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Can local government steer socio-economic transformation in Zimbabwe? Analyzing historical trends and gazing into the future.

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Summary/Abstract

Zimbabwe's local government has historically had a subservient role to central government. The current constitution-making process presents an opportunity to address this historical underperformance of local government in terms of transforming and democratizing development processes and relations. Local government weaknesses, to varying degrees, lie not only in the law but also in socio-political and economic capacity epitomized in a governance culture (particularly evident in ZANU PF's legacy of misrule) limiting local government's developmental potential. Any law reform should not exclusively focus on empowering local government in relation to the other members of the family of public institutions without addressing citizens' empowerment and issues of horizontal accountability.

Acronyms

ACPDT:	Africa Community Publishing and Development Authority.
ARDCZ:	Association of Rural District Councils of Zimbabwe.
CBCC:	Capacity Building Coordinating Committee.
CBOs:	Community-Based Organizations.
CPIA:	Centre for Peace Initiatives in Africa.
CSOs:	Civil Society Organizations.
EFZ:	Evangelical Fellowship of Zimbabwe.
GRZ:	Government of the Republic of Zimbabwe.
MDPESA:	Municipal Development Partnership East and Southern Africa.
NAC:	National Action Committee (for the Integrated Rural Water Supply and Sanitation Program).
NGOs:	Non-Governmental Organizations.
PDCs/RDDCs:	Provincial Development/Rural District Development Committees.
RDCCBP:	Rural District Councils Capacity Building Program.
RDCs:	Rural District Councils.
RUAF:	Resource Centers for Urban Agriculture and Food Security.
SAPES:	Southern Africa Political and Economic Series.
UCAZ:	Urban Councils Association of Zimbabwe.
UNECA:	United Nations Economic Commission for Africa.
ZANLA:	Zimbabwe African National Liberation Army.
ZANU PF:	Zimbabwe African National Union- Patriotic Front.
ZCBC:	Zimbabwe Catholic Bishops' Conference.
ZCC:	Zimbabwe Council of Churches.
ZINWA:	Zimbabwe National Water Authority.

Table of Contents

Summary/Abstract	i
Acronyms	i
Introduction.....	Error! Bookmark not defined.
History of local government and highlights of law reform	Error! Bookmark not defined.
Contextualizing local government in Zimbabwe.	Error! Bookmark not defined.
Elaborating the local government legislative context.....	Error! Bookmark not defined.
Table 1: Local and Central Government Power Differentials.....	9
Table 2: Summary of Local Government Institutional Changes.....	10
Constraints to and inadequacies of decentralization	12
Local government structures.....	14
Traditional leadership and local government.....	15
Civil society organizations and local government	17
Table 3: NGO activities in local authority areas, Mashonaland West	19
Local government's developmental potential.....	21
Key issues for law reform	22
Conclusion: Does the current political dispensation in Zimbabwe allow for change?.....	26
References.....	28

Introduction

In both pre and post-independence Zimbabwe, local government has been a terrain for sub-national governance conflicts and innovations. The question posed by this paper engages with whether those processes of conflict and innovation have generated lessons that present-day local governments, key stakeholders and citizens in general can draw upon to consolidate the role that local government can play in Zimbabwe's development. Local government has at once been an extension of central state power and also a means to organize or steer sub-national development. Before 1980 the latter role of local government found more expression and generated real economic development outcomes in European Areas while the former (penetration of state power) was evident in its blunt form in African Native Areas. Africans' experience of such blunt state power inspired, among others, the liberation struggle with local government being seen as a symbol of colonial maladministration. Given such a history it is critical to ask whether local government at present can initiate alternative models for Zimbabwe's social, political and economic development. What kind of state-citizen and citizen-citizen relations should local government steer? How should the appropriation of citizen agency by political parties and state institutions be dealt with in local government? Can local governments mobilize relevant local traditions of participation in their steering of local development processes? What changes need to be made regarding the 'ownership structure and culture' of local government in Zimbabwe?

The above questions are raised as a contribution to a search for post-crisis¹ local government legitimacy regarding the generation and distribution of socio-economic benefits and provision of basic services with community participation. The notion of transformation used in the 'title question' refers to radical alteration of state-citizen and citizen-citizen relations at sub-national level aimed at enabling the meeting of local needs (welfare, social, economic and physical infrastructure, services and employment) and thus improving living conditions or quality of life. The pursuit of improved living conditions is what I define in this paper as development. Where local governments steer such an agenda (within and across their areas of jurisdiction) they become developmental. We return to these issues in later parts of the paper but suffice to mention that the discussion on law and institutional reform in local government is approached from the perspective of creating developmental local government.

¹ From the late 1990s Zimbabwe has been in the midst of a social, economic and political crisis. The beginnings of the end of the crisis were marked by the March 2008 harmonized elections which ZANU PF effectively lost and thus heralded possibilities of real change. Additional sign-posts towards a post-crisis reality include the signing of a global political agreement (GPA) in September 2008 and the formation of the shaky Government of National Unity in February 2009.

In many ways some of the questions in paragraph one and the notions of transformation and development above have informed post-1980 local government reforms. I note and elaborate on the main changes as follows; the one local government Ministry, the one-city policy, amalgamation and deracialization of rural local government, application of universal adult suffrage and the harmonization of traditional and elected local government structures. I will return to these in the body of the paper to highlight policy and legislative progression (change and continuity) from the pre-1980 period. Suffice however to note that the profile of local government as rural and urban development facilitator has been lifted further through implementation of a decentralization policy from the mid-1980s. Economic and political liberalization processes in the 1990s gave the policy further impetus.

Sub-national local governance spaces have allowed interaction amongst development organizations within and outside the public sector viz state-citizen and citizen relations. Before and after independence, a number of non-state development organizations have interacted to articulate and implement development activities. Such interaction has acted to shape and in turn be shaped by the nature of local government structures and capacities. Nationalist activities before independence and democratization forces after independence have essentially been nurtured by civil society organizations of varying shapes and sizes. For instance, nationalists mobilized citizens against local government institutions and programmes, which they saw as symbols of colonial oppression.

After independence and specifically since 1999, Zimbabwean democratizing processes were initially successful at the local government level where independent and opposition candidates were elected as Councilors. From the perspective of central government (pre and post-1980) local government susceptibility to capture by oppositional forces appears to have informed limiting of its power. As noted by de Valk and Wekwete (1990) changes in the nature of the state influenced the form and functions of local government. In this paper, I highlight some of the ways in which central government's attitude towards local government has been shaped by struggles waged by citizens for space and identity within local government. In doing so I connect relevant arguments to the call for constitutionalizing local government especially the need to protect it as a sphere in which citizens can participate in processes affecting their lives. An argument is developed in this paper that, the crisis of legitimacy on the part of central government (before and after 1980) derailed local government consolidation through fracturing socio-political relations, destroying local government identity and capacity.

History of local government and highlights of law reform

The history of formal local government in Zimbabwe is generally traced from the arrival of the British South Africa Company (BSAC) in 1890. However, some analysts observe that local governance institutions that existed before 1890 deserve recognition and classification as forms of local government (ACPDT 2002). The two points of view regarding when to begin the story of local government in Zimbabwe are not necessarily opposed. They however provide insights into the very conception of local government in the country from both a central and a local perspective. Changes in the policy and law are a useful framework to use in tracing the history of local government. This is because these capture the essence, structures and functions of local government.

The first formally established local authority was the Salisbury Sanitary Board in 1891 (Jordan 1984, Makumbe 1998). The necessary legal instrument was however only enacted in 1894 (Ordinance 2) followed by the first Municipal Law of 1897. Hlatshwayo (1998) interprets the time lag or delay between setting up Salisbury Sanitary Board and Ordinance 2 as an indication that local government was established grudgingly. In rural areas, the creation of Gwai and Shangani ‘reserves’ under the Matabeleland Order in Council of 1894 signified the beginnings of colonial local government (Hammar 2003). Subsequent orders, legislations and commissions entrenched white expropriation of African lands till the 1930 Land Apportionment Act shaping the development of local government in the process.

In terms of urban local government legislation before independence changes were made through the enactment of a Municipal Act in 1930 and the Urban Councils Act in 1973. In big urban local authorities like Salisbury and Bulawayo, a number of local Town Management Boards were created. From the 1930s through independence more local government legislative and policy changes were witnessed in African than European areas. This was part of managing the native question and ensuring that the African rural economy remained second and subsidiary to the white economic sector as a basis for assuring availability of African labor for the latter (see Moyana 1984). As a consequence, local government institutions in African areas were not autonomous, did not pursue local interests, lacked local legitimacy and resources compared to those in European areas. Urban and rural areas were divided and development pursued in ways that at once subjugated African interests or ambitions and were managed by structures dominated by privileged groups. For instance, the 1973 Urban Councils Act provided for the control of African Townships by rate-paying whites, ‘colored’ and Asians. Between 1940 and 1970 Advisory Boards were established in African Townships with a purely consultative role. In non-African areas within Municipal areas like Harare (Salisbury) smaller local authorities invariably known as Area and Town Management Boards were

established. Most of these were incorporated in 1972 before the enactment of the 1973 Urban Councils Act (Jordan 1984).

As such, local government legislation provided for racially divided urban and rural areas. The divisions were both spatial and institutional. From an historical perspective it is important to note that the first formal local government body was established in an urbanizing context. It was only in 1937 that rural local government in a formal sense was given form under the Native Councils Act, amended in 1943 and followed by a 1957 African Councils Act. The creation of Native and later African Councils was progressive. In 1940 there were only 23 Native Councils, increasing to 58 by 1958 before dropping to 52 by 1965. In 1979 there were 220 African Councils (Jordan 1984, Makumbe 1998) and it was anticipated that 20 more African Councils would have made the full complement. African Councils mainly presided over social service or welfare issues as agricultural development and other infrastructural services were provided by the Department of African Agriculture and the African Development Fund², both directly run from the District Commissioner's Office (Matumbike 2009). Such an approach reinforced direct white control of the main African economic levers.

Pre-independence developments of local government were intricately linked to the land and race questions. The colonial government generally treated the natives as 'child-like' and imposed centrally-defined programmes on African and Native Councils. Any pretence at promoting African self-government was overrun by white supremacist policies (see de Valk and Wekwete 1990). African Natives increasingly saw self-help as denial of national resources to the black majority. Evidence was seen in denial of participation, linking of local government to traditional authorities and the use of chiefs to subdue and contradict nationalist aspirations. As such, national contests for political power between Africans and white settlers (de-colonization) shaped the discourse and practice of local government. In due course, African and Native Councils became synonymous with all unpopular measures and regulations instituted for Africans especially herd control, soil conservation (*nhamo yemakandiwa*³), land use planning and land tenure changes (de Valk and Wekwete 1990). Local government facilities like schools, dip tanks, bridges and clinics, among others, were targeted for destruction during the liberation struggle as a way of resisting and sabotaging the colonial government.

² Current District Development Fund (DDF). ADF was mainly funded from levies on African crop produce (NAC 2002).

³ Conservation works included back-breaking preparation of contour ridges (*makandiwa*) in people's own fields which was seen as unjust/problematic (*nhamo*).

Yoshikuni (2006) describes Africans' experiences of segregationist landscapes in urban areas particularly state control of African housing. These experiences contributed to the shaping of community action even before the 1920s (Ibid). Rural and urban Africans were therefore 'the other', a social history characterized by under-provision of services, political exclusion and socio-economic ill-treatment (Auret 1995, Yoshikuni 2006, Moyana 1984) with local government literally reduced to an instrument of the centre. The struggles that the pre-independence political economy inspired were critical in shaping African identities and aspirations at individual, community and national levels. Africans' experiences with local government institutional processes were influential in defining the agenda of and participation in the liberation struggle. In essence, the liberation struggle progressively delegitimized colonial local government creating a basis for starting anew come 1980. The war contradicted African Councils and rationalized the deposition of traditional leaders. By contradicting and destabilizing African Councils the liberation struggle (essentially ZANU PF as *de facto* appropriator of a national process) installed structures around which early independence local government reforms were built. This sowed the seeds of party political appropriation of local government.

Since 1980 a number of local government reforms have been instituted. In 1980 government created a new single Local Government Ministry and brought all three types of local government institutions (for urban, commercial farming and former Tribal Trust Lands) and all legislation (Acts and Statutory Instruments) under the single Ministry. Tribal Trust Lands were renamed Communal Lands and 55 District Councils were created from the amalgamation of about 220 African Councils. New local government legislation was enacted (District Councils and Urban Councils Acts) to capture the new political dispensation particularly universal adult suffrage and the one city concept. A 1984 Prime Minister's Directive guided the establishment of grassroots participation structures and provided a framework for coordination of government institutions' participation in rural development. The Directive was enacted into the Provincial Councils and Administration Act (1985) creating the office of Provincial Governor and defining the functions of provincial structures of government.

Duality in rural local government, where commercial farming areas were governed by 45 Rural Councils with all Communal Lands falling under 55 District Councils, was addressed through the enactment of the Rural District Councils (Amalgamation) Act in 1988. The Act was only implemented from 1993 when 45 Rural Councils were amalgamated with District Councils to form 55 Rural District Councils (RDCs). The number of RDCs has since risen to 60 as new ones were created by subdividing bigger RDCs. Abolition of African Councils to create District Councils was

accompanied by transfer of powers of traditional leaders to the new Councils (planning and land allocation), elected Village Development Committees and Community Courts (judicial). However, lobbying and continued practical influence resulted in legislative changes to harmonize modern local government and traditional institutions through the Traditional Leaders Act of 2000.

Reforms were complemented by considerable grant funding and loan support from central government through the Public Sector Investment Program (PSIP) and other funding avenues. At the same time, government implemented major national programmes in local authority areas and facilitated capacity building programmes. Some of the main national programmes were the Integrated Rural Water Supply and Sanitation Program (IWRSSP), Communal Area Management Program for Indigenous Resources (CAMPFIRE), Community Action Project (CAP), District Environmental Action Planning (DEAP), South Eastern Dry Areas Program (SEDAP) and the Rural Development Fund (RDF). The leadership of implementation processes for these programs was mainly from central government institutions, which acted to stifle local authority visibility and growth. In terms of capacity building initiatives the main examples include the Pilot District Support Program (PDSP), the RDC Engineer Support Program, Rural District Councils Capacity Building Program (RDCCBP), Urban I and II and a host of other programs supported by major donors.

Economic liberalization in the 1990s was associated with a redefinition of the functions of central government in favor of doing less direct planning and implementation of development programs, offering of services including pressure to reduce subsidies seen as increasing budget deficits and thus a cause of fiscal indiscipline. This provided an impetus for the decentralization agenda stalled in the late 1980s largely because it was felt that rural local authorities lacked adequate capacity to receive substantial functions transferred from the centre. As an example of loss of faith in rural local authorities, education sector salary and grant administration functions were recentralized and School Development Committees (SDCs) managed closely by the Ministry responsible for education were established from 1992⁴. Despite such shifts, the momentum for decentralization remained and picked with the launch of the RDCCBP in 1996. It culminated in the adoption of the thirteen principles of decentralization (Government of Zimbabwe 1996). According to Government of Zimbabwe et al (2002) decentralization aimed to promote democracy (public participation and civic responsibility), to increase efficiency and effectiveness service delivery and to reduce the role of central government in local services provision and management. Implementation of decentralization would thus entail creating an enabling environment, building the capacities of local authorities and transferring functions from Ministries to local authorities (*Ibid*). What needs to be noted however, is

⁴ SDCs established under Statutory Instrument 87 of 1992.

that the decentralization debate was articulated more in relation to rural than urban local government.

The early independence policy of racial reconciliation particularly the protection of private property (large scale commercial farms and industrial capital) within the framework of the Lancaster House Agreement delayed addressing of both questions. This policy framework created a local government process rich in the rhetoric of political participation based on addressing development disparities largely through donor funding and centrally planned programs. Development programs were mainly implemented through field administration structures. While there were very good reasons for such an approach this resulted in lopsided and dependent growth model for local government. It is a sector which increasingly looks up and out, values external and upward rather than local and downward accountability (Chatiza 2008) and uses the criterion of admin-political representation more than facilitation of livelihood sustainability.

Contextualizing local government in Zimbabwe.

A 1953 document defined the basis of local government as ‘...a genuine community or its creation...and [that] no definition of local government is more suited or urgently needed in Africa than that of a community building agency’ (Government of Southern Rhodesia 1953:2). This followed a comparative government sponsored study whose findings were used to facilitate a fairly robust debate on local government (Government of Southern Rhodesia 1953). The study influenced government’s view of community building as separate from political representation, tribal authority as a form of local government different from central government and that local government would flow from voluntary movement towards meeting felt needs (Ibid). Government also sought to avoid dependence and cautioned against spoon-feeding as follows:

‘...the serious dangers of breeding a species of sub-economic man...ignorant of elementary responsibilities and regarding government as an inexhaustible source of benefits...the problem calls for a re-examination of the present system with a view to assigning a definite sphere of finance and self-help to African Local Government’ (Government of Southern Rhodesia 1953:6).

As noted in the above section, sound conceptualization of colonial local government in African areas was undone by racist separate development something which the post-1980 conception of local government sought to deal with. Unfortunately, post-independence conceptualization of local government exhibits some shifting confusion. A paper presented by the Minister responsible for local government at a 1992 rural development conference captures such a shift reasonably. Minister Joseph Msika defined local government as ‘...the administration of local affairs by local

people elected by the registered residents of a given locality' (Msika 1992:104). He further extended this confusion by emphasizing that '...in Zimbabwe, local government entails the division of functions and responsibilities between central and local government' before adding that '...the final accountability of local Councils remains with central government, which created local government in the first place...local does not extend to include the concept of sovereign self-rule for local authorities' (Ibid). A paper by the Ministry responsible for local government refers to creation of a lower tier of governance to perform functions that central government is too far to perform effectively and efficiently (Government of Zimbabwe 2002), which confirms the centre-local functional division, alluded to by Minister Msika. However the same Ministry paper defines local government as the creation of participatory and democratic structures capable of identifying local needs and translating them into programmes of action.

The shifting confusion is evident in the contradiction between the concepts of local affairs or needs and locally elected decision makers on the one hand and division of functions between central and local government as well as the notion of transfer of functions inherent in the decentralization debate on the other. This is further exaggerated by categorical reference to final accountability lying with central government 'which creates local government' i.e. not the residents. This is a structural contradiction in Zimbabwe's local government, which is not accidental but shows the undemocratic nature of the local governance environment. Central government vacillates between a devolution thrust (administering local affairs by locally elected officials) and a delegation one (performing tasks transferred from or assigned by the centre).

As noted by de Valk and Wekwete (1990, see also Brand 1991) this shows the limits of attempts at democratizing rural local government without radical economic reform. The latter would allow local generation of practical socio-economic benefits critical to the 1953 conception of local government as community builder. The current weak conception of local government finds expression in the law and other institutions. It reflects elements of self-interest on the part of the black political elite characteristic of shallow democratization. The status of local government in the family of public institutions is therefore not sufficiently entrenched. Ministries, government departments and state enterprises impinge on local government functional autonomy. At the same time, the party caucus system where most crucial decisions are often made without citizen consultation undermines autonomy and local accountability of Council decision-making spaces.

Elaborating the local government legislative context

Local government in Zimbabwe has always been legislative and therefore not an independent sphere of government (see Zimbabwe Institute 2005). There are two principal pieces of local government law. These are the Rural District Councils Act (1996) and Urban Councils Act (1996), which are administered by the Ministry responsible for local government. The Ministry coordinates the activities of local government bodies making them extensions of central government (Ibid). It is responsible for administering the Regional Town and Country Planning (1976), Traditional Leaders Act (2000) and the Provincial Councils and Administration Act (1985). These five pieces of legislation are at the core of local government in Zimbabwe in terms of defining functions, powers, structures and procedures.

Other sector laws also impinge on local government. The 1961 Local Government Act (Government of Southern Rhodesia 1961) cited legislation on fruit and vegetable vending, public health, advertisements, shopping hours and liquor issues. Sector laws define standards often arrived at with limited local authority input. In essence, while local government law provides for establishment and supervision of Councils sector laws detail standards that Councils should attain. Post-1980 sector laws central to local government functions include those governing land, public health, education, water, road-traffic, administration of justice, business/trade licensing, public utilities (e.g. electricity) and, among others, mining. These laws are administered by Ministries other than the one responsible for local government.

Zimbabwe's legislative environment imposes structural constraints for sound local governance. One is the lack of constitutional provision and the second is the mosaic of institutions that often contradict local government independence and constrain its soundness. This is made worse when one considers that Zimbabwe's law-making is based on the principle of precedence where each time a law is passed the new law supersedes previous laws.

In analyzing the adequacy and/or appropriateness of legal provisions for local government in Zimbabwe one framework often used is a comparison of the powers of central government and local government (see Table 1). Such analyses use existing local government legislation to identify the powers and on the basis of simple tallying verdicts on the 'balance of power' are pronounced generally as favoring central government (ACPDIT 2002). Others look at the foundational nature of the powers as regards import and effect in relation to Parliamentary legitimacy, legal and strategic soundness, significance to national development and relevance in terms of the coordination function. For instance, Hlatshwayo (1998) noted about 200 instances i

However, the simple valuation of instances of ‘the Minister/President shall or may’ without analyzing the strategic rationalization of such provisions may not be helpful. Although conceptually and practically nebulous, one rationalization is captured in the concept of the ‘public interest’. To the extent that there are cases of procedural and substantive failings in Councils (Zimbabwe Institute 2005) and that Councils individually and collectively fail to address such failings, ‘central interference’ needs to be problematized in terms of holding Councils accountable. I will return to this strategic question later in the paper.

Table 1: Local and Central Government Power Differentials

Powers of local government.	Powers of central government.
<ol style="list-style-type: none"> 1. Plan and implement local development. 2. Manage water and sanitation. 3. Provide and maintain roads. 4. Manage education and health. 5. Manage refuse removal. 6. Provide housing and serviced stands. 7. Manage cemeteries. 8. Carry out social welfare. 	<ol style="list-style-type: none"> 1. Establish, abolish or alter local government status. 2. Fix the area of a local authority (number of wards and thus Councilors). 3. Approve the getting or taking over of land by the local authority. 4. Carry out planning and estate development. 5. Appoint the Local Government Board. 6. Appoint a Valuation Board. 7. Appoint auditors. 8. Appoint an investigating team where an inquiry is needed. 9. Suspend or dismiss councilors who have committed serious offences. 10. Appoint a commissioner to run the affairs of a Council when there are no councilors. 11. Give general direction on policy. 12. Authorize anything not covered by the Act. 13. Publish model by-laws, direct Councils to adopt specific by-laws and approve Council developed by-laws. 14. Suspend a Council resolution when it goes against the interests of residents. 15. Correct any omissions. 16. Establish bus stops. 17. Regulate accounting and loans. 18. Prescribe amounts beyond which Councils should seek tender.

	<p>19. Approve income generating projects and cooperatives.</p> <p>20. Direct Councils to pay their debts and reduce deficits.</p> <p>21. State what types of local charges can be raised without approval.</p>
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Source: adapted from ACPDT, (2002:48)

The other framework relates to comparison of local government institutions over time and across national territories. For Zimbabwe, the usual comparisons are with the South African local government system, and among others, Commonwealth local government principles. Increasingly, the evaluation of Zimbabwe’s local government is in relation to grounded or localized notions of good governance or democracy driven by citizen expectations and experiences. Relevant law reforms are often inspired by such comparisons. As Adedeji and Hyden (1974) caution there is a risk of using formal, statutory or conventional criteria for exclusion in an unconscious fashion. As such, this analysis has combined both formal statutory criteria and empirical evidence for discussing gaps in the local government legal framework. The section on civil society organizations below highlights some of the experiences that inform local government law reform.

Another framework often used relates to structures that exist to pursue and govern sub-national development planning and management. The structures of local government are juxtaposed to central government and those of other institutions (e.g. traditional leaders, civil society organisations etc). Using such a framework a Capacity Building Coordinating Committee (CBCC 1999) concluded that civil society organizations, among others, were creating parallel structures, which were out-competing local government ones. Analyses from this perspective often blame the law for not protecting local development institutions generally and local authorities particularly from central ‘bullying’. Some commentators argue that because local government in Zimbabwe is created through Acts of Parliament and not the constitution, it makes it vulnerable to political manipulation (Hlatshwayo 1998, Zimbabwe Institute 2005).

Table 2: Summary of Local Government Institutional Changes

Key area.	Main changes.
Elections & Participation.	<ol style="list-style-type: none"> 1. Alignment of Council election with universal adult suffrage and age of majority (18 years from 21 years before). Registered voter in a Council area rather than property ownership as eligibility criteria. 2. Citizens vote for Councilors. Between 2002 and 2008 also voted for Executive Mayors in urban local authorities. Ceremonial Mayor chosen by fellow Councilors from March 2008.

	<ol style="list-style-type: none"> 3. Citizens can attend full Council meetings, access minutes and view plans on public display.
Internal organization.	<ol style="list-style-type: none"> 1. Based on a committee system. Councils relatively free to devise and implement own methods of discharging their duties. 2. Powers and functions defined in the law with some expansion from 49 to 54 between the 1980 and 1996 Urban Councils Act. RDC Act (1996) 1st schedule identifies 64 functions. 3. Urban and rural local authority one-city and amalgamation processes. Territory-based poverty pockets remain i.e. high density or ex-African Townships for urban and communal areas for rural local government.
Autonomy.	<ol style="list-style-type: none"> 1. President and Minister responsible for local government have substantial powers and legally empowered to intervene to pursue public interest. 2. Dissolution of Councils (Harare, Mutare and Chegutu), among others in recent years reflected the insecurity of local government. 3. For urban local authorities Local Government Board (1996 Act) presents an institutional layer that takes away Council powers as bodies corporate that can hire and fire staff. Rural local authorities are shackled by line Ministries in service provision. Ministry of local government also has functionaries at Province and District whose work overlaps with that of Council. 4. Traditional leadership institution presides over sub-district policy spaces (Ward and Village Assemblies) as part of harmonizing elected and traditional leadership. The law has not resolved conflict between the two.
Local government versus other structures and processes of government.	<ol style="list-style-type: none"> 1. Reasonable institutional and legal transformation from 1980 (deracialization). 2. Capacity building (from 1993) and decentralization (first in 1984 and then in 1996) gave profile and visibility to local government. 3. Implementation of some national programmes through Councils. 4. State-owned Enterprises (e.g. ZINWA) often assigned Council functions.

Decentralization.	<ol style="list-style-type: none"> 1. 1984 Prime Minister’s Directive, Thirteen Principles of 1996 and Decentralization Implementation Strategy in 2001 albeit without specific decentralization law. 2. Implementation has generally suffered ‘start-stop-start’ implementation.
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Local government’s dependence on central government, enshrined in the law is seen as weakening local governance. For instance, de Valk and Wekwete (1990) note that local government conditions were such that central government had a lot of powers. In their view the conditions ‘...open up the possibility that the Council be used by central government institutions for the purpose of implementing their priorities...they form important constraints to exercising decentralized authority, thereby hampering the process of participation’ (1990:96-7).

Constraints to and inadequacies of decentralization

An area often ignored in local government legislative reform is about natural resources and how people relate to and utilize them (de Valk and Wekwete 1990). The decentralization processes have not effectively addressed key fundamentals prompting some to assert that ‘...decentralization is not a panacea to problems constraining rural development’ (Cormack 1992:119, see also Chatiza 2008). The ineffectiveness of Zimbabwe’s decentralization has also been made worse by a general focus on rural local government, which has been seen as lacking capacity partly to explain the inevitability and perhaps desirability of centralization (Chatiza 2008).

Based on an analysis of major development programmes (CAMPFIRE, PDSP, RDCCBP and CAP) implemented in rural local authority areas Chatiza (2008) concludes that they made significant contributions to participation but failed to alter the underlying political economy that sustains poverty in Zimbabwe. He further notes that this explains why most innovations introduced during the life of the programmes were discontinued when external funding stopped. The net result is shallow political representation and participation without real socio-economic transformation.

In October 1996 Provincial Heads of Ministries identified a number of inadequacies in Zimbabwe’s decentralization (RDCCBP 1996). These included lack of consultation, communication and information dissemination. The process was also affected by limited stakeholder commitment especially Parliament and the political party (ZANU PF). Central government Ministries also lacked understanding of Rural District Councils, which (RDCs) also lacked capacities and resources. The Heads also noted that the national decentralization process was not synchronized with timeframes in

individual Ministries in part also affected by a lack of adequate resources to implement decentralization and absence of a national vision on the (desired) structure of government after decentralization. This meant Ministry programs were not tied to a common national institutional structure. Lack of progress in implementing decentralization in the Ministry responsible for local government also discouraged other Ministries. The Heads added that this lack of progress raised fears that the Ministry responsible for local government was going to be a super Ministry. Additionally, the exclusion of Parastatals from the decentralization process was seen as a source of problems in future.

Some of the limits to the potential of local government in poverty reduction have been observed as lying in the law. A number of areas in local government law have been identified as in need of change. The main one has been in terms of the status of local government in the system of government institutions. Based on a history of central government interference, which has in some cases caused paralysis in local government, a call has been made since the mid-1990s for local government to be provided for in the constitution (Hlatshwayo 1998). A call has also been made for the harmonization of existing legislation to come up with one local government law. By 2007 the Ministry responsible for local government had come up with a framework for a single local government Act. The reasoning behind harmonization flows from the desire to eliminate perceived disparities in levels of autonomy and to provide for a uniform legal framework for rural and urban local authorities. Such a rationalization flows from post-independence local government reform projects which saw amalgamation of small African Councils into more viable District Councils (1980 District Councils Act), amalgamation of Rural Councils and District Councils (1988 Rural District Councils Act) and the harmonization of elected and traditional leadership structures (2000 Traditional Leaders Act).

An argument can therefore be made that constitutionalization of local government will decisively deal with the subjugation of local government to the form and political orientation of central government. This way the powers of the national executive will be limited in relation to the creation, functioning and dissolution of local government units. A related advantage of constitutionalization is addressing centre-local functional overlaps by providing for local government as a distinct sphere of government rather than the current situation where central government defines it through ordinary legislation. At the same time, constitutionalizing local government will ensure that local government law is not as subservient to other legislation as is the case at present. Constitutionalization is also seen as critical to deepening the institution of local government as a space for citizens.

Local government structures

Zimbabwe is a unitary state (Hlatshwayo 1998) divided into 10 administrative provinces. Eight of the provinces are rural and two are urban. The urban provinces (Bulawayo and Harare) were only recently established in 2005. Rural provinces are made up of a number of urban and rural local authorities (Councils). Councils are divided into wards (and villages in rural and neighborhoods in urban areas) with each ward represented by a Councilor elected on a simple majority. Ward boundaries in rural areas do not always coincide with a mosaic of hereditary chieftainships, which are subdivided into areas governed by headmen and village heads. Unlike rural villages, urban neighborhoods lack distinct social cohesion due to population diversity and more individualized socio-economic structures.

As a sphere of government, local government is not provided for in the constitution of Zimbabwe. Curiously, however the institutions of chiefs and provincial governors are provided for. Local government in Zimbabwe operates in a delegated capacity performing functions conferred upon it by central government. The functions, while defined in law are open to central government variation and reassignment to other state agencies. Local government existence and sustenance is largely dependent on central government, which has historically operated more through field administration than Councils. Pre and post-independence policy and structural developments have sustained center-local relations that undermine the emergence of sound local governance.

Existing local government structures and their operation further illuminate the status of local government and its potential to address the development deficit. The main structures include a Ministry, a provincial layer and local authorities (Councils and Boards). The Ministry is responsible for administering local government legislation, which in practical terms entails coordinating policy formulation, implementation and evaluation. The Ministry's functions entail leading the development and management of the local government sector, representing the sector's interests at national and subnational levels in relation to other arms of government. For instance, at provincial and district levels Ministry staff (the Provincial and District Administrators) are the most senior representatives of central government with a responsibility to coordinate multi-agency development planning and management through chairing the Provincial and Rural District Development Committees (PDCs/RDDCs).

Zimbabwe's provincial tier of government is headed by a Resident Minister (Provincial Governor) who is a presidential appointee. The institution of Governor was created under the Provincial Councils and Administration Act to perform coordinative, consultative and political functions seen as essential for the speedy and coordinated development of districts and provinces

(GRZ 2002). Governors chair Provincial Councils whose membership is drawn from Councils, Parliamentarians and party leaders within a province. The PDC (chaired by a PA) is the technical arm of the Provincial Council and is made up of heads of government departments. Civil society organizations and the private sector also take part in PDC and RDDC meetings usually through the subcommittees that are aligned to and headed by sector Ministries relevant to the work they undertake.

Local authorities (Rural District and Urban Councils) form the local government structure closest to citizens. Zimbabwe currently has sixty (60) rural and thirty-one (31) urban local authorities⁵. Council areas are divided into wards each represented by an elected Councillor. Local authorities function and are structured on a committee system. In rural local authorities, policy making spaces are the village assemblies, ward assemblies and full Council in ascending order. The ward assembly is made up of all headmen, village heads and the Councilor of the ward. The ward assembly is chaired by a headman and its technical work is undertaken by a ward development committee, which is chaired by the ward Councilor with representatives of development organizations operating at that level as members. Wards are made up of village assemblies whose boundaries coincide with traditional villages. The assemblies are chaired by village heads and are based on universal participation (all villagers above 18 years). Technical matters of the assembly are handled by a committee that draws in the input of technical agents from within the village. The committee is chaired by the village head.

Traditional leadership and local government

Additional to the above local government structures is the institution of traditional leaders. This institution has been at the centre of rural local governance before and after independence. Between 1930 and 1980 traditional leaders became the anchor of rural local government progressively being assigned tax collection, judicial and land allocation functions and associated powers. For instance the 1967 Tribal Trust Lands Act restored their land allocation powers, the 1969 African and Tribal Courts Act restored their powers to try some cases and the 1973 African Councils (Amendment) Act granted them executive and administration powers. As noted elsewhere in this paper their alignment and identification with unpopular policies of the colonial government resulted in their corruption leading to a decision at independence to strip them of virtually all formal

⁵ The Department of National Parks and Wildlife Management is defined at law as a local authority for national parks, safari and other categories of protected areas while national monuments like the Great Zimbabwe fall under the purview of a different authority (National Monuments and Museums). This paper though, does not discuss these authorities.

administrative and political powers. 220 African Councils were amalgamated into 55 District Councils to which land allocation powers were assigned and at grassroots level Village Development Committees chaired by elected officials wrestled local admin powers from them. Suffice to note that Local Government Promotion Officers (LGPOs) tasked with creating the local government structures were mainly former war-time political commissars and ZANLA combatants (Makumbe 1998, Zimbabwe Institute 2005), which explains why the early village structures were adapted ZANU PF structures (Brand 1991, Chatiza 2008, Hammar 2003). Despite post-colonial loss of formal power traditional leaders retained local influence that created operational anxieties for local government structures and processes (Chatiza 2008, Nugent 2004, Mukamuri et al 2003, Odotei 2005). Traditional leaders began lobbying for recognition, something that found sympathy from a number of analysts (Government of Zimbabwe 1994, Ray et al 1997, UNECA 2005, Zack-Williams et al 2002) culminating in the enactment of the Traditional Leaders Act in 2000.

Traditional leaders exist at the village (village heads), which is the basic organizing unit of rural life in Zimbabwe outside commercial farming areas. Zimbabwe's constitution recognizes the institution unlike local government. Traditional leadership is administered under the Traditional Leaders Act by the Ministry responsible for local government. The number of headmen in a ward and chiefs in a district or province largely depends on traditions in different parts of the country as well as the influence of formal administrative boundaries. In some cases there are more headmen in a ward while in other areas a headman chairs more than one ward. Some districts have one chief e.g. Seke/Manyame, others two (Mutare) while others have more than four (Masvingo). In total the country has 269 chieftainships (Interview with Ministry of Local Government Official 31 August 2009), which shows that about 49 chieftainships have either been revived or recognized since independence.

Chiefs are ex-officio members of Councils, which in some areas has resulted in their participation in local government at this level difficult. At provincial and national levels traditional leaders have a forum (Council) that coordinates their activities and participation in national development processes. From district through national levels it appears that the relations between local government bodies and traditional leaders is difficult partly because of different structures. Despite relevant legislation being administered by the same Ministry there has been limited attention paid to harmonizing the two. For instance, there is no evidence of effective participation of Councils at the annual conference of chiefs on the one and also of chiefs at the biannual ARDCZ congresses. The institution of traditional leadership in Zimbabwe has gone through colonial and post-colonial acceptance, usage and political corruption. It has also shown considerable resilience and clout in

terms of influencing sub-national development processes and increasingly national political structures. There are inherent contradictions in terms of the functions of the institution that Zimbabwe's ruling elite has exploited (see CPIA 2005, Mbembe 2001; Mamdani 1996) capitalizing on its continued legitimacy in the eyes of the majority of Zimbabweans (see also Nugent 2004, Ray et al 1997). The fact that it is provided for in the constitution has been an additional source of strength if not endurance. As an institution, traditional leaders have been willing and coerced state partners in controlling, ordering and developing spaces. Below I return to this point in the context of the potential of local government to lead development processes.

Civil society organizations and local government

Organizations that are formed by citizens to pursue their social, political and economic interests (associational life) are what have become generally known as civil society. Although regulated, they are neither formed nor controlled by the state or private sector (Chatiza 2008) from which they maintain operational independence tempered by strategic linkages (*Ibid*) and partnerships (Anheier 2004, Johnson and Wilson 2000, Schroeder 2000, Charlick 2001). Globally, the influence of civil society in national development became more noticeable from the 1990s (Clayton et al 2000). In the context of Africa such growth has been seen as a response to state failure (Nyangoro 1999) while in the developed world the growth has been focused on reforming the welfare state (Clayton et al 2000). However, the importance of associational life generally and in terms of participation in governance in Zimbabwe is not an exclusive post-independence development. Kriger (1992) notes that social movements were mobilized to participate in the liberation struggle reflecting not just their existence but activity before independence (Chatiza 2008, Yoshikuni 2006, Auret 1995). Civil society, as NGOs (but not donors), voluntary associations, groups, solidarity networks, faith-based organizations, membership and professional bodies, social movements (women, youth and on land) labor and farmers' unions, political parties and employers' groupings (Chatiza 2008) has had a long history in society. Its diversity is seen in the nature and size of organizations, their interests, approaches and alliances within and across national boundaries.

In this section I explore the relationship between civil society and local government beyond the burial societies and women's clubs, which were commonplace in African townships before independence and essentially nurtured African nationalism. I include in the definition of civil society non-governmental development organizations of local and international extraction, of varying program size and orientation. I deliberately exclude political parties from this section because they directly participate in local government. The section is not necessarily concerned with the taxonomy

of non-governmental development organizations but rather the ways in which their growth and visibility has impacted local government in Zimbabwe. The intention is to show how and whether civil society has had a positive role with regards to constraining state excesses, articulating public opinion and self provisioning as is often espoused in literature (Pankhurst 2002, Bangura 1999, Berner and Phillips 2005, Krishna 2003, Tendler 1997, ZCBC et al 2006) particularly in the light of changes in the role of the state (Chatiza 2008, Abrahamsen 2000, Bernstein 2007) and growing participation of social actors in traditional state activities (Ackerman 2004, Moyo et al 2000, Mungate 1993). Of concern in this analysis is illuminating whether civil society has aided or obstructed sound local governance in Zimbabwe.

Local government associations, namely the Urban Councils Association of Zimbabwe (UCAZ) and the Association of Rural District Councils of Zimbabwe (ARDCZ) are most relevant in relation to the debate in this section. UCAZ was established in 1923 while ARDCZ was established in 1993. The two have initiated a process of creating one local government association since 2005. ARDCZ and UCAZ facilitate consolidation of policy issues from their members and engage stakeholders pursuant to the promotion of sound local governance. The work of these two associations has been directly supported by a number of local and international development organizations. On their own non-governmental development organizations have come up with and implement activities in local authority areas. The activities they implement span a wide spectrum of social and economic sectors (see Table 2 below). Without necessarily detailing the size of their programs in terms of budgets and program reach it can be argued that non-governmental development organizations have become more active in recent years than local government bodies. In some cases they have become a *de-facto* part of local public administration as some community requests for assistance are referred to them (Chatiza 2008). Some partner or materially support public sector organizations to enable them to deliver on their mandate (*Ibid*). For instance, Plan International (Manicaland) actively supported Mutare District Assembly as part of addressing conflicts between elected officials and traditional authorities in the District (*Ibid*). Table 3 shows examples from Mashonaland West Province.

Table 3: NGO activities in local authority areas, Mashonaland West

District.	N° of active NGOs.	Sectors in which NGOs are active.
Kadoma.	4	Targeted food aid, home-based care (HBC), school fees support, voluntary counseling and testing (VCT), agricultural input support.
Chegutu.	4	School feeding, livelihood skills support, orphan and vulnerable children (OVC) support, water and sanitation.
Zvimba.	6	Child protection, school fees, material and food aid to vulnerable groups, HIV and AIDS, income generating projects (IGP), gender awareness, voluntary counseling and testing (VCT), orphan and vulnerable children (OVC) support, nutrition gardens, agricultural inputs, water and sanitation.
Makonde.	5	Material and food aid to vulnerable groups, orphan and vulnerable children (OVC) support, prevention of parent to child transition (PPCT) of HIV and AIDS, home-based care (HBC) and urban vulnerable feeding.
Hurungwe	4	Education support, water and sanitation, orphan and vulnerable children (OVC) support, support to girl children.
Kariba.	6	Support to cultural activities, targeted food aid, livelihood programs, water and sanitation, home-based care (HBC), orphan and vulnerable children (OVC) support and educational support.

Source: Decoded from Mashonaland West, Provincial Administrator's Report of July 29th 2009, Ministry of Local Government, Rural and Urban Development.

The reality of non-governmental development organizations has been more evident for longer in rural than urban areas. The cholera outbreak of 2008 showed how non-governmental interventions have become critical to service provision and maintenance. Johnson and Wilson (2000) discuss the case of Environment Africa's waste management work in Bindura and Victoria Falls, among other sites, as evidence of non-governmental augmentation of local government performance. In its work Environment Africa has supported activities of youths and women's groups to engage with their local authorities. The partnership also enabled transfer of skills from the NGO to its partner Councils. The Municipal Development Partnership for East and Southern Africa has also promoted policy research and programme work on urban agriculture in Zimbabwe (among

other countries). Its activities have allowed the bridging of household and community urban agricultural activities on the one hand and policy makers on the other (MDPESA and RUAF 2005) culminating in the development of a policy framework to guide integration and facilitation of urban agriculture in urban planning and management.

World Vision Zimbabwe's Area Development Programs (ADPs) have also seen direct provision of social and economic infrastructure as has Plan International, Care International, Christian Care and a host of other NGOs in many local authority areas. What is also important is that most non-governmental development organizations also increasingly include advocacy and capacity building activities in their programs i.e. becoming 'third generation NGOs' (Korten 1987). In the process, considerable investments have gone into social mobilization into project committees. Some of these project committees have graduated into community based organizations (CBOs) surviving beyond direct NGO support. Examples include AIDS Service Organizations that have been established by volunteers trained by various NGOs.

The Organization for Rural Associations for Progress (ORAP) in the Western part of Zimbabwe and Manicaland Development Association (MDA) are often given as perhaps the earliest outside the HIV and AIDS sector (Nyoni 1987, Mararike 1995). However, there are other more localized as well as national organizations that work to articulate people's social and economic rights, access to decision-making structures and broadly work to foster democratization. Basilizwi Trust in Binga District (Conyers 2003), Lower Guruve Development Association in Mbire District and the Africa Community Publishing and Development Trust, among others, engage in issues with a bearing on the development of sound local governance.

Farmer organizations (Unions and their sub-structures) have also acted to shape citizens' interaction with local government and traditional institutions around land, marketing, infrastructural development and general governance of rural development processes. Councillors and traditional leaders often find themselves competing for citizen loyalty with leaders of farmers' groups. Such conflicts have strained local government capacity exposing structural weaknesses in the system.

Civil society involvement in development activities generally and local governance specifically arises from a general concern with enhancing participation. The conception of participation based on the principle of subsidiarity (ZCBC et al 2006) informs the focus of their work. A measure of siding with the poor and a generalisable commitment to democratization resulted in central government considering civil society as oppositional especially after the 2000 Constitutional Referendum when civil society sponsored the rejection of the draft constitution. ZANU PF's appropriation of civil society agency for its benefit beyond War Veterans and other party structures seemed to have come

unstuck. Apart from the use of violence to disrupt NGO operations since then, one major policy response came in 2003 through the Policy on Operations of Non-Governmental Organizations in Humanitarian and Developmental Assistance in Zimbabwe (Government of Zimbabwe 2003). The policy defined NGO registration, NGO-local government interactions, the public works approach to food assistance and reporting structures for NGOs. This was followed by a draft NGO Bill in 2004, which non-governmental development organizations under the leadership of the National Association of NGOs (NANGO) robustly resisted. Like the rest of Zimbabwe, civil society has gone through a polarizing and traumatic experience characterized by disruption of operations, harassment, blanket banning of activities (e.g. between June and September 2008) and centrally fettered engagement with local government.

This section has shown how civil society, broadly defined, has staked a claim in local government contributing to its growth while also exposing its weaknesses. The dynamics of interaction have been played out in formal structures like RDDCs and full Council. Conflict has arisen regarding reporting structures for development and humanitarian organizations while central government has tended to resent those involved in human rights advocacy. Local government has in the majority of instances lacked capacity to nurture civil society let alone define and protect citizen spaces from closure by central government. For instance, Residents Associations have suffered serious mistrust, lacked adequate funding and have often been denied access to information. As noted by Clayton et al (2000) issues of performance, accountability, influence of trends towards decentralization, ability to do more than basic service provision and broaden their focus by adopting a rights-based approach to development have become important. In Zimbabwe, civil society has undergone considerable growth in terms of size, focus, partnerships and approaches.

Local government's developmental potential

Before and after independence Councils were used to transform and/or 'develop' Zimbabwean society. This role is therefore an historical one although the outcomes of such transformation have always fallen below public expectations; Councils have progressively failed⁶ to effectively govern and develop their areas. That Councils can and should perform better in this role is not in doubt. Debate rages on whether the constraints to such transformative potential reside within individual Councils, the whole sector, central government or in society. It is true that all factors hold true to varying degrees and depending on a Council, Council type (rural or urban, new

⁶ This is seen in serious service delivery slippages (uncollected rubbish, pot-holed roads, water shortage etc) and disruptions to socio-economic relations of production while local government looks on (chaotic land reforms, violence, corruption etc).

or old in terms of establishment), political culture and resource endowment. From experience, local government's role in facilitating development relates to:

- Grooming of politicians, facilitating sound political participation and local democratic processes. Most successful political actors are 'trained' at this level.
- Local government structures are also critical in terms of facilitating participation in decentralized development planning. In this way they allow meeting of local needs from local resources while also acting as a conduit for securing local access to national resources and participation in national programs.
- Nurturing citizenship and civic mindedness particularly through levying/charging fees and taxes locally, which revenues are then used to meet local needs. Where collection of levies, rates and taxes is followed by participatory policy making, budgeting and prioritization of local needs citizens develop a sense of belonging essential for effective citizenship, which is critical for community and nation building.
- Local authorities are the closest and locally accountable and accessible public institutions with a role to represent local interests and deliver locally relevant services.
- Meeting community welfare needs and facilitating local economic development are critical Municipal functions critical to development. The potential of local authorities is considerable but is presently not fully tapped.
- In Zimbabwe's case, local authorities can also become more effective than currently in terms of monitoring and coordinating the work of other development organizations. This, as noted by Chatiza (2008) can be through providing relevant information to their residents and implementing organizations to allow effective participation in development activities.
- Local authorities also have a role in facilitating community organization. Good examples include facilitating the formation of and access to land for housing cooperatives that was done by relevant departments in the Municipalities of Harare and Bulawayo, among other Councils. Urban and rural Councilors are also regularly involved in convening community meetings in their wards that are critical to development facilitation.

Key issues for law reform

One of the national development processes that is seizing Zimbabweans at present is constitution making. The process is valorized as critical to systematically addressing the macro-governance problems of recent years. However, such hope in the supreme law and any subsidiary

laws may be misplaced if the political culture in the country remains undemocratic. As noted by McGee et al (2003) the law does not always provide sufficient safeguards for participation and democratic practice in general. While acknowledging that the law is not an all conquering instrument on matters of political and social interaction one cannot deny that some of the problems that local government grapples with in Zimbabwe could be addressed through careful and far reaching legal reforms. Suffice to acknowledge that law reform in local government needs to be approached with an understanding of the debate on the role of the central state in development. Local government empowerment informed by the debate on weakening state capacity and the demise of the model of state-led development has to acknowledge that state capacity is once again becoming critical in the development debate (see Fritz and Menocal 2007, Lyons et al 2001, Ayittey 2005, Calderisi 2006, Chatiza 2008). In this section, I highlight some of the areas that are important in terms of reforming local government law not in any order of importance.

Legal provisions for people's *participation* in governance generally and local government affairs in particular are weak in Zimbabwe. Decisions are supposed to be made after consultation but existing law on participation does not adequately provide for recourse should objections to a Council decision be noted by citizens. The case where Gwanda Rural District Council was taken to the High Court by residents who were objecting to levy proposals in the 2005 budget cycle reflects this weakness in the law. The Court ruled that Section 76 of the RDC Act does not make consultations of residents a legal requirement but a forum where residents could lobby Council (*The Standard*, 26th August 2007). Generally, decisions are made with limited to no citizen consultation rather than in-consultation with residents. Council meetings are often inaccessible to the public as dates and times are not known and minutes are rarely made public. Local government law provides that citizens can access minutes from Council freely at a cost rather than compelling Councils to cause minutes or resolutions to be published or displayed in the community to improve public access to relevant information to aid informed participation. In a country with limited media plurality, it is only by compelling Councils to become transparent and accountable that citizens are able to utilize the democratic spaces provided through Councils. With the full knowledge that the Ministry responsible for local government is more important in terms of decision-making, Councils tend to ignore citizens. The legal provisions for public participation therefore need to be strengthened as a way of reinforcing local democracy. Local government law needs to allow more recognition of civil society organizations in local governance than hitherto (see Blackburn and De Toma 1998).

As discussed in other parts of this paper, a case exists for using the law to rationalize the status of local government in relation to other public institutions. Debate on *constitutionalizing* local

government has been relatively exhaustive and the reasons adequately grounded. First, is the fact that constitutionalization raises the profile of local government, protects it from central government 'bullying' particularly regarding existence and functions, access to resources and general autonomy. Second, is ensuring that local government laws cease to be subordinated by other legislation. Third, the notion of delegated and legislated powers will cease to weigh down local government limiting it to central government dictates. An important factor associated with this is assuring direct and determinate resource transfers through the national budget to local government once it is defined as a sphere of government. In terms of local government law, improvements may be needed to complement such direct budget support through transparent and participatory budgeting processes (see Houtzager et al 2003).

In both the constitution and specific local government law, specific provisions about '*policing*' local government will be needed. This is because the assumption that designating local government a distinct sphere of government will be tantamount to unfettered devolution is a fallacy considering what the Zimbabwe Institute (2005) notes as procedural and substantive failings. Some structure and process will be needed to which complains about local government failings can be brought for redress. This proposal for a body to oversee and resolve local government matters is premised on the inadequacies of accountability and self-regulation in the sector. The experience of the NGO sector (see Ebrahim 2003) is instructive in this respect. As such, while excessive Ministerial and Presidential interference are decidedly unwarranted and will become inoperable where local government is constitutionalized, any law reform needs to clearly address how local authorities will be supervised and monitored to entrench good practice i.e. stem corruption, underperformance and irrelevance.

To extend the above argument, specific local government law will thus need to be articulate about local *government management and accountability* lines in ways that entrench a servant-like leadership culture. Local government associations presently service their members who equally lack mechanisms for engaging citizens effectively. Councilors lack basic leadership competences to steer good governance in their wards and as a result lack effective power and influence in Chamber. Once elected the tendency is to disconnect with the electorate in terms of aspirations, priorities and positions on key issues. As noted by Porter and Onyach-Olaa (1999) the socio-political distance between the elected and the electorate increases and with it the public's access to technical decision-making processes e.g. submission and approval of plans, budgets. The distance is what destroys the effectiveness of representative democracy.

Legal reforms are also needed in terms of district to national *structures for development planning, financing and stakeholder interaction*. One area problematised in this paper relates to the lack of legal

provision for how traditional institutions relate to local government beyond the ward. The specific structures, powers and functions including relations with other state institutions need to be clarified without necessarily packing them into some neat pigeon holes. In this case therefore reform needs to go beyond core local government law if institutional mutuality is to be fostered. Another related area regards aligning functions of key state institutions in the light of constitutionalizing local government. This is because constitutionalizing local government will drastically reduce state flexibility in reassigning local government functions. As such, relevant laws will have to be adjusted accordingly to give effect to a dispensation where local government status is elevated and therefore more enduring than hitherto.

An alternate point needs to be made about specific functions, which are defined in current local government legislation as though only Councils perform those functions. With the growing involvement of civil society organizations and private sector provision of services hitherto defined as the preserve of local government, the law needs to recognize and provide for how *partnerships for service delivery* will be entered into and managed. Existing provisions speak to the permissibility of entering into partnerships but from the assumption of Council-initiation of the partnerships. Developments in the sector show cases where Councils are not proactive but rather reactive.

Zimbabwe's decentralization programme or process has remained at the level of policy (Prime Minister's Directive) and principles (The Thirteen Principles). Giving *legal effect to decentralization* reduces its vulnerability to central government whims particularly expressed through the interests of incumbent Ministers responsible for local government from time to time. Local government law reforms need to provide for decentralization and to guide reconciliation of institutional arrangements or definition of the form of a decentralized governance system. Such legal clarity is bound to authenticate government commitment and allow easier implementation of decentralization. Again, law reform in this case is not seen as the complete panacea but a safety valve of sorts that guarantees movement in a desired direction.

In this section of the paper I have alluded to the areas that I see as critical in any process of local government law reform. I have steered clear of specific provisions mainly because these will flow from the main ones. For instance, debate on Executive Mayors has resurfaced with some advocating for their return. Others have been categorical about the abolition of the Local Government Board and its replacement with a Local Government Commission provided for in the constitution. By choosing to highlight critical areas like participation, constitutionalization, monitoring-evaluation, giving legal effect to decentralization, partnerships, structures for development planning and financing, I hope to have contributed to refining the debate on legal

reform. I also hope to have sufficiently problematized the oft uncritical if not knee-jerk reaction that goes ‘empower local government and you will have democracy’. Experience proves otherwise and lack of constitutionalization is not the exclusive reason behind local government under-achievement. The case of a number of South African local governments (provided for in the constitution) which recently experienced service delivery strikes and reflect lack of capacity to collect revenue while their staff demand and receive high salaries proves that the law is not the only source of local governance problems. In fact local government itself has serious problems in Zimbabwe and beyond. Just as local government needs constitutional and legislative protection, so too do citizens specifically from the institution of local government. Extending the frontiers of the two critical anchors for local democracy is what an effective local government law reform ought to concern itself with.

Conclusion: Does the current political dispensation in Zimbabwe allow for change?

The argument of this paper is essentially that local government has qualified potential to transform society generally and in Zimbabwe particularly. The history of local government in Zimbabwe has been one of being used as an instrument of control and coercion by the central state from before and since independence. In the process some of the bad practices have rubbed off from the user to the instrument. The empowerment of local government is undeniably critical to transforming society. However, the experience of Zimbabwe’s Executive Presidency has shown that empowerment of institutions without putting effective safeguards is folly. This brings me to the question of whether the obtaining political environment is suited to robust local government policy, legislative and institutional reforms.

Substantial research will be needed to answer the above question comprehensively. However, drawing upon available anecdotal evidence one can assert that both negative and positive signs exist. The negative signs include the die-hard and unrepentant culture of abusing public office and log-jamming institutions to deliberately breed corruption and inefficiency. Local governments and their associations generally tend to be inward looking and owe allegiance to the Ministry since it is easier to ‘please one stakeholder’ than to respond to divergent views of many including unorganized, barefooted and hungry citizens. Also, there are still some dinosaurs in many public institutions such that the momentum for change is bound to suffer regression at critical stages. Politicized, polarized and at times privatized Councils, rising poverty and weak civic-mindedness also militate against sound and sustained positive change.

That noted, there are positive signs inherent in society itself as shown in the growing activity of citizens’ organizations, NGO programs impacting on local governance, information and

communication technologies, emergent political stability and the growing realization that without good macro governance local government constitutes a layer through which some social transformation may be sought in Zimbabwe. The Inclusive Government provides a window of opportunity particularly its flagship (and highly controversial) constitution making project. Sector stakeholders may do well to organize efforts at changing the course of local government history in the country by contributing to relevant processes especially constitution-making. More detailed research may be needed for instance on aspects of community 'ownership' of Councils, center-local relations, the funding of local government in a changing context and the state of service delivery in terms of variables and actual status. Such research will help inform debate on local government reform in terms of both policy and practice. This will allow movement beyond looking at law reform as a magic wand that will address all local government ills.

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