The Myth of Devolution in Zimbabwe: The Reality Post – May 2013

Mkhululi Nyathi* and Matshobana Ncube**

ABSTRACT

The 2013 Constitution of Zimbabwe provides for a devolved system of government, comprising national, provincial/ metropolitan and local governments. On the face of it, this is a departure from the Independence Constitution which did not provide for devolution of power. This paper, however, seeks to demonstrate that there is in fact no marked difference between the current framework and the pre-2013 constitutional dispensation. Weak and unsatisfactory legal and constitutional provisions on governance at national, provincial and local government levels, combined with the anti-devolution stance of the current ZANU-PF government, have conspired to make devolution of power nothing but a mirage. It is contended that a truly devolved system of governance in Zimbabwe may be realized through constitutional amendments establishing realistic sub-national tiers of governments that are democratically legitimate and have clear law making and implementation powers of their own.

1. INTRODUCTION

After three post-independence attempts at wholesale constitutional reform, Zimbabwe was finally able to adopt a new constitution after the May 2013 referendum. One of the results of the 2013 constitutional referendum was the adoption of a 'devolved' framework of government. However, devolution in Zimbabwe is more a matter of appearance than reality. Those that fought hard for a devolved system of government now face the sad reality that their fight was all but in vain.[1] For all intents and purposes, the pre May 2013 centralised system of government remains in place with slight cosmetic changes.

In addition to the challenge of a thin constitutional basis for

* LLB (UZ), LLM (WITS), LLD (UP), Pretoria, South Africa, mkhululi.nyathi@gmail.com

** LLB (UZ), LLM (MSU).

1 Empirical evidence gathered during the public consultative phase of the constitution making process indicates that seven out of ten provinces were in favour of devolution. See the National Statistical Report, Version 2, presented at the Second All Stakeholders Conference in October 2012 in Harare; pp.268-276.

devolution, the Zimbabwe African National Union-Patriotic Front (ZANU-PF) government that assumed power immediately after the adoption of the 2013 Constitution did not waste time in suffocating the lame devolution baby that was brought forth by the constitutional reform process. The operationalisation of whatever little devolution there is in the Constitution has been at best extremely slow and at worst an outright frustration of the already feint letter and damp spirit of the Constitution. The ZANU-PF government clearly has had the last laugh since it has always been openly hostile to a devolved framework of government.[2]

The intention of this paper is twofold: to critically analyse, from a legal perspective, the 2013 constitutional provisions on devolution; and to assess the practical implementation of those provisions by the government of Zimbabwe to date. This paper does not seek to state the case for devolution. The credentials of this form of government in the socio-economic sphere and its value as a democracy enhancing framework have long been recognised.[3] This paper therefore intentionally sails clear of the theoretical underpinnings of devolution. It also eschews the trap of definitions – the meanings ascribed by different scholars to devolution and decentralisation and related terms and whether these concepts are the same or there are differences between them, big or nuanced.[4]

For the purposes of this paper, it suffices to briefly state that devolution is seen as a tool that enhances efficiency and quality in service provision "through improved governance and resource allocation".[5] The proximity between citizens and local government helps in enabling citizens to have

2 President Mugabe argued that devolution is divisive and that Zimbabwe was too small to be devolved. Dr. Ignatius Chombo, a cabinet Minister in Mr. Mugabe's government, also argued that because of the economic challenges facing the country, devolution would result in infiltration, limit central government oversight and promote inter-regional conflict. Prof. Jonathan Moyo, another cabinet minister in Mr. Mugabe's government, argued quite bizarrely, that while devolution was a good tool for public administration, it was not a constitutional issue, but should be reflected in legislation. See "Devolution of Power: What They Said", New Zimbabwe 28 March, 2012, available at http://www.newzimbabwe.com/news-7570-Devolution+of+power+What+they+said/news.aspx (accessed 2 November, 2016).

3 P. Moyo and C. Ncube, "Devolution of Power in Zimbabwe's New Constitutional Oder: Opportunities and Potential Constraints," *Law, Democracy & Development*, 18 (2014), pp. 296-299.

4 For a glimpse of the unending definition-centred academic discourse on decentralisation and its related themes, see Moyo and C. Ncube, *ibid*, at pp. 290-292.

5 Local Development International LLC, "The Role of Decentralisation/ Devolution in Improving Development Outcomes at the Local Level: Review of the Literature and Selected Cases", Report prepared for the United Kingdom Department for International Development, South Asia Research Hub, Brooklyn New York, (November, 2013), p. 3, available at https://assets.publishing.service.gov.uk/media/57a08a09ed915d622c000515/61178-DFID_LDI_Decentralization_Outcomes_Final.pdf, (accessed 18 November, 2016).

more influence on local officials thereby resulting in reduction of corruption as compared to a centralised system of government.[6] Accountability is thus one of the dividends of a devolved system of government.

The value of devolution has also been recognised at international law. The African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development ('the Charter') states, in one of its preambular paragraphs, that the African Union (AU) is "[c]onviced that local governments or local authorities are key cornerstones of any democratic system".[7] The Charter views devolution as a form of decentralisation.[8] It defines decentralisation as the "transfer of power, responsibilities, capacities and resources from national to all sub-national levels of government with the aim of strengthening the ability of the latter to both foster people's participation and delivery of quality services".[9] Article 5 of the Charter provides for accountable and transparent exercise of power by local governments. In the context of the Charter, this includes the provincial sphere of government, which shall "manage … administration and finances through democratically elected, deliberative assemblies and executive organs".

This paper discusses devolution as a two faceted concept - it has both institutional and substantive dimensions. The institutional dimension refers to the structure of devolution itself - the governance framework. The substantive component, on the other hand, refers to the actual powers of provinces.

This paper has several sections dedicated to various themes. The next section provides an overview of the pre-2013 constitutional dispensation with regard to devolution. Section three analyses the current constitutional provisions on devolution as carried in Chapter 14 of the Constitution and those provisions outside that chapter but with a bearing on devolution. Section three also sets out the current reality of devolution in Zimbabwe. Section four illustrates what should be the minimum, clear, constitutional framework for devolution.

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6 *Ibid.*

7 The Charter was adopted by the 23rd Ordinary Session of the AU Assembly on 27 June, 2014 at Malabo, Equatorial Guinea. The Charter is available at https://www.au.int/en/treaties/african-charter-values-and-principles-decentralisation-local-governance-and-local (accessed 3 January, 2017).

8 See the preamble to the Charter.

9 Article 1 of the Charter.

2. AN OVERVIEW OF DEVOLUTION UNDER THE PRE-2013 CONSTITUTIONAL DISPENSATION

There really was not much devolution in the Independence Constitution. In this section, we sketch out the constitutional and legal framework at the two levels – provincial and local authority level.

2.1 The Provincial Level

The Independence Constitution did not have a provision for provincial administration, let alone the office of provincial governor. The office of provincial governor came about through the 1985 amendment to the Independence Constitution.[10] It was this amendment that brought about section 111A of that constitution. Section 111A gave the President the power to appoint provincial and district governors. The section provided as follows:

> **"111A Provincial, district or regional governors**
> (1) For the better administration of Zimbabwe, an Act of Parliament may provide for the appointment by the President of governors for any areas within Zimbabwe.
> (2) Governors appointed in terms of an Act of Parliament referred to in subsection (1) shall have such functions and powers in relation to the areas for which they have been appointed as may be prescribed by or under the Act of Parliament.
> (3) The offices of governors appointed in terms of an Act of Parliament referred to in subsection (1) shall be public offices but shall not form part of the Public Service.
> [Section as inserted by section 7 of Act 4 of 1985 - Amendment No. 5]."

There was nothing more by way of constitutional provision. There was no detail on the role of governors and their relationship to the national institutions. Section 111A without doubt gave the president wide discretionary powers when it came to appointment of governors.[11] With

10 Amendment No.5 of 1985

11 There were initially eight provinces: Manicaland; Mashonaland Central; Mashonaland East; Mashonaland West; Masvingo; Matabeleland North; Matabeleland South; and the Midlands. These were increased to 10 in 2005 through Constitutional Amendment No. 17, which added the metropolitan provinces of Bulawayo and Harare.

no constitutionally stated justification for devolution and no framework on the relationship between the provincial and national levels, the pre-2013 constitutional dispensation was thus more about appointments and less about governance.

Section 111A however made provision for the establishment of a more detailed framework of provincial government by way of an Act of Parliament. The Provincial Councils and Administration Act (Cap 29:11) was enacted in 1985. In terms of substance, it does not really add much to the constitutional framework. The long title of the Act provides that it is:

> "AN ACT to provide for the declaration of provinces within Zimbabwe and the appointment of provincial governors for such provinces; to provide for the establishment and functions of provincial councils; and to provide for matters connected with or incidental to the foregoing".[12]

The President is empowered to declare provinces in Zimbabwe through a statutory instrument.[13] The President is also empowered to assign a name to a province;[14] and to alter the name or boundary of a province, or, after consultation with the Provincial Council concerned, abolish its existence.[15]

Section 4 of the Act empowered the President to appoint any person to the governorship of any province.[16] The duties and functions of a provincial governor included being chairperson of the provincial council of the province;[17] fostering and promoting the activities of various ministries and organs of central government in the implementation of various development plans;[18] coordination of the preparation of the development plan for the province; and promotion of the implementation of such plans by ministries, authorities, agencies and persons.[19] The governor was additionally empowered to carry out any function within his province, and on behalf of

12 Unlike the Constitution which gave the possibility of the appointment of district and regional (the latter has no official geographical bounding in Zimbabwe) governors, the Provincial Councils and Administration Act tied the office of governor to the provinces.

13 Section 3(1)(a) of the Act.

14 Section 3(1)(b) of the Act.

15 Section 3(1)(c)of the Act.

16 This section (and related sections) has been automatically jettisoned by virtue of the coming into force of the new Constitution.

17 Section 10(a) of the Act.

18 Section 10(b) of the Act.

19 Section 10(c) of the Act.

the province, as imposed on him by the Act or any other legislation.[20]

Section 11 of the Act conferred on the President the power to establish a Provincial Council if he considered it desirable.[21] A Provincial Council was therefore not inherently part of the institutional framework of a province but its establishment was the prerogative of the President. Once created, however, the functions a Provincial Council corresponded with duties and functions of a provincial governor enumerated above.

Section 14 of the Act provided for the composition of the provincial councils, consisting of the governor,[22] mayor or chairman and one councillor appointed by each municipal council, town council and local board whose area was wholly situate in the province;[23] the chairperson and one councillor of each rural district within the province whose area was wholly situate in the province;[24] and one chief from the provincial assembly of chiefs in the province.[25]The president had the power to appoint three more persons to the provincial council.[26]

Section 26 of the Act provided for the establishment of a provincial development committee within a provincial council. The committee, in terms of section 26(2), had to be constituted as follows:

> "(*a*) the provincial administrator for the province; and
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> (*b*) the town clerk, principal officer, secretary or senior council officer of every municipal council, town council, local board, rural council or district council whose mayors or chairmen, as the case may be, [were] members of the provincial council; and
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> (*c*) the senior officer in the province of—
>
> (i) the Police Force; and
>
> (ii) the organisation known as the Central Intelligence Organisation; and
>
> (iii) the Zimbabwe National Army;
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> (*d*) the provincial head of each Ministry and department of a Ministry within the province that the Minister may designate by notice in writing to the provincial governor; and

20 Section 10(d) of the Act.
21 Section 11(a) of the Act.
22 Section 14(1)(a) of the Act.
23 Section 14(1)(b) of the Act.
24 Section 14(1)(c) of the Act
25 Section 14(1)(d) of the Act
26 Section 14(1)(e)(i)-(iii) of the Act. One of these persons was supposed to be appointed for their skill, the other two to represent women and the youths.

(*e*) such further members representing other organisations and interests as the Minister, on the recommendation of the provincial governor, may appoint".

The functions of a provincial development committee included making recommendations to the provincial council as to matters to be included in the annual development and other long term plans for the province;[27] assisting the provincial council in preparing the annual development and other long term plans for the province;[28] investigating the implementation of the development plans and other long term plans for the province when instructed by the provincial council;[29] and exercising such other functions in relation to the development plans and other long term plans of the province when so instructed by the provincial council.[30]

The manner in which these committees were constituted ensured that central government appointees played a crucial role in the formulation of development programmes within provinces by virtue of their numerical dominancy of these committees. In a way, rather than being a different tier of government, provinces were in fact a mere extension of central government.

The other oddity in the constitution of provincial development committees was, in view of the latter's functions, the presence of national security personnel in the form of police, military and intelligence officers. However, in light of well documented human rights abuses in Zimbabwe and limited democratic space, including the government's hostility to the freedoms of assembly and expression, among other political rights, there is no gainsaying that the presence of the central government security apparatus in the provincial development committees was nothing but a reminder of central's government's omnipresence in every aspect and sphere of the life of citizens. Further, the very possibility, if not fact, that the security personnel would be people from other provinces, their membership of these provincial committees belied whatever veneer of decentralisation there was.[31]

27 Section 28(a) of the Act.

28 Section 28(b) of the Act.

29 Section 28(c) of the Act.

30 Section 28(d) of the Act.

31 P. Moyo and C. Ncube op. cit p. 298, for instance argue, that the ZANU-PF government policy "of inter-region deployment of civil servants, purportedly to deal with tribalism, is one of the reasons for spirited resistance against central government control and calls for devolution". They go on to indicate that locals from the "Matabeleland provinces resist inter-regional deployment of civil servants arguing that it defeats the notion of local governance if citizens from one area are deployed to govern citizens from (sic) other provinces". Moyo and Ncube refer to 'civil servants', but they may very well be referring to all state employees, including the police, military and intelligence personnel.

2.2 The Local Government Level

Local governance was (and still is) provided for in two distinct parliamentary Acts: the Rural District Councils Act, Cap 29:13; and the Urban Councils Act, Cap 29:15.[32] As the names of these Acts suggest, the former provides a legal regime for the administration of rural areas and the latter for urban councils.

The two pieces of legislation give the Minister responsible for the administration of these two statutes overarching and wide intervention powers. For example, section 314 of Urban Councils Act gives the Minister the power to reverse, suspend and rescind decisions and resolutions of councils. Section 52(3) of the Rural District Councils Act gives the Minister similar powers; it allows the Minister to reverse, suspend and rescind decisions and resolutions of rural councils. Through the Local Government Board, the Minister also has the final say in the appointment of senior officials like town clerks, chamber secretaries and treasurers in urban local authorities.[33] The same is the case with appointment of secretaries of local boards.[34]

While the pre-2013 statutory framework had some semblance of devolved authority in the governance of local authorities especially in the areas of service provision, national government had and continues, post-2013, to have a strong grip on local governance. Instances abound of the abuse of power by the Minister. For instance, in a number of cases, the best candidates selected by local authorities through their internal recruitment processes would not be appointed by the Local Government Board, but less qualified ones would be appointed instead.[35] It needs mention that members

32 There is also the Regional, Town and Country Planning Act [Chapter 29:12] which deals with the planning of regions, district and local areas.

33 In terms of section 123(1)(e) of the Urban Councils Act, the Local Government Board approves the appointment of senior officials in Councils. Sections 132, 133 and 134 provide that the appointment of a Town Clerk and Secretary of a Local Board, Chamber Secretary and other senior officials must be approved by the Local Government Board.

34 The definition of a local authority in the Urban Councils Act includes a local board.

35 In Gwanda in 2012, the Minister suspended the mayor for defying a ministerial directive to appoint a certain individual to the position of Chamber Secretary. See "Chombo Suspends Gwanda Mayor", New Zimbabwe, 5 April, 2012, available at http://www.newzimbabwe.com/news-7654-Chombo+suspends+Gwanda+mayor/news.aspx (accessed 10 December, 2016). In Bulawayo, minister Chombo, through the Local Government Board, refused to appoint a substantive town clerk (from the list availed to him by the City of Bulawayo) for three years, instead opting to appoint a central government employee, Ms Khonzani Ncube, the provincial administrator of Bulawayo, in an acting capacity. See "No Byo Town Clerk for 3 Years", The Standard, 26 March, 2009, available at https://www.thestandard.co.zw/2009/03/26/no-byo-town-clerk-for-3-years/ (accessed 10 December, 2016). In Harare the government fired Mr. James Mushore, a town clerk, within hours of his appointment. See "Harare Town Clerk Hired, Fired in One Day", The Chronicle, 25 March, 2016, available

of the Local Government Board are themselves appointees of the Minister of Local Government and there have been perceptions that the Board has always acted under the shadow of the Minister who used his position to frustrate those local authorities under opposition parties.[36]

The Minister of local government also has the power to suspend not only appointed senior employees of local authorities, but elected representatives including councillors and mayors.[37] In addition to matters to do with appointments and dismissals, the Minister had (and continues to have) overarching powers relating to budgetary matters. While the longstanding practice of local authorities is that of a participatory budget making process under which residents would be involved in budget formulation,[38] the Minister has the final decision.[39] There have been several instances where the Minister would simply not approve local authority budgets sent to him for approval without even involving or taking into account stakeholder (specifically residents) interests.[40] In other instances, the Minister would simply delay his approval for almost a year, thus making the whole process meaningless as the relevant local authority would have to make do with the rates and estimates of expenditure of the previous financial year pending approval for the current year.[41]

Further, by-laws adopted by councils have no legal force unless approved by the Minister.[42] The Minister may approve the by-law or withhold his approval or he may, where the by-law is divisible, approve a portion of it.[43] The Minister also has the power to direct a council to adopt a model by-

at http://www.chronicle.co.zw/harare-town-clerk-hired-fired-in-one-day/(accessed 10 December 2016).

36 See W. Jonga, "The Minister of Local Government's Intrusions in Urban Councils' Administration", (2013), available at http://pparnet.com/journals/ppar/Vol_1_No_1_June_2013/3.pdf (accessed 12 December, 2016); and W Jonga, "Local Government System in Zimbabwe and the Associated Challenges: Synthesis and Antithesis", *Archives of Business Research*, 2(1) (2014), pp.75-98, available at http://scholarpublishing.org/index.php/ABR/article/view/89/68, p.76, (accessed 31 October, 2016).

37 Section 114 of the Urban Councils Act and section157 of the Rural District Councils Act.

38 There is no legal framework that exists for the participation of citizens in local government budget adoption processes. See "Citizen Participation Lacking in Budgeting Processes", available at https://southern-africa.hivos.org/news/citizen-participation-lacking-budgeting-processes (accessed 15 January, 2017).

39 Section 47(1) of the Public Finance Management Act, Cap 29:19.

40 See "Govt Reject Councils Budget", *The Sunday Mail*, 7 February, 2016, available at http://www.sundaymail.co.zw/govt-rejects-council-budgets/ (accessed 27 December, 2016) which reports on government rejection of budgets of 26 local authorities.

41 See "Council Blames Poor Service on Budget Delays", The Southern Eye, 12 September, 2014 available at https://www.southerneye.co.zw/2014/09/12/council-blames-poor-service-budget-delays/ (accessed 27 December 2016).

42 Section 228(3) of the Urban Councils Act.

43 Section 229(2) of the Urban Councils Act.

law made by him.[44] Such a model by-law may provide for anything which council may make provision for in terms of the Act.[45] The Minister therefore effectively has the power, even without consultation, to make or adopt by-laws for or on behalf of a council.[46]

Another instance of central government interference in the running of local authorities is in water management. In 2005, the function of water provision in all local authorities was taken away from the control of local authorities and given to the Zimbabwe National Water Authority (ZINWA).[47] As a consequence, local authorities lost to central government an important source of revenue. In 2008 the Minister again issued another directive handing back the function of water provision to some local authorities while retaining it under ZINWA in other local authorities.[48]

The provision of electricity by local authorities was equally affected. This function was taken away in 1989 and given to the Zimbabwe Electricity Supply Authority (ZESA),[49] thereby not only negatively affecting the efficient management of power but also starving urban authorities of a significant revenue generation stream.[50]

As indicated in the section below dealing with local governance post-2013, there has been no re-alignment of the pre-2013 local authority legal regime to the new Constitution. This means that all provisions that impinge on the right of local authorities to govern the affairs of the people in their areas at their own initiative, as provided for in section 276 (1) of the new Constitution, still remain in force contrary to the letter and spirit of the new Constitution. The ZANU-PF government is apparently comfortable, if not happy, with the pre-2013 legal framework and practices.

3. DEVOLUTION 'POST – 2013'

It is quite interesting that chapter 14 of the Constitution which deals with provincial and local government is the only chapter in the Constitution with

44 Section 230(1) of the Urban Councils Act.

45 *Ibid.*

46 See section 233 of the Urban Councils Act.

47 M Musemwa, "The Politics of Water in Post Colonial Zimbabwe 1980-2007", a paper for presentation at a meeting in The Netherlands, available at http://www.ascleiden.nl/pdf/papermusemwa.pdf?%20origin=%20publication%20detail (accessed 15 January, 2017).

48 See Jonga *op cit* pp.82-84 for a detailed discussion of the issue.

49 Musemwa *op cit* p.12.

50 Section 216 of the Urban Councils Act provides for municipalities to own and operate a public electricity supply undertaking subject to the Electricity Act (Chapter 13:19).

its own sub-preamble. However, other than concluding with a declaration that "there must be devolution of power and responsibilities to lower tiers of government in Zimbabwe", the devolution preamble is very thin on aspiration and does not project the full essence of devolution as a framework of government. The 'devolution' preamble states:

> "Whereas it is desirable to ensure:
>
> (a) the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism;
>
> (b) the democratic participation in government by all citizens and communities of Zimbabwe; and
>
> (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 very first paragraph of the devolution preamble is negatively couched and speaks to the desire of "the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism". This wording seems to project the ZANU-PF government's inherent hostility to devolution which it views as an agent of disunity and secessionism.[51] Instead of inspiring confidence in this form of government, the preamble seems to be calculated to inculcate something else – a mistrust of devolution. While the next two paragraphs of the devolution preamble speak to the desire for "democratic participation in government by all citizens and communities"; and "the equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas," none of these paragraphs invoke the positive attributes of devolution as a framework of governance. An opportunity to capture the credentials of this form of government and thus positively inspire its development statutorily and by practice was thus lost.

The devolution preamble also does not paint provinces and local authorities as distinct spheres of government in their own right. At best, it casts them as merely additional arenas for citizen and communal participation which are not supposed to formulate policies at their respective levels, but rather facilitate participatory involvement of local communities in the

51 See (n 2 above).

determination of developmental priorities.[52]

While a preamble is not a substantive provision of a constitution, the nature of its framing cannot be ignored. It has been held that there can be recourse to the preamble in the interpretation of a constitution.[53] As shall be shown in the following sub-sections, the provisions on devolution, both on the provincial and local levels, are generally vague and weak. It would thus be difficult even for a progressive judiciary to try to breathe life into such a framework since recourse to the sub-preamble would not be a valuable tool of construction because of its negative couching and its damp spirit.

The relevant constitutional provisions on devolution at the provincial and local levels are set out below. Reference is also made to other provisions with a bearing on devolution, particularly those that deal with fiscal matters. An attempt is also made to illustrate the current state of affairs in terms of the operationalisation of the constitutional provisions relating particularly to the provincial sphere.

3.1 The Provincial Sphere

The Constitution maintains the ten provinces including the two metropolitan provinces that were in existence prior to May 2013.[54] Probably the only remark to be made with regard to the two metropolitan provinces, without necessarily going into the rationale of creating metropolitan provinces, is that it is as if the framers of the constitution never envisaged the possibility of other cities growing into 'metropolitan' status, since no provision is made for the possibility of creation of additional metropolitan provinces even by way of an Act of Parliament. This is not to say the creation of metropolitan provinces was a good idea or that providing for the possibility of more provinces would be wise. If anything, it only serves to illustrate lack of foresight, specifically that while maintaining the boundaries of the eight original provinces would be something easy to do, the growth of urbanisation either through the growth of existing cities and towns or the creation of additional urban areas is something that cannot be predetermined and fixed by way of a rigid constitutional provision.

52 The power of Local authorities to govern is at least clearly set out in section 276(1) of the Constitution.

53 L Orgad "The preamble in constitutional interpretation" *International Journal of Constitutional Law* (2010), Vol 8 No. 4 pp.714-738.

54 Section 267 of the Constitution.

The 'governance' of provinces is reposed in provincial councils. Provincial councils are a motley mixture of members elected on the basis of party lists (used for national assembly elections);[55] members of both houses of parliament from the particular province;[56] and in the case of metropolitan provincial councils, councillors(and mayors and chairpersons of relevant urban local authorities) falling within the relevant metropolitan council.[57] Needless to say, it is hard to say what exactly are the spherical interests represented at the provincial level.

The constitutional architecture of provincial administration has a provincial council headed by a chairperson. The chairperson, whose powers are not defined in the Constitution, is chosen from a list made by the political party with the majority seats in the National Assembly in the province or if there is no such party with a majority seats, then from the party with the highest tally of votes cast in the general election for the National Assembly seats in that province.[58]

Section 269 creates metropolitan councils – the Bulawayo and Harare Metroppolitan Councils. These consist of the mayor of each of the cities; all members of Parliament whose constituencies fall within the metropolitan province concerned; and mayors and deputy mayors as well as the chairpersons of all local authorities that fall within the metropolitan provinces. The Constitution states that the mayors of Bulawayo and Harare are the chairpersons of their respective metropolitan provinces.[59]

Devolved government at the provincial level presents serious challenges. The institution of provincial/metropolitan council is inherently heavy in central government officialdom and is far removed from the people. It is an antithesis of devolution that at the provincial level, the same people who constitute central government either as part of the legislature (and possibly the executive)[60] are also members of a provincial council. The people at the provincial level should have been allowed to elect directly persons who would constitute the provincial council. After all, it is a well

55 Section 268(1)(e) of the Constitution.
56 Section 268(1)(b) of the Constitution.
57 Section 269(1) of the Constitution.
58 Section 272(1)(a) and (b) of the Constitution.
59 Section 269(1)(a) and (b) of the Constitution.
60 Ministers are, in terms of section 104(3) of the Constitution, appointed from among senators or members of the National Assembly, with only five ministers potentially appointable from outside of parliament. The likelihood of some of the members of a provincial council being executive members of central government is self-evident.

recognised principle that devolution is about creating a structure that enjoys autonomy from central government.[61]

The electoral process of constituting provincial councils is indirect and rather dubious as people would in essence be electing only parliamentary representatives. The creation of a provincial council thus becomes something of an electoral default rather than a deliberate electoral process aimed at consciously establishing this second tier sub-national government sphere. The psychological attachment of the voter to the provincial government is without doubt undermined, along with the potential of the voter to call upon this 'distant' institution to account. With regard to the metropolitan provinces, these are so intertwined with local authorities that it is difficult to tell exactly what their jurisdictional competencies are.

The role of provincial councils should not be underestimated - the responsibilities provided for in section 270 of the Constitution, whatever their faulty and limited framing, are matters of significance.[62] Provinces therefore require a body of persons who are rooted on the ground in the province and solely focused on the social and economic development of the province. The effectiveness of the current provincial/metropolitan councils is undermined since parliamentarians, in addition to the risk of being functionally conflicted, have other, if not core, demanding roles at national level. Some may be ministers with demanding government schedules. A provincial/metropolitan council membership that is most of the time in Harare on national duties cannot be expected to effectively attend to 'local' concerns at the provincial level.[63]

The constitution gives provincial and metropolitan councils a number of functions. These functions are provided for in section 270 which reads:

> "(1) A provincial or metropolitan council is responsible for the social and economic development of its province, including—
> (a) planning and implementing social and economic development activities in its province;
> (b) co-ordinating and implementing governmental programmes in

61 M. O Kiggundu *Managing Organisations in Developing Countries: An Operational and Strategic Approach,* West Hartford, Kumarian Press Incorporated, (1989), p.234, available at http://www.us-aid.gov/pdf_docs/PNABE025.pdf. (accessed 20 December, 2016).

62 For a discussion of the faulty and limited nature of the functions, see the paragraph immediately below.

63 A somewhat similar view is expressed by ActionAid Denmark in its briefing paper "The Dynamics of Devolution in Zimbabwe", October 2014, p.8, available at https://www.ms.dk/sites/default/files/udgivelser/zimbabwe_report_2014_finale_lav.pdf (accessed 17 December, 2016).

its province;
(c) planning and implementing measures for the conservation, improvement and management of natural resources in its province;
(d) promoting tourism in its province, and developing facilities for that purpose;
(e) monitoring and evaluating the use of resources in its province; and
(f) exercising any other functions, including legislative functions, that may be conferred or imposed on it by or under an Act of Parliament.
(2) An Act of Parliament must provide for the establishment, structure and staff of provincial and metropolitan councils, and the manner in which they exercise their functions.
(3) Members of a provincial or metropolitan council are accountable, collectively and individually, to residents of their province and the national government for the exercise of their functions".

While the number and framing of these functions may on the face of it be impressive, there is no clear demarcation between provincial functions and those of national government, leaving the national government free to carry out similar functions or to deliberately interfere, either through national legislation or other means, in the formulation or implementation of such functions by a province. Also, as already indicated, there is no clearly articulated framework on the relationship of a metropolitan council to local authorities under it in the areas of policy making and implementation.

A close reading of section 270 reveals that a provincial or metropolitan council has no constitutional power to make binding laws within its province. Provincial laws, made by and for the province, are clearly not envisaged in the current constitutional architecture. Absent the agency of binding legal instruments, policy making and implementation at the provincial level is thus dependent on the goodwill of the national government and stakeholders at the provincial level.

Unlike a local authority, a province has no taxation powers. In essence, a provincial council has no autonomous sphere over which to govern. The council is therefore a governance institution with no government powers. It is clearly not autonomous and exists primarily to implement central government programs.

The provincial councils have to date not been constituted.[64] Further, the five per cent of national revenue that section 301 of the Constitution says should be set aside and allocated to the lower tiers of the State has not been set aside and allocated.[65] Indeed, it has been observed, quite appositely, that "devolution has not been implemented and the intentions of the present government do not seem to point in that direction."[66]

Not only has the ZANU-PF government violated the constitutional provisions through deliberate inaction. The government has also come up with other subtle political stratagems aimed at effectively making illusory the concept of a provincial government. For example, in the aftermath of the adoption of the 2013 Constitution and the elections in that year, the President appointed various persons to be 'national' Ministers of State for Provincial Affairs in charge of the 10 provinces into which Zimbabwe is divided.[67] The repeal of the old Constitution had as a consequence the falling away of the office of governor. That democratically deficient ghost from the past has been resuscitated, albeit under a new title.[68] The appointment of these Ministers in the new constitutional dispensation has served to undermine the already formally thin devolution of power.

The reality therefore is that the 2013 Constitution serves only to create the impression, and nothing more, of a new governance framework underpinned by devolution of power to the provincial tier. The formal formulation of devolution in chapter 14 in respect of the provincial sphere, and the deliberate inaction by the ZANU-PF government to operationalise the constitutional framework, coupled with political stratagems meant to stifle, if not totally kill off devolution, have all contributed to a myth of devolution since in reality there still exist the pre-2013 institutions.

3.2 The Local Government Sphere

Part 3 of Chapter 14 of the new Constitution provides for local government in

64 See "No money to set up Provincial Councils", Southern Eye, 29 February, 2016 available at https://www.southerneye.co.zw/2016/02/29/no-money-to-set-up-provincial-councils/ (accessed 13 January, 2017).

65 See a joint study on Zimbabwe by United Cities and Local Governments (UCLG) and the Organisation for Economic Co-operation and Development (OECED), October 2016, available at http://www.uclg-localfinance.org/sites/default/files/ZIMBABWE-AFRICA-V3.pdf, (accessed 13 January, 2017).

66 ActionAid Denmark briefing paper, (n 63 above) 5.

67 Section 267(1) of the Constitution.

68 See also ActionAid Denmark paper (n 63 above) 8; Moyo and Ncube (n 3 above) 300.

Zimbabwe. This is just but an elevation of local government to a constitutional status since it has always obtained in terms of ordinary legislation. This 'constitutionalisation' of local government is, however, important.[69] Existence of local government through legislation only is problematic as it can easily be interfered with through amendments by parliament compared to constitutional provisions which require special and onerous processes to amend.[70] Elevation of local governance to a constitutional status thus insulates it against arbitrary interference by parliament of the day.[71]

The mandate of local authorities is to represent and manage the affairs of the people in urban and rural areas of Zimbabwe.[72] Both are managed by councils constituted by councillors elected by voters in the particular local authority.[73] Urban local authorities are presided over by either mayors or chairpersons[74]while rural local authorities are presided over by chairpersons.[75]

Local authorities are vested with authority to govern, at their own initiative, the local affairs of the people in their area.[76] The only limit is that imposed by the Constitution and legislation. Legislation may confer functions on local authorities that include a power to make by-laws, regulations or rules for the effective administration of the areas for which they have been established.[77]

Local authorities are endowed with governance powers and are clearly a sphere within the three tier system. However, the enactment of legislation outlining their competencies, among other things, in line with the new Constitution is still outstanding.[78]

69 'Constitutionalisation' is used here to mean the inclusion of the local governance sphere in the constitution. The term is not used in the sense of constitutionalism as understood in constitutional law and related fields. In constitutional law and related fields, constitutionalism (and constitutionalisation) denotes, in simple and laconic terms, the subjection of politics to law. See D Grimm, "Constitutional Adjudication and Constitutional Interpretation, between Politics and Law", p.16, *NUJS LAW REVIEW 4 NUJS L.REV.p.15 (2011)*, also available at http://nujslawreview.org/wp-content/uploads/2015/02/dieter-grimm.pdf,(accessed 13 January, 2017). .

70 Section 328(5) of the Constitution.

71 D Brand, *Introduction to Socio-economic rights in the South African Constitution*, (2005), p.15 (cited in D. Brand and C. Heyns, (eds) *Socio-Economic Rights in South Africa*, Pretoria University, Pretoria University Law Press), (2005) observes that where statutory entitlements do not have constitutional protection they are vulnerable to legislative interference.

72 See sections 274(1) and 274(1) of the Constitution.

73 See sections 274(2) and 275(2)(b) of the Constitution.

74 Section 274(2) of the Constitution.

75 Section 275(2)(c) of the Constitution.

76 Section 276(1) of the Constitution.

77 Section 276(2)(a) of the Constitution.

78 A Bill was drafted by the Minister of Local Government, Urban and Rural Development in September 2014 ostensibly to align the local government legal framework to the Constitution. However the Bill is nothing more than a mere amalgamation of the pre-2013 statutes maintaining the minister's overarching powers. The Bill is also totally silent on the provincial sphere of government.

The Minister's extensive powers that undermine and degrade local authority autonomy remain intact. Local authorities still operate within the overarching powers of the Minister - the appointment of senior employees of local authorities still requires ministerial approval through his/her proxy, the Local Government Board; the Minister still has power to approve budgets of local authorities; power to suspend councillors at will; and power to make model by-laws for local authorities, among the many other powers that existed in the pre-2013 constitutional dispensation.

With regard to the two sub-national spheres of government therefore, there is nothing, save for the formal provisions in the Constitution itself, to show that Zimbabwe has adopted a new constitution that provides for devolution.

Some have suggested that the failure so far to create provincial and metropolitan councils and the failure to realign local government legislation, may be constitutional. This stems from section 264 (1) of the Constitution which reads:

> "Whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively".[79]

On the face of it and read independently of other provisions of the Constitution, this may mean that the timing of devolution is a matter that is left to the discretion of national/ central government and would therefore only happen once a particular province/ local authority passes the competency test. However, this could not have been the intention of the framers of the Constitution, and there are many reasons in support of this contention. First, devolution is one of those principles enumerated in section 3 (2) of the Constitution, which principles "bind the State and all its institutions and agencies of government at every level". These principles are set out without qualification. Devolution is therefore one of the fundamental pillars of Zimbabwe's constitutional architecture.

Second, section 5 of the Constitution enumerates three tiers of government in Zimbabwe which are the national government, the provincial and metropolitan councils and local authorities. Again, there is nothing in that section that suggests that there should be piecemeal establishment of any of these tiers.

79 See Moyo and Ncube (n 3 above) 300.

Third, section 268 (1) states, in deliberate and current terms, that “[t]here **is** a provincial council for each province…” (own emphasis). Section 269 (1) on metropolitan councils is similarly worded, to wit, “[f]or each of the metropolitan provinces there is a metropolitan council consisting of - …” Sections 274 (1) and 275 (1) on urban local authorities and rural local authorities, respectively, are similarly worded. All these distinct but similar provisions do one clear and definite thing – they create, without qualification and postponement, the second and third tiers of government.

Fourth, section 273 (1) which deals with the statutory operationalisation of provincial and metropolitan councils does not provide for any competency based qualification of any provincial or metropolitan authority.

Even accepting for argument’s sake that devolution is conditional on ‘competency’ (which it is definitely not), there should at the very least be a general pre-existing legal framework ready to accommodate those provinces and local authorities that would subsequently be deemed ‘competent’. There currently is no such statutory framework. In fact, the corollary to accepting that devolution is subject to the prior competency assessment would be the interpretation that any sub-national tier established by the Constitution can, at any time during its life, be deprived of its devolved powers once it is determined that it is no longer “competent to carry out those responsibilities efficiently and effectively” - something that is certainly not envisaged by the Constitution.

Section 264 (1) is therefore nothing but an absurdity that should be ignored and preference given to the overall scheme and teleology of the Constitution. In other words, it is the overall scheme and the end purpose of a statute (and constitution) that matters and should therefore be deferred to. Lord Denning, himself getting inspiration from the European Court of Justice espoused this method of interpretation in the following terms:

> “[J]udges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose . . . behind it. When they come upon a situation which is *to their minds* within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means they fill in gaps, quite unashamedly, without hesitation. They

> ask simply: what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation? They lay down the law accordingly".[80]

In the mind of Lord Denning, the above approach was suited for the interpretation of international conventions [the statute under consideration incorporated an international (European) convention]. The classical English common law approach to statutory interpretation is to follow the words of an Act if they were clear even if they led to a 'manifest absurdity'.[81] However, this method of interpretation was neither an invention of the European Court of Justice nor was it confined to the interpretation of international conventions. It had long been applied in the interpretation of purely domestic statutes elsewhere. In the lucid words of Innes CJ in the South African case of *Venter* v *Rex*:[82]

> "[W]hen to give the plain words of the statute their ordinary meaning would lead to absurdity so glaring that it could never have been contemplated by the legislature, or where it would lead to a result contrary to the intention of the legislature, as shown by the context or by such other considerations as the court is justified in taking into account, the court may depart from the ordinary effect of the words to the extent necessary to remove the absurdity and to give effect to the true intention of the legislature".[83]

This approach has also been embraced in Zimbabwe, although its articulation has recently been muddled by the Constitutional Court.[84]

80 Lord Denning in *James Buchanan & Co v Babco Forwarding and Shipping (UK) Ltd* [1977] 2WRL 107 at 112.

81 See the dictum of Lord Esher in *The Queen v Judge of the City of London* [1892] QBD 273. However in the event of an ambiguity, that is to say in the event that there are two possible interpretations of a statutory provision, then, in the words of Lord Esher (here paraphrased), where one of these interpretations would lead to an absurdity, then the court would follow the one that would not lead to absurdity, the presumption being that the legislature did not intend to enact a law that would lead to an absurdity.

82 1907 TS 910.

83 At pp.914-915.

84 See the unsatisfactory reasoning of Chidyausiku C.J. in *Mawarire v Mugabe NO & ORS* 2013 (1) ZLR 469 (CC). Chidyausiku liberally quoted Lord Denning (n 80 above), but apparently missed the 'international convention' context in Lord Denning's reasoning. By following this approach, which he calls the 'wider approach', as opposed to the one in *The Queen v Judge of the City of London* (n 87 above), which he calls the 'narrower approach', he posits that "the court has a broad discretion in removing an absurdity, being guided ultimately by the intention of the legislature or in constitutional terms by the intention of the framers of the supreme law". It is not clear how the broad discretion comes about when an absurdity has been established. Chidyausiku C.J. also lists a number of aids available to a Court whenever an 'ambiguity or absurdity' has been established – historical, schematic, teleological and purposive approaches. However, the schematic and teleological approach already includes Chidyausiku CJ's additional aids – the history and purpose of the legal or constitu-

To anchor devolution in the discretion of a minister, or whatever institution, who/which must first determine that a province or a local authority is "competent to carry out [the devolved] responsibilities efficiently and effectively" does not only create a glaring absurdity in the context of the whole scheme and teleology of the Constitution, but creates the possibility that devolution as encapsulated in chapter 14 would not be created simultaneously and uniformly across provinces. There could be no better recipe for disunity and national disintegration (something ZANU-PF seems to fear so much) than would result from such an interpretation.

It is difficult to imagine how section 264 (1) found its way into the Constitution. The absence of any thread linking this section to any other section in Chapter 14 or elsewhere in the Constitution boggles the mind. It is however not far-fetched to speculate, in the absence of '*travaux preparatoires'* pointing to the contrary, that this short, lonely, miserable and contextually bizarre section might have been the result of last minute fiddling with the draft constitution by the anti-devolution elements at the time of the finalisation of the draft.

4. REMEDYING THE CONSTITUTIONAL DEFICIENCY

The current challenges bedeviling the operationalisation of devolution in Zimbabwe have their roots in the unsatisfactory nature of the formal constitutional provisions. This unsatisfactory position has emboldened the anti-devolution ZANU-PF government resulting in deliberate inaction (and active frustration) when it comes to the operationalisation of Chapter 14. The only viable recourse to remedy the current state of affairs is immediate constitutional amendment.

To illustrate what form the new framework should take, we make reference to the South African Constitution. This is not to say the South

tional provision. Chidyausiku CJ also seems to bizarrely treat 'ambiguity or absurdity' as amounting to the same thing. These are distinct terms meaning totally different things. The method employed by Lord Esher (n 81 above) is alive to the distinction between ambiguity and absurdity: – the court has to determine that there is an ambiguity in a statutory (or constitutional) provision first, that is to say, the provision should be open to more than one interpretation; once ambiguity is established, then the court would move to the next stage where it ascribes to the provision that interpretation which does not lead to an absurdity, that is to say, the court will discard the interpretation that is wildly unreasonable, illogical, or inappropriate. At this stage, there is no question of the court exercising a 'broad discretion'. It should also be noted that it is very much possible that a provision may be ambiguous and lead to interpretations that both or all lead to an absurdity. In that event, "the court may depart from the ordinary effect of the words to the extent necessary to remove the absurdity and to give effect to the true intention of the legislature". See the dictum of Innes CJ, n 83 above.

African model of devolution is the best there is. As argued below, it has its own significant challenges that need to be addressed and which should be avoided when addressing the Zimbabwean framework. Reference is made to the South African Constitution mainly because it has ample flesh and clarity on the composition and powers of the sub-national spheres and their relationship to the national sphere. For the purposes of this paper, the focus is on the provincial sphere, the reason being that in Zimbabwe it is in this sphere that most of the challenges reside.

The Constitution of South Africa creates three levels of government - national, provincial and local government spheres.[85] There is a legislative arm in each province which is conferred with clear legislative authority.[86] There is also a provincial executive that is accountable to the provincial legislature.[87] In terms of section 105(2) of the South African Constitution, the legislative chamber consists of between 30-80 members elected from that province indirectly in that they are elected on the province's segment of the national common voters' roll.[88]

The provincial legislature in South Africa has a number of competencies including the power to consider, pass, amend and reject any Bill before it;[89] and the power to initiate or prepare legislation except money Bills.[90] The provincial legislature has the authority to play an oversight role over the exercise of executive power;[91] and over any provincial organ of state.[92]

The executive authority at the provincial level is exercised by the premier together with members of the executive in implementing provincial and national legislation. The premier is chosen from the membership of the provincial legislature by the legislature at its first sitting after an election.[93] The premier so elected can serve a maximum of two terms.[94]

A provincial legislature may remove a premier from office by passing a vote of no confidence by a two thirds majority. A premier may be removed from office if s/he commits a serious violation of the Constitution, is guilty of

85 Chapter 6 of the South African constitution.
86 Section 104 of the South African Constitution.
87 Section 133(2) of the South African Constitution.
88 Section 105(1)(b) of the South African Constitution
89 Section 114(1)(a) of the Constitution of South Africa.
90 Section 114(1)(b) of the Constitution of South Africa.
91 Section 114(2)(b)(i) of the Constitution of South Africa.
92 Section 114(2)(b)(ii) of the Constitution of South Africa.
93 Section 128(1) of the Constitution of South Africa.
94 Section 130(2) of the Constitution of South Africa.

serious misconduct or is unable to perform the functions of office.[95]

It has been argued that it is ideal that leadership at a decentralised level be regularly and directly elected for it to be representative.[96] The importance of this cannot be over emphasised. Leadership should be representative of the voters by being directly and democratically elected and thus accountable to its constituents. The democratic deficit inherent in the indirect South African system has been pointed out in scholarship. February, for example, observes in this regard:

> "However, since the 1999 general elections, a significant weakness has emerged within the electoral system. South Africa's use of proportional representation based on a closed-party-list system seems to generate a deficit in accountability, particularly in the context of one-party dominance."[97]

The South African model is not lean on detail when it comes to provincial executive functions/powers. The premier has the power to assent to and sign Bills;[98]and may ask the provincial legislature to consider a Bill's constitutionality.[99] S/he also can refer a Bill to the Constitutional Court for the consideration of its constitutionality.[100] The premier can summon the legislature for an extraordinary sitting to conduct special business.[101] The premier can also appoint commissions of inquiry[102] and also call for a referendum in the province to be held in accordance with national legislation.[103]

The premier is also invested with a power to appoint members of the executive council (MECs).[104] The premier also assigns functions to each executive member that has been appointed by him or her.[105] The executive

95 Section 130(3)(a)-(c) of the Constitution of South Africa.

96 A Feinstein "Decentralisation: The South African Experience", Global Powers Governance, (2015), available at http://www.gpgovernance.net/wp-content/uploads/2015/07/Decentralisaion-the-south-african-experience-feinstein1.pdf (accessed 20 June, 2017).

97 J. February, "Could a change in South Africa's electoral system be the missing link for greater accountability in government?" Institute of Security Studies, (2014) available at https://issafrica.org/iss-today/why-south-africas-electoral-system-needs-to-be-reviewed (accessed on 20 June, 2017). See also G Solik "Is South Africa's Electoral System in Urgent Need of Change?", *The Journal of the Helen Suzman Foundation* Issue 72, (2014) p. 40, available at http://www.myvotecounts.org.za/wp-content/uploads/2014/04/GSolik_72_April.pdf (accessed 20 June, 2017).

98 Section 127(2)(a) of the Constitution of South Africa.

99 Section 127(2)(b) of the Constitution of South Africa.

100 Section 127(2)(c) of the Constitution of South Africa.

101 Section 127(2)(d) of the Constitution of South Africa.

102 Section 127(2)(e) of the Constitution of South Africa.

103 Section 127(2)(f) of the Constitution of South Africa.

104 Section 132(2) of the Constitution of South Africa.

105 Section 132(2) of the Constitution of South Africa.

administers the province; develops and implements provincial policy; coordinates the functions of provincial administration and departments; prepares and initiates provincial legislation; and does those functions assigned by the national Constitution or an Act of Parliament.[106]

A South African provincial executive has significant and far-reaching duties including the duty to implement national legislation within each provincial sphere in respect of administration of indigenous forests; agriculture; airports (other than international or national airports); animal control and diseases; casinos, racing, gambling and wagering, (excluding lotteries and sports pools); consumer protection; cultural matters; disaster management; education at all levels (except tertiary education); environment; health services; housing; industrial promotion, language policy and regulation of official languages, among other things.[107]

Section 146(2)-(6) provides for a mechanism for the resolution of conflict arising from provincial legislation and national legislation. This mechanism provides for national legislation to prevail over provincial legislation if any of the following conditions obtains: national legislation deals with a matter different provincial legislation (by different legislatures) cannot effectively regulate;[108]national legislation deals with a matter, that to be dealt with effectively, requires uniformity across the nation, and the national legislation provides the uniformity by establishing standards and norms, frameworks, or national policies;[109]national legislation is necessary for maintenance of national security, maintenance of economic unity, protection of the common market in respect of the movement of goods, services, capital and labour, promotion of economic activities across provincial boundaries, promotion of equal opportunity or equal access to government services or the protection of the environment.[110]

National legislation also prevails over provincial legislation if the former is to prevent an unreasonable action by a province that is prejudicial to the economic, health or security of another province or the country as a whole[111] or impedes the implementation of a national economic policy.[112]

The South African Constitution also provides a clear relationship

106 See sections 114 and 125 of the Constitution South Africa.
107 See section 125(2)(b) of the Constitution of South Africa as read with Schedule 4.
108 Section 146(2)(a) of the South African Constitution.
109 Section 146(2)(b) (i) - (iii) of the South African Constitution.
110 Section 146(2)(c) (i)-(vi) of the South African Constitution.
111 Section 146(3)(a) of the South African Constitution.
112 Section 146(3)(b) of the South African Constitution.

between the national and the provincial spheres. Parliament is made up of the National Assembly and the National Council of Provinces.[113] Every province is entitled to send to the national legislature ten (10) members that are called delegates.[114] These constitute the National Council of Provinces. The members of the National Council of Provinces also double up as members of their respective provinces' legislatures. The creation of the National Council of Provinces gives provinces a stake at national level, thus providing two-way pollination instead of a one way, top down, Zimbabwean approach.

The South African model of devolution (specifically at the provincial sphere) clearly has advantages and weakness. One of the weaknesses, as already intimated, is the failure to provide for a leadership that is directly elected by the voters within the province. This is a democratic deficit that Zimbabwe should avoid. The competencies of a provincial government are relatively extensive compared to the Zimbabwean framework and are thus worth emulating and improved on in Zimbabwe. But above all, it is the clarity and the level of detail in the South African Constitution that is inspiring.

5. CONCLUSION

The adoption of the new Constitution has been a misadventure in so far as devolution is concerned. The constitutional framework of provincial government creates an unclear, conflicted, democratically deficient, and potentially dysfunctional provincial governments with no clearly defined functions and no law making and implementation powers and institutions.

The local authority sphere does not fare well either. While the 'constitutionalisation' of this sphere is welcome, the unsatisfactory nature of the constitutional framework and the ZANU-PF government's reluctance to operationalise devolution has resulted in the continuation of the pre-2013 framework in practice. The minister of local government continues to enjoy extensive powers over local authorities contrary to the letter and spirit of the Constitution. In essence, devolution is nothing but a mirage and only significant amendments to chapter 14 addressing the concerns raised in this paper will create a truly devolved framework of government not the façade presented in the current Constitution.

113 Section 42(1)(a) and (b) of the South African Constitution.
114 Section 60 of the South African Constitution.