terms of how and whether it provides straightforward guidance for entrenching citizen participation in local government law and administrative practice. The paper concludes with some suggestions for coming up with new and transformative provincial and local government legislation overall and with a specific emphasis on citizen participation. This way the paper contributes to the debate on subsidiary legislation to be developed in keeping with the overall philosophy of the new constitution. New subsidiary legislation is needed to carry the new constitution forward. What is needed is therefore more than mere amendments to pr alignment of existing provincial and local government legislation with the new constitution.

2.0 Constitutional underpinnings of citizen participation

The preamble highlights the constitution's premise as '...the need to entrench democracy, good, transparent and accountable governance...commitment to upholding and defending human rights and freedoms' (Government of Zimbabwe 2013:19). In section 3:1 (e to h) the constitution guarantees recognition of the dignity, worth and equality of all human beings while in section 3:2 (a, b and f) it details the good governance principles that bind the State specifically referring to a multi-party and democratic political system, adequate representation of the electorate and respect of the people as the sources of the mandate to govern. Further, it defines provincial and local authorities as a tier of government in section 5 c) and assigns Councils the responsibility to represent and manage the affairs of the people, which is consistent with sections 274:1 and 275:1 conferring on Councils the power to govern, on own initiative [but] subject to the constitution and an Act of Parliament (section 276:1). In representing and managing the affairs of the people provincial and local authorities are guided by the national vision of 'a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives' as stated in section 8:1.

Section 13:2 (National Development) is more direct regarding citizen participation as it enjoins the State and all institutions and agencies of government to 'involve the people in the formulation and implementation of development plans and programmes that affect them'. The constitution places responsibility on the State to ensure citizen participation citing specific groups and categories. This is shown in the requirement in section 17:1 regarding promotion of full gender balance in society and the full participation of women (on the basis of equality with men), in section 20:1b and 3 on providing youths with the opportunities to associate, be represented and participate in all spheres of life, in section 21:2 a) and d) on encouraging the elderly to participate fully in the affairs of society and fostering social organizations aimed at improving their quality of life and in section 22:1 and 3 d) on treating people with physical and mental disabilities with respect and dignity.

Some of the constitutional provisions cited above clearly reflect that representation is not enough for effective participation. It is therefore conceivable and perhaps desirable to interpret the constitution as providing a broader framework for making, implementing and tracking public policy, law and administrative performance than current public administration practice is structured to deliver. In the context of local government the constitution thus

creates unmistakable space for the flourishing of diverse mechanisms for sharing of power and responsibilities between Councils on one hand and myriad citizen platforms on the other. These platforms are created in pursuit of citizens' freedom to associate and assemble (section 58), demonstrate and petition (section 59) and taking direct part in their development (section 13). The broadening of spaces is also evident in section 62:1 where citizens have the '...right of access to any information held by the State...in so far as the information is required in the interests of public accountability'. The caveat does not in any way lessen the constitutional obligation on the State to emplace and operate open government mechanisms.

Section 67:1 a), c) and d) elaborates on the right to free, fair and regular elections but more specifically to participation in peaceful political activity in gatherings or groups or in any other manner '...to influence, challenge or support the policies of the government' (section 67:1 d). Section 68:1 espouses 'the right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and...fair', which is further reinforced by section 266:1-4 with respect to the requirement for non-partisanship amongst government officials and section 194:1 c), d), e), f) and h), which speak to a developmental public administration, impartially and equitably provided services, public participation in policy making, accountability of public institutions to Parliament (people's representatives) and the people (direct accountability) as well as provision (to the public) of timely, accessible and accurate information based on a service not ruling ethic (section 196:1 b).

3.0 General implications for sub-national local governments

In light of a relatively comprehensive framework of citizen rights and freedoms that Zimbabweans have under the new constitution it is therefore not surprising that devolution was adopted as a governance framework. The constitutionally encouraged governance diversity is better managed in a devolved system. This is because the normative depth and breadth of the devolution is adaptable to the considerable aspirations of Zimbabweans given the recent history of misgovernance at every level of government. The aspirations are comparable to other democratic jurisdictions and have to be understood aside from the practical limitations imposed by Zimbabwe's recent social, economic and political environment. In fact the aspirations are sufficiently detailed to provide an impetus for a radical transformation of the national, provincial and local governance regime. This is the premise upon which the argument of not thinking amendment but drafting of new law is based. The same reality that forced Zimbabweans to endure the making of a new constitution after nineteen amendments to the Lancaster House charter and two other failures (the 1999-2000 constitutional process and 2007-8 Kariba Draft) should drive the local government sector to draft new legislation. The patchwork of amendments to provincial and local government legislation at a time when legislation in allied sectors was going on has created a nearly dysfunctional mosaic of national laws. Legislation administered by other sector Ministries and governing the operations of national agencies often contradicts local government powers and functions. Such contradictions if not addressed holistically negatively impact on the powers and functions of the provincial and local government tiers.

The implications of the bill of rights on provincial and local government are provided in the preamble to Chapter 14. In framing the purpose of provincial and local government the

constitution underlines democratic participation in government by all citizens and communities of Zimbabwe as well as the participation of local communities in the determination of development priorities in their areas (Government of Zimbabwe 2013). Use of both citizens and communities appears deliberate. It suggests an expansive rather than a minimalist interpretation of participation which goes beyond but does not contradict representative democracy. Citizens can act and participate both as individual voters or single campaigners engaging existing structures and spaces on one hand and in organized groups creating and participating in new spaces around alternative development trajectories and using alternative development models. As such, the constitution does not confine democracy and relevant democratic systems to electing of representatives but also encompasses elements of direct democracy (Kaufmann et al 2008). As noted above, the recent history of misgovernance shows that it would be crass arrogance to apply a minimalist interpretation of democracy and devolution in relation to citizens' submissions to COPAC in general and regarding provincial and local government specifically. That the submissions survived contested data analysis and constitutional drafting shows the strength of the agitation for devolved governance in Zimbabwe.

The emerging question becomes whether Zimbabwe's local government legislation will be aligned to such an expansive interpretation of participation given recent experiences of poorly drafted law as well as use of political rather than legal considerations when ascribing meanings to legislation (Matyszack 2013). Additionally, it is critical to explore whether the new devolution 'wine' will not break the old centralized and deconcentrated 'wineskins'. This is critical since citizens expect the best possible services from the provincial and local administrative structures of government, which are closest to them (Musekiwa and Mandiyanike 2013) particularly for water, health, education and housing (BPR 2013). This is against a longstanding history of local government policy and law reform that created '...a lopsided and dependent growth model for local government...[that] looks up and out, values external and upward rather than local and downward accountability and uses the criterion of administrative-political representation more than facilitation of livelihood sustainability' (Chatiza 2010:7; 2008). The constitutionalization of provincial and local government as well as guaranteeing of at least 5% of national revenue raised in any financial year (Government of Zimbabwe 2013: section 301:3) provide relative institutional security and strengthens prospects for self-government (Musekiwa and Mandiyanike 2013). In the section below the paper touches on whether devolution provides a framework for operationalizing such institutional security for provincial and local governments. The paper paints the key facets of the new local government law required to underpin deep and broad citizen participation. The impediments imposed by centralized and deconcentrated administrative structures on the new devolved structures need to be understood as well. Financial constraints aside, that central government is to lead processes of creating and empowering sub-national policy-making tiers of government while retaining a centrally-aligned public sector bureaucracy may, at least in the short term, render these structures ineffective. This is because they may still need to negotiate with the deconcentrated public administration system for the implementation of their policy decisions. The section below suggests ways in which this could begin to be addressed as part of drafting new laws.

4.0 Drafting new laws to live the new constitution

New local government legislation is needed for the new constitutionalism to be felt in neighborhoods and villages. The business of local governance has to be redefined in light of the contest over its purpose and performance. This conversation has previously been looked at as something that central government fully controlled. However, with devolution and the new governance ethic Parliament, Provincial Councils, Local Councils and citizens potentially have more significant powers than hitherto. This diffusion of power is grounded in the constitutional provisions discussed in previous sections of this paper. The constitutional provisions generally speak to a different kind of local government, which is expected to deliver in a locally responsive and accountable manner. New legislation aligned with the new constitution should clearly reflect that accountability of the new local government system has to be more to citizens than to central government. This is a reversal of the principles that are captured in a 1992 speech by the then Minister responsible for local government who stated that ‘...final accountability of local Councils remains with central government, which created local government in the first place...local does not extent to include...sovereign self-rule’ (Msika 1992:104). Such a legislated or non-independent conceptualization and administration of the local government system disproportionately empowered the executive (ACPD 2002; Hlatshwayo 1998) with non-local government law impinging on local government legislation thus disempowering local Councils (Chatiza 2010). Overall, the policy and legislative environment contradicted local government existence, independence and constrained its soundness (Ibid 2010). This basis of provincial and local government in Zimbabwe weakened citizen participation as Councils could still proceed against local demands or expectations as long as they had central support or approval.

In the new dispensation the constitution creates provincial and local government not central government as previously. This is particularly important for the provincial tier, which principally existed as an administrative structure tasked with the coordination of government programmes. The sphere potentially has greater policy-making, implementation and evaluation powers than hitherto. Within this framework the local government legislation’s reference to the Minister/President now has to be tempered with reference in the constitution to more diffused and people-centred accountability structures and processes. Though the verdict on whether the new constitution guarantees self-governance remains in question (Musekiwa and Mandiyani 2013; BPRA 2013) it is appropriate to be optimistic. In this section the paper makes a contribution to a trajectory of local government law reform and capacity development that will expand the principle of self-governance and thus the deep and broad citizen participation that the constitution provides for as elaborated on previously.

4.1 Structures, processes and norms

Principal local governance dynamics occur amongst Council staff, Councillors and Residents of local authority areas. The comprehensive capacity assessment of local government and service delivery (DEGI 2013a) noted demand and supply weaknesses to citizen participation. Citizens lack critical social awareness of their rights while their organizations are generally weak (DEGI 2013b). On the other hand institutions established to facilitate citizen participation in both rural and urban local authorities were found to be weak with the development planning structures at Village and Ward almost dysfunctional (DEGI 2013a) not sufficiently protected by law and subject to central government bullying and political manipulation (Chatiza 2010; de Valk and Wekwete 1990) and overshadowed or

overwhelmed by parallel non-state structures (CBCC 1999). Relations of mistrust, antagonism and disrespect between State and non-state agencies have seriously curtailed collaboration with 'the most evident mistrust...[being] between residents associations and individual local authorities' (DEGI 2013a:45; Kamete 2003; 2007; 2009). New legislation should decidedly extricate provincial and local government from the shadows of political manipulation, central subjugation and externally inspired relations of mistrust. Provincial and local government structures, processes and norms should provide for more open governance. Autonomy in setting up administrative structures and processes will be critical for provincial and local governments to respond to local needs and opportunities. Aside from a basic layering of institutions this suggests that individual Councils should have the autonomy to design and adjust their policy and administrative architecture in keeping with resources available to them and other factors like population served, service delivery models and citizen input. New provincial and local government law should not be overly prescriptive in terms of structures and processes but rather be elaborate on principles and values.

4.1.1 Understanding the roles of Council staff

Council employees directly engage residents and provide services. They also provide services to Councillors to enable them to make and track Council policies. In performing these functions they gather, hold and process considerable information and communicate more regularly with the various publics of Council than Councillors do. This conceptualization of Council employees' functions is also comparable to what staff of the new Provincial Councils will be responsible for. As such they cannot be shielded from direct accountability to and engagement with citizens in the performance of their functions. It becomes critical for the new legislation to provide a framework within which mechanisms for direct citizen engagement by Council staff will be developed and deployed. Staff of the two sub-national tiers of government will be in most contact with individual citizens as well as the citizen spaces or forums than their central government counterparts. This therefore suggests the need for specific units for public interface for the critical functions of gathering and processing policy-relevant data that policy-makers need and will utilize. Relatedly, the new provincial and local government law should provide a framework for models to be developed that entrench consistent and systematic citizen engagement and direct involvement as part of boosting the quality of policy making, actual policy outcomes and implementation. Staff of the two sub-national tiers of government has the responsibility to fully fashion and execute citizen engagement in terms of the new local government law.

4.1.2 Imagining new roles for Councillors

The traditional role of a Councillor, a Parliamentarian and Senator is to represent specific constituents on one hand and to make policy on the other. The citizen representation role has often been performed without adequate regard to the 'reverse representation' in terms of Councillors/Parliamentarians/Senators representing the policy making bodies to which they are members. Particular weaknesses have included not taking time to account for the performance of the policy-making bodies. This is a failing also exhibited by the executive at national, provincial and local authority level. These weaknesses have often expanded polarized spaces and competition amongst people's representatives with some of the extreme responses being instruments like Constituency Development Funds and promotion of constituency projects, which tend to take away policy makers from their core role to

implementation increasing possible role overlaps with the executive. Local and provincial government Councillors/Parliamentarians/Senators engage citizens, oversee the executive, make and track policy implementation while also framing the national policy agenda to continually enhance good national governance performance. These functions are critical for sub-national good governance. In a multi-party democratic environment where citizens have justiciable socio-economic, environmental and political rights Councillors, Parliamentarians and Senators are expected to interface with and account to individual citizens and their organizations. The new provincial and local government legislation needs to provide guidance on how the conduct of provincial and local government Council business will be accessible to and controlled by citizens. Relatedly, the new laws should provide for collective and non-partisan accountability on the part of Councillors, Parliamentarians and Senators.

4.1.3 Inter-governmental relations

The devolution framework inspires new expectations for provincial and local governments. As a consequence Councillors/Parliamentarians/Senators have new powers and responsibilities need legal expression in local government law. The structures, processes and norms defined in Chapter 14 have to be read in light of other non-Chapter 14 provisions for citizen participation to be fully entrenched in local governance. The focus of the legislation needs to be on defining the powers of the sub-national tiers of government as part of expanding on section 264:2 of the constitution without being constrained by the 'whenever appropriate' claw-back or conditional clause. The clarification and negotiation of powers and functions of the different tiers of government is particularly critical to avoid risks of unproductive overlaps, lack of inter-governmental collaboration (cooperative governance) and service delivery slippages (Institute of Social Accountability et al 2013). Service delivery efficiency and effectiveness is also predicated on such clarity in assigning powers and responsibilities consistent with the constitution and to levels with the most appropriate competences. The question of 'Who's in Charge?' has exercised Kenyans since the adoption of a new constitution in 2010 as part of ensuring that the division of roles is not only clear in law but also practicable (*Ibid*).

In this respect the powers and responsibilities of the Ministry responsible for local government need critical review and redefinition given the constitutional definition of provincial and local authorities as distinct tiers of government. The Ministry has invariably had an interventionist purview in a 'parent-child' relationship with Councils. The Ministry's approach has not acted to advance capabilities to deliver services and competently govern local affairs. The principle of provincial and local government autonomy should guide such role redefinition for the Ministry. Similarly, service delivery responsibilities at the local level have involved deconcentrated sector Ministries (of the centre) and state-owned enterprises. The institutional mosaic for service delivery has invariably been characterized by overlaps and non-collaborative relationships. The performance of national agencies particularly those responsible for water, land, the environment, energy and mining, among others has either been weak or unaccountable with negative outcomes for local authority delivery. In the new dispensation intervention by central agencies in provincial and local authorities needs to be justified and based on clear parameters or principles. Relatedly, provincial and local governments should have legally enforceable competences to decide on partnership frameworks, use of nationally disbursed and locally generated resources to allow local accountability.

Previous intergovernmental relations were framed on the basis a 'parent-child' framework. Sub-national levels of government were generally assumed to lack capacity and therefore treated as weak. The argument in this paper is that the enactment of the constitution and legislation consistent with it will be adequate for framing the capacity of sub-national tiers of government. As such, fulfilling the conditional clause of devolving 'whenever possible' is something that should be assumed to have been met at least at the level of creating the framework for devolution. This is because the excuse of appropriateness, usually predicated on some nebulous articulation of lack of sub-national level governance capacity is itself an inevitable result of previous subjugation of sub-national tiers of government and the legislation governing it to central government and non-local government legislation (Chatiza 2010). An additional argument underpinning the suggestions in this paper is that legislation should frame public administration processes particularly accountability of appointed officials to citizens as individuals or groups. The shielding of public servants at provincial and local authority level from public scrutiny has also created spaces within which appointed officials have abused policy makers and citizens largely based on central government protection. Such processes have deliberately weakened local institutions and opened them up to political manipulation. The devolution framework works to reduce such exposure and thus creates a sound premise for local performance.

4.1.4 Urban-Rural Linkages

The local authority system in Zimbabwe assumes a hierarchy with the Urban Councils assumed to be at the peak while Rural District Councils are seen as at the bottom. This is a carry-over from the colonial dualism and has affected systems of supporting Councils. At the height of political polarization the divide assumed political party shades with Urban Councils being considered opposition strongholds while rural areas were seen as hives of ruling party dominance. Unfortunately, this deliberately affected public policy including actual allocation of resources, supervision of Councils and relations between Urban and Rural local authorities. Even the local government associations have retained and perpetuated the dualism often crippling joint advocacy on effective local governance. A framework for collaborative local economic development relations is required in new law. Urban and Rural District Councils often interface in the administration of peri-urban land whose administration requires legislative elaboration particularly regarding governance of these transitional zones. At the same time, a land administration framework accommodating urban expansion has to be provided for in the new legislation. Similarly, the new provincial and local government legislation ought to strengthen these sub-national institutions' roles in land administration considering the importance of land in national and local development. This will allow sustainable urban growth within rural areas and to provide predictable mechanisms where land is available for urban expansion.

4.2 Operational instructions for lower tiers of local authorities

The broadening of provincial structures, processes and governance norms as expected by the constitution places pressure on local authorities to function in devolved fashion. It also behoves them to acknowledge (and operate in acknowledgement of) a multiple power matrix pitting political, religious, traditional and other civil society institutions in governance. What is important for lower tiers of local authorities will be a practical elaboration of their powers and functions consistent with sections 264:2 and 276:2 of the constitution providing for predictable and collaborative relations. In rural local authorities traditional leaders have been

involved in collection of revenue and enactment of local by-laws using a combination of powers bestowed upon them through tradition and formal legislation within and outside the local government sector. Legislative elaboration of constitutional provisions under section 282:1 c) to e) has to be reconciled with legislative provisions for Council structures at ward and village level synchronizing both functions and accountability mechanisms. In terms of accountability section 282:3 may have undesirable consequences of making traditional authorities unaccountable unless legislation clearly provides a framework under which they are also enjoined to be party to cooperative governance norms.

At the same time it is important to note that the weaknesses of rural governance institutions have arisen in part because of the negative influence of political parties. The pervasive influence of the political party has also been experienced in urban areas. Zimbabwe's recent governance experience has seen 'policy making, interpretation and implementation generally oscillate between the party and government to the exclusion of ordinary citizens including those within the ruling parties' (Chatiza 2008:224). Such capture of local governance organizations by the political party in power including equating if not subjugating the State to the party has created deepening partisanship (Chatiza 2008; CPIA 2005; Gasper 1997). For Zimbabwe, the local governance challenge at provincial and local authority level as well as lower becomes about taming the political party as part of ensuring that public institutions work equitably and effectively. It is therefore important to create enforceable mechanisms that define the powers and functions of the different local governance institutions without necessarily doing away with inevitable 'overlapping separateness' (Chatiza 2008:225). These mechanisms should also provide for the different institutions to hold each other in check to avoid what Ayittey (2005:21) refers to as 'utter institutional chaos and misgovernance'.

All considered, Councils should establish devolved structures with distinct policy and administrative sides. Councillors should be effectively supported by technical staff not just in Committees but for citizen engagement, stakeholder liaison, receiving and processing policy and administrative information. Council (body of Councillors) need to have specific schedules for constitution and ward visits as teams to diffuse the practice of sub-national spaces being personalized and politicized depending on the political party affiliation of incumbent Councillors, Parliamentarians and Senators. Joint sub-national engagement sessions should be budgeted for by each Council. The sessions (consultation, planning and feedback) should be properly scheduled to allow active citizen participation that builds mutual understanding and cooperative governance across local institutions, with and amongst citizens. The sessions also constitute specific spaces akin to the forums suggested above for the provincial and local authority levels.

4.3 Term limits for heads of local authorities

Like in other countries where presidential term limits have been imposed the debate has not been decentralized sufficiently to addressing the question of whether synchronizing political and strategic administrative careers will also be helpful in advancing service and democracy. Some local authorities have suffered the curse of long-staying appointed officials who then tend to 'own' Council while in others frequent departures have also spurred greed as appointed officials optimize on indeterminate stays. It may be useful to adopt practices from countries like Botswana where there are term limits for senior

executives. This could complement the performance agreements being promoted under the Integrated Results Based Management² model and contribute to institutional stability. With improved accountability mechanisms, term limits could also help reduce corruption and other administrative excesses as senior officials aim to leave legacies of service and performance. Where implemented as part of a broader civil service reform this may actually provide for effective succession planning.

4.4 Recognition of non-state actors

Non-state agencies are ‘civil society or non-government developmental organizations of local and international extraction, of varying programme size and orientation’ (Chatiza 2010:17). They are critical to the initiation, development and sustenance of associational life critical to Zimbabwean society from pre to post-colonial times. Regarding those of local extraction a number of constitutional provisions guarantee their establishment, existence and operations. The provisions enshrining citizens’ right to assemble, participate and organize to influence, campaign for or oppose specific policy positions clearly guarantee the freedom to create and run civil society organizations. There is no caveat to their existence with the only condition relating to peaceful and lawful operations. As tiers of government provincial and local authorities thus have a responsibility to create mechanisms for facilitating their establishment, existence and operations. Some of the functions that non-government developmental organizations perform include ‘constraining state excesses, articulating public opinion and self-provisioning of services’ (Chatiza 2010:18; Berner and Phillips 2005; Tendler 1997). In recent years Zimbabwe’s development landscape has seen many local and international non-government developmental organizations performing both traditional civil society functions but increasingly taking up functions usually associated with the public sector. This was largely a response to public sector capacity inadequacies but also a response to international development funding channels that circumvented government. The circumventing of state agencies was for strategic and operational reasons like corruption, other governance deficits and donor preferences based on perceived and actual performance of non-government developmental organizations. This suite of reasons partly the State felt spited creating tensions with non-government developmental organizations and invariably labeling them regime change activists.

A de-escalation of the tensions between the State and non-government developmental organizations is needed recognizing the significant services that these agencies offer (Chatiza 2010). The constitutional provisions that guarantee plurality need to find expression in local government legislation to avoid situations where sub-national tiers of government act as if they do citizens and their organizations a favor when engaged (DEGI 2013b). The recognition of non-state agencies also needs to flow from a positive perspective to allow non-state organizations to freely complement Council efforts in the areas where they operate. This is because most local civil society organizations (e.g. *Basilizwi*³ in Binga, Lower Guruve Development Association in Mbire, local AIDS Service Organizations, Manicaland Development Association, Organization of Rural Associations for Progress etc) galvanize associational life in particular areas around specific development issues. Their

² Performance Agreements for 2014 are being entered into between the Ministry responsible for local government and individual Council Executives. While justified because Provincial Councils are not yet in place, it shows the risk that the subjugation of local government to the centre may continue.

³ Tonga for People of the River.

work complements that of Councils and therefore constitutes an addition to provincial and local authority capacity. Invariably, the civil society organizations offer alternative models arising from their funding and implementation flexibility, which is often unavailable to public institutions. An area where some of this has generated a stream of benefits relates to community-based natural resource management (CBNRM) and emerging practices of engaging mining operators. Mining sector engagement in many instances is building on the previous success of the CAMPFIRE programme (see Box below).

Box 1: When Central Government and Councils can't tame miners

Some communities hosting mining activities face challenges associated with a weak legislative framework that provides minimal to no rights to them. The Mines and Minerals Act, best understood against the colonial backdrop does not protect the rights of communities affected by the establishment of mining operations. Although the Act in section 188 provides that Rural District Council shall act as the owner for purposes of compensation, Councils have failed to consistently and substantially levy mining concerns. In instances where some revenue has been mobilized affected communities have not always been prioritized. Equally, section 255 which provides that the Minister may make statutory regulations for certain payments to be made to Council by miners situated in their areas has not always led to real inflows to Councils.

This experience, inter alia has prompted the Zimbabwe Environmental Law Association to support the setting up and capacity building of Community Development Trusts in Mutoko and Mutare (Marange) to address the issues of mining companies and operators not paying levies and violating local people's economic, environmental, social and cultural rights. In essence the mining operations do not just deprive Councils and communities of revenue but also infringe on many other rights. Based on ZELA's support these registered Community Development Trusts⁴ are contributing a community dimension to chipping on the mining monoliths and increasingly getting audience with mining firms and the State in ways that are adding to Council voices that were being drowned in multiple political interests. For instance, before CCDT, 14 families relocated to ARDA Transau were put in tobacco barns. CCDT lobbied and advocated for better houses and 2 sample houses were built. More houses have since been built and allocated. Communities to be relocated are now even taken for a tour to the area they will be relocated to before the relocation. CCDT has even lobbied successfully for the compensation of business people. The Trust is also addressing the pollution of the Save-Odzi Rivers. MNDT has facilitated direct contact with mining companies resulting in rehabilitation of a bridge, a classroom block at one secondary school, payment of school fees for orphaned children whose parents used to work at the quarries and direct support to community development projects (chicken rearing and gardening). The MNDT governance structure also includes three Mutoko RDC Councillors providing a conduit through which the Trust can influence Council policy and vice-versa.

Adapted from DEGI-DIC (2014⁵).

The benefits accruing to the specific Mutoko and Mutare (Marange) communities are substantially more than what would accrue through Council facilitated initiatives. Additionally, there is evidence that repeated efforts of the respective Councils did not yield desired results. For their part, most of the efforts of the Trusts cannot be scaled up and institutionalized without the involvement of provincial and local governments. As such, their successes (and failures) provide useful lessons on which the review of mining and local government legislation and administration can be built. The connections that the Trusts have with local and international environmental lobbyists are also an important resource regarding policy making and implementation.

⁴ Chiadzwa Community Development Trust (CCDT) and Mutoko North Development Trust (MNDT)

⁵ Draft Report of the Mid Term Review of the Fair, Green and Global Project being implemented by the Zimbabwe Environmental Law Association in partnership with Action Aid International Zimbabwe.

As noted above, recognition of civil society agencies, though grudging is something the State in Zimbabwe has embraced. A challenge imposed on the administration of State-civil society relations was an overly securitized process where the State looked at virtually every agency as an actual or potential regime change activist. Local government legislation should create a framework where service delivery models and governance interactions allow active and self-governed nourishing of State and non-government developmental organization relations at sub-national levels.

5.0 Conclusion and recommendations

While the constitution is not necessarily a magic wand, constitutionalization of provincial and local tiers of government is a boon for citizen participation. When read in light of the basic rights that Zimbabweans are guaranteed under the constitution Chapter 14 becomes an elaboration of the particular platforms closest to citizens for the realization of these rights. Provincial and local authorities have to deliver on the specific rights defined in the constitution. Serious service delivery slippage in some ways raised people's awareness of the importance of functional and accountable public institutions. This raised citizens' interest in the kind of associational life that agitated for governance reforms culminating in a relatively progressive constitution. Unfortunately, the constitution on its own may not be sufficient to root out misgovernance without development of relevant local government policy, new legislation and realignment of administrative practices from a centralized to a devolved framework. This paper argues that the constitution appropriately frames the kind of local government legislation required to underpin local democracy. Elaboration of the laws is however more than an amendment of existing laws as it requires considerable unlearning of governance practices from the Ministry responsible for local government to individual Councils and other structures. Some of the citizen participation specific recommendations that aid that transformation include, but are not limited to:

1. Clarifying the framework within which national government circulars, directives and other correspondence on local government issues by, *inter alia*, elaborating the specific and concurrent competences or powers of the three tiers of government consistent with devolution and beyond schedules of functions;
2. Elaborating a framework and/or guidelines for provincial and local Councils to meaningfully report and account to each other. Minimum thresholds for such inter-institutional accountability mechanisms across all three tiers of government must be established in the law;
3. Framing structures that allow interface with citizens' bodies or civil society organizations. Legislation must set minimum thresholds for such interface including the responsibility to set up relevant provincial and local authority level forums consistent with the constitutional requirement that the State and all institutions and agencies of government must take reasonable measures. Without overly regulating the kinds of structures that provincial and local governments may have the law should provide for:
 - a. Direct accountability to and engagement with citizens in the performance of their functions by Council staff;
 - b. Specific units for public interface within provincial and local Councils. This will perform the critical functions of gathering and processing policy-relevant data for use by policy-makers. This will also be part of enforcing deliberate capacity

- building to obviate the 'whenever possible' claw-back clause regarding devolution;
- c. Create a framework for local government and civil society partnerships; and
 - d. Frame local government law in ways that tame the political party to allow for effective policy and administrative spaces;
4. Creating a framework for presentation and approval of budgets at Council level with provincial input/guidance and within a clear framework of standards provided at national level;
 5. Setting minimum thresholds for making Council business more open and accessible including:
 - a. Parameters for balancing decision making 'in-consultation' and 'after-consultation' with some of the draft policy choices being subjected to public vetting through referenda, public debates (e.g. at schools), dissemination of draft resolutions/policies through the media, public institutions. The use of 'in-Committee' sessions of Council to bar the public from direct participation has to be balanced with providing for direct public engagement in policy making at provincial and local government level;
 - b. Guidelines for provincial and local authority consultations on sharing of fiscal transfers, grants, loans and application of locally-generated resources to provide for equity and thus enthrone local ownership of the development process. This should be coupled with administrative requirements for publishing of transfers received, regularly reporting incomes and expenditure in easily accessible media and designing-deploying predictable systems for deciding on allocations e.g. based on weights like population, ability to mobilize and use local resources, financial management prudence and notional poverty mapping. The legislation should impose minimum thresholds for the reporting e.g. quarterly or half-yearly;
 - c. Council Committees at both provincial and local authority level working more from evidence and direct engagement with issues through, *inter alia*, 'Town Hall' meetings, public hearings, feedback sessions and processing petitions;
 - d. Providing for mechanisms through which citizens and their organizations can submit motions for debate at both provincial and local authority level consistent with section 67:1 d) of the constitution;
 - e. Ensure new legislation provides for mechanisms through which Councillors, Parliamentarians and Senators (at province and lower) are substantively supported to make their policy-making and representative roles effective; and
 - f. Provide a legislative framework for joint consultation, planning and feedback forums that entrench citizen respect for state institutions more than the political party;
 6. The law should also provide a framework for collaborative local economic development relations between rural and urban local authorities guided by clear national and provincial urban development strategies. This will reduce rural and urban development gap and the disdain with which citizens in these spaces regard each other;
 7. New local government law should recognize civil society organizations in terms of their creation, overall existence and operations to reduce their being 'criminalized'; The new law should also clarify peri-urban land administration mechanisms to guide effective or productive transitioning of land in these zones;

8. Legislation should devolve registration of Private Voluntary Organizations as part of ensuring de-escalation of tensions. Some of the bad relations have largely arisen from the fact that local public officials have been doing civil society tracking for the centre and tended to be 'angrier' and embellished their reports to make them believable. In a devolved set up where they will be the ones with the bulk of the say they will not have the excuse of 'orders from above' and thus will make decisions they can live with; and
9. The new law should clarify how traditional leaders will become party to cooperative and open governance.

There is scope for more elaborate processes of support to parliament and the Ministry responsible for local government in the making of new provincial and local government law. This will be critical also for Councillors as part of ensuring a consultative process that will engender capable and accountable sub-national tiers of government. This has to be looked at a part of medium to long-term process not necessarily tied to an electoral cycle and to sitting politicians and administrators. However, their impact on the pace and direction of reform should not be underplayed.

6.0 References

1. Africa Community Publishing and Development Trust (ACPDT). 2002. Local Governance and Participation. ACPD and ABDT.
2. Ayittey, G. B. N. 2005. *Africa Unchained: The Blueprint for Africa's Future*. Palgrave, Macmillan.
3. Berner, E. and Phillips, B. 2005. Left to their own Devices? Community Self-help between Alternative Development and Neo-liberalism. *Community Development Journal*, 40 (1): 17-29.
4. Bulawayo Progressive Residents Association (BPRA). 2013. A framework for a devolved local government system in Zimbabwe: A discussion paper. Bulawayo, BPRA;
5. CBCC. 1999. Review of Rural Development Coordination. Government of Zimbabwe.
6. Chatiza, K. 2010. Can local government steer socio-economic transformation in Zimbabwe? Analyzing historical trends and gazing into the future in de Visser J, Steytler, N and Machingauta, N. (Eds.). *Local Government Reform in Zimbabwe: A policy dialogue*, Community Law Centre, University of Western Cape;
7. Chatiza, K. 2008. Opportunities and challenges in institutionalizing participatory development: the case of rural Zimbabwe, Doctoral Thesis, Swansea University (Wales-UK);
8. Cheema, G. S. and Rondinelli, D. A. 1983. *Decentralization and Development: Policy Implementation in Developing Countries*. Sage Publications.
9. Conyers, D. (2002) Decentralization: A Conceptual Analysis in Conyers, D. and Matovu, G.(2002) (eds.) *The Challenge for Developing a Shared Vision on Democratic Decentralization and Local Governance in Africa for the 21st Century: The Perspectives of African Ministers of Local Government*. Report of proceedings of a Conference. Municipal Development Partnership for East and Southern Africa.
10. Crook, R. C. and Manor, J. 1998. *Democracy and Decentralization in South Asia and West Africa*. Cambridge University Press.
11. Development Governance Institute (DEGI). 2013a. *Capacity building for local government and service delivery-Zimbabwe: Draft report of the 2013 local government capacity assessment*. Harare: Development Governance Institute (deGI)
12. Development Governance Institute (deGI). 2013b. *Capacity Needs Assessment of residents associations (Zimbabwe): Final Report*, Harare: Development Governance Institute (deGI)
13. De Valk, P. and Wekwete, K. H. 1990. Challenges for local government in Zimbabwe, in *Decentralizing for participatory planning? Comparing the experiences of Zimbabwe and other Anglophone countries in East and Southern Africa*. Aldershot, UK: Gower Publishing Company;
14. Enemuo, F. C. 2000. Problems and Prospects of Local Governance in Hyden, G., Olowu, D., and Oketh-Ogendo, H. W. O. 2000. (eds.) *African Perspectives on Governance*. Africa World Press Inc.
15. Gasper, D. R. (1997) *Decentralization, Coordination and, Integration: Reflections from Zimbabwe in the 1980s*. Unpublished Paper.
16. Government of Zimbabwe. 2013. Constitution of Zimbabwe (Amendment No. 20) Act;
17. Hlatshwayo, B. (1998) *Local Government in Zimbabwe* in Stewart, J. 1998 (ed.) *Grounding Good Governance and Democracy in Communities: An Exploration of some Zimbabwean Experiences*. Austrian North-South Institute, Vienna and Institute of International Law and International Relations, University of Graz, Austria.
18. Institute of Social Accountability, Hakijamii, Water and Livelihoods Reform Network, International Institute for legislative Affairs, Article 19, Institute of Economic Affairs and

- the International Budget Partnership, 2013. Who's in Charge? Devolution may Fail without Clear Division of Roles, A Policy Brief (Kenya),
19. Kaufmann, B., Buchi, R. and Braun, N. 2008. Guidebook to Direct Democracy in Switzerland and Beyond, Initiative and Referendum Institute,
 20. Matyszack, D. 2013. Mayoral elections and Zimbabwe's legislative I CHING, Research and Advocacy Unit;
 21. Msika, J. W. 1992. Opening Address to Conference on Rural Development p103-105 in Government of Zimbabwe. 1992. Rural Development in Zimbabwe: A Conference Report, (21-25 September 1992) ZIPAM and Ford Foundation.
 22. Musekiwa, N. and Mandiyanike, D. 2013. Zimbabwe's 2013 constitution and its implications on local self-governance, Southern Peace Review Journal;
 23. Ndegwa, S. N. 2002. Decentralization in Africa: A Stocktaking Survey. World Bank, Washington DC.
 24. Stiefel, M. and Wolfe, M. (1994) *A Voice for the Excluded: Popular Participation, Utopia or Necessity?* Zed Books.
 25. Tandler, J. 1997. *Good Government in the Tropics*. Johns Hopkins University Press.
 26. Turner, M. and Hulme D. (1997) *Governance, Administration and Development: Making the State Work*. Palgrave.
 27. UNRISD, 2014. Social drivers of sustainable development, Brief No. 4, February 2014;