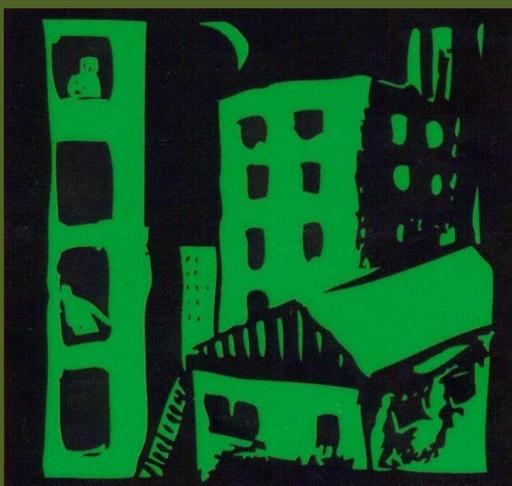


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Devolution of power in Zimbabwe's new constitutional order: Opportunities and potential constraints

PHILANI MOYO

*Senior Lecturer, Department of
Sociology and Anthropology, University
of Fort Hare, South Africa*

CORNELIAS NCUBE

*Postdoctoral Fellow, School of Social
Sciences, University of KwaZulu-Natal,
South Africa*

1 INTRODUCTION

Many countries in sub-Saharan Africa have adopted constitutions which legislate different forms of decentralisation for their governance structures and systems. This currency and desirability for decentralisation is built on a consensus of African governments, international development agencies and civil society organisations that see it as a democratic system of government which advances citizen participation in human development. This consensus further sees decentralisation as a key for local

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democratisation in Africa since it brings a locally responsive government closer to the people and makes government more accountable to local people. Although there are four main forms of decentralisation, namely, administrative, political, fiscal and market,¹ many African governments have chosen to implement political decentralisation (devolution) and administrative decentralisation (deconcentration)² with those running devolved systems of government being seen and acclaimed as more democratic.³ These are the democratic credentials usually showered on Kenya and Uganda which run devolved governments, as well as South Africa which uses a unique decentralisation model based on a three tier co-operative government structure. Of late, Zimbabwe has joined this group of African countries with constitutions that legislate a devolved governance system. Zimbabwe's new Constitution adopted in May 2013 states that governmental powers and responsibilities must be devolved between the national government, provincial and metropolitan councils and local authorities which are expected to ensure good governance by being effective, transparent, accountable and responsive to the needs of local people.⁴ This introduction of devolution of power as a new governance model in Zimbabwe replaces deconcentration on the premise that devolution is a more democratic, citizen centred, participatory, more transparent, accountable and locally relevant development focussed governance system.

This article examines the opportunities and potential constraints associated with this transition from deconcentration to a three tier devolved system of governance. It does this through answering the following questions: To what extent will this reconfiguration of the State from centralisation to devolution give citizens more power to elect representatives who understand and champion their local development needs? Will local needs, aspirations, influence and drive the development agenda as opposed to the current top-down deconcentration model of development? Which consequentialist and deontological benefits will be derived from devolution of power? Is devolution going to influence equitable and fair exploitation of local resources for the benefit of all communities including "marginalised" provinces, such as, Matabeleland, Midlands and Manicaland? Does an anti-devolutionist ZANU-PF dominated government have the political will to fully implement devolution? Or maybe devolution of power will remain a symbolic constitutional provision while the deconcentration status quo remains?

2 DECENTRALISATION UNPACKED: DECONCENTRATION, DELEGATION AND DEVOLUTION GLOBAL DEBATES

Decentralisation is a broad and contested concept. One of the main (and early) proponents of this concept, Dennis A Rondinelli, defines it as the transfer of

¹ Rondinelli DA & Nellis J R "Assessing decentralization policies in developing countries: The case for cautious optimism" (1986) 4(1) *Development Policy Review* 3 at 5.

² Crawford G "Making democracy a reality? The politics of decentralisation and the limits to local democracy in Ghana" (2009) 27(1) *Journal of Contemporary African Studies* 57 at 59.

³ Ribot J *Waiting for democracy: The politics of choice in natural resource decentralisation* (Washington DC: World Resources Institute 2004).

⁴ Constitution of Zimbabwe (2013).

responsibility for planning, management and resource raising and allocation from the central government and its agencies to: (a) field units of central government ministries or agencies, (b) subordinate units or levels of government, (c) semi-autonomous public authorities or corporations, (d) area-wide, regional or functional authorities, or (e) non-governmental private or voluntary organizations.⁵ At the heart of decentralisation is the transfer of authority and responsibility for public functions from the central government to provincial units of the same department or other local government units linked to the central office.

The evident complexity and multifaceted nature of decentralisation has compelled a number of scholars and institutions to attempt to unpack the concept.⁶ Writing in 1981, Dennis A. Rondinelli argued that different types of decentralisation can be distinguished based on the degree of responsibility for and discretion in decision making that is transferred by the central government to provincial and local government units. This is made possible by the mere fact that degrees of decentralised responsibility can vary, from simply adjusting workloads within central government organizations to the divesting of all government responsibilities for performing a set of what were previously considered to be central government public sector functions. Using this analytical framework, Rondinelli distinguished four major types of decentralisation, namely, deconcentration, delegation, devolution, and privatisation.

Robust dissection and critique of Rondinelli's four broad categories of decentralisation in the early 1980s by people, such as, Friedman,⁷ Harris,⁸ Leonard,⁹ and Okafor,¹⁰ prompted him and John R. Nellis to further disaggregate his four types of decentralisation, offering a more nuanced typology which presumed four new categories of decentralisation: administrative, political, fiscal and market.¹¹ Under this typology, administrative decentralisation (which includes deconcentration and delegation) refers to the transfer of limited policy making, planning and management functions (and resources) from central to local levels (with authority over decision making and use of resources remaining at the centre) while political decentralization refers to the statutory devolution of some political, economic and local policy making

⁵ Rondinelli DA "Administrative decentralisation and economic development: the Sudan's experiment with devolution" (1981) 19(4) *The Journal of Modern African Studies* 595.

⁶ See among others, Rondinelli (1981) at 596-599; Crawford (2009) at 59.; Rondinelli DA, Nellis JR & Cheema G S *Decentralisation in developing countries: A review of recent experience* (World Bank 1983) 1 at 13-32; World Bank "Decentralization and sub-national regional economics" (2001). Available at <http://www1.worldbank.org/publicsector/decentralization/what.htm> (accessed 1 January 2015); Bardhan P "Decentralization of governance and development" (2002) 16(4) *The Journal of Economic Perspectives* 185.

⁷ Friedman H "Local political alternatives for decentralized development" in Cheema GS & Rondinelli D A (eds) *Decentralization and development: policy implementation in developing countries* (Beverly Hills: Sage Publications 1983) at 35.

⁸ Harris R "Centralization and decentralization in Latin America" in Cheema & Rondinelli (1983) at 183

⁹ Leonard D "Inter-organizational linkages for decentralized rural development: overcoming administrative weaknesses" in Cheema & Rondinelli (eds) (1983) at 271.

¹⁰ Okafor F "Community involvement in rural development: A field study in the Bendel State of Nigeria" (1982) 17(2) *Community Development Journal* 134 at 135-137.

¹¹ Rondinelli & Nellis (1986) at 3

powers to democratically elected local governments. Devolution of some of these powers and authority is done within formal political structures and institutionalised by constitutional means. On the other hand, fiscal decentralisation includes efforts to change the distribution and sources of resources available to local governments while market decentralisation involves attempts to transfer substantive control over resource allocation to non-State actors.¹²

A number of sub-Saharan African countries (including Zimbabwe) have differently pursued the administrative type of decentralisation either by transferring selected public functions to sub-regional entities or field office units supervised by central government (deconcentration) or by transferring defined authority, responsibility and financial resources to semi-autonomous sub-regional entities that are ultimately accountable to the central office (delegation).¹³ For example, Ghana's 1992 Constitution (article 35, 6d) stipulates that the State shall take appropriate measures to decentralise the administrative and financial machinery of government to the regions and districts. Malawi also has similar administrative decentralisation provisions in section 146 and chapter XIV of its 1994 Constitution¹⁴ as does Zambia under part VIII of its 1996 Constitution.¹⁵ A variety of domestic political concerns, democratisation ambitions, internal and external demands for good governance pushed by local civil society, active citizenry, international donor agencies and western governments have pressurised African governments to adopt varying administrative decentralisation governance structures and systems. For example, in Malawi administrative decentralisation was motivated by political concerns and democratisation ambitions as the country moved from the autocratic centralised governance system of Kamuzu Banda to the first democratically elected government of Bakili Muluzi operating under the aegis of a new democratic constitution. Bakili Muluzi's administration was anchored in decentralisation which was a key component of Malawi's political reform agenda, a good governance principle and a mechanism for cultivating and fostering a democratic political culture and democratic public institutions.

A different set of political considerations motivated decentralisation in Mozambique and Uganda where opening political opportunities at the local levels allowed greater participation by all former warring factions in the governance of the country while in some countries, such as Ethiopia, administrative decentralisation has been a response to pressures from regional or ethnic groups for more control or participation in the political process.¹⁶ Ethiopia's motivation for decentralisation was thus a political strategy for bringing the State closer to different regional and ethnic groups by bringing government closer to the people thereby broadening direct citizen participation and influence in public affairs in conformity with the principles of democracy. Chikulo adds that such a democratisation agenda promotes equality

¹² Rondenelli & Nellis (1986) at 3

¹³ World Bank (2001).

¹⁴ Government of Malawi *A review of the Malawi decentralisation process: lessons from selected districts* (2010).

¹⁵ Government of Zambia *The national decentralisation policy: towards empowering the people* (2002).

¹⁶ World Bank (2001).

through equal representation of different political, religious and ethnic groups in decision making and development administration.¹⁷ The benefits ordinary people and the poor derive from decentralisation also speak to the democratisation agenda since their direct participation in development is viewed as a human right through a liberal lens. It also leads to their empowerment as Ingham and Kalam note:

Decentralization can empower and enable the poor, permitting greater choice and stricter control over their rights. It is thus one way of breaking into what Chambers terms the 'deprivation trap', that is, that mutually reinforcing situation of powerlessness, vulnerability, physical weakness, poverty and isolation into which the majority of the world's poor are locked.¹⁸

These views are shared and further promoted across Africa by the World Bank which states that citizen participation in local affairs creates a virtuous circle that "ensures that majority needs are heard" and "helps increase the voice of poor people in local affairs".¹⁹ This popular citizen participation ideology and "political wave" is also closely tied to the spread of multi-party political systems in many sub-Saharan African countries. At the heart of "multi-partyism" is citizen participation which aims to bring more local voice in local decision making. This local voice which is considered a hallmark of good governance is imagined or seen to be one of the main drivers of locally relevant service delivery and local development. It is also seen as one of the vehicles that "enables the public to participate effectively in the management of public affairs and is thus conducive to local democracy".²⁰ However, as Goetz and Gaventa observe, "participation and the expression of 'voice' do not necessarily mean that people are either heard or listened to – they can simply be ignored".²¹ Furthermore, in some countries, Bossuyt and Gould argue, "participation can be used as an 'incorporation strategy' where local populations are encouraged to participate in political structures that have no real control over development resources".²² This suggests that for people's participation to be real and effective in a decentralised system, their local government and provincial or county government must be accountable to locals. It is only through such local accountability and transparency that decentralisation can realistically be seen as providing a platform for local citizens to effectively influence decision making in local affairs.

Political decentralisation (specifically, devolution of power) aims to statutorily transfer some political power, local policy making and administrative responsibilities and resources from central government to citizens and/or their democratically elected regional, provincial or local authorities.²³ One of its main aims is to capacitate sub-

¹⁷ Chikulo B C "Decentralisation and the role of the state in the future" in Mandaza I (ed) *Governance and human development in Southern Africa: Selected Essays* (Harare: Southern Africa Printing and Publishing House: 1998) 81 at 83.

¹⁸ Ingham B & Kalam A K M "Decentralisation and development: Theory and evidence from Bangladesh" (1992) 12 *Public Administration and Development* at 373.

¹⁹ World Bank *World development report 2000/2001: attacking poverty* (2001).

²⁰ Chikulo (1998) 81 at 83.

²¹ Cited in Crawford (2009) at 59.

²² Cited in Crawford (2009) at 59.

²³ Balogun MJ "The scope for popular participation in decentralisation, community governance and development: towards a new paradigm of centre-periphery relations" (2000) 21(1) *Regional Development*

national tiers of government to respond to problems of a purely local nature without waiting for policy instructions and directives from the central government.²⁴ In comparison to deconcentration discussed above, it is clear that power and space are at the heart of devolution since it is anchored in wide dispersal of authority to local authorities. It strives for democratic decentralisation through its reconstitution of centres of power within a particular State. “It provides a process at the local level through which diverse interests can be heard and negotiated and resource allocation decisions can be made based on public discussions”.²⁵ The presence of such a local process subscribes to the ideals of democratic local governance since it observes and respects pluralism in policy making, and policy choices, and emphasises greater active citizen participation in decision making which is a sign of respect for their political rights and civil liberties. Furthermore, a devolved system “emphasizes the presence of mechanisms for fair local political competition, transparency, and accountability, government processes that are open to the public, responsible to the public, and governed by the rule of law”.²⁶ All these tenets demonstrate that devolution endeavours to cultivate a culture of good local political processes and good local governance both of which are central elements of democratisation.

What has motivated some sub-Saharan African countries, such as, Kenya and Zimbabwe, to pursue devolution of power? First, some of the reasons discussed above partly explain the legislation of devolution in Zimbabwe and Kenya. Secondly, the political upheavals that emanated from the contested legitimacy of governments that followed the violent 2007 Kenya elections and the equally violent 2008 elections in Zimbabwe provided the impetus for devolved systems of governance. Devolution of power was therefore legislated to address the democratic deficits related to the disputed elections, but also broadly to address issues of citizen participation in local development and local government accountability. For example, Kenya’s Constitution (chapter 2.6:2) emphasises that devolution of power provisions are an effort to encourage democratic control in local decision making, democratic local governance, popular participation in local development initiatives, financial sobriety and communitarianism.²⁷ These principles of devolution contained in Kenya’s and Uganda’s constitutions are replicated in Zimbabwe’s new Constitution which states that while the country remains unitary, governmental power and functions are devolved through a three tier co-operative governance system that includes the national government, provincial and metropolitan councils as well as local authorities.²⁸ The legal architecture and structure of this devolved three tier co-operative governance system are described below.

Dialogue 154; Juma OD “Devolution of power: Building a case for local government in the new constitutional order” (2003) 12 *University of Nairobi Law Journal* 209 at 210.

²⁴ Rondinelli, Nellis & Cheema (1983).

²⁵ Barnett CC, Minis H P & Van Sant J “Democratic decentralization” (1997). Available at http://www.rti.org/pubs/Democr_Decen.PDF (accessed 1 January 2015).

²⁶ Barnett, Minis & Van Sant (1997).

²⁷ The Kenyan Constitution (2010); see also Constitution of the Republic of Uganda (1995).

²⁸ Constitution of Zimbabwe (2013).

3 LEGAL ARCHITECTURE OF DEVOLUTION OF POWER IN ZIMBABWE

Devolution of power is enshrined in Zimbabwe's new 2013 Constitution as one of the country's founding values and principles. Zimbabwe's statutory objectives for the devolution of governmental powers and responsibilities include:

- (a) to give powers of local governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them
- (b) to promote democratic, effective, transparent, accountable and coherent government of Zimbabwe as a whole
- (c) to preserve and foster the peace, national unity and indivisibility of Zimbabwe
- (d) to recognise the right of communities to manage their own affairs and to further their development
- (e) to ensure the equitable sharing of local and national resources
- (f) to transfer responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.²⁹

In accordance with the above devolution constitutional vision, political power, policy making decisions, resource raising and distribution, as well as administrative and governance responsibilities are meant to be devolved through three tiers of government. These include: (1) the national government; (2) provincial and metropolitan councils; and (3) local authorities (which include urban councils and rural councils). The national government is composed of national Ministers who constitute the Cabinet (the executive arm of government). These Cabinet Ministers are directly elected Members of the National Assembly (MPs), Senators or non-constituency Ministers appointed by the President in terms of the new Constitution. The second tier of government – provincial and metropolitan councils – is composed of directly elected and proportional representation public representatives elected using constitutional provisions contained in chapter 14 (2:268) (for provincial councils) and chapter 14 (2:269) (for metropolitan councils).³⁰ The third (and by no means the least) tier of government is that of the local authorities. These are the grassroots level urban councils and rural councils. These councils are composed of ward councillors directly elected using constitutional provisions contained in chapter 14 (3:277) read together with chapter 14 (3:274) (for urban councils) and chapter 14 (3:275) (for rural councils).³¹ In broad terms, rural councils are expected to represent and manage the affairs of people in rural areas within districts into which Zimbabwe's provinces are divided, while urban councils do the same in urban areas. The small size of wards from which councillors (who make up the council) are drawn enables councillors to be in continuous close contact with their constituents. This potentially provides an avenue for local citizens to access their political representatives thereby enabling their voice to be heard in decision making that affects their local service delivery and local development.

In theory, Zimbabwe's three tiers of government are predicated on a constitutional provision within which they will implement their functions in a co-operative manner. A co-operative framework in which the three tiers of government inform, consult, harmonise and co-ordinate on matters of common national and public interest is thus imagined in the new Constitution. While such co-operation among the

²⁹ Constitution of Zimbabwe (2013).

³⁰ Constitution of Zimbabwe (2013).

³¹ Constitution of Zimbabwe (2013).

three tiers is possible, its success or failure will depend on how an Act of Parliament (which is yet to be crafted, debated and enacted) will define the mechanisms and procedures to facilitate co-ordination between central government, provincial and metropolitan councils and local authorities.

4 OPPORTUNITIES FOR DEVOLUTION IN ZIMBABWE: CONSEQUENTIALIST AND DEONTOLOGICAL DEBATES

There are several perceived and real benefits of devolution in Zimbabwe. This optimistic view is informed by two mutually reinforcing broad arguments for the utility of devolution as advanced by pro-devolutionists. On the one hand, there is the consequentialist argument that supports devolution because of the positive, good or desirable effects mainly in the form of an “economic dividend” envisioned from such a governance model. On the other hand, is the deontological argument that justifies devolution on the basis of some inherently valuable moral or normative ethical value, such as “autonomy.”³² We engage these consequentialist and deontological arguments in this section from both a general theoretical angle and a more specific reference to the Zimbabwe context.

Consequentialist arguments for devolution emanate from territorial grievances in a centralised state that is characterised by acute spatially differentiated patterns of development between regions. The grievances could range from differentiated patterns of income and unemployment to poor infrastructure and low business or economic activity. A major consequential benefit of devolution therefore is an “economic dividend” that accrues to regions or territories that are perceived to be disadvantaged by centralised models of development. Devolution is therefore a mechanism that facilitates the attainment of territorial justice.³³ In the Zimbabwe context, provinces that strongly advocated for devolution during the constitution making process (and its eventual inclusion in the Constitution) include Manicaland, Midlands and Matabeleland which have long blamed their underdeveloped public and social infrastructure (compared to other provinces) on a deliberate policy of marginalisation by central government which favours other provinces for political expediency. Moyo notes that even though these provinces have an array of natural resources which could have been used for the socio-economic benefit of locals and public infrastructure investment, the ZANU-PF central government systematically neglected and impoverished them as it spirited away natural resources (and proceeds) for the benefit of other provinces.³⁴ For example, Manicaland has the country’s biggest and most profitable sugar estates, commercial logging forests and huge alluvial diamond deposits (in Marange) but there is no diamond driven or sugar profits driven socio-economic development or public

³² Kay A “Evaluating devolution in Wales” (2003) 51(1) *Political Studies* 51 at 51.

³³ Morgan K “Devolution and development: Territorial justice and the north-south divide” (2006) 36(1) *Publius: The Journal of Federalism* 189 at 203.

³⁴ Moyo P “The devolution of power debate and the Zimbabwe national project” in Ndlovu-Gatsheni SJ & Ndhlovu F *Nationalism and national projects in Southern Africa: New critical reflections* (Pretoria: Africa Institute of South Africa 2013) at 140.

infrastructure investment in that province. The same can be said of Midlands province where there is no evidence of platinum driven or gold profits driven social and public infrastructure investments.³⁵ In Matabeleland, there are the examples of the Hwange Thermal Power Station and the Kariba Hydro-Electricity Power Station. The majority of the schools and homes in the surrounding Hwange, Kariba and Binga districts have no electricity, yet these two major electricity power stations generate and supply a lot of electricity to the national grid. Furthermore, “three of the country’s busiest border posts (Beitbridge, Plumtree and Kazungula) that remit high amounts of revenue to the state” as well as “several tourist resort centres such as the Victoria Falls, Hwange National Park and Matopos, which similarly remit the highest amounts of foreign currency to the state”³⁶ are located in Matabeleland provinces yet this region remains one of the poorest and least developed. Given these imbalances and inequitable distribution of revenue derived from exploitation of national natural resources, it is not surprising that calls for devolution were more prominent in these “marginalised” provinces (Matabeleland, Midlands and Manicaland) which anticipated territorial justice through devolution. In these three provinces, devolution is thus seen as a potential avenue for accessing “economic dividends” from their territorial natural resources endowments. It is however important to note that even if devolution was to yield uniform economic dividends to all regions in the country, the claimed “territorial endowments” (be it in Matabeleland, Midlands or Manicaland) would not, of necessity and for national strategic reasons, be under the control of provincial or metropolitan councils. This is an idealism that would need to be managed or controlled under the new devolution dispensation.

How then, from a consequentialist perspective, is an “economic dividend” supposed to be achieved by devolution? According to Kevin Morgan,³⁷ devolution delivers economic dividends when it permits provincial governments to design and deliver developmental policies that respond to needs and interests of provincial citizens; when it empowers local people to deploy localised knowledge to address local challenges; and through enhancing locally centred accountability and effective service delivery. Several factors are at play in order for these benefits to be realised. First, local governments are argued to have the comparative advantage of proximity to the needs of people, what Pranab Bardhan calls “informational advantage”.³⁸ In other words, the imperative to politically account to regional or provincial citizens renders it prudent for devolved government representatives to use local knowledge and local resources to improve the socio-economic conditions of locals. In a centralised political system local developmental preferences compete for policy space with issues from other localities. If the local issues are perceived as unthreatening to the re-election of the government,

³⁵ Moyo (2013) at 140.

³⁶ Mhlanga B “Devolution – the ‘ticklish’ subject: the ‘northern problem’ and the national question in Zimbabwe” (2012) 1(1) *Ubuntu: Journal of Conflict Transformation* 206 at 215; see also by same author “Zimbabwe’s post-colonial antinomies as the ‘northern problem’: policy projections” (2010) 19(4) *African Security Review* 104 at 106.

³⁷ Morgan (2006) at 194.

³⁸ Bardhan P “Decentralization of governance and development” (2002) 16(4) *The Journal of Economic Perspectives* 185 at 191.

then responsiveness and accountability can be negated. Secondly, it is argued that devolution may strengthen accountability mechanisms; especially where sub-governments are permitted to progressively compete with each other to come up with innovative ways of delivering public services efficiently and less costlier.³⁹ Thirdly, devolution decongests central governments thus lowering the risk of meddling in local issues. This in turn facilitates efficient coordination and ensures speedy implementation of policy at the local level.

From a deontological perspective, devolution is justified on the basis that “self-government” is an inherent normative ethical value for humankind. Devolution in this sense transfers power to sub-governments so that they may have the capacity to autonomously or discretionarily make fundamental policy decisions without interference from the central government.⁴⁰ Autonomy, in turn, can facilitate the achievement of a “democratic dividend”. In other words, the deontological benefit of devolution is that it may address a nation’s “democratic deficit” by promoting democratic representation and legitimacy.⁴¹ Vernon Bogdanor adds that devolution addresses the democratic deficit when the new regional governments create new centres of power or separate political wills better placed to represent the interests of the people in different regions.⁴² Self-government or territorial autonomy, in this case, should not be conflated with secessionism. One of the fears of devolution propagated by ZANU-PF and other anti-devolutionists is that devolution in Zimbabwe would threaten the unitary character of the State by encouraging regional secessionist politics, especially in Matabeleland.⁴³ This narrative is weak on several counts. First, most of the existing secessionist inclined movements operate in cyberspace and outside the country with no known political or organisational structures. Those that have some presence within the country have no organisational structures and do not command any meaningful grassroots support to realise this political vision anytime soon. Secondly, the current ZANU-PF 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. In particular, locals from 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 other provinces. Thirdly, the broader territorial grievances of people from Matabeleland, despite being peppered with demands for “political voice”, have largely been of a consequentialist nature, i.e.; seeking a share of the country’s economic dividend.

³⁹ Bardhan (2002) at 191.

⁴⁰ Leonardi R, Nanetti RY & Putnam RD “Devolution as a political process: The case of Italy” (1981) 11(1) *Publius: The Journal of Federalism* 95 at 97.

⁴¹ Kay (2003) at 51; Bradbury J “The devolution debate in Wales during the Major governments: the politics of a developing union state?” (2007) 8(1) *Regional and Federal Studies* 120 at 120-121.

⁴² Bogdanor V “Devolution: Decentralisation or disintegration” (1999) 70(2) *The Political Quarterly* 185 at 185.

⁴³ See Moyo (2013) at 140.

To that end, one of the benefits of devolution is that were it to fulfil the economic (and emotional) needs of disgruntled citizens in specific provinces (especially in Matabeleland, Midlands and Manicaland) it may, as Vernon Bogdanor argues, become the end goal against central government as demands for secession recede. As Bogdanor adds, "... the best way to strengthen national unity is to give away to [powerful centrifugal forces] a little so as to disarm them".⁴⁴ Seen from that angle, national unity, and therefore democracy in Zimbabwe, can be potentially enhanced as sub-governments mobilise local consent and cooperation in the implementation of national policies. Similarly, Jonathan Bradbury argues that the sense that through devolution a people is in control of its economic fortunes may promote local patriotism that remains anchored to the loyalty of the overarching framework of the unitary state.⁴⁵ Put differently, by diffusing social and political tensions⁴⁶ in Zimbabwe, devolution has potential to elevate economic nationalism over ethno-regional nationalism.

5 DEVOLUTION OF POWER CONSTRAINTS IN ZIMBABWE: EMERGING EVIDENCE

Laws and policies have concrete and symbolic dimensions.⁴⁷ Seen from this perspective, chapter 14 of Zimbabwe's new Constitution thus provides the symbolic (as well as legal) articulation of the devolution framework. It outlines the constitutionally defined three tiers of government as well as some of their powers and responsibilities. The concrete dimension of the devolution legal framework refers to both its implementation and the realisation of anticipated benefits. The process of turning symbolic devolution statutory articulations into concrete implementation dimensions is fraught with uncertainties and constraints, which is why Vernon Bogdanor equates devolution to a "mystery tour".⁴⁸ The constraints of implementing devolution in Zimbabwe are discussed in this section. This discussion proceeds not just from a theoretical purview but also from the specific political opportunity based structures and constraints that are being presented by the new Zimbabwe government that came into power after the July 2013 harmonised elections. The constraints are divided into two categories, namely, formal resources (laws, rules and money) and informal resources (technical expertise, public opinion and the politics of political parties).⁴⁹ First, in terms of the *formal resources* (i.e., law, rules and money), there is a devolution caveat in the Constitution which allows one to begin to question the substance, breadth and depth of Zimbabwe's devolution legal framework. The Constitution says that "whenever appropriate, governmental powers and responsibilities must be devolved to

⁴⁴ Bogdanor (1999) at 194.

⁴⁵ Bradbury J "The devolution debate in Wales during the major governments: The politics of a developing union state? (2007) 8(1) *Regional and Federal Studies* 120 at 131-132.

⁴⁶ Bardhan (2002) at 185.

⁴⁷ Mitchell J "Rights and devolution" (2011). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1916597&download=yes (accessed 1 January 2015).

⁴⁸ Bogdanor (1999) at 193.

⁴⁹ Leonardi, Nanetti & Putnam (1981) at 97.

provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively”.⁵⁰ The political message and implications of this caveat are clear. Since the national government remains the supreme tier of government, it means that the Constitution guarantees it power to determine whether a particular province has the appropriate competence to efficiently and effectively govern local affairs and institute locally relevant socio-economic development interventions for the benefit of the majority of the local citizens. Such enormous statutory power given to national government over provincial and metropolitan councils and local authorities means that their initial constitution and survival thereafter will always be at the mercy of a ZANU-PF national government which retains oversight power and authority.

Secondly, even before an Act of Parliament to provide appropriate legal powers, mechanisms and procedures to facilitate co-ordination between central government, provincial and metropolitan councils and local authorities is drafted, debated and enacted, there is already evidence that the anti-devolutionist ZANU-PF led government is determined to subvert and undermine the country’s devolution of power constitutional provisions.⁵¹ We say so because in appointing the new Cabinet, President Robert Mugabe picked ten ZANU-PF members and appointed them Ministers of State for Provincial Affairs responsible for each of the country’s ten provinces. The appointment of these Ministers of State for Provincial Affairs has raised fears that they will effectively suppress devolution of power. As the International Crisis Group’s Trevor Maisiri notes;

The appointment of Ministers of State for Provincial Affairs has dashed hopes of decentralising power. These provincial ministers will report directly to the President, hence their interaction with provincial councils or mayors of respective areas will be superficial. They will override every programme set to be taken in their respective provinces.⁵²

Furthermore, the appointment of these Ministers will create leadership hierarchy challenges in the provinces since the provinces will have provincial councils led by Provincial Council Chairpersons. So who will be the political and administrative head of a province? Is it the Provincial Council Chairperson or relevant Minister of State for Provincial Affairs? This opaque leadership structure created by the anti-devolutionist ZANUPF will have direct implications for local policy making, service delivery and local development.

⁵⁰ Constitution of Zimbabwe (2013).

⁵¹ In March 2014, a former Minister in the Inclusive Government and currently MDC-T Member of Parliament for Lobengula in Bulawayo, Samuel Sipepa Nkomo, filed a court case to the Constitutional Court (ConCourt) against government for failing to expeditiously enact an Act of Parliament to give effect to the full operationalization of a devolved government. The case is still pending. Zimbabwe Independent “Cabinet ministers sued over devolution” (2014). Available at <http://www.theindependent.co.zw/2014/03/28/cabinet-ministers-sued-devolution/> (accessed 1 January 2015).

⁵² Cited in Bhebhe N “President Mugabe ‘dumps’ devolution” (2013). Available at <http://www.southerneye.co.zw/2013/09/12/president-mugabe-dumps-devolution/> (accessed 1 January 2015).

Thirdly, due to ZANU-PF's preference for a centralised unitary state (as opposed to a devolved unitary state), it is likely that Zimbabwe's new Act of Parliament to define devolution mechanisms and procedures will confer mere administrative delegation of functions of the central government to [provincial and metropolitan councils].⁵³ The Act could be couched in the language of autonomy and local participation but grossly lacking the same. If this happens, the danger is that many policy decisions of the provincial councils may be ignored or overruled by the ZANU-PF central government and its line ministries. It is possible therefore that the central government may bulldoze through policy issues that in law are the prerogative of provincial and metropolitan governments. For this reason Bogdanor has argued the need for "a court to police the division" between various tiers of a devolved government.⁵⁴ Thus issues that would have to be clearly resolved are which government institution is primarily responsible for the implementation of the devolution programme and who, in the event of friction between provincial and metropolitan councils and respective sector ministries, has the final arbitral powers. Spreading the powers of oversight and arbitration to various key players may have the advantage of ensuring that no super ministry or agency takes absolute control of the proposed sub-governments.⁵⁵

Fourthly, the financing architecture of the devolved system of governance would have to be well thought out. A weak public expenditure allocation system or one that is not transparent, equitable and accountable may cripple the capacity of provincial councils (provincial governments) to take control of formulating and implementing policies in their localities. Kevin Morgan argues that in order for devolution to achieve territorial justice, allocation of public expenditure to sub-governments should be based on a needs based assessment by region and not by population.⁵⁶ Because devolution does not imply discrimination against or preferential treatment of regions, as may be the case in a targeted regional economic policy, narrowing regional disparities in Zimbabwe may remain an elusive dream. This may fuel the criticism that devolution is not working or may even exacerbate perceptions of favouritism, even where none exists. Positive discrimination of sub-governments through skewed allocation of public expenditure to underdeveloped regions like Matabeleland would prove problematic. Herein lies the paradox of devolution: it would treat unequals as equal thus defeating the notion of equality or territorial justice.⁵⁷ The solution would be to proceed on the basis of the dictum that "it is people not places which are poor"⁵⁸ and devise a transparent and equal public expenditure allocation system across provincial governments for nationally derived policies with different provincial governments funding locally derived policy choices from revenue raised locally through, for example, local service rates and taxes.

⁵³ Bardhan (2002) at 186.

⁵⁴ Bogdanor (1999) at 188.

⁵⁵ Mitchinson R "Devolution in Uganda: An experiment in local service delivery" (2003) 23(3) *Public Administration and Development* 241 at 242.

⁵⁶ Morgan K "The new territorial politics: Rivalry and justice in post-devolution Britain" (2001) 35(4) *Regional Studies* 343 at 347.

⁵⁷ Morgan (2006) at 196.

⁵⁸ Morgan (2001) at 347.

Lastly, Zimbabwe is currently on an economic recovery path after a decade of economic meltdown and stagflation. The spectre of continued economic sanctions from countries, such as, the USA, Australia, Canada, and the European Union etc means that all three tiers of government will experience financial strain thus hindering expeditious delivery of public services in the foreseeable future. This scenario will undermine the full implementation of devolution of power as provincial and metropolitan governments as well as local authorities will be partly judged as having failed or successfully implemented devolution based on whether they have designed locally relevant development policies and raised enough resources to implement these for the benefit of local citizens.

The *informal resources* (technical expertise, public opinion and the politics of political parties) that may constrain Zimbabwe's implementation of devolution are not necessarily linked to the political structures of an anti-devolutionist ZANU-PF dominated government (even a pro-devolutionist MDC government would have faced the same informal constraints). The discussion here therefore adopts a general cautionary approach, one that assumes that ZANU-PF may not amend the Constitution to reverse or subvert the devolution legal framework. Thus, first, there would be need for capacity building to strengthen the technical expertise of staff in all provincial and metropolitan councils with regard to policy formulation and implementation. Institutions of democracy and mechanisms of political accountability at these sub-governments would have to be equally strengthened. As Bardhan argues, where these institutions and mechanisms are weak, delivery of public services may be captured by elite groups in all three tiers of government resulting in decentralised authoritarianism and despotism.⁵⁹ Secondly, there would be need for continued central government supervision to ensure that the practice of devolution does not mutate into geo-ethnic or linguistic crevices so that all citizens regardless of ethnic and linguistic identities have equal opportunities to pursue an "economic dividend" in whatever region they want. Failure to rein-in territorial provincial councils (provincial governments) that may directly or indirectly promote tribal xenophobia could undermine national unity rendering ZANU-PF's basis for an anti-devolution policy self-fulfilling. For this reason it is crucial that provincial or metropolitan based policies reflect the broader national economic and socio-political policies.

Thirdly, public opinion about the performance of provincial and metropolitan councils would be crucial in the next five to ten years. Leonardi *et al* demonstrate this using the case of devolution in Italy and arguing that although public support may be minimal at the beginning, it is important that sub-governments quickly connect with their constituencies so that the devolution euphoria does not turn into cynicism.⁶⁰ Solid public support for the sub-governments, in addition to support from civil society and various regional interest groups, and strong cooperation between provincial and metropolitan councils, further argue Leonardi *et al*, are the sub-governments' bargaining tools for more devolved powers. The point about bargaining is important

⁵⁹ Bardhan (2002) at 188-193.

⁶⁰ Leonardi, Nanetti & Putnam (1981) at 114-116.

insofar as it should shape the devolution discourse in Zimbabwe from being viewed as an asymmetrical transfer of policy or powers from top to bottom, to being about bargaining and negotiation.⁶¹ This would ensure that the process of devolution, even if it proceeds on a minimalist trajectory (few reforms at the start), attains maximum devolution reforms through progressive disputation between different tiers of government and between different stakeholders.

Lastly, the nature of party politics after the 2013 elections would be crucial for the success of devolution in Zimbabwe. We alluded above to the possibility of amendments to the Constitution by ZANU-PF that could stall devolution. However, it is also possible that ZANU-PF may decide to capitalise on its electoral gains and implement devolution to its fullest so as to create a buffer zone against the MDC opposition who have previously combined advocacy for devolution with criticising ZANU-PF's policies. That said, the combined formal and informal constraints on devolution, as discussed above, however mean that the odds in favour of a maximalist implementation of devolution are very high. Devolving power from Harare will most likely proceed on an incremental and conflict ridden trajectory, with the anti-devolutionist ZANU-PF central government retaining the big interlocutor status, and constantly exhibiting controlling and centralising instincts.

6 CONCLUSION

This article has discussed opportunities for and constraints upon implementing devolution of power under Zimbabwe's new constitutional order that was ushered in by its new 2013 Constitution. It is argued that the constitutional provision for devolution of power is a governance milestone in Zimbabwe, both in terms of the consequential "economic dividend" expected from it by citizens from "marginalised" provinces and in terms of the deontological or normative ethical value of "self-government" which is "fashionable" in contemporary debates on citizen participation in good governance systems. Among the numerous formal and informal constraints on devolution discussed, it is posited that the main potential constraint on achieving a fully devolved unitary Zimbabwe state will be lack of or minimal political will for it by a ZANU-PF dominated government whose anti-devolution stance has been publicly articulated by its most senior officials. With an over two-thirds majority in Parliament and the Senate, ZANU-PF may decide to retain the status quo of a centralised system of governance or to enact an Act of Parliament whose legal mechanisms and procedures will not facilitate comprehensive devolution of power. In that eventuality, the resulting provincial governments and local authorities will not be autonomous but merely function as supervisors and implementers of central government designed development policies which might not be locally relevant. The nature of Zimbabwean politics and the political opportunity structure of an anti-devolutionist ZANU-PF dominated government thus suggest an uncertain and conflict ridden political process towards devolution of power

⁶¹ Marinetto M "The settlement and process of devolution: Territorial politics and governance under the Welsh assembly" (2001) 49(2) *Political Studies* 306 at 311.

whose full implementation and expected benefits may take some time to be realised (if at all). In conclusion it is noted that in the event that ZANU-PF proceeds with sincerity to fully implement devolution, this process might adopt a minimalist approach as opposed to a maximalist approach because of ZANU-PF's politics that are inherently inclined towards centralisation.