



MONITORING LEGISLATIVE CHANGES AND THEIR IMPLICATIONS ON SOCIAL ACCOUNTABILITY AND LOCAL GOVERNANCE PROGRAMMING



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1. Background

The Civic Forum on Human Development (CFHD) in partnership with the Lower Gurove Development Association (LGDA), Centre for Community Development Solutions (CCDS), Association of Rural District Councils of Zimbabwe (ARDCZ) and Nyahunhure Community Trust (NCT) are implementing a four-year project entitled "Strengthening Civil Society Capacity for Scaling-up Social Accountability in Rural Local Governance Systems of Zimbabwe". The aim of the project is to enhance the meaningful participation of Civil Society Organisations (CSOs) and Community-Based Organizations (CBOs) in demanding and monitoring inclusive, accountable and resilient governance and service delivery in rural local authorities of Zimbabwe. Participation of CBOs and CSOs has been supported by the project within the existing regulative and policy framework on Local Government in Zimbabwe which has been subjected to many changes and modifications aimed at strengthening good governance in Zimbabwe at the district and sub-district level. This paper seeks to highlight some of the recent legislative and policy changes that have been occurring in Zimbabwe over the past decade and their impact on the Social Accountability Project and Local Governance Systems of Zimbabwe.

2. Legislation Context Analysis

The local government system in Zimbabwe has experienced many changes and challenges during the colonial period and after independence in 1980. In 1980, Zimbabwe inherited a system of local government in which local authorities enjoyed a mixture of delegated and devolved functions and powers. Since Independence, the main Local Government legislative Acts, the Urban and Rural District Council Acts have been amended many times to initiate efficiency and effectiveness in local governance¹. The focus of such changes included the need to remove racial discrimination and abolish dual systems of development emphasizing white and black areas. Additionally, there was a push to develop democracy, good governance, and decentralization. The aim was also to align local government institutions' politics and policies in such a way that they support national strategies and visions for broad-based and inclusive development.

"Good Governance is recognised as a founding value and principle in Zimbabwe and the "principles of good governance, which bind the state and all institutions and agencies of every level include – the devolution and decentralisation of governmental power and function".

Before the enactment of the 2013 constitution, local authorities were merely creatures of the national government and without constitutional recognition. This changed with the 2013 Constitution of Zimbabwe, which among other things provided for a multi-level system of government. Under the existing system, government is organized at the national, provincial and local levels with the provincial tier constituted by provincial and metropolitan councils while the local tier is composed of local authorities. The 2013 Constitution provides for the devolution of powers, responsibilities and resources to these local authorities to attain a variety of objectives linked to development, democracy and peace. The Constitution

¹ Jonga. W, (2014). Local Government System in Zimbabwe and Associated Challenges: Synthesis and Antithesis. Archives of Business Research Volume 2 Number 1

recognises two types of local government - urban and rural local authorities - which existed in Zimbabwe prior to its adoption. Urban local authorities enjoy greater autonomy and status than rural local authorities in both law and practice. Within the urban and rural forms of local government, several categories of local authorities can be established. Currently, there are three legally recognised categories of urban local authorities, namely: municipal councils (including cities), town councils and local boards - ranked in terms of powers, finance and discretion. Legislative Acts that contribute to the management of the institution of Local Government Management of Zimbabwe include:

- Traditional Leadership Act (Chapter 29:19) of 1998,
- Urban Councils Act (Chapter 29:15) of 1995,
- Rural District Councils Act (Chapter 29: 13) of 1988,
- Public Finance Management Act (Chapter 22:19) of 2009
- Shop Licensing Act (Chapter 14:17) of 1976,
- Regional Town and Country Planning Act (Chapter 29:12) of 1976
- Communal Lands Act (Chapter 20:04) of 1983.
- Provincial Councils and Administration Act (Chapter 29:11) of 1988

3. Main Legislative Changes (2020 – 2024)

Over the past decade, the Government has enacted and modified a number of legislative Acts and policy documents that contribute towards the management of the Local Government systems of Zimbabwe. Significant progress has been made in operationalizing the regulatory changes as summarized below as follows:

- ***Constitutional Amendment No. 2 of 2021***

In 2021, the Legislature approved Constitutional Amendment No. 2 of 2021. A few amendments that have a direct impact on Local Government are outlined below:

- Sections 268 and 269 were repealed to reconfigure the composition of the Provincial Councils
- Section 277 of the Constitution was amended with the addition of the following section:
 - “(4) An Act of Parliament may provide for the election, by a system of proportional representation referred to in subsection (5), of at least thirty *per centum* of the total members of the local council elected on ward basis as women.
 - (5) Elections to local authority councils must be conducted in accordance with the Electoral Law, which must ensure that the persons referred to in subsection. (4) are elected under a party list system of proportional representation which is based on the votes cast for candidates representing political parties in the local authority concerned in the general election for Members of the local authority.

- ***National Development Strategy 1***

Chapter 11 of the NDS 1 recognises Devolution and Decentralization as one of the priorities for ensuring that Zimbabwe attains the Vision 2030 of becoming an upper-middle country. The NDS 1, attest to the fact that devolution seeks to make the system of governance community-based and people-centred by enhancing community participation in making decisions on local development issues that affect them and in the exercise of governmental powers, whilst upholding the preservation of national unity.

- **Devolution and Decentralisation Policy**

The policy was approved on the 1st of July 2020. The policy provides a framework for the operationalising of Constitutional provisions contained in Chapter 14 of the Constitution of Zimbabwe. The Government approved the Devolution and Decentralisation Policy, which will guide the implementation of the Devolution and Decentralisation process whose aim is to devolve power to the sub-national structures to enable a faster, efficient and effective response to challenges of the delivery of public services, development, democracy as well as the imperative of sustaining national unity and peace. The specific objectives of the policy are as follows:

- 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 on issues affecting them;
- To promote democratic, effective, transparent, accountable and coherent Government in Zimbabwe as a whole;
- To preserve and foster peace, national unity, and indivisibility of Zimbabwe as a sovereign State;
- To provide recognition of the right of communities to manage their own affairs and further their own development;

Significant strides have been made in the implementation and operationalisation of the Devolution and Decentralisation Policy as shown in Table 1 below:

Table 1: Progress in Operationalization of the Devolution and Decentralization Policy

Provision	Implementation Status
Realignment of Local Government Legislation	Abandoned
Constitutional Amendments to exclude Members of Parliament and Senators from participating in the formal business of elected Councils.	Completed
The Results Based Monitoring and Evaluation framework for the implementation of the devolution policy was developed by the Office of the President and Cabinet	This has been done as evidenced by the Signing of Performance Contracts by all Heads of Government and Local Authorities
Essentially, Council staff will not be subordinate to Provincial and District Development Coordinators deployed by the Ministry of Local Government and Public Works.	On-going
Development of a complex fiscal distribution formulae, designed to achieve an equitable development status in all sub-national tiers of Government	On-going

Appropriate legislation will be enacted to provide for procedures for recall of non-performing Councilors and Council Chairpersons, as well as for holding by-elections, in between seasons of periodic national harmonised elections.	On-going
Sub-national tiers of Government will need to develop capacities and capabilities for preparing own estimates of expenditure to be presented to the Treasury in a prescribed manner.	On-going
Use of funds disbursed by Local Authorities will be subject to oversight and audit by the Office of the Auditor-General, over and above accountability requirements of the Accountant-General in the Ministry of Finance and Economic Development, as well as the Parliamentary Portfolio Committee on Public Accounts.	On-going

The Zimbabwean local government legislative and legal framework is demonstrably undergoing a significant period of transformation which will probably take time to conclude. This ongoing evolution reflects a commitment to strengthening local governance processes and empowering communities.

- **Local Government Laws Amendment Bill, 2016**

The purpose of the Bill is to amend the Rural District Councils Act [Chapter 29:13] of 1988 and the Urban Councils Act [Chapter 29:] of 1995 so as to align certain provisions of those Acts with sections (2) and (3) of the 2013 Constitution. The Amendment is guided by Sections 5 and 265 of the Constitution, which recognises Local Authorities as a tier of government, and that governmental powers and responsibilities must be devolved to local authorities. The specific section provided for the appointment of an independent tribunal to exercise the function of removing from office mayors, chairpersons and councillors. The key highlights of the Amendment Bill are as follows:

- The Bill seeks to establish the Local Authorities Board, as provided by Section 116 of the Urban Councils Act. The term tribunal is also defined by reference to the same entity constituted by Section 114A of the Urban Councils Act. One significant additional function of the Local Authorities Board under the RDC Act is to prescribe regulations for the formation of resident associations in Council areas which is inline with the constitutional requirement for local communities' participation in the governance processes.
- The new section 32A provides for the grounds of removal of members of Council from office and these are as spelt out in section 278(2) of the Constitution. The Constitution requires that the function of removing a member of the Council from office be exercised by a tribunal set up for that purpose. The new section provides that the same tribunal set up in terms of section 114A of the Urban Act will serve for purposes of this Act.
- Section 52(3) gives the Minister power to direct the Council to rescind or alter its resolutions. This power is unconstitutional and will be repealed.
- Section 59 of the Act will be amended to remove the power of the Minister to appoint persons to be members of the ward development committee.
- Sections 66 and 67 of the Act which provides for the appointment and conditions of service of employees of the Council will be repealed and replaced by new sections 66, 67, 67A and 67B. These sections require the appointment of the officers by the Council

in consultation with the Local Authorities Board whose expertise should ensure the appointment of appropriate persons to these key positions.

- The new section 67A will set out the conduct expected of employees of local authorities as is provided in section 266 of the Constitution.

- ***Provincial Councils and Administration Amendment Bill 2021***

The process of amending the Provincial Councils and Administration Act [Chapter 29:11] was initiated in 2021. The process seeks to bring the Act into conformity with the Constitution; and to provide for matters connected with or incidental to the foregoing. The major features of the proposed Bill are in the following areas:

- Competency of Councils to Receive Devolved Functions- requires the Minister to prescribe the criteria for competence that Councils must meet before they can be granted governmental powers and responsibilities, there is no procedure for Councils to follow if they desire to claim and receive devolved powers.
- Proposes to substitute governors with central government appointees to be called Ministers of State and Devolution, appointed by the President.
- The Bill provides for provincial and metropolitan councils to comprise members of parliament, chiefs, senators, elected councillors and mayors and chairpersons of councils.

Public Procurement and Disposal of Public Assets Act [Chapter 22:23] The Public Procurement and Disposal of Public Assets Act [Chapter 22:23] was enacted in 2017 and came into operation on the 1st of January 2018. The Act was instituted to regulate public procurement and asset disposal by government entities including local authorities. It aims to promote transparency, fairness, honesty, cost-effectiveness and accountability in public procurement. For local authorities, the law mandated the setting up of procurement management units and procurement committees to oversee all procurement activities. This has professionalized and standardized procurement processes at the local level. All procurement now has to follow open bidding procedures publicized well in advance. This provides opportunities for more potential suppliers including local companies to bid for tenders. The law has provided citizens with an opportunity to:

- Through Public disclosure requirements, scrutinise procurement contracts and expenses.
- Fight corruption and wastage, more public funds can go directly towards provision of services to citizens rather than be lost through kickbacks and inflated contracts.

Box 1 Combined Harare Residents Association & Others v Minister of Local Government, Public Works and National Housing HH-07-23

On 11 January 2023, Judge Munangati-Manongwa in the case of Combined Harare Residents Association & Others v Minister of Local Government, Public Works and National Housing HH-07-23 made a judgement that the power of the Minister to rescind resolutions of Local Authorities was unconstitutional. The Judgement was made on the following basis:

- Any power exercised by a Minister must have a legal basis; it must comply with the law both procedurally and substantively. This is the principle of legality, a component of the rule of law. Hence the Minister could issue directives under section 314 only if section 314 itself is valid, i.e. conforms with the Constitution.

- The concept of devolution, with power cascading to local communities, is an essential constitutional value expressed in section 3(2)(l) of the Constitution and in the preamble, which speaks of “the democratic participation in government by all citizens and communities”.
- Section 314 gives the Minister arbitrary power to order a council to rescind its decisions; the section makes no provision for consultation with inhabitants if the Minister considers a council’s decision not to be in their interests, and there is no objective mechanism by which the Minister decides whether or not a council’s decision is in the public interest.
- The Constitution in sections 264, 274 and 276 confers governing and management powers on local authorities, and those powers should not be interfered with clandestinely; they should rather be fostered by ensuring the independence of local authorities.
- The overriding powers conferred on the Minister by section 314 of the Urban Councils Act are a danger to democracy as enshrined in the Constitution.
- Section 265(3) of the Constitution, which states that an Act of Parliament must provide mechanisms to facilitate co-ordination between central government and local authorities, cannot justify section 314 because the power to reverse, suspend or rescind council resolutions are drastic actions that do not form part of mechanisms that facilitate co-ordination between the different levels of government.

The net effect of the judgement is the reduction of Central Government interference in local government affairs. It recognises the new institutional status of Local Authorities from mere creatures of subsidiary law to that of Constitutional Bodies. The results are increased functional autonomy for local authorities. However, this newly found autonomy can be abused if not properly checked which raises the need for strengthening social accountability systems in-between democratic accountability periods.

4. Main drivers of the legislative changes

The main drivers of the legislative changes within the local government system include the following:

- The ushering in of a new dispensation under the Second Republic led by His Excellency the President of the Republic of Zimbabwe through political will to implement Constitutional provisions on decentralization and devolution.
- The need to implement the principle of subsidiarity and improve citizen participation in local programming on all matters that affect them
- Amendments by the Central Government and legislators that have been driven by the need to initiate efficiency and effectiveness in local governance.
- The need to ensure alignment with the 2013 Constitution and other global and regional conventions such as the SDGs.
- Exerted pressure from residents and their representative groups such as Associations and CBOs contributed to the legislative changes in the local government system of Zimbabwe.

5. Emerging Opportunities for Social Accountability Programming

The changes in the Local Governance management systems present a wide range of opportunities for the existing work on social accountability. Some of the opportunities include the following:

- The devolution policy provides for the need for capacity-building initiatives targeted at local citizens, in order to empower them to hold local officials accountable for the implementation of approved regional development plans.
- The devolution policy requires that sub-national tiers of Government reflect and be cognizant of the needs and priorities in the planning, decision making and resource allocation processes.
- Legislative changes present the need for capacity building in social accountability approaches and tools that are responsive and tailored to the ever-changing regulatory landscape in local government systems of Zimbabwe.
- The need to support local authorities with the establishment of systematic training programmes for use in capacitating councillors, traditional leaders and duty bearers in response to changes within the Zimbabwe local government systems.

6. Implications of the Changes on Local Changes on Local Governance Processes

The changes in the regulatory framework providing for the management of Social Accountability have a wide range implications on Social Accountability processes of Zimbabwe. Some of the implications are summarised in the table below.

Table 2: Implication of Changes

Thematic Area	Description
Increased Autonomy	The 2013 Constitution aimed to devolve more power and resources to local authorities. This could have granted them greater autonomy in decision-making and service delivery. • However, critics argue that later legislation and policy directives have not been followed through. There is still a sense of recentralization, with the central government retaining significant control over local government finances and functions. • The once proposed Local Government Amendment Act (2016): while introduced after the Constitution, was criticized for weakening some of the devolutionary promises. The Act granted the central government the power to suspend or dissolve elected local councils, potentially undermining local government autonomy.
Focus on good governance	• The Constitution emphasizes good governance principles like transparency, accountability, and citizen participation. This ideally strengthens local government legitimacy and effectiveness. • However, implementing these principles consistently can be challenging, especially with limited resources and capacity at the local level.
Citizen participation	• The Constitution strengthens citizen participation in local governance. This could lead to more inclusive decision-making and improved service delivery that reflects community needs. • Yet, ensuring meaningful citizen participation requires ongoing efforts in voter education, public consultation, and effective feedback mechanisms.
Uncertain funding	• Local government finances remain a contentious issue. Devolution promises were not fully accompanied by reliable funding streams for local authorities.

Thematic Area	Description
	This can hinder their ability to deliver essential services and maintain infrastructure.
Limited Capacity	Various Civil Service Acts: These set national employment standards for civil servants, which can be challenging for local governments with limited resources. Implementing these standards can strain their budgets and limit their ability to hire or train specialized personnel needed for effective service delivery.
Gender and Women Participation	Constitutional quotas or legislative mandates for women in government positions can lead to a greater number of women participating in decision-making processes. This can bring new perspectives and priorities to the table, potentially leading to policies that can better address women's needs.

7. Implications of Legislative Changes to Social Accountability Monitoring

Changes to constitutions and legislative acts can have significant implications for Social Accountability Monitoring (SAM) in several ways, both positive and negative. Changes to constitutions and legislative acts can significantly influence social accountability monitoring. Strong legal frameworks, increased transparency, and support for civil society can create a more conducive environment for holding governments accountable. However, successful social accountability monitoring also requires attention to enforcement mechanisms, capacity building, and ensuring the inclusion of marginalized voices. The Social Accountability process has documented the following potential implications:

- **Strengthened Legal Framework:** Constitutional guarantees for freedom of expression, assembly, and access to information can create a more enabling environment for SAM activities. This allows citizens and CSOs to hold governments accountable without fear of reprisal through the use of SAM.
- **Legislative Mandates:** Laws requiring citizen participation in decision-making or mandating the disclosure of government data can **facilitate** social accountability monitoring efforts. These mandates provide a legal basis for demanding transparency and responsiveness from the government.
- **Increased Transparency:** Changes that promote open government initiatives, like requiring public disclosure of budgets and spending, can provide **more information** for social accountability actors to monitor and analyze. This transparency allows for better identification of potential problems or areas where government action is needed.
- **Weak Enforcement:** Even with strong legal frameworks, inadequate enforcement can render them meaningless. If mechanisms for holding governments accountable for violating social accountability provisions are weak, monitoring efforts may have limited impact.

8. Conclusion

Constitutional changes and legislative reforms can be a powerful driver of positive developments in various areas. Increased gender representation in government, stronger social accountability monitoring, and a more empowered local government system are all achievable goals with the right legal framework and implementation strategies. Addressing challenges like weak enforcement, cultural barriers, and limited resources is crucial for these legal changes to translate into real-world improvements for citizens. However, achieving

lasting progress requires ongoing efforts even with strong legal frameworks in place. Cultural attitudes and ingrained power structures may take time to shift. Consistent monitoring, capacity-building initiatives, and ensuring citizen participation are essential for long-term success.

9. Way forward for CFHD Programming

The project has identified a critical need for the CFHD and its partners to strategically leverage emerging issues related to both citizen demand and government supply. This presents a unique opportunity for all stakeholders to engage in a collaborative learning process and co-create positive legislative changes. By strategically positioning itself, CFHD and its partners can become a central hub for promoting collaborative learning, advocating for positive legislative change, and ensuring that legal reforms are responsive to the needs and aspirations of Zimbabwean citizens. Some of the areas for CFHD programming:

- Equip citizens with the knowledge and skills to actively participate in public consultations on legislative and policy frameworks. This could involve training workshops on understanding legislative processes and effective participation.
- CFHD can play a key role in facilitating constructive dialogue between citizens and government officials during public consultations. This could involve creating safe spaces for open and respectful communication and assisting citizens in effectively presenting their priorities and proposed legislative changes.
- Provide training and support programs for local government officials on how to understand and implement new legislative and policy changes and develop effective mechanisms for citizen engagement in local governance processes.
- Equip service providers with the knowledge and skills to adapt their practices to align with new legislative frameworks and better serve the needs of the community.
- Service Users: Raise awareness among citizens about their rights and entitlements under the new legislation, empowering them to hold service providers accountable for effective service delivery.
- CFHD can develop knowledge products and disseminate informative resources (e.g., policy briefs, fact sheets, community radio programs) that explain complex legal and policy issues in a clear and accessible manner. This can empower citizens to understand their rights and engage meaningfully in legislative debates.
- Monitor and conduct oversight on the implementation of new legislation to ensure it aligns with its intended purpose and identify any unintended consequences. Advocate for corrective measures if necessary.

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