

**DECENTRALISATION AND RECENTRALISATION IN ANGLOPHONE
SOUTHERN AFRICA: FACTORS DRIVING THE EBB AND FLOW OF POWER**

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DECLARATION

I, ALOIS MADHEKENI, do hereby declare that *Decentralisation and Recentralisation Waves in Anglophone Southern Africa: Factors Driving the Ebb and Flow of Power* is my original work and has not been submitted for any degree or examination in any other university or institution of higher learning. While I have relied on numerous sources and materials to develop the main argument presented in this thesis, all the materials and sources used have been duly and properly acknowledged.

Signed.....

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ABSTRACT

Literature on multilevel government is replete with the virtues of decentralisation as a governing model. As a result, the discourse of decentralisation has found its way into the constitutions, legislation and policy documents of most African states, including those that are ostensibly centralised. However, the enthusiasm for the juridical form of decentralisation is not reflected when it comes to the actual distribution of state power. In practice, the distribution of power ebbs and flows as states hover between decentralisation and centralisation. In other words, regardless of juridical commitments, states hardly ever promote decentralisation consistently, but move between cycles of decentralisation and recentralisation. Thus, once reforms that promote decentralisation have been adopted, they are shortly followed by a wave of recentralisation, which lasts until it in turn, is replaced by a further push for decentralisation. Consequently, the cycles are repeated. The central quest of this study is to explain the factors driving this cyclical pattern. It raises the following questions: Why are states seldom consistent with respect to decentralisation? What drives decentralisation? What drives recentralisation? What does this mean for the future of decentralisation?

A comparative study of five Anglophone countries in Southern Africa was conducted with a view to analyse the waves of decentralisation and recentralisation both within and across countries over long periods of time. The countries were chosen in terms of their similar historical background and regional concentration. They are the countries of Botswana, Malawi, Namibia, South Africa and Zimbabwe. The study traced the process of decentralisation in these countries from the precolonial and colonial period up until 2019, examining historical, legal, constitutional, economic and political documentation and scholarship. In some cases, in-depth interviews with key informants were conducted to supplement evidence collected through desk-top research.

The central argument of this study is that ruling elites are rational actors who make calculated moves based on external and internal pressures, threats to their power, and opportunities to increase it. Evidence from the five countries under study indicate that governments always prefer to centralise power and would maintain the status quo until a political or economic crisis arises. Such crises tend to open up spaces in which other actors are able to negotiate for decentralisation. These other actors include opposition political parties, minority ethnic groups

and donors. However, because decentralisation is driven by crisis resolution negotiations, it faces challenges at the implementation stage, and this is always accompanied by a fresh wave of recentralisation. In the wake of this vicious cycle, it is concluded that decentralisation can be sustained if measures are put in place to contain the reverse wave of recentralisation and its unravelling effects. The measures include constitutional protection, the strengthening of the rule of law, good governance at local levels, and support from political parties.

DEDICATION

To my daughter Ano.

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On the 1st of July 2015, I arrived at the University of the Western Cape expecting to pursue a PhD study in Multilevel Government Law and Policy. To my surprise, it turned out to be the beginning of a long process of learning how to write, how to think critically, how to read between the lines, and how to separate myths from reality. In the process, I was surprised at how shallow I had previously been as an intellectual. This study is more than a degree to me; it represents life, growth, confidence and my transformation as a person. This learning experience would not have been possible without the support of several individuals.

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Conducting a comparative study of five countries was the most difficult academic task I have ever undertaken. The historical, constitutional, political, social and economic dynamics and varieties of each country constantly seemed to threaten that the study was impossible. To obtain an insider's perspective for the individual case studies, I leaned heavily on the work and support of several experts whose kind support was invaluable. For my understanding of Botswana, I would like to thank Dr David Mandiyanike and Prof David Sebudubudu; for providing me with numerous reflections on Malawi, I am greatly indebted to Professors Lea Mwambene and Mwiza Jo Nkata; and my thanks go to Prof Gerhard Töttemeyer and Mr Graham Hopwood for developing my understanding of Namibia. For South Africa, my thanks go especially to Prof Jaap de Visser while for Zimbabwe, I am grateful to Eldred Masunungure and Dr Heather Chingono.

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LIST OF ABBREVIATIONS

AB	Advisory Board
AC	African Council
ADB	African Development Bank
AFORD	Alliance for Democracy
ANC	African National Congress
BCP	Botswana Congress Party
BDP	Botswana Democratic Party
BIP	Botswana Independence Party
BMD	Botswana Movement for Democracy
BNF	Botswana National Front
BPP	Botswana People's Party
BSAC	British South African Company
CA	Constituent Assembly
CANU	Caprivi African National Union
CCC	Coloured Consultative Committees
CDF	Constituency Development Fund
CEO	Chief Executive Officer
CPSA	Communist Party of South Africa
CRO	Chief Regional Officer
DA	Democratic Alliance
DA	District Administration
DA	District Assembly
DANIDA	Danish International Development Agency
DC	District Council
DCr	District Commissioner
DDC	District Development Committee
DDF	District Development Fund
DFRD	District Focus for Rural Development
DLGSM	Department of Local Government Service Management
DP	Democratic Party
DPP	Democratic Progressive Party

DPSM	Department of Public Sector Management
DRC	Democratic Republic of Congo
DTA	Democratic Turnhalle Alliance
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
ESAP	Economic Structural Adjustment Programme
FFC	Finance and Fiscal Commission
Frelimo	Frente de Libertação de Moçambique
GNU	Government of National Unity
ICJ	International Court of Justice
IFP	Inkhata Freedom Party
IMF	International Monetary Fund
LA	Local Authority
LB	Land Board
LGC	Local Government Committee
LGNF	Local Government Negotiating Forum
LGSC	Local Government Service Commission
LGTA	Local Government Transition Act
LN	League of Nations
MC	Municipal Council
MCP	Malawi Congress Party
MDC	Movement for Democratic Change
MEC	Malawi Electoral Commission
MFDP	Ministry of Finance and Development Planning
MP	Member of Parliament
MPLA	Movimento Popular de Libertação de Angola
MPNF	Multiparty Negotiating Forum
MPS	Metropolitan Police Service
NA	Native Authority
NAC	Nyasaland African Congress
NCr	Native Commissioner
NLGFC	National Local Government Finance Committee
NNP	New National Party
NP	National Party

NR	Native Reserve
NRM	National Resistance Movement
PAC	Pan-Africanist Congress
PC	Provincial Commissioner
PCLGS	Presidential Commission on Local Government Structure
PF-ZAPU	Patriotic Front - Zimbabwe African People's Union
PP	People's Party
RB	Reserve Board
RC	Regional Council
RC	Rural Councils
RCr	Resident Commissioner
RDC	Rural District Council
RDP	Rally for Democracy and Progress
REDs	Regional Electricity Distributers
Renamo	Resistência Nacional Moçambicana
RG	Regional Governor
RSA	Republic of South Africa
SA	South Africa
SALGA	South Africa Local Government Association
SANCO	South African National Civics Organisation
SAPS	South African Police Service
SWA	South West Africa
SWANU	South West Africa National Union
SWAPO	South West Africa People's Organisation
TC	Town Council
TMB	Town Management
TTF	Tribal Trust Fund
UC	Urban Council
UDF	United Democratic Front
UDI	Unilateral Declaration of Independence
ULGS	Unified Local Government Service Commission
UN	United Nations
UNDP	United Nations Development Program

UNITA	União Nacional para a Independência Total de Angola
USAID	United States Agency for International Development
UTS	Unified Teaching Service
VMB	Village Management Board
WB	World Bank
WCG	Western Contact Group
WUC	Water Utilities Corporation
ZANU-PF	Zimbabwe African Union – Patriotic Front
ZINARA	Zimbabwe National Roads Authority
ZINWA	Zimbabwe National Water Authority

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CHAPTER ONE

Introduction

1. Problem Statement

Since the 1990s, decentralisation has become a global phenomenon. Nearly all countries in the world have undertaken decentralisation reforms that seek to strengthen local government.¹ This global wave of decentralisation has been attributed to various factors. One factor has been the belief that dispersing power to strong local government is critical for the deepening and sustaining of democratic governance.² Advocates of the democracy argument believe that the resultant strong local government opens more political space by creating smaller political institutions that increase citizen participation and improve the accountability of government to citizens.³ This means that through decentralisation, the various communities that make up the state have opportunities to formally establish their own spheres of governance in which they can participate in decision-making without being overridden or overshadowed by dominant groups in the country. Closely linked to the quest for democracy is the belief that decentralisation helps limit the abuse of power by regimes in strong centralised states. The argument has deep roots in both the ideas of political philosophers such as Lord Acton⁴, John Locke⁵ and Jean Jacques Rousseau,⁶ and in the experience of disappointment with centralised governments.⁷ Another factor, one strongly advocated by international donors like the World Bank (WB), United Nations Development Program (UNDP), Swedish International Development Agency (SIDA) and the United States Agency for International Development (USAID) has been the belief that decentralisation enhances development.⁸ The development argument is premised upon beliefs that strong local governments would better match development programmes to the developmental needs of society, increase efficiency in government operations and enlarge opportunities for citizen participation and ownership of

¹ Faguet J 'Decentralisation and Governance' (2013) 53 *World Development* 2; Manor J *The Political Economy of Democratic Decentralisation* (1999) 1; Rosenbaum A 'Decentralisation and Local Governance: Comparing US and Global Perspectives' (2013) 14 (1) *Halduskultuur – Administrative Culture* 11.

² Rosenbaum (2013) 11; Manor (1999) 1.

³ Faguet (2013) 2; Manor (1999) 1.

⁴ He warned that power corrupts, and that absolute power corrupts absolutely.

⁵ Advocated for a vigilant citizenry fearing that powerful regimes will lead to tyranny.

⁶ Believed that good governance must promote the general will of the people.

⁷ Rosenbaum (2013) 14; Faguet (2013) 2.

⁸ Rosenbaum (2013) 3.

development projects. A further factor is the argument that decentralisation promotes peace and stability by ceding some political control over subnational entities to aggrieved minority groups.⁹ All in all, as scholars like Jean-Paul Faguet have argued, these factors all point to a common pursuit of good governance.¹⁰

The global wave of decentralisation discussed above swept across Africa in the 1990s. So pervasive was this wave that scholars such as James Wunsch have argued that in terms of policy, decentralisation has been undertaken in more countries in Africa than anywhere else in the world.¹¹ Most of the conventional reasons discussed above have been similarly cited in Africa, but the most common explanation for decentralisation has been the pursuit of democratisation following the end of the Cold War in the early 1990s.¹² Decentralisation reforms followed the failure of the centralised state model that was premised on the assumption that a strong central government was essential for the promotion of national unity, and the development of African states.¹³ Contrary to its objectives, the centralised state model had yielded political instability, ethnic conflict, autocratic and corrupt governments, administrative inefficiency and economic stagnation in most African countries.¹⁴ Shortly after the wave of decentralisation (widely adopted at least on paper) African regimes took different directions.¹⁵ Some regimes went on to implement decentralisation reforms by strengthening local government; some started renegeing on their promises; still others reversed the process by recentralising what had previously been decentralised powers and functions.¹⁶ Decades after the general adoption of decentralisation, country case studies have shown that whilst some African countries have implemented it, most have been insincere in this regard – preaching the

⁹ Faguet (2013) 2.

¹⁰ Faguet (2013) 3.

¹¹ Wunsch J S 'Decentralisation: Theoretical, Conceptual, and Analytical Issues' in Dickovick J T & Wunsch J S *Decentralisation in Africa: The Paradox of State Strength* (2014) 1.

¹² Ribot (2002) 7; Fesha Y & Kirkby C 'A Critical Survey of Subnational Autonomy in African States' (2008) 38 (2) *Publius: The Journal of Federalism* 253.

¹³ Wunsch J S 'Centralisation and Development in Post-Independent Africa' in Wunsch J S & Olowu D (eds) *The Failure of the Centralised State: Institutions and Self-Governance in Africa* (1990b) 44.

¹⁴ Wunsch J S & Olowu D 'The Failure of the Centralised African State' in Wunsch J S & Olowu D (eds) *The failure of the Centralised State: Institutions and Self-Governance in Africa* (1990) 3-6.

¹⁵ Erk (2014) 535-6.

¹⁶ Ribot J C 'African Decentralisation: Local Actors, Powers and Accountability' (2002) *Democracy, Governance and Human Rights – Paper No. 8* 7; Erk J 'Federalism and Decentralisation in Sub-Saharan Africa: Five Patterns of Evolution' (2014) 24 (5) *Regional and Federal Studies* 536; Dickovick J T *Decentralisation and Recentralisation in the Developing World: Comparative Studies from Africa and Latin America* (2011)1.

rhetoric of decentralisation whilst in practice pursuing recentralisation reforms.¹⁷ As a consequence, decentralisation in Africa should not be treated as a static event that can be explained by a single incident, such as a search for democratisation after the end of the Cold War. Rather, it should be seen as an unsteady process that has been unfolding in fits and starts, and with variations across countries.

These variations show the inadequacy of explanations provided in current literature. This is because most scholarly explanations do not address the cycles of decentralisation and recentralisation reforms; do not try and show, in the repetition, whether similar or different factors are at play each time; and do not work to compare whether the explanations for these cycles differ from one country to another. This scholarly gap raises a pertinent need to understand the practical workings of decentralisation by explaining the factors driving shifts between decentralisation and centralisation across different countries.

2. Research Question

This study poses an explanatory research question: What explains the successive waves of decentralisation and centralisation of power? To unpack this question, six sub-questions are raised. First, how is the decentralisation and centralisation of power determined in local government systems? Secondly, when has governing power been shifted to or away from local government? Thirdly, what strategies have been employed to centralise or decentralise power? Fourthly, which factors have been driving governing regimes to adopt the strategies? Fifthly, are the factors driving waves of decentralisation and centralisation similar across countries? Sixthly, how does this analysis contribute to the international literature on decentralisation?

3. Case Selection

To seek to answer the core research question, this study uses a case study of five Anglophone Southern African countries. The countries are Botswana, Malawi, Namibia, South Africa and Zimbabwe. The five countries were selected due to their potential help in understanding the problem at hand. They are all former British colonies, and this fact makes it easier to compare

¹⁷ Ndegwa S N 'Decentralisation in Africa: A Stocktaking Survey' (2002) *Africa Region Working Paper Series No. 40* 1; Fessha & Kirkby (2008) 248; Dickovick (2011) 193.

power dynamics over time given their more or less similar background. In other words, the shifts in the decentralisation process are easily comparable because they all start from a similar local government system, one inspired and modelled on Britain's system of local government. The variations from the common system provide a clear opportunity to observe internal and external factors peculiar to each country. The repeated observation of similar factors in other countries at different times validates the claim and helps in the development of a general theoretical explanation.

An overview of the case study shows that since the colonial era, the five countries have been on a transformative path in terms of power distribution between central and local government. Located in the same region, these countries share not only geographical boundaries but a similar historical background, that of British colonial rule. This colonial background led to the development of a more or less similar system of elected local government which has progressed unevenly over time. The system was first introduced in South Africa in 1836 and gradually spread to Zimbabwe, Malawi, Namibia and Botswana. For the greater part of the colonial period, the system applied to white people only. It was extended to black people upon the attainment of majority rule.

Contrary to the conventional expectation that decentralisation reforms took place at the same time, transformation in local government actually took place at different times across the five countries. In Malawi and Botswana, non-racial reforms expanding the elected system of local government to black people were introduced in 1961 and 1966 respectively; Zimbabwe followed suit in 1980; whilst Namibia and South Africa realised such reforms in 1990 and 1994¹⁸. Immediately after reforms pushed to expand decentralisation in Malawi, Botswana and Zimbabwe, new reforms followed to shrink it, and to centralise local government powers. As Namibia and SA attained majority rule in the 1990s, Malawi and Zimbabwe introduced new reforms, decentralising power back to local government while Botswana maintained a slow recentralisation trajectory, slowly strengthening central government step by step. By the time all five countries had achieved majority rule in the 1990s, decentralisation was a common policy commitment across Southern Africa.¹⁹ It did not take long before new reforms were adopted in all the countries except Botswana. The reforms took place at different times, and

¹⁸ The transformations came at the coattails of majority rule.

¹⁹ See Manor (1999) 1; Erk (2014) 535.

lasted for different periods, before being replaced by fresh reforms going in the opposite direction. In the post-2000 era Malawi, Namibia, and Zimbabwe were increasingly shifting power back towards the centre, while the South African government also sought to do the same but failed to achieve this recentralisation. The ANC government made numerous attempts to centralise some local government powers and functions but faced strong resistance.²⁰ Whilst these reforms were sweeping across the region, Botswana continued to appear unaffected. It continued its ambivalent trajectory in which local government reform inquiries would be conducted, but implementation would be focused on strengthening central control. Malawi and Zimbabwe introduced new reforms, decentralising more power in the second decade of the 2000 millennium. Contrary to this move, since 2010, Namibia has intensified recentralisation reforms, taking more power away from local government whilst SA made new attempts to recentralise, but again failed to do so.

4. Argument

The argument traversing this study is that there is a combination of factors used by scholars and international institutions such as the World Bank to trace waves of decentralisation and recentralisation of power. Such factors include the constitutional recognition of local government, local democracy, substantive powers and financial autonomy. An uneven pattern is observable where these powers have been suddenly deepened at different times in various countries. Notwithstanding the differences in timing and varieties in state composition, a consistent quest to recentralise power follows immediately after decentralisation. When this occurs, there is an unravelling of constitutional protections, local democracy, substantive powers and the financial autonomy of local government.

It is further argued that the successive shifts of power between central government and local government is driven more by internal political power struggles rather than by theoretical and external arguments around the model of local self-government. More elaborately, the argument starts from the premise that politicians are naturally driven by a quest for power – how to acquire it, how to expand it and how to preserve it. Their quest creates a tendency to centralise power, and to keep the opposition at bay. However, this impulse is problematic in that although

²⁰ See Cameron R ‘Vertical Decentralisation and Urban Service Delivery in South Africa (2014) 32 (S1) *Development Policy Review* 81; De Visser J ‘The Right to (be) the City: The Place of Cities in the Institutional and Constitutional Context of Federal/Decentralised Systems in Africa’ in Shastri S (ed) *Equality and Unity in Diversity for Development 5th International Conference on Federalism Addis Ababa Ethiopia 2010* (2012).

it has worked fairly well elsewhere, in Africa, history has judged it harshly. This is because, historically, centralisation has proved open to abuse, inefficiency, and patronage, and effected the marginalisation of opposition political parties and minority ethnic groups. Consequently, economically developed Western democracies inspire and encourage African states to decentralise power; international donors support decentralisation programmes; scholars write positively about the promises of decentralisation; and internal opposition political parties, civil society, traditional leaders and minority ethnic groups all lobby for the decentralisation of governing power and functions. These actors support decentralisation because it conventionally promises to deepen democracy, advance development, accommodate minorities, promote peace and limit the centralisation of power. However, whilst these actors can raise their concerns at both local and international platforms, regimes tend to remain unresponsive. Consequently, regimes cling on to their powers and will only decentralise them if a crisis arises, forcing them to compromise.

It therefore takes a crisis for regimes to give up some of their powers to local government. The crisis usually comes in two main forms – the political and the economic. A political crisis can vary in its form and magnitude from a disputed election to civil unrest and armed conflict. In all cases the outcome is instability and a pressing need to make peace. Another form of political crisis is one of legitimacy. A legitimacy crisis arises from change of regime or leadership within the same regime in such a way that the new regime finds itself under pressure to prove its popularity. An economic crisis may include a major decline in economic performance, a deteriorating industrial sector, hyperinflation, crippling national debt, high unemployment, food shortage and general suffering of the people. The outcome of the crisis is tension between state and society, mutual distrust between the ruling regime and electorate, and a general state of unrest and instability that creates a desperation for international donor bailout.

Whatever form the crisis takes, it has a common effect of pressing regimes to enter into negotiations with disgruntled internal actors (such as opposition political parties, minority ethnic groups and civic society groups) as well as international actors like Western countries and donors. In the negotiations, the different parties involved pursue different objectives most of which involve taking some central government powers and functions and dispersing them to local government. This is done for reasons that vary with the players' calculated future expectations and past experiences. In the end compromises are made, agreements are reached

and promises made. The agreed terms or promises could be reflected in the form of a policy document, legislation or constitutional provisions. However, the compromises are made not because the regime in power has suddenly realised the value of decentralisation, but only because politicians are rational actors who take calculated steps to manage power. They realise that the crisis is a threat to their ability to acquire power, to expand or retain it. As a result, once an agreement has been made and the crisis is contained, the motive for decentralisation immediately falls away. This is because the primary factor driving decentralisation was the crisis itself and not the other actors like opposition political parties, donors, minority groups and civic society groups, nor was it the positive promises of decentralisation that scholars put forward in their publications.

Immediately after the implementation of decentralisation reforms or their codification into law and policy, the regime in power either starts renegeing on the agreement or embarks on a systematic process of recentralising local government powers and functions. Gradually, local government is shorn of power as central government is strengthened. At the centre of this backtracking are the limits that local government places on the power of elites in central government. In other words, local government undermines the centralisation ethos of ruling elites, opens them up to regional competition with opposition political parties and other local elites, and weakens their ability to use the local state as a patronage instrument. Consequently, recentralisation occurs with remarkable consistency in every country unless the centripetal forces are stopped or weathered by opposing forces. Circumstances under which the centripetal forces can be challenged or checked include where the takeover of local government powers and functions is unconstitutional, and would need an amendment, but either parliament does not support the amendment, or local government refuses to give up its powers. In such cases, an independent judiciary is needed to arbitrate.

If the centripetal forces cannot be stopped, then there is simply a period of waiting until another crisis emerges. In some states, a second crisis comes quickly, while in others this is a slower process and consequently, the adoption of new decentralisation reforms varies from one country to another. When the crisis finally emerges, the cycle is predictably repeated, leading to an unsteady pattern where decentralisation moves in fits and starts. Finally, by comparing experiences of different countries and explaining why waves of decentralisation and

recentralisation are repeated over time, this study nuances and enriches the ongoing international discussion on decentralisation.

5. Literature Review

A survey of local government literature indicates that several studies have been conducted on the subject of decentralisation and recentralisation of power. Some have been global in their perspective, some have been Afrocentric, and others are regionally based. Most focus on individual countries, but a few are comparative. Jean-Paul Faguet estimates that over the past 40 years empirical studies of decentralisation have grown by thousands.²¹ There is a large body of literature on local government reforms and decentralisation and centralisation in Southern Africa. Most of this literature is descriptive and normative in approach, focusing on the extent to which power has been centralised or decentralised. Whilst some of this literature examines why decentralisation is or is not meeting expectations, very little of it seeks to be explanatory. A very small body of the literature offers any comparative perspective, and most studies focus on a single country with no cross reference to developments outside. Of the few comparative studies on local government reforms in Southern Africa, most are static and descriptive whilst some are now outdated. A comparative explanatory study tracing shifts in local government powers across various countries over a long period of time and mapping out the shifts' driving factors remains a missing link in the quest to understand the practical workings of decentralisation.

Some of the comparative studies have tried to explain the disappointing progress with decentralisation from a global perspective. They include James Manor's book on the political economy of democratic decentralisation and Kent Eaton and others' work on the political economy of decentralisation reforms.²² These studies argue that political elites and bureaucrats play a significant role in aligning the process of decentralisation with their own interests and incentives. They conclude that since the political incentives vary from place to place, considering contextual factors should be important. A specific focus on the Southern African region and its unique context does not feature in either of these two works.

²¹ Faguet (2013) 2.

²² Manor (1999) 1-3; Eaton K Kaiser K & Smoke P *The Political Economy of Decentralisation Reforms: Implications for Aid Effectiveness* (2010) 1-92.

There are a few comparative studies that have been conducted in pursuit of the drivers of decentralisation and centralisation in Africa. They include Dickovick's study of decentralisation and recentralisation in the developing world, Riedl and Dickovick's study of party systems and decentralisation in Africa, and Lovise Aalen and Ragnhild Muriaas' study of power calculations and political decentralisation in African post-conflict states. Aalen and Muriaas have investigated how regime change has influenced political decentralisation in post-conflict African states. They concluded that political power is more likely to be decentralised in post-conflict states if a new regime comes to power rather than if the incumbent regime stays in power.²³ However, the context of their study was limited to post-conflict situations. This restricted their analysis to the transitional period between either military or colonial rule to majority civilian rule. For the purposes of their study conceptualisation of decentralisation was also narrowly limited to the conduct of elections at the subnational level of government. Yet many studies assessing the extent of decentralisation in Africa have discovered that political decentralisation is no longer the biggest challenge as most countries now conduct regular local government elections. The contest now seems to be around the fiscal and administrative dimensions of decentralisation which Yonatan Fessha and Coel Kirkby referred to as the new 'backdoors' to recentralisation in Africa.²⁴

Riedl and Dickovick sought to find out what explains when governments' motivation to implement decentralisation and the extent to which they are prepared to go. They analysed four African countries (Ethiopia, Botswana, Ghana and Benin) and established that political party incentives of subnational footholds and patronage opportunities were chief drivers of decentralisation.²⁵ Their study was delimited to the relationship between party systems and decentralisation. In the process it missed other driving forces which are not linked to party systems.

Dickovick gives a balanced analysis of decentralisation and centralisation in his study of two African (South Africa and Senegal) and two Latin American states (Brazil and Peru). The study

²³ Aalen L & Muriaas R L 'Power Calculations and Political Decentralisation in African Post-Conflict States' (2017) 38 (1) *International Political Science Review* 56-69.

²⁴ Fessha & Kirkby (2008) 266.

²⁵ Riedl R B & Dickovick J T 'Party Systems and Decentralisation in Africa' (2014) 49 (3) *Studies in Comparative International Development* 327.

sought to explain decentralisation and recentralisation of fiscal powers. He concluded that electoral decline tends to motivate decentralisation whilst the need to address an economic crisis tends to motivate centralisation.²⁶ Notwithstanding its balanced analysis, Dickovick's study (like the two preceding studies) tends to take too narrow view of decentralisation, focusing on the fiscal dimension alone. In practice it has become evident that states use different strategies to centralise power depending on the political and economic dynamics at play. The strategies are not only limited to fiscal but also include administrative and political measures. Although, the three studies reviewed above have nuanced the discussion on decentralisation by using a comparative approach to explain practice, they were not specifically focused on Southern Africa as a region.

Jan Erk's comparative study on federalism and decentralisation in Sub-Saharan Africa gives a more regional perspective.²⁷ He argues that the way decentralisation has evolved over time in Sub-Saharan Africa tends to follow several patterns. One of these is what he calls 'symmetrical recentralisation' – an across the board tendency to recentralise power immediately after decentralisation reforms have been adopted. Erk does not extend his study to explanatory variables shaping the pattern but he does acknowledge their importance in understanding the practical workings of decentralisation in Africa. James Dickovick concurs with Erk's observation and warns that focusing on decentralisation alone without paying attention to centralisation could be inadequate. In his study of decentralisation and recentralisation in Africa and Latin America, he observed that in many countries recentralisation has followed just after decentralisation.²⁸

At the time of writing, no comparative studies that seek to explain the alternate waves of decentralisation and centralisation in the Southern African region were available. Studies on Southern African countries have either been normative in approach, assessing the extent to which decentralisation has been adopted, or identifying the challenges encountered by the decentralisation reforms. Nevertheless, individual countries like Botswana, South Africa and Angola have featured in some explanatory studies on decentralisation. All of them have been

²⁶ Dickovick (2011) 3.

²⁷ Erk J 'Federalism and Decentralisation in Sub-Saharan Africa: Five Patterns of Evolution' (2014) 24 (5) *Regional and Federal Studies* 535-552.

²⁸ Dickovick (2011) 1-2.

part of the few studies attempting to explain decentralisation either globally or in Africa. The global and African focus consequently made most of the studies cross-sectional or static surveys with little room for detailed process tracing. This study will therefore contribute to the body of knowledge on local government and decentralisation. Whilst it will not be the first to give a comparative perspective of factors driving the process of decentralisation and its reverse wave of centralisation, it adds value to the ongoing scholarship on the subject of decentralisation.

There are scholars who have conducted individual country studies on local government reforms in Botswana, Malawi, Namibia, South Africa and Zimbabwe. Ronald Hope conducted a normative study assessing the extent to which theoretical expectations of decentralisation and local government are practically reflected in Botswana.²⁹ Peculiarly, he found the practice of decentralisation and local government in Botswana to have satisfied the requirements in theory and hailed the government for a job well done.³⁰ In his doctoral thesis on local government in post-colonial Botswana, Rwanedzi Nengwekhulu traced the historical development of local government in the country and assessed the extent to which it has been autonomous.³¹ His findings flatly contradicted those of Hope, concluding that local government in Botswana lacked relative autonomy. In both studies, very limited attention was paid to the factors making local government strong or weak. This is not because the studies have failed to establish them but because it was not the objective of the studies to do so. A book chapter by Amy Poteete and others has nuanced the discussion by focusing on how centralisation has worked to deplete local autonomy.³² This analysis is in line with the explanatory objective of this study. Their chapter concludes that centralisation in Botswana is driven by the political uncertainties that continue to face the ruling party and the pressures resulting from the economic decline of 2008. However, since this was a single case study, the chapter is not comparative.

²⁹ Hope R K 'Decentralisation and local governance theory and the practice in Botswana' (2000) 17 (4) *Development Southern Africa* 519-533.

³⁰ Most literature on Botswana shows that local government is very weak.

³¹ Nengwekhulu R *An Evaluation of the Nature and Role of Local Government in Post-Colonial Botswana* (Unpublished Doctoral Thesis, University of Pretoria, 2008).

³² Poteete A R Mothusi B & Molaodi D 'Botswana: Political and Economic Obstacles to Decentralisation' in Dickovick J T & Wunsch J (eds) *Decentralisation in Africa: The Paradox of State Strength* (2014) 23-44.

Johnathan Kaunda conducted a descriptive study of decentralisation and democratisation in Malawi.³³ He describes local government reforms in the country as a reflection of centralised rule and details strategies that have been utilised to centralise power. Whilst it is very informative, the 1999 study does not cover the significant reforms that have evolved following the change in ruling parties in 2005 and 2012 and neither was it concerned with the explanatory narrative. A Tilitonse Foundation report on the political economy of local government in Malawi has provided a more comprehensive description spanning a longer period of time beyond Kaunda's study.³⁴ Although the report is mainly descriptive, it does have an explanatory conclusion that suggests local government in Malawi is constrained by the political interest of central government to keep it weak.

Gerhard Töttemeyer's conference paper describes regional and local government reforms that have been conducted in Namibia since independence.³⁵ He narrates the reforms measures that have been adopted and expressed through laws and policies with a view to decentralise more power. Töttemeyer argues that there is a general reluctance by central government to implement them. Boniface Mutumba's short descriptive study summarises the evolution of regional and local government in Namibia.³⁶ He similarly concludes that the decentralisation process has failed to meet expectations, but doesn't go into the explanatory factors.

There is a great deal of literature on South Africa's local government reforms. Some of this is normative in intention, some descriptive and some explanatory. Jaap de Visser's book gives a comprehensive but largely legal and normative analysis of South Africa's developmental local government system.³⁷ Although largely normative, the book has a whole chapter tracing the historical development of local government from the colonial period (Union government) to the passing of the 1996 Constitution under majority rule. This background - which includes periods of racial discrimination and negotiations - gives some insights into the role played by history in shaping local government under the 1996 Constitution. Nico Steytler and Jaap de

³³ Kaunda J M 'Malawi: Local Government Democratisation and Decentralisation – an Uncertain Agenda' in Reddy P S (ed) *Democratisation and Decentralisation: A Review of the Southern African Region* (1999a) 113-128.

³⁴ Tilitonsefund 'The Political Economy of Local Government in Malawi' (2011) 1-29.

³⁵ Töttemeyer Töttemeyer G 'Regional and Local Government Reform in Namibia' *Expose Presented to ARC Congress, held in Otjiwarongo, 28-31 October 2008* (2008).

³⁶ Mutumba B S 'The Evolution of Regional and Local Government' (2013) 2 (1) *University of Namibia Journal for Studies in Humanities and Social Sciences* 52-59.

³⁷ De Visser J *Developmental Local Government: A Case Study of South Africa* (2005).

Visser provide another comprehensive legal analysis, interpreting local government law of South Africa.³⁸ In their first chapter, Steytler and De Visser also give an account of the historical developments leading to the 1996 Constitutional dispensation. A more explanatory analysis of local government reform in South Africa is provided by Rudolf Mastebroek and Nico Steytler in their paper on local government under the 1996 Constitutional.³⁹ The authors argue that the transformation of South Africa's local government system from a relatively weaker to a stronger one is a product of the internal negotiations on the role and powers of central and provincial governments. Derek Powell gives a discussion of local government transformation during the national peace transition from minority to majority rule.⁴⁰ He explains how local government reform in South Africa has been shaped by negotiating parties' search for peaceful co-existence. A common feature of these publications is their concentration on the 1996 local government system – what it entails and where it came from. There is very little analysis of developments thereafter.

John Jordan gives an overview of Local government in Zimbabwe immediately after independence in 1980.⁴¹ As a 1984 publication, Jordan's book carries a descriptive account of local government before and immediately after independence. It does not provide an explanatory account of the system of local government adopted at independence, nor does it go beyond 1980 in its description. Tinashe Chigwata gives a more elaborate and contemporary analysis of local government reforms before and after the 2013 Constitution.⁴² His book is anchored on a normative analysis of the law, policy and practice of provincial and local government and examines the extent to which these promote democracy, development and peace. Whilst Chigwata provides a historical account of the evolution of local government since the pre-colonial era, it only serves as a background to the mainstay of his study. The fulcrum of the book is the reform measures ushered in by the 2013 constitution.

³⁸ Steytler N & De Visser J *Local Government Law of South Africa* (2016) 1-4.

³⁹ Mastebroek R & Steytler N 'Local Government and Development: The New Constitutional Enterprise' (1997) 1 (2) *Law, Democracy and Development* 233-249.

⁴⁰ Powell D M *State Formation after Civil War: Local Government in National Peace Transitions* (2017).

⁴¹ Jordan J D *Local Government in Zimbabwe* (1984).

⁴² Chigwata T C *Provincial and Local Government Reform in Zimbabwe* (2018).

6. Methodology

6.1 Research Approach

The ultimate goal of this study is to understand why regimes decentralise and recentralise governing power. As previously argued, available literature does not adequately address this question. It presents a variety of loosely coordinated and sometimes contested reasons, making it difficult to establish the actual forces driving the process of decentralisation. To add value to the body of knowledge on decentralisation, this study adopts a comparative approach where similarities and differences are drawn amongst explanatory factors in five countries (Botswana, Malawi, Namibia, South Africa and Zimbabwe). This approach was adopted because it enables the study to examine if factors explaining decentralisation or centralisation in one country are similar or different to those explaining it in others. Ultimately, the approach helps establish if a pattern can be observed, revealing the actual drivers of decentralisation and centralisation. The choice of this approach is equally supported by James Dickovick and Jonathan Eastwood who have argued that comparative approaches are more appropriate in explanatory studies where the ‘why?’ question is at the centre.⁴³

When comparative analysis is done on country case studies as is the case in this study, it can take place at two levels. These are between cases (between countries) or within-case (comparative analysis of variations taking place over time in a single country).⁴⁴ This study pursues a comparative analysis at both levels. First, a longitudinal narrative of local government is traced in each country from the colonial period up to the 2000 millennium, identifying times of significant shifts towards decentralisation or centralisation and explaining them. The longitudinal approach within cases was adopted in order to explain repetition of decentralisation or centralisation and analyse if the same or different factors are at play. Dickovick, an author with experience in comparative studies on decentralisation supports this approach arguing that ‘static’ studies run the risk of missing the ebb and flow of power as well as important continuities.⁴⁵

⁴³ Dickovick J T & Eastwood J *Comparative Politics: Integrating Theories, Methods, and Cases* (2016) 2.

⁴⁴ Dickovick & Eastwood (2016) 20.

⁴⁵ Dickovick (2011) 33.

In the science of comparative analysis, it is recommended that evidence used to support an argument should be collected based on the same level of analysis: that units of analysis must be more or less similar.⁴⁶ It is in line with this principle that this study uses evidence from five Anglophone Southern African countries with more or less similar local government institutions. The similarities stem from the countries' common background of British colonialism.

6.2. Sources

Evidence from the five countries under study was primarily collected through desktop research of primary and secondary documents that are in the public domain. Thus, constitutions, Acts of parliament, policy documents, internet material and published literature formed the basis of analysis. Where some of these documents were outdated, or others did not provide adequate explanations for the power dynamics taking place in different cases, interviews were conducted with local government experts. Since interviews were only complementary to available documents, they were only conducted on Malawi and Namibia. In total, four interviews were held with experts and officials of local government in the two countries. Ethical considerations such as informed consent, anonymity, privacy, confidentiality and avoidance of harm to respondents were respected. Accordingly, all but one respondent's real names are not mentioned in the study. For the single respondent whose name was expressly cited against his input, a consent form had to be signed where the respondent voluntarily agreed that his name be mentioned against his submissions. His name was mentioned because his experience with local government and the evidence he produced were so important that they strengthen the validity of the study's argument. An ethical clearance was obtained from the Research Ethics Committee of the University of the Western Cape to conduct the interviews. Participants in the in-depth interviews were selected using purposive and snowball sampling techniques. This means only experts in the field of local government were selected on the basis of their experiences in the countries under study. A few were snowballed through referrals by other experts. Overall, the data used in this study was collected between the 1st of July 2015 and the 30th of November 2019.

⁴⁶ Dickovick & Eastwood (2016) 13.

7. Delimitation of Study

The primary focus of this study is on governing power, its movement between central government and local government. The existence of decentralised structures and institutions on its own does not necessarily imply decentralisation of power. Decentralisation in this study refers to the transfer of governing power to elected local governments. In short, decentralisation is presumed to mean devolution of power to locally elected institutions. For purposes of this study, concepts like deconcentration and delegation are associated with centralisation since they do not promote the transfer of governing power to locally elected entities but instead, they strengthen central control.

As alluded to in the methodology section, it is not the primary concern of this study to measure the extent of decentralisation or centralisation in Anglophone Southern African states. This study is neither concerned with the theoretical advantages and disadvantages of decentralisation or centralisation, nor what works well and what does not. The primary concern of this study is to explain the practical driving forces behind observed and/or recorded waves of decentralisation and centralisation of power. Notwithstanding the equal importance or relevance of other dimensions to the study of decentralisation, it is the ‘why?’ question that this study most seeks to address.

The decentralisation of power away from central government can move to various subnational institutions or levels of government. Because the levels of government vary from country to country, only one subnational level of government was taken into consideration – local government. The local government level was chosen because it is common in all the countries under study.

The approach followed in this study involves tracing shifts in local government powers and functions over a long period of time. Thus, the analysis traverses successive regimes within each country, observing factors responsible for the decentralisation or centralisation of power in different circumstances and draws similarities and differences over time. However, this does not imply that the time frame under study is infinite. All the shifts in local government powers

in all countries under study are analysed from the colonial era to the year 2017. Thus, new developments taking place after the year 2017 are not included in this study.

8. Chapter Outline

This study is divided into eight chapters, with the current chapter being Chapter One. The second chapter presents the theoretical framework of the study. It frames the study on three accounts. First, it interprets what the terms decentralisation, centralisation and local government mean for the purposes of this study. Secondly, it provides a framework of indicators of increased centralisation and decentralisation of power - how do we tell that regimes are decentralising or centralising power. In addition, it provides a framework of possible drivers of decentralisation and centralisation drawn from the work of other scholars.

Chapters Three to Seven are country-case studies examined using the same analytical framework provided in Chapter Two. Each of the five chapters presents an in-depth analysis of factors driving shifts in local government powers and functions towards more decentralisation or more centralisation from the colonial period to 2017. The chapters are organised in the following order: South Africa, Zimbabwe, Malawi, Namibia and Botswana according to the spread of the British system of elected local government. This organisation is considered ahead of alternatives like the spread of colonialism, constitutional recognition of local government and attainment of majority rule. Informing the decision is the search for a clear narrative sequence of transformations to local government logically binding the cases together. For instance, as the first colony, South Africa influenced local government reforms in almost all the other four countries whose regimes borrowed heavily from the Cape municipal laws.

Chapter Eight is the conclusion. It brings evidence from the five countries together through a comprehensive presentation of comparative conclusions. It draws a pattern of decentralisation reforms and shows similarities and differences in factors driving the shift of local government power. The chapter also establishes an overarching argument setting out the study's theory on the practical workings of decentralisation. It concludes with a survey of this study's contribution to international literature on decentralisation.

CHAPTER TWO

Decentralisation and Recentralisation of Power: A Theoretical Framework

1. Introduction

This chapter presents a framework of analysis for the structuring and discussion of evidence from the five case studies. The need to establish this framework is informed by the complexities of the terms under study: decentralisation, recentralisation and local government. The term decentralisation has been interpreted in many ways, and complete consensus on its meaning does not exist.¹ Also, it takes different forms ranging from a static to a process form, a *de jure* to a *de facto* form. The degree of decentralisation can however be measured by several indicators. These include constitutional protection, local democracy, substantive powers and financial autonomy. Local government itself has various forms which include elected, appointed and inherited leadership.² Usage of the terms decentralisation and local government in government policy documents and laws has generated different meanings. The term ‘centralisation’ is also different from ‘recentralisation’ in that the former denotes a state of affairs whilst the later signifies a movement or reversal of earlier reforms. Due to the variations in interpretation of the terms, it has become difficult to conduct a comparative study without having to streamline their applicability. Riedl and Dickovick have concurred with this observation, arguing that the range of definitions and measures proposed by scholars has led to conceptual confusion.³ Propagating the same observation, Daniel Treisman argued that scholarship is littered with so many different usages of these words that it is often unclear just what they mean, if they still mean anything at all.⁴

Against the above-mentioned background, three questions are pertinent to this study. First, how are the terms decentralisation, recentralisation and local government applied in this study? Secondly, what indicators are commonly used in the literature to show decentralisation and

¹ See difference between Smith B C *Decentralisation: The Territorial Dimension of the State* (1985) 1-2 and Rondinelli et al ‘Decentralisation in developing countries: A review of recent experience’ (1983) *World Bank Staff Working Papers No 581* 13.

² See Smith (1985) 1-2.

³ Riedl & Dickovick (2014) 324.

⁴ Treisman D ‘Defining and measuring decentralisation: A global perspective’ (2002) available at <https://pdfs.semanticscholar.org/.../0f52052d1a290dd51488d092f9a6eca9fb2f.pdf> (accessed 02 February 2019).

recentralisation (which will be used in the five case studies)? Thirdly, how have other scholars explained decentralisation and recentralisation waves in their countries of study?

In response to the questions mentioned above, this chapter commences with a conceptualisation of terms decentralisation, recentralisation and local government. The term decentralisation is central to this study; hence its interpretation influences how the other terms, recentralisation and local government are applied. Instead of being treated as an absolute and static feature whose presence or absence is clearly noticeable, this study views decentralisation as a continuously evolving process in the deepening of autonomy in local government. It is a complex process involving various components such as political, fiscal and administrative aspects. These components are often implemented to different degrees that signify a promotion or erosion of local government autonomy. Consequently, decentralisation is treated as an unstable process that improves or declines with time. Contrary to centralisation, which is the opposite of decentralisation, the term recentralisation is viewed to be closely linked to the process of decentralisation. In other words, recentralisation denotes the reversal, weakening or decline of local government autonomy. These definitions facilitate the tracing of the decentralisation and recentralisation waves necessary to the explanatory objective of this study.

Operationally, the term local government is restricted to local authorities responsible for a specific geographical territory, and whose leadership is composed of members elected by and accountable to the local people. Central to the understanding of the term local government is its autonomy from central government. However, this study is cognisant of the fact that the autonomy of local government itself varies from country to country and across periods, depending on whether decentralisation or recentralisation is in play. A set of four factors indicating local autonomy is considered in this study for the purpose of identifying waves of decentralisation and recentralisation. These factors are constitutional protection, local democracy, substantive powers and financial autonomy. The study is premised on the assumption that both decentralisation and recentralisation operate across a spectrum, whose extremities are constituted by either the complete observation or complete erosion of the five indicators. Between these two extremes, there are clusters which depict variations in the depth of autonomy. The variations assist in identifying the extent to which governing regimes are committing to decentralisation. Another premise is that levels of autonomy do not remain static

but are mobile and shift in different directions, signifying increasing decentralisation or recentralisation.

From the pool of available literature on decentralisation, there are scholars who have tried to explain why governments decentralise and recentralise power. To arrive at their explanations, some scholars used a single-country case study; some compared two or more countries, and others focused only on a specific time period. In sum, 14 common factors can be identified from the scholarly literature, of which nine explain decentralisation and five explain recentralisation. The nine factors driving decentralisation are (a) the search of peace and stability (b) democratisation, (c) politics of grandstanding (d) international pressure (e) intraparty pressure (f) entrenchment of ruling party grip (g) curbing centralised rule and (h) exit strategy of regimes facing defeat. The five factors driving recentralisation are (a) conflict and instability (b) the quest for nation building (c) threat of political opposition (d) traditions of centralism and (e) threat to ruling party cohesion. These factors put forward by other scholars will be tested with reference to the five country cases under this study.

2. Conceptualising Decentralisation

A variety of definitions have been put forward with a view to explain what decentralisation entails. Some are broad and some are narrow, some concur with each other while others differ. Dennis Rondinelli et al and Brian Smith and Daniel Elazar have put forward two different interpretations of decentralisation. Rondinelli et al provide a broad interpretation of decentralisation as

‘the transfer of responsibility for planning, management, and resource-raising and allocation from the central government to (a) field units of central government ministries or agencies, (b) subordinate units or levels of government, (c) semi-autonomous public authorities or corporations, (d) area-wide regional or functional authorities, or (e) non-governmental private or voluntary organisations.’⁵

⁵ Rondinelli et al (1983) 13.

This definition has been adopted by various scholars in their works, leading to the conceptualisation that decentralisation takes three main forms – deconcentration, delegation and devolution.⁶

Deconcentration refers to the dispersal of responsibility for policy implementation by a central government to its field offices.⁷ Although some scholars view this as a weak form of decentralisation, we suggest it is hardly a form of decentralisation, particularly because it does not involve any transfer of authority to lower levels of government.⁸ In the form of delegation, decentralisation entails the transfer of policy responsibility to local governments or semi-autonomous organisations that are not wholly controlled by central government but are accountable to it.⁹ Although generally regarded as much stronger than deconcentration because a different government is involved, delegation remains a relatively weaker form of decentralisation in that it involves the existence of a principal-agent relationship where local government acts as an agent of central government (the principal).¹⁰ Put differently, delegation does not promote local autonomy since responsibility is retained by central government. In the form of devolution, decentralisation refers to the transfer by central government of authority for decision making, finance and management responsibilities to quasi-autonomous units of elected local government.¹¹ Unlike deconcentration and delegation, devolution is viewed as a much stronger form of decentralisation which shifts the balance of power between levels of government. Riedl and Dickovick clearly delineate this unique character of devolution by affirming that it encompasses fiscal, political and administrative reforms that transfer resources, create new elected offices and establish autonomous bureaucratic units of decision making and service provision at the local level.¹² The problem with using devolution as a form of decentralisation is that, in terms of law and policy, governments interpret this concept in various ways that sometimes create confusion as to whether a difference exists between devolution and the other forms.

⁶ The scholars include Fessha & Kirkby (2008) 249; Litvack J et al 'Rethinking decentralisation in developing countries' (1998) *Sector Studies Series* 4; Schneider A 'Decentralisation: Conceptualisation and measurement' (2003) 38 (3) *Studies in Comparative International Development* 38.

⁷ Schneider (2003) 38.

⁸ Litvack et al (1998) 4.

⁹ Schneider (2003) 38.

¹⁰ Litvack et al (1998) 6.

¹¹ Litvack et al (1998) 6.

¹² Riedl & Dickovick (2014) 323.

Smith and Elazar provide a different interpretation of decentralisation which narrows down the concept to the dispersal of power from a central government to local government with its smaller territorial jurisdiction and its own political and administrative institutions.¹³ The two take the position that decentralisation cannot be subdivided into deconcentration, delegation and devolution as postulated by Rondinelli et al. Smith expressly argues that the terms deconcentration and delegation cannot be associated with decentralisation as these do not entail a shift of power between different governments.¹⁴ Both Smith and Elazar have argued that decentralisation implies that a country is subdivided into smaller territorial governments that are not administered by agents of a central government but are governed by local institutions whose membership is democratically elected.¹⁵ Smith and Elazar's conceptualisation of decentralisation therefore distinguishes it not only from deconcentration and delegation but also from traditional authorities that are founded on hereditary values.

This chapter does not seek to take part in the debate of what decentralisation means and what it does not. Instead, it clarifies which conceptualisation of decentralisation, amongst the various versions available in literature, will be applied in this comparative study. Accordingly, for the sake of uniformity and clarity of comparison, this study adopts Smith and Elazar's conceptualisation of decentralisation as the dispersal of power from a central government to territorial local governments with a measure of autonomy. However, the adoption of Elazar and Smith's interpretation of decentralisation is not exclusive. Writing in the 1970s and 1980s, both scholars viewed decentralisation as a process leading to the development of subnational governments which are creatures of a superior central government and not a national constitution.¹⁶ Over the years some countries across the globe have made some constitutional reforms that have seen subnational governments deriving their mandate directly from the constitution. In Africa, decentralised states like Kenya, Malawi, Namibia, South Africa, Zambia and Zimbabwe are examples of such reforms. These developments spread the application of decentralisation in this study to local governments deriving their mandate from the constitution. Elazar himself encourages such nuances, highlighting that new thinking does

¹³ See Elazar D J 'Federalism vs. decentralisation: The drift from authenticity' in Kincaid J (ed) *Federalism Volume 11: Alternative Models, Constitutional Foundations, and Institutional Features of Federal Governance* (2011) 83; Smith (1985) 1.

¹⁴ Smith (1985) 1.

¹⁵ See Elazar (2011) 83; Smith (1985) 18.

¹⁶ Although Elazar's work is cited in this study from a 2011 publication, his chapter was extracted from a 1976 *Publius* journal article.

not imply that ‘old ideas are necessarily outmoded, only that even the best ideas – those of eternal worth – need to be reformulated and reanalysed periodically.’¹⁷

The concept of decentralisation is a complex one, and requires some clarification. It is made up of a number of diverse elements which need to come together for the practice of local self-governance to be possible. This study acknowledges three such aspects - political, administrative and fiscal decentralisation. Political decentralisation refers to a process by which central governments allow subnational units to undertake the political functions of governance.¹⁸ Simply put, it entails the establishment of elected local bodies that make developmental decisions on behalf of their communities by adopting and promulgating laws, regulations and policies. Administrative decentralisation refers principally to the power to hire and fire employees in order to implement a subnational government’s policy decisions.¹⁹ It is the critical institutional architecture that helps to manage and support political decentralisation. Fiscal decentralisation depicts the granting of fiscal space by central government to local government.²⁰ More specifically, it involves raising revenue and expending that revenue according to the priorities of local communities. Some scholars have argued that fiscal decentralisation is so central to the decentralisation process that if it is not properly enabled, political and administrative decentralisation lose their significance.²¹

This study analyses the process of decentralisation, closely examining its development over time and across changing regimes. It is thus different from cross-sectional studies that focus on a country’s state of being decentralised or centralised at a particular time. Because of this approach, it is important to clarify that from a theoretical perspective, decentralisation should contain all three aspects discussed above in what Riedl and Dickovick call ‘robust decentralisation’.²² However, when in practice, countries hardly reflect nor maintain the ‘robust’ nature of decentralisation. Sometimes the three aspects are implemented to varying degrees or some are withdrawn and later reintroduced, in a continuous process of decline or

¹⁷ Elazar (2011) 79.

¹⁸ Schneider (2003) 39.

¹⁹ Smoke P ‘Decentralisation in Africa: Goals, dimensions, myths and challenges’ (2003) 23 *Public Administration and Development* 10.

²⁰ Schneider (2003) 33.

²¹ Smoke (2003) 10; Dickovick (2011) 1; Fessha & Kirkby (2008) 266.

²² Riedl & Dickovick (2014) 324.

improvement in decentralisation over time. In other words, when viewed as a continuous process, as is the case in this study, the robust nature of decentralisation becomes elusive. Riedl and Dickovick affirm this view in their study of decentralisation in Africa. They observed that countries such as Benin, Mali, Mozambique and Tanzania have experienced what could be termed ‘weak decentralisation’ (where one or two of the three aspects is lacking) whilst countries like Senegal and Uganda have vacillated between robust and weak decentralisation.²³

The variations between theory and practice discussed above are not only limited to the realisation of all three aspects of decentralisation. In addition, there are variations between the theoretical model of robust decentralisation and its codification into law. Steytler identifies three different degrees to which decentralisation can be codified into the constitution. These are: ‘full-blooded’ decentralisation, where there is a high level of constitutional recognition and enforceability; rhetorical decentralisation, where recognition is somewhat median; and phantom decentralisation where there is either very little or no constitutional recognition.²⁴ It is important to note that the codification of decentralisation into law on its own does not always guarantee the actual realisation of the law’s objectives. This is because another variation exists between what is in law (*de jure* decentralisation) and what is implemented in practice (*de facto* decentralisation). Erk’s study of patterns of decentralisation in sub Saharan Africa corroborates this observation. He observed that states can be decentralised in terms of the law yet, remain in that *pro forma* state for years.²⁵

The variations discussed above raise an important distinction between the ‘state’ and ‘process’ of decentralisation. The ‘state’ perspective deals with the degree of decentralisation at a given time.²⁶ Accordingly, studies focusing on the ‘state’ of decentralisation focus on examining the extent to which states are decentralised. On the contrary, the ‘process’ perspective focusses on the continuous evolution of decentralisation over time.²⁷ The ‘process’ perspective, followed in this study, assumes that states are seldom completely decentralised and neither do they

²³ Riedl & Dickovick (2014) 324.

²⁴ Steytler N ‘The Symbiotic relationship between decentralisation and constitutionalism’ (2016) *Paper presented at the Fourth Stellenbosch Annual Seminar on Constitutionalism in Africa 7-9 September 2016* 34.

²⁵ Erk (2014) 540.

²⁶ Torris G et al ‘Defining and measuring decentralisation: A critical review’ (2011) *Munich Personal RePEc Archive Paper No. 51441* 4 available at <http://mpra.ub.uni-muenchen.de/51441/> (accessed 03 February 2019) 4.

²⁷ Torris et al (2011) 4.

continuously pursue decentralisation. It can be reversed, reflecting a process of recentralisation. It is therefore important to separate the process of decentralisation from that of recentralisation.

3. Conceptualising Recentralisation

Contemporary studies treat recentralisation and decentralisation as two sides of the same continuum.²⁸ Elazar explains the background to this understanding as a recognition of the fact that the term decentralisation itself implies the existence of a central authority or government which has the authority to decentralise and recentralise at will.²⁹ Similarly, Dickovick asserts that recentralisation constitutes the reverse wave of decentralisation.³⁰ Thus, whilst decentralisation is viewed in this study as the transfer of power and resources from central government to local government, recentralisation is interpreted to mean the opposite - withdrawal of the powers and resources of local government and transfer of these to central government. Accordingly, the withdrawal of political, fiscal and administrative powers of local government by a central government is treated as a process of recentralisation.

Application of the term recentralisation itself in this study is distinguished from the term centralisation. The term centralisation, compared to recentralisation, depicts a state of withholding or consolidating power at the central government level. This means that centralisation can be analysed independently of decentralisation. This study is primarily concerned with the process of decentralisation, which when observed in practice shows signs of reversal (recentralisation) over time. In much the same way as decentralisation, the term recentralisation depicts a process with varying levels of intensity. Acknowledged in this conceptualisation is that the legislative, political, financial and administrative components of local government autonomy can be withdrawn at different times and to different degrees. This interpretation facilitates a longitudinal analysis of shifts in local government autonomy in one country over time and enriches the identification of factors driving the recentralisation wave.

²⁸ See Elazar (2011) 83; Dickovick (2011) 6; Torris et al (2011) 4.

²⁹ Elazar (2011) 82.

³⁰ Dickovick (2011) 193.

4. Conceptualising Local Government

At the centre of this study is an analysis of factors driving waves of decentralisation and recentralisation of power. These shifts of power take place between a central government and subnational governments. A complexity which arises in this process is that countries have different levels of governments. Whilst some countries may have only one subnational level of government, some can have as many as three different levels. The five countries under study reflect these variations. In addition to variations in levels of government, more variations can be witnessed at the local government level itself. This asymmetry is also common in federal countries such as Germany, Canada, and Switzerland where states are allowed to establish local government systems of their choice, but only within a framework set by federal laws.³¹

South Africa and Zimbabwe (at least in terms of the law) have two subnational levels of government - provincial and local governments. Botswana, Malawi and Namibia have one subnational level in the form of local government. Malawi's local government is made up of a common system of district councils. Botswana has separate local government structures for rural and urban areas - District Councils and Town Councils. Namibia has a slightly different system of local authorities for urban areas and regional councils for non-urban areas. In addition, Zimbabwe all along had a single subnational level - local government. It only added Provincial Councils in a 2013 Constitutional amendment. Notwithstanding the structural variations across the five countries, local government is visibly a common feature. It is therefore imperative that decentralisation and recentralisation waves in the five countries are viewed through shifts of power between central government and local government.

As with the idea of decentralisation, the term local government is equally complex and amenable to varied interpretation. For instance, does local government include traditional authorities? Are Land Boards and District Development Committees part of local government? The answer depends on the perspective taken. In line with the interpretation of decentralisation given above, this study adopts the United Nations Development Program (UNDP)'s definition of local government. The UNDP refers to local government as a democratically representative and autonomous political entity with a clear mandate to provide a range of significant services;

³¹ See Kramer J 'Local government and city states in Germany' in Steytler N (ed) *The Role and Place of Local Government in Federal Systems* (2005) 83-4.

a body corporate with an ability to sue, be sued, enter into contractual arrangements, employ its own staff, raise its own revenue and make and enforce local by-laws.³² Accordingly, in this study, the term local government is limited to the rural and urban local authorities with elected members. This goes hand-in-hand with the conceptualisation of decentralisation as the dispersal of central government powers, functions and resources to democratically elected local institutions. Against this backdrop, traditional institutions of chieftaincy, deconcentrated central government structures like District Development Committees and Land Boards are not considered as local government.

In terms of structure, most local governments have a council, an executive and the bureaucracy. A council is the highest decision-making authority and is made up of individuals popularly elected to represent members of the public in the local governing process.³³ In most cities and towns the council is led by a mayor who can be an executive or ceremonial figure. Where the mayor has an executive function, he or she is normally elected by registered voters whereas ceremonial mayors are either appointed or elected by councillors from amongst themselves.

The executive is the top management level of a local government and is responsible for heading the administrative machinery of the organisation.³⁴ Its configuration varies from country to country depending on the laws establishing it. In some countries, it is headed by a Chief Executive Officer, a City Manager, an Executive Mayor or a Town Clerk. The executive is charged with leading the implementation of resolutions from council and or policies from the superior government.³⁵ Members of the executive make key decisions that affect council performance. Consequently, their appointment and management is important in determining shifts towards decentralisation or recentralisation. In other words, increased council autonomy in the administration of executive members signifies a commitment to decentralisation whilst the placement of executive members under central government control indicates a shift to recentralisation.

³² United Nations Development Programme 'Decentralisation: A sampling of definitions' (1999) *Working paper prepared in connection with the Joint UNDP-Government of Germany evaluation of the UNDP role in decentralization and local governance* 8.

³³ Humes S *Local Governance and National Power: A Worldwide Comparison of Tradition and Change in Local Government* (1991) 202.

³⁴ Humes (1991) 202.

³⁵ Humes (1991) 202-3.

The bureaucracy is the administrative and operations architecture that is responsible for implementing executive decisions.³⁶ It is made up of the ‘foot soldiers’ or council employees who take part in the delivery of services to the community on a day to day basis. The employees must be appointed and administered by the local government itself rather than the central government. This improves accountability as the elected councillors will have some control.

As an order of government in a hierarchy, local government gains in strength if more powers are decentralised, but grows weaker if powers are recentralised. As implied by Elazar the powers can move back and forth between central government and local government depending on the will of the central authority. This movement signals shifts by regimes towards more decentralisation or recentralisation, a subject that is discussed in detail in the next section.

5. Indicators of Decentralisation and Recentralisation.

Waves of decentralisation and recentralisation can be traced using indicators of local government autonomy. Through a survey of works by other scholars and international institutions such as the World Bank and the United Nations, four such indicators have been identified as key to this study. These are (a) constitutional protection, (b) local democracy, (c) substantive powers and (d) financial autonomy. The premise of this study is that the five indicators are equally important, and they must all be in place to signify robust decentralisation. However, this is hardly ever the case as governments are constantly shifting in this regard, recognising aspects of local autonomy at one moment and imposing limits on this at another, in the ebb and flow of decentralisation and recentralisation. Furthermore, there are variations in terms of the degree to which these indicators are promoted or limited, showing improvement or decline in the level of local autonomy.

5.1. Constitutional Protection

Constitutional recognition of local government, both as a level of government and as specific demarcated territorial entities, has become a key factor in the promotion of decentralisation.³⁷

³⁶ Humes (1991) 202.

³⁷ See Katorobo J ‘Decentralisation and Local Autonomy for Participatory Democracy’ (2005) *6th Global Forum on Reinventing Government towards Participation and Transparent Governance 24-27 May 2005 Seoul Republic of Korea* 10; Steytler N ‘Local multiparty democracy in Africa’ (2018) *Paper Presented at the Sixth Stellenbosch*

De Visser defines constitutional recognition or protection of local government as the extent to which local government is expressed in the constitution.³⁸ Dele Olowu gives a more elaborate interpretation of constitutional protection as a reform process that changes the status of local government from being a creature of central government to an independent actor that is free from national government impulses.³⁹ Olowu's view is shared by Tinashe Chigwata and Jaap De Visser, who affirm that enshrining local government provisions in the constitution raises its status and guards against arbitrary disestablishment or subversion by central government.⁴⁰ Accordingly, if local government is no longer recognised by the constitution, the subnational entity becomes a creature of central government and loses an aspect of its autonomy (constitutional protection), a process that reflects recentralisation.

When tracing changes in local government autonomy it is important to note that the term constitutional protection itself can be complex. There are varying degrees of constitutional protection, indicating improvement in decentralisation or its decline. Steytler identifies three levels of entrenchment that makes constitutional protection uneven across countries or regimes. First, is a nominal recognition of local government. Here one or more constitutional provisions make reference to local government whilst reserving detail about its structures, powers, functions and financial matters to a determination by legislation.⁴¹ Second, there is more robust recognition in which the powers, functions, structures and finances of local government are enshrined in the constitution and these can be invoked for protection in a court of law.⁴² A third level that must be recognised (although Steytler did not expressly acknowledge it) is the moderate recognition that falls in between the two extremes, where only some powers and functions are entrenched.

Annual Seminar on Constitutionalism in Africa 4-6 September 2018 1; De Visser J 'Constitutionalisation of Local and Regional Government in South Africa, Uganda and Lesotho' (2016) *Paper Presented at the Fourth Stellenbosch Annual Seminar on Constitutionalism in Africa 4-6 September 2018* 1.

³⁸ De Visser (2016) 1.

³⁹ Olowu D 'The constitutionalisation of local government in developing countries: Analysis of African experiences in global perspective' (2012) 3 *Beijing Law Review* 44.

⁴⁰ Chigwata T C & De Visser J 'Local Government in the 2013 Constitution of Zimbabwe: Defining the Boundaries of Local Autonomy' (2018) 10 *Hague J Rule Law* 168.

⁴¹ Steytler (2018) 5.

⁴² Steytler (2018) 5.

5.2. Local Democracy

One of the most publicised arguments for decentralisation has been the promise that it deepens democracy.⁴³ In other words, it is at the local government level that democracy becomes more meaningful and accessible. As Steytler has argued, governance matters such as transparent behaviour, holding leadership to account, accommodation of minority groups and small political parties in any transition from authoritarianism are more realisable at the local government level.⁴⁴ It is against this background that scholars have treated local democracy as a critical vehicle for the realisation of self-governance, taking it to the core of decentralisation.⁴⁵

Neven breaks down the indicators of local democracy in the form of answers to seven key questions. Are subnational governments elected? Are there multiparty elections? Are ballots secretly cast? Are elections held at regular intervals? Are the elections free and fair? Does the central government have authority to override local decisions? Is the head of local government elected or appointed?⁴⁶ Kent Eaton et al add the relative timing of local government elections as another important indicator, asking are local government elections conducted at the same time with national elections or at different times⁴⁷? Shifting from separate to simultaneous elections is therefore considered to signify recentralisation. According to Eaton et al this is because simultaneous elections tend to nationalise electoral contests and diminish the likelihood that local elections will be decided on the basis of how well local officials have performed.⁴⁸

The discussion above indicates that decentralisation can be manifested through the introduction of councils whose members can be directly held accountable by communities through regular, free and fair local government elections. It also involves a plurality of the polity through multiparty competition and tolerance of minority views.⁴⁹ Beyond elections, tolerance entails that opposition political parties controlling certain local authorities must be allowed to govern.

⁴³ See Steytler (2018) 1; Fessha & Kirkby (2008) 249; Dickovick (2011) 7.

⁴⁴ Steytler (2018) 1-2.

⁴⁵ See Wunsch J S 'Decentralisation: Theoretical, conceptual, and analytical issues' in Dickovick J T & Wunsch J S *Decentralisation in Africa: The Paradox of State Strength* (2014) 3; Steytler (2018) 1.

⁴⁶ Neven I 'Background paper on "Decentralisation" (2003) *Contribution to Cost-Action E 19 "National Forest Programmes in the European Context September 2003 Vienna* 8.

⁴⁷ Eaton et al (2010) 15.

⁴⁸ Eaton et al (2010) 15.

⁴⁹ See Steytler (2018) 2.

On the other hand, regimes bent on recentralising political power may stop holding local elections, preferring instead for local government to be led by individuals appointed by elites at the central government level. Some may regularly conduct free and fair elections for the rest of local representatives but make the appointment of the head of the council a prerogative of the President. Some may prohibit opposition political parties from participating.⁵⁰

5.3. Substantive Powers

The mere existence of local government with elected leadership is inadequate for the determination of waves of decentralised and recentralisation. This is mainly because central government can still recentralise power without tampering with local democracy. This happens when the elected local government is shorn of substantive powers. Botswana is a good example of such manipulative tactics. Notwithstanding its protracted legacy of consistency in practicing multiparty democracy at the local government level, literature indicates that decentralisation in Botswana has been reversed through the withdrawal of important functions, sources of revenue and personnel administration powers.⁵¹ This example brings to the fore the importance of substantive powers to local government. There is no common formula to the determination of such powers, which differs in nature across decentralized states. The key question is whether local government has meaningful functions and competencies that give it in practice, the distinctive status of a government. Or as Steytler puts it:

‘The key questions are: does local government have powers that matter? Are local authorities confined to ‘roads, rubbish and rats’, as is often said of Australian municipalities? Are local government’s powers significant enough to make local self-government a meaningful enterprise so that citizens are interested in local politics?’⁵²

Three forms of substantive powers are discussed under the following sub-sections – policy scope, legislative powers and personnel administration powers.

⁵⁰ See Aalen L & Muriaas R L *Manipulating political decentralisation: Africa’s inclusive autocrats* (2018) 119.

⁵¹ Poteete A R et al ‘Botswana: Political and economic obstacles to decentralisation’ in Dickovick J T & Wunsch J S (eds) *Decentralisation in Africa: The Paradox of State Strength* (2014) 23.

⁵² Steytler N ‘Introduction’ in Steytler N (ed) *The Place and Role of Local Government in Federal Systems* (2005) 6.

5.3.1. Policy Scope

The subdivision of a state into central and local governments requires that the scope of functions discharged by the government has to be shared between the two levels. However, the sharing process is often riddled with variations. Sometimes basic functions such as primary education and primary healthcare may be provided at the local government level while secondary functions such as secondary education and hospital care are provided at the central government level.⁵³ In some cases, the same functions are discharged by both central and local government with the former giving policy direction and setting broad objectives, and the latter determining methods of delivery.⁵⁴ These variations lead to a distinction between functions exclusively provided by local government and those concurrently provided by both central and local government. Smith concludes that the more the number of functions local government is responsible for, the more decentralised the state is.⁵⁵ A narrow scope of functions could thus be an indication of more power being held at the central government level whilst a wide scope indicates greater decentralisation.

The distinction between decentralisation and recentralisation is relatively easier to identify within the context of functions exclusive to local government but could be more complex when it comes to those functions concurrently discharged by both central and local governments. In his study of concurrent powers in South Africa, De Visser concludes that concurrency tends to have a centralising effect.⁵⁶ De Visser's views resonate with Frits Scharp's 'joint –decision trap' argument that policy outcomes of joint decision systems tend to be suboptimal compared to those of a unitary nature.⁵⁷ In short, recentralisation takes place when central government takes over or withdraws functions which were being discharged by local government or declares certain local government functions a concurrent responsibility. In addition to being exclusive to local government or concurrent, sometimes the separation of policy jurisdictions may not be clear-cut.

⁵³ Smith B 'The measurement of decentralisation' (1979) 45 (3) *International Review of Administrative Sciences* Smith 215.

⁵⁴ Smith (1979) 215.

⁵⁵ Smith (1979) 215.

⁵⁶ De Visser J 'Concurrent powers in South Africa' in Steytler N (ed) *Concurrent Powers in Federal Systems: Meaning, Making, Managing* (2017) 240.

⁵⁷ Scharpf F W 'The joint decision trap: Lessons from German federalism and European integration' (1988) 6 *Public Administration* 271.

5.3.2. Legislative Powers

The legislative powers of local government entail a municipal council's power to set policy priorities through the passing of local legislation.⁵⁸ The legislation is important as it gives effect to policy priorities like the municipal budget, development plans, credit control, levying of property rates, user fees, waste management and water supply.⁵⁹ Therefore, the conceding of power for local government to legislate on its policy priorities is indicative of decentralisation. Against this, if local government does not have legislative powers, it follows that it may be only responsible for implementing policy priorities determined through central government legislation, a development that signals centralisation of power. Thus, a strong indicator of legislative autonomy is the power of a municipal council to pass legislation within its competence and without having to seek the approval of the central government. Any movement away from this, or any decline in this power, signifies a process of recentralisation. For instance, the central government may require that all council legislation must be subjected to central government approval.

5.3.3. Personnel Administration

The power to hire or fire local government employees is an important indicator of autonomy (and thus decentralisation). In a centralised system, the central government makes these decisions, for example, requiring the approval of the central government. Recentralisation takes place when all or some aspect of hiring and firing is taken over by the central government. According to Neven the changes can be traced by analysing shifts in the level of government responsible for determining salaries, hiring and discharge of employees.⁶⁰ When decentralising, the selection, deployment and discharge of personnel working in subnational entities are transferred to local governments.⁶¹ Accordingly, when recentralising, central government either withdraws the full responsibility for the administration of personnel from local government or reclaims only a hand in their hiring and discharge.

⁵⁸ De Visser J & May A 'Functions and powers of South Africa's provinces and municipalities' in Steytler N and Ghai Y (eds) *Kenyan and South African Dialogue on Devolution* (2015) 165.

⁵⁹ De Visser & May (2015) 166.

⁶⁰ Neven (2003) 9.

⁶¹ Smith (1979) 221.

5.4. Financial Autonomy

The authority to discharge a wide scope of functions may lose its value if it is not backed by adequate financial autonomy. This is mainly because, for the authorised functions to be implemented, adequate finances and freedom to make spending decisions should be in place. For this reason, Dickovick has hinted that there is increasing recognition in political science discourse that the power to govern depends on the control of financial resources.⁶² Decentralisation or centralisation, therefore, can be indicated by answers to the question: which level of government controls financial resources?⁶³ Consequently, the level of decentralisation or centralisation is indicated by the extent to which the local government or central government makes revenue generation and expenditure decisions. More specifically, the level of decentralisation or centralisation can be determined by answers to the following questions: Which level of government authorises payments? Which level of government can levy taxes? How do different levels of government share nationally-raised revenues?⁶⁴

Dickovick has argued that in financially-decentralised states, local government should have taxation authority, receive constitutionally-guaranteed transfers from central government, set independent budgets free of Ministerial approval and operate free of spending mandates.⁶⁵ On the contrary, financially centralised states limit local government's taxation authority, reduce its sources of revenue, erratically disburse discretionary transfers to subnational entities, set ceilings on local government budgets and tightly control its spending priorities. The reversal of the state of financial decentralisation or return to the state of financial centralisation described above indicates the recentralisation of financial powers. In their study of subnational autonomy in Africa, Fessha and Kirkby also concluded that the withdrawal of fiscal power has constituted a 'backdoor' to centralisation (recentralisation) in most African states.⁶⁶

⁶² Dickovick (2011) 1.

⁶³ Dickovick (2011) 1.

⁶⁴ Böckenförde M 'Decentralized forms of government' in Böckenförde et al (eds) *A Practical Guide to Constitution Building* (2011) 305.

⁶⁵ Dickovick (2011) 5.

⁶⁶ Fessha & Kirkby (2008) 266.

6. Driving Forces.

The above discussion indicates that variations in local government autonomy can be observed within one country over different time periods or across different countries at a similar time period. However, similarities can also be observed as different countries share the same level of local government autonomy. These similarities and disparities raise questions about the factors driving decentralisation and recentralisation in individual countries and whether these are similar or different across countries. A number of studies have documented the factors driving decentralisation and recentralisation of power. Some of these are simply theoretical reflections on the question, while others are based on observed practice from different countries. Some of the factors come from the grassroots, where upon central government simply compromises or they can emanate from the top as part of central government elites' power calculations. They can be external, as part of donor pressure or global integration influence or they can be internally-driven by political and socio-economic dynamics within the country. They can be a result of the interplay between competing political parties or they can be a product of power struggles within a dominant ruling party.

6.1. Factors Driving Decentralisation

6.1.1. Peace and Stability

Countries that are ethnically diverse and regionally divided present a picture of coexisting differences. History has demonstrated that these differences have the potential to generate conflict and instability if certain groups feel marginalised by or excluded from the government machinery. Scholarship is divided on whether conflict can be resolved by decentralisation or recentralisation. Section 6.2.1 will discuss the recentralisation argument whilst this section presents the argument for decentralisation. Jean Paul Faguet is one of the scholars who have argued that decentralisation can be an instrument for peace. He explains that, historically, some governments have decentralised power as a strategy for securing national stability, reducing the risk of violence and taming secession-threatening groups.⁶⁷ Fessha and Kirkby echo the same sentiments using Kymlicka's argument that:

“Harmony will be increased in a system in which territorially concentrated minorities are able to exercise autonomy or self-determination on matters crucial to their

⁶⁷ Faguet (2013) 6.

continued existence, without the fear of being overridden or vetoed by the majority group.”⁶⁸

Although some literature suggests that accommodation of diversity as a peace-making and stabilising device is achieved through federal or quasi-federal arrangements at the provincial or state level, there are countries where local government has been used to promote peace and stability - Ethiopia and Uganda are examples of this.⁶⁹ This means bottom-up demands for some measure of autonomous rule coupled by threats of instability can equally play a part in driving decentralisation.

6.1.2. Democratisation

The end of the Cold-War saw authoritarian regimes losing international legitimacy and financial support.⁷⁰ The wave of democracy that followed the end of the Cold-War had decentralisation on its coattails. Decentralisation was viewed as a true reflection of democratic governance where the government operates closer to the people and communities have a better opportunity to hold their leaders to account.⁷¹ A wave of decentralisation reforms that took place during transitions from authoritarian rule in the 1990s attests to this.⁷² In a study of ten African countries Wunsch observed that all regimes seek and need varying forms of legitimacy in the eyes of their citizens and the international community.⁷³ Consequently, as Dickovick has observed, regimes tend to decentralise power in search of democratic credentials associated with the view that ‘decentralisers are democrats’.⁷⁴ The view that ‘decentralisers are democrats’ is informed by promises that decentralisation makes in terms of bringing the government closer to the people, expanding opportunities for communities to participate in governance and hold their leadership to account.

From the discussion above, it appears that decentralisation, particularly in the early 1990s, has been driven by external forces. These forces emerged from the demise of the Soviet Bloc and

⁶⁸ Fessha and Kirkby (2008)251-2.

⁶⁹ Steytler (2016) 11-2; Ribot (2002) 14.

⁷⁰ The World Bank Group ‘Decentralisation & subnational regional economics: What, why and where’ available at <http://www1.worldbank.org/publicsector/decentralization/what.htm> (accessed 04 August 2017).

⁷¹ Fessha & Kirkby (2008) 249.

⁷² Dickovick (2011) 7.

⁷³ Wunsch (2014) 4.

⁷⁴ Dickovick (2011) 7.

its centralist ideologies and the telling victory of the Western Bloc and its democratic imperatives. Be that as it may, literature shows that not every process of decentralisation has been driven by a search for some form of legitimacy in the eyes of the world. There are cases where the drive behind decentralisation resembled some genuine commitment to the deepening of democracy. For instance, Manor asserts that the Philippines, Bolivia and Indian states such as West Bengal and Karnataka in the 1980s undertook some form of decentralisation, driven by the need to extend liberal representative politics to communities and to enlarge citizen participation.⁷⁵

6.1.3. Politics of Grandstanding

The pursuit of decentralisation as part of a wider global wave of democratisation explained above cannot be limited to incoming regimes. Certainly, incumbent regimes can decentralise power when facing a tough election where calculations show high levels of uncertainty about winners and losers.⁷⁶ In this regard, decentralisation is not pursued as a genuine democratic venture to bring the government closer to the people but as a campaign gimmick by regimes grandstanding for re-election. It is rolled-out in a bid to salvage some legitimacy on the back of the association of decentralisation with good governance. In this case regimes calculate that benefits of retaining power at the national level outweigh costs of decentralising some of their power to opposition-controlled local government institutions.⁷⁷ In other words, they make a decision to ‘win by losing’. Dickovick supports this argument with reference to Victoria Rodriguez’s findings on how decentralisation in Mexico emerged as a tactical scheme to raise public support and enhance the incumbent government’s legitimacy just before a national election.⁷⁸ In this regard, decentralisation would be internally driven in a top-down manner by elites at the centre as they respond to political competition.

6.1.4. Donor Pressure

The support and popularity enjoyed by democracy at the end of the Cold War saw donors like the International Monetary Fund (IMF) and the World Bank emphasising decentralisation to

⁷⁵ Manor (1999) 37.

⁷⁶ Eaton et al (2010) 15.

⁷⁷ Dickovick (2011) 8.

⁷⁸ Dickovick (2011) 8.

promote good governance in developing countries.⁷⁹ As a consequence, donor support carried a condition requiring decentralisation reforms in most developing countries.⁸⁰ This has been the case particularly in those developing countries that are heavily dependent on foreign assistance.⁸¹ In that regard, it can be argued that external forces such as international donors play a part in driving decentralisation. However, literature concurs that although donors have been involved in decentralisation reforms, their influence has been modest. Manor concludes in his study that in practice, the actual decisions to decentralise power have seldom been donor-driven.⁸² He adds that in East Africa, the World Bank's influence was partly ambiguous and generally insignificant.⁸³ Dickovick shares Manor's view, arguing that the influence of these international actors in Africa was either ignored or resisted in most cases.⁸⁴

6.1.5. Intra-party Pressure

Power dynamics between national and subnational elites of ruling parties tend to put party cohesion at stake and drive central government to decentralise power. This is mainly the case when subnational elites dominate political processes in ruling parties.⁸⁵ Eaton, Kaiser and Smoke explain how Willis et al's study of five Latin American countries revealed that, if the careers of central government elites are dependent upon support by local elites in the party like governors, they are more likely to concede to demands for decentralisation.⁸⁶ In this case decentralisation is internally driven from the bottom-up by strong local elites within the ruling party, demanding more power or seeking to ring-fence their area of influence. Consequently, central government make compromises in order to retain grassroots support and keep the party together.

6.1.6. Entrenching the Ruling Party's Power Grip

While decentralisation can be driven from the bottom by local elites, leaders at the central government level can also initiate decentralisation not only in response to the demand from

⁷⁹ Manor (1999) 29.

⁸⁰ Eaton et al (2010) xvii.

⁸¹ Eaton et al (2010) xvii.

⁸² Manor (1999) 29.

⁸³ Manor (1999) 29.

⁸⁴ Dickovick (2011) 26.

⁸⁵ Eaton et al (2010) 17.

⁸⁶ Eaton et al (2010) 17.

local elites, but because decentralisation may extend the reach, presence, visibility and influence of the ruling party. In this regard, decentralisation is a product of central elites' desire to increase their and the party's penetration into the periphery of the state.⁸⁷ According to Eaton et al, Ugandan President Yoweri Museveni is one example of this. He pushed decentralisation from the top-down in order to build a strong support base for his National Resistance Movement (NRM), leading to a relatively empowered local government.⁸⁸ Jesse Ribot shares the same view, noting that some 'one party states' in Africa during the 1970s and 1980s used to promote decentralisation for the same purpose.⁸⁹ As Manor puts it, under such circumstances the driving force is a narrow search for partisan advantage in which central government uses decentralisation to cultivate political support and co-opt powerful actors at the local level.⁹⁰ Riedl and Dickovick agree, adding that sometimes regimes decentralise not only to expand their power base but also to prevent opposition parties from taking root and building their own local footholds of power.⁹¹

6.1.7. Curbing Centralised Rule.

The fall of the centralised state in the late 1980s and early 1990s left many doubts about the virtues of extremely powerful rulers (dictators) and their regimes. The 1990s wave of democratisation that was accompanied by decentralisation became an opportunity for constitution-makers to strategically hedge states against the resurgence of one centre of power. Yash Ghai explains this with reference to Kenya and South Africa's decentralisation reforms where constitutional codification in 2010 and 1996 respectively was partly driven by a desire to limit the centralisation of power.⁹² In these cases, decentralisation is driven from the bottom-up by constitution-makers in search of a way to limit the concentration of power in the central government.⁹³

⁸⁷ Ribot (2002) 14.

⁸⁸ Eaton et al (2010) 15.

⁸⁹ Ribot (2002) 14.

⁹⁰ Manor (1999) 38-9.

⁹¹ Riedl & Dickovick (2014) 327.

⁹² Ghai Y, 'South African and Kenyan systems of devolution: A comparison' in Steytler N and Ghai Y (eds) *Kenyan and South African Dialogue on Devolution* (2015) 10.

⁹³ Steytler N 'Domesticating the leviathan: Federalism and constitutionalism in Africa' (2016) 24 (2) *African Journal of International and Comparative Law* 273.

6.1.8. Exit Strategy: Subnational Footholds of Power

The preceding section indicates the prevalence of mutual distrust between regimes in power and the people they govern. Similarly, some studies have revealed that most regimes view decentralisation as a threat.⁹⁴ It becomes curious when regimes that have been clinging to power all along suddenly announce sweeping decentralisation reforms. Riedl and Dickovick explain that such changes are closely tied to electoral outcomes at the national level.⁹⁵ In every election, regimes try to calculate their chances of winning or losing before the voting takes place. If they sense defeat at the polls, they try to put in place some plans for a ‘life after national power’. Accordingly, decentralisation presents ruling parties with subnational footholds that can sustain them when they are out of power at the national level.⁹⁶ In this case decentralisation is driven from the top-down by regimes seeking to salvage some levers of power and state resources as they bow out. In other words, decentralisation becomes an exit strategy as the ruling party searches for subnational footholds to retain and rebuild.⁹⁷ Bolivia is an example in this regard. In 1994, the ruling National Revolutionary Movement (NRM) in Bolivia endorsed bold decentralisation reforms in anticipation of electoral defeat at the national level and victory in some local authorities.⁹⁸

6.1.9. Creating Patronage Opportunities

Central government elites may also wish to decentralise power for patronage reasons. According to Riedl and Dickovick, the term patronage entails the selective distribution of state resources and positions to a leader’s party supporters in return for loyalty.⁹⁹ Michael Bratton and Nicolas van de Walle give a more elaborate interpretation of the workings of patronage. They found that elites at the central government level, and particularly Presidents, are understood as ‘big men’. ‘Big men’ carefully consolidate power through the offer of patronage distribution of public positions, resources and opportunities to a network of cronies who work to mobilise more political support.¹⁰⁰ In this case, decentralisation is seen as an instrument for

⁹⁴ Riedl & Dickovick (2014) 327.

⁹⁵ Riedl & Dickovick (2014) 327.

⁹⁶ Riedl & Dickovick (2014) 327.

⁹⁷ Wunsch (2014) 17.

⁹⁸ Eaton et al (2010) 15-6.

⁹⁹ Riedl & Dickovick (2014) 327.

¹⁰⁰ Bratton M & Van De Walle N ‘Neopatrimonial Regimes and Political Transitions in Africa’ (1994) 46 (4) *World Politics* 458-9.

creating patronage opportunities in the form of local government positions and resources for supporters of the ruling party. Riedl and Dickovick found the use of decentralisation for the purpose of expanding patronage networks to be a common strategy in both democratic and authoritarian regimes.¹⁰¹

6.2. Factors Driving Centralisation.

6.2.1. Conflict and Instability

The discussion on factors driving decentralisation in this chapter indicates that the quest for peace and stability has played a part in driving decentralisation in some countries. Further analysis of the literature suggests that although this theory is supported by events in some African states, this is not always the case. In their study of post-conflict African states, Aalen and Muriaas explain how conflict and instability worked to drive centralisation of power in Angola and Mozambique.¹⁰² Their theory seeks to reconcile the paradox of how conflict can drive both centralisation and decentralisation in different contexts. Their argument is that much depends on whether the conflict ends with the insurgent group taking power or the incumbent regime retaining power.¹⁰³ Implied in this theory is the fact that conflict tends to drive recentralisation of power if it ends without giving birth to a change of government. Regimes that succeed in crushing dissent are seldom persuaded to decentralise power. They are most likely persuaded to tighten their grip on the levers of power through recentralisation. For instance, in Angola and Mozambique conflict ended with the defeat of insurgent groups - Unita (União Nacional para a Independência Total de Angola) and Renamo (Resistência Nacional Moçambicana) by the ruling MPLA (Movimento Popular de Libertação de Angola) and Frelimo (Frente de Libertação de Moçambique) respectively. True to Aalen and Muriaas's theory, Frelimo has recentralised through a number of measures which include a principle of 'geographic gradualism' where local government elections are only conducted in ruling party strongholds but are held back in opposition strongholds.¹⁰⁴ In Angola, the MPLA government has recentralised by backtracking on the conduct of local government elections despite constitutional provision for them¹⁰⁵.

¹⁰¹ Riedl & Dickovick (2014) 328.

¹⁰² Aalen & Muriaas (2017) 58.

¹⁰³ Aalen & Muriaas (2017) 57.

¹⁰⁴ See Steytler (2018) 11.

¹⁰⁵ Steytler (2018) 9.

6.2.2. Nation Building

Conflict or no conflict, the pursuit of nation-building has had a part in the drive for centralisation of power in most African states, especially during the 1970s and 1980s. The premise of this position was that a strong central government was essential for national unity and for the modernisation of African societies.¹⁰⁶ Many African states implemented centralist strategies in the name of nation-building during the above-mentioned period with gusto, leaving little in the way of a meaningful role for local government.¹⁰⁷ By the time the wave of centralisation had lost its steam (in the early 1990s), most African states were far from achieving the trumpeted goal of building a united developed nation. Instead centralisation was associated with ethnic conflict, political inefficacy, corruption, administrative weaknesses and economic stagnation.¹⁰⁸ These results have put the nation-building theory into serious doubt, suggesting that maybe the ideals of nation-building were overtaken by other competing drivers which were more powerful but probably subtle.

6.2.3. Threat of Opposition: Democratisation

The waves of democratisation that swept across Africa in the early 1960s and the 1990s should not be narrowly viewed as driving decentralisation. In some cases (if not most), democratisation presented the spectre for regime change with decentralisation serving to sustain an ever-present threat of opposition. As a result, regimes clung to power, and used centralisation to keep threats at bay. Riedl and Dickovick unpack this theory in their study of party systems and decentralisation in Africa. The underlying presumption in the theory is that decentralisation creates subnational footholds of power and patronage opportunities that can be utilised by opposition parties to mobilise against the ruling party.¹⁰⁹ Consequently, ruling parties, particularly those in competitive democracies, tend to centralise power in order to limit the opportunities that local government creates for opposition parties. Benin is a case in point where the fragmented political system has worked to encourage centralisation as opposed to

¹⁰⁶ Wunsch (1990b) 44.

¹⁰⁷ Wunsch (1990b) 45.

¹⁰⁸ Wunsch J S and Olowu D 'The failure of the centralised African state' in Wunsch J S & Olowu D (eds) *The Failure of the Centralised State: Institutions and Self-Governance in Africa* (1990) 3-6.

¹⁰⁹ Reidl & Dickovick (2014) 330.

decentralisation of power.¹¹⁰ Riedl and Dickovick nuance their theory, arguing that centralisation is not only associated with competitive democracies or ruling parties with declining party support. Even dominant political parties in less competitive polities can centralise power as a strategy to thwart any future opposition challenge or make it difficult for new opposition parties to take root.¹¹¹ This is what happened in Senegal under the *Parti Socialiste du Sénégal* (Socialist Party of Senegal) government for many years before its demise in the late 1990s.¹¹²

6.2.4. Traditions of Centralism

Riedl and Dickovick's theory of centralisation driven by multiparty democracy does not go very far in explaining how the penchant to centralise power is noticeable in dominant ruling parties and the 'one party states' of the 1970s and 1980s. This brings the discussion to another theory of centralist traditions that drive recentralisation in modern states. Steytler makes reference to the Democratic Republic of Congo (DRC), Ethiopia and Kenya as examples of countries where traditions of centralism entrenched in path dependence and the principle of 'democratic centralism'¹¹³ have contributed to the recentralisation.¹¹⁴ In this case, centralisation is viewed as a product of values and traditions inherited from the past. Wunsch corroborates this view, explaining that post-independence regimes in Africa have waded into colonial path dependence, recentralising power and producing more continuity than change.¹¹⁵ He further clarifies that colonial regimes left the instruments for centralised rule at the disposal of independent Africa's new leaders and these had seen how these could be used to deal with political and policy opposition.¹¹⁶ This explains how most African states quickly recentralised power when they were exposed to multiparty democracy after independence: the role models were readily available. In this, the opening-up of African states to competitive politics after independence entails that the threats posed to the colonial regime by decentralisation are still relevant now, as are the instruments used to deal with them. As Wunsch has argued, post-colonial African regimes saw how well these instruments worked. Therefore, it will be naive

¹¹⁰ Reidl & Dickovick (2014) 337.

¹¹¹ Reidl & Dickovick (2014) 328.

¹¹² Reidl & Dickovick (2014) 335.

¹¹³ A Communist party organization system in which decisions are made by a few elites at the helm of the party (after consulting the masses) and become binding to all party members.

¹¹⁴ Steytler (2016) 23.

¹¹⁵ Wunsch (1990a) 29.

¹¹⁶ Wunsch (1990a) 29.

to expect post-colonial regimes not to consider colonial instruments of recentralisation as part of their options when they are faced with threats to their own power.

6.2.5. Internal Party Cohesion

The search for a system of governance that can hold the ruling party together and ensure unity of direction explains how a country can be decentralised *de jure* and yet centralised *de facto*. The determinant factor is whether national or subnational elites dominate political processes within the party.¹¹⁷ This theory is precisely reflected in Zemelak Ayele's study of local government in Ethiopia where the ruling party's use of the principle of democratic centralism has dominated and neutralised the formal system of decentralisation.¹¹⁸ Ayele argues that this outcome has been facilitated by three factors. First, the ruling party, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), has dominated the country's politics since coming to power in 1991, meting out crushing defeats to opposition parties at all levels of government.¹¹⁹ Secondly, elites in the party's leadership deftly play a tight gate-keeping role in the selection of candidates and work to monopolise patronage instruments.¹²⁰ Thirdly, national party elites make most of the important decisions and task local government officials with implementation under the close supervision of regional party leaders.¹²¹ This exposé brings the theory to the following conclusions: The penchant (and success) of ruling party elites to create cohesion tend to promote centralisation of power within the party. If the party is dominant, internal cohesion in turn drives *de facto* centralisation in government, making local government an extension of the party elite-led national government. This happens whether decentralisation is formally acknowledged by law or not.

7. Conclusion

From a theoretical perspective, the process of decentralisation takes different forms and dimensions and can be implemented to different degrees, and hence its usage has varied according to the explanatory objectives of the scholars concerned. This has made it imperative

¹¹⁷ Eaton et al (2010) 17.

¹¹⁸ Ayele Z 'Local government in Ethiopia: Still an apparatus of control?' (2011) 15 *Law Democracy & Development* 20.

¹¹⁹ Ayele (2011) 15.

¹²⁰ Ayele (2011) 15.

¹²¹ Ayele (2011) 13.

for this study to outline its own analytical framework against which findings from the five case studies are assessed. The different forms of decentralisation and varying degrees to which it can be implemented bring to the fore an important observation: the elusive nature of what constitutes decentralisation itself. For comparative purposes, a narrower interpretation of decentralisation is more useful. This explains the decision in this study to apply decentralisation as a process dispersing some central government powers, functions and resources to territorial local government entities whose leadership is elected by members of that community. Although less-complicated than some interpretations (which go beyond the jurisdiction of elected local government), this conceptualisation is still complex. The complexity emanates from the various forms that decentralisation takes – political, fiscal and administrative. Since these forms can be separately promoted and undermined by central government, decentralisation assumes a fluid status, difficult to view in any absolute terms.

The complexity of decentralisation makes a ‘process’ view of the concept more practical and applicable to longitudinal studies. In other words, the view that decentralisation is an unstable process where local government autonomy can be expanded or eroded neatly connects the wave of decentralisation to the reverse one of recentralisation. The variety of factors that can be applied to indicate whether a country is pursuing decentralisation or is on a reverse wave of recentralisation give credence to this view. Common indicators of local government autonomy include constitutional protection, local democracy, substantive powers, financial autonomy and central government supervision. All the five factors are important for decentralisation to prevail. Yet, in practice, it is difficult to find all of them satisfactorily in place at the same time. For instance, sometimes local government might have democratic structures which are gradually shorn of legislative, financial or personnel administration autonomy. Thus, after a decentralisation reform, the central government may withdraw certain aspects (not all) of local government autonomy, systematically recentralising power. The identification of clear indicators and timing of their movement in turn give scholars an opportunity to develop new explanations or test the ones existing in literature.

A pool of loosely coordinated explanatory factors is available in the works of other scholars. In their numbers, the explanations have varied from study to study and from country to country, suggesting the centrality of deep contextual factors and variations in methodologies. The multiplicity of explanatory factors emerging from literature makes it very difficult to conclude

if all factors are responsible or if certain factors only apply to certain circumstances, or if certain factors are only a rhetorical facade that hides actual drivers. The comparative analysis of explanatory factors pursued in this study certainly adds value to the body of knowledge on decentralisation by connecting similarities and differences, and drawing patterns across different countries.

CHAPTER THREE

South Africa: 'Full-Blooded' Decentralisation

1. Introduction.

In decentralisation literature, the Republic of South Africa (RSA) ranks high among countries with a strong system of local government and a successful decentralisation process, and this is especially so when compared to the record of other African countries.¹ As is the case with all Southern African countries, South Africa's process of decentralisation has not been a smooth one. It reflects a wave of decentralisation that started during the period of white minority rule and picked up with the constitutional negotiations for democratic SA between 1990 and 1996. Culminating in the interim Constitution of 1993 and the final Constitution of 1996 and implemented in the first democratic local government elections of 2000, the local government system includes all four indicators of decentralisation discussed in Chapter Two of this study. These indicators are constitutional protection, local democracy, substantive powers and financial autonomy. However, during the two governments of President Thabo Mbeki and President Jacob Zuma (which succeeded the Nelson Mandela government), the dutiful quest for decentralisation regressed as faltering attempts were made to reform some of the substantive powers of local government, weaken its financial autonomy and integrate local government elections into a single election together with national and provincial elections.²

It is argued that the process of decentralisation in democratic South Africa was driven top-down and bottom-up by the national and local actors who negotiated the transition to democracy. The political crisis that engulfed the country during the fight against the apartheid³ policies of the white minority government was the main driver of the negotiations. It is further argued that the faltering attempts to reform local government after 2000 were driven by the centralist ethos of the ruling African National Congress (ANC) in the face of opposition and

¹ See Aalen L & Muriaas R L *Manipulating Political Decentralisation: Africa's Inclusive Autocrats* (2018) 52; Cameron R 'Vertical decentralisation and urban service delivery in South Africa: Does politics matter?' (2014) 32 (s1) *Development Policy Review* 81; Smoke (2003) 12.

² Steytler N 'The Dynamic Relationship between Devolution and Constitutionalism in South Africa' in Steytler N & Fombard C M (2019) 173.

³ A system of institutionalised racial segregation implemented by the white minority government to separately develop white communities whilst relegating blacks to inferior rights and services.

competition at the subnational level. However, the failure of the reform attempts was a result of three factors: the strong protection afforded to local government by the Constitution; resistance from an assertive local government made up of ANC-controlled authorities that identified with the vision of the democratic struggle against apartheid; and the strength of opposition political parties that captured some regional spaces of power.

In order to advance the argument made above, this chapter is divided into six sections, each indicating major shifts in local government autonomy towards either decentralisation or recentralisation. It begins by looking at a period of diverse levels of decentralisation under the white minority government from 1910 to 1990. Next, it examines local government reforms instituted during the transition to majority rule between 1990 and 1993. The reforms are followed by the codification of a strong sphere of local government into the final Constitution between 1994 and 1996. Thereafter, it analyses the operationalisation of the strong system of local government between 1996 and 1999 under the government of Nelson Mandela. It then proceeds to examine the period of ambivalence towards decentralisation under the Mbeki government (1999 to 2007) and closes by looking at the continued ambivalence towards local government under President Jacob Zuma (2009 to 2018).

This analysis needs to be placed within the country's context in terms of its history, size, diversity and wealth. It is a huge territory inhabited by a large population that is diverse in terms of race, ethnicity, culture and language.⁴ The country has a developed industrial and mining economy, yet, in terms of wealth distribution, it has one of the highest rates of inequality in the world. The roots of this inequality can be traced back to the colonial and apartheid periods of white minority rule and racial segregation.⁵

⁴ Picard L A & Mogale T *The Limits of Democratic Governance in South Africa* (2015) 7: The country has a territorial size of about 1.2 million square kilometres and a population size of (as of 2010) of nearly 53 million people, 61 per cent of which is urban, 79 per cent is African (black), 9.1 per cent is white, nine per cent is mixed race and three per cent is Asian.

⁵ Picard & Mogale (2015) 6-7. As of 2015, Statistics South Africa put the country's Gini coefficient at 0.68, ranking amongst the highest rates of inequality in the world.

2. Diverse Levels of Decentralisation under White Minority Rule (1910-1990)

2.1. Introduction

Colonial occupation and the gestation of white minority rule in RSA can be traced as far back as the 17th century when Jan van Riebeeck and the Dutch East India Company (VOC) took control of the Table Bay (Present-day Cape Town) in 1652. The company's occupation was meant to develop a fortified refreshment station for trade ships sailing between Europe and Asia.⁶ Initially, the company obtained some supplies through a barter trade with the native Khoikhoi and San (Khoisan) population. With time, more European settlers and slaves arrived and the natives were dispossessed of their land. In 1806, the British took over the territory (now renamed Cape Colony) and introduced new reform measures that included a ban on the slave trade. In 1836, a large population of Afrikaners⁷ trekked out of the Cape and established two republics - Orange Free State and the South African Republic (Transvaal). In 1843, the British annexed Natal, expanding their colonial territory into KwaZulu, an area controlled by the Zulu kingdom of Bantu-speaking people. In the 1860s, a large number of Indians were shipped into Natal as indentured labourers in the sugar plantations.⁸ The native Khoisan and Bantu population bore the brunt of British and Dutch settlement as most of them were displaced from their land and subjected to new laws.

After the discovery of gold in the Transvaal, war broke out between the British and the two Boer Republics (Anglo-Boer war of 1899-1902). The British victory led ultimately to the unification of the two Boer Republics and the two British colonies into the Union of South Africa in 1910. The new state was composed of four provinces (Cape, Natal, Transvaal and the Orange Free State), each with a government of its own that was subordinated to a powerful central government. Working beneath the provincial level was a fragmented system of local government that served different racial groups according to the national policy direction.

The country's population was very diverse, composed of significant African, Coloured, Indian and White populations. The white population itself was further divided into two major language and cultural camps, the Afrikaners and the English speakers of British descent. Africans were

⁶ See Thompson L *The History of South Africa* (2000) 33.

⁷ Descendants of Dutch settlers.

⁸ Thompson (2000) 99-100.

also subdivided into various ethnic groups scattered across the country. Although whites effectively controlled the political and economic life of SA,⁹ they were in the minority, constituting only 21.4 per cent of the total population (in 1911).¹⁰ Africans constituted by far the majority population in SA – 67.3 per cent, whilst Coloureds and Indians accounted for the remaining 11.3 per cent.¹¹ Naturally, Africans stood as a glaring threat to the continued dominance of their white minority counterparts and in the process attracted political exclusion.¹² One way in which blacks were politically excluded was through the establishment of separate local government systems for whites, Africans, Coloureds and Indians. Consequently, local government during the period of white minority rule was not a uniform structure reflecting a common level of decentralisation. Instead, the level of decentralisation reflected by each racial group's local government system varied considerably, leading to a protracted conflict that later shaped the future of local government in the democratic RSA.

2.2. Local Authorities for the White Community

In each of the four provinces, white communities had a modern system of local government similar to the one practised in Britain. This did not, however, enjoy constitutional protection. It was a creature of provincial legislation – a Local Government Ordinance passed by the provincial government as directed by the 1909 South Africa Act. Although each province passed its own Local Government Ordinance, there were significant similarities. The Ordinances were all informed by one law – the Cape Municipal Ordinance of 1836.¹³ This law borrowed considerably from the English Municipal Corporations Act of 1835, creating modern British-style municipalities with elected councillors, and enjoying fiscal, administrative and legislative powers.¹⁴ Although racial discrimination was a general trend, there were variations

⁹ Cloete J J N *South African Municipal Government and Administration* (1997) 7; Reddy P S 'Local government restructuring in South Africa' in Reddy P S (ed) *Readings in Local Government Management and Development: A Southern African Perspective* (1996) 53; Vosloo W B 'South Africa: Local government in white areas' in Vosloo W B, Kotzé D A & Jeppe W J O (eds) *Local Government in Southern Africa* (1974) 13: Most whites lived on large tracts of land where they constructed or bought affluent houses, established commercial farms, mines and industries. Powell D M *State Formation after Civil War: Local Government in National Peace Transitions* (2017) 144: Overall, white settlement, agriculture, mining and industrial activity accounted for about 86 per cent of the land and the entire productive economy of the country.

¹⁰ Christopher A J 'A South African Domesday Book: the first Union census of 1911' (2010) 92 (1) *South African Geographical Journal* 25.

¹¹ Christopher (2010) 25.

¹² Powell (2017) 144.

¹³ The influence of this law extended far beyond the Cape to other British colonies in Southern Africa.

¹⁴ Cloete (1997) 11; Vosloo (1974) 21.

in terms of the degree of discrimination between the more liberal Cape and Natal provinces and the Afrikaner-dominated Provinces. Prior to the Union of South Africa, the native Africans, Coloureds and Indians enjoyed a limited franchise in the Cape and Natal. This franchise continued after Union, but gradually declined until it was finally repealed in 1948 when the National Party (NP) came to power.¹⁵ This background explains the varieties of local democracy practised under white minority rule and the escalation of black dissent under the NP government.

Notwithstanding their lack of constitutional protection, white local authorities were autonomous in other aspects such as local democracy. White municipalities had some measure of local democracy in that they had councillors directly elected by white residents and with mayors indirectly elected by the councillors.¹⁶ The elections were regularly conducted, allowing the white residents to hold their leaders to account. Since they derived their governing mandate from residents, the white municipal councils enjoyed a significant amount of legitimacy. Various measures were put in place to ensure that only white residents qualified as candidates and voters. The measures varied from a requirement that one must meet certain immovable property and literacy qualifications¹⁷, to the outright declaration that only whites can be on the voters roll.¹⁸

White municipalities were authorised to discharge a wide range of important functions. These included the supply of water, electricity reticulation, public transport, traffic regulation, street maintenance, refuse collection, and trading and business licencing.¹⁹ The range of important functions they were authorised to discharge made them valuable, enabling residents to treat them as important public institutions that deserved respect and support. In addition, the municipal councils had powers to pass by-laws, facilitating the effective implementation of their mandate. Apart from the legislative powers, the municipal councils had the power to appoint and administer their personnel subject to provincial oversight.²⁰ Personnel

¹⁵ See Thompson (2000) 151.

¹⁶ Vosloo (1974) 27-8.

¹⁷ This was initially the case in the British-controlled Cape Province.

¹⁸ This was the practice in the Afrikaner-dominated provinces.

¹⁹ Vosloo (1974) 26.

²⁰ Vosloo (1974) 25.

administration powers increased the autonomy of the municipalities, enabling them to govern the affairs of their communities with limited oversight from the provincial government.

The most significant source of autonomy for the white municipalities was their fiscal strength. In general, white municipalities were financially self-sufficient, relying on provincial and central government transfers for only 3.7 per cent of their expenditure.²¹ They were well resourced and well-managed, providing white South Africans with a high quality of service.²² A decisive factor in the financial strength of white municipalities was their tax base of property rates. They controlled the Central Business District (CBD) in all towns and cities and had affluent suburbs in their so-called 'white' areas which were subject to property rates.

In sum, it is noteworthy that although unprotected by the constitution, the system of local government in white communities was relatively autonomous, and reflected a degree of decentralisation. The practice of local democracy facilitated accountability and public participation whilst financial autonomy kept central and provincial control at bay. In addition, the high quality of the services rendered increased the value and legitimacy of the municipalities. However, this system was not uniform across the country. The structure and powers of the municipal system and the quality of services rendered differed markedly from the system of local government prevailing in areas inhabited by blacks.

2.3. Local Authorities for the African Community

Africans had two types of local government, depending on their place of residence. Some were resident in the black homelands,²³ whilst others, in search of work opportunities, had moved to white urban areas. Those residing in urban areas settled on the fringes of white suburbs because of numerous apartheid laws that residentially separated races.²⁴ Consequently, blacks resided in townships near affluent white suburbs. By 1970 of the almost 15 million Africans (out of a population of almost 21.5 million),²⁵ more than half (54 per cent) of them worked and resided

²¹ Vosloo (1974) 29.

²² Powell (2017) 145.

²³ Rural pieces of land designated for African settlement and later referred to as Bantustans.

²⁴ These include the Natives (Urban Areas) Act 1923, the Natives (Urban Areas) Consolidation Act 1936, the Group Areas Act 1950 and the Separate Representation of Voters Act 1956.

²⁵ Vosloo (1974) 16.

in the 'white' urban areas whilst the remainder was scattered across the territory, living in homelands and on white commercial farms.²⁶

2.3.1. Homeland Local Authorities

At the heart of the grand apartheid policy, was the white minority government's propagandist narrative that RSA consisted of minorities. In this picture, blacks were not considered as a single unit but as a collection of minority ethnic groupings, existing alongside the white minority, but all with irreconcilable differences. As such, each ethnic grouping had to be prepared to develop in its way until it achieved total independence from (white) RSA.²⁷ Several laws were enacted to facilitate this vision including the Bantu Authorities Act 1951, the Promotion of Bantu Self-Government Act 1959 and the Bantu Homelands Citizenship Act 1970. This reform process led to the establishment of four 'independent' homelands of Transkei, Bophuthatswana, Venda and Ciskei and six 'self-governing' territories of KwaZulu, Kangwane, Qwa-Qwa, Gazankulu, KwaNdebele and Lebowa.²⁸ The homeland government structures varied from territory to territory, but a common denominator in them was the dominant role played by traditional leaders. Most of them had partly-elected legislative assemblies and executive government in which chiefs were dominant.²⁹ Local government was made up of the already existing traditional structures and systems of tribal governance through chiefs, headmen and their tribal councils.

Similar to the white municipalities, the traditional system of local government in homelands had no constitutional protection. It derived its existence and powers from homeland legislation. This meant that the traditional authorities were exposed to central government control. Consequently, when various pieces of central government legislation, policies and practices were rolled out, traditional leaders lost their autonomy, operating more as implementing agents of central government policies than as examples of local self-government.³⁰

²⁶ Vosloo (1974) 16.

²⁷ See speeches of Prime Ministers Hendrik Verwoerd and John Vorster in Khunou S F 'Traditional Leadership and Independent Bantustans of South Africa: Some Milestones of Transformative Constitutionalism Beyond Apartheid' (2009) 12 (4) *Potchefstroom Electronic Law Journal* 88-90.

²⁸ Steytler (2005) 313. The number of self-governing territories was later increased to six after the establishment of Lebowa in 1972.

²⁹ Khunou (2009) 91-2.

³⁰ For a detailed discussion on the subordinate role of traditional leaders under minority rule, see Khunou (2009) 81-125.

The type of local democracy practised in traditional authorities differed from that exercised in the white municipalities. Chiefs and headmen were not subjected to regular local government elections. Instead, they inherited their leadership positions from their forefathers through customary practice. This practice was passed on from generation to generation but during the period of white minority rule, the quality of democracy declined. This was because the white minority government would influence the appointment of chiefs and their benefits in a bid to make them accountable upwards to the national government, instead of downwards to their local subjects.³¹ Any resistance to the government's patronage was discouraged and met with consequences that included deposition from the throne. Leonard Thompson has described this relationship, outlining that chiefs assisted the government with duties such as the collection of hut and poll taxes, and with the task of persuading their subjects to support apartheid policies.³² In return, chiefs were rewarded with government subsidies, a small salary and security.³³ The legitimacy of many traditional authorities waned in the process as their subjects came to associate them with the loathed white minority government.

Traditional authorities had a wide range of substantive powers that were inherited from the pre-colonial era and adopted by the white minority government to suit the apartheid policy. Some of the functions were determined by custom while others were provided for through government legislation such as the Bantu Administration Act of 1927, the Bantu Authorities Act of 1951 and various regulations issued from time to time for each homeland. As a result, no single set of functions existed for all traditional authorities. In general, common functions of the authorities could be divided into political, administrative, developmental and judicial roles. They included general tribal governance, promotion of law and order, advising higher government authorities on the material and social welfare of Africans, forestry and soil conservation, small services and works projects on local roads and clinics, application of customary laws, settling of disputes and control of the tribal settlement and land allocation.³⁴ These functions resonated with both the nature of the rural environment, rooted in subsistence

³¹ See De Visser J *Development Local Government: A Case Study of South Africa* 57; Thompson (2000) 222; Khunou (2009) 81.

³² Thompson (2000) 173.

³³ Thompson (2000) 173 & 222.

³⁴ Jeppe W J O & Kotzé D A 'Local Government in the African Areas of South Africa' in Vosloo W B Kotzé D A & Jeppe W J O (eds) *Local Government in Southern Africa* (1974) 71-92.

farming, and the central government policy of separate development. In addition, the traditional authorities had legislative powers to establish, interpret and enforce customary laws which varied from tribal grouping to tribal grouping. They also had some limited personnel administration powers, including the hiring and firing of tribal secretaries, clerks, nurses and general labourers.³⁵

Traditional authorities raised their finances from both internal and external sources. Internal sources of revenue included tribal levies, tribal courts' fees and fines, animal levies, clinic fees and grazing fees.³⁶ However, considering that homelands were areas of great poverty, they could not sustain themselves through internally-generated revenue alone.³⁷ The lack of adequate internal sources of revenue meant that traditional authorities were heavily dependent on central government transfers for their operations. Central government transfers came in the form of grants for health services, road construction and maintenance, the provision of offices and clinics, the salaries of nurses, and support for the general administration of the tribal area.³⁸ Observably, these grants were very specific in terms of their purpose, leaving very limited room for the traditional authorities to make own decisions. In addition to the dependency on central government transfers and the attraction of central control, the level of support from the central government itself was very limited as the government scarcely paid attention to the homelands.³⁹ The financial problems of traditional authorities were to a great extent the deliberate making of the white minority regime. Homelands were not useful to the regime's agenda beyond being a dumping ground for Africans displaced from white farms, towns and strategic development areas. They were only useful as a reservoir of cheap labour for white industries and commercial farms and for presenting an illusion of African self-governance and independence as a place where Africans could exercise their political rights.

From the foregoing, it is observable that the traditional system of local government was lacking in most aspects of local autonomy. Consequently, it failed to promote meaningful decentralisation. As observed by Powell, contrary to the functioning white municipalities, local

³⁵ Jeppe & Kotzé (1974) 95.

³⁶ Jeppe & Kotzé (1974) 92.

³⁷ Thompson (2000) 192: Most people in homelands were unemployed and living in abject poverty whilst agriculture was collapsing due to overcrowding on small pieces of land.

³⁸ Jeppe & Kotzé (1974) 75.

³⁹ Thompson (2000) 164.

government in the homelands was weaker, under-resourced, poorly managed and corrupt.⁴⁰ Similarly, Samuelson Khunou observed that some chiefs became tyrannical and corrupt, using public funds and incentives from the ‘white’ government for their personal gain whilst their communities languished in poverty.⁴¹ According to Reddy, it is these poor conditions prevailing in the African homelands that led to more blacks staying in urban areas where they were no longer recognised as citizens.⁴²

2.3.2. African Townships

Africans residing in urban areas were not integrated into the white municipalities. Instead, separate local authorities with different levels of autonomy emerged over the course of 70 years. Initially, African townships did not have elected municipalities such as the ones serving the adjacent white community. This was because the white minority government insisted that they were merely visitors or sojourners whose stay was temporary. As quoted by Thompson, then Prime Minister Hendrik Verwoerd, the South African politician mainly associated with the apartheid policy, explained the segregation saying that:

‘If the native in South Africa today in any kind of school in existence is being taught to expect that he will live his adult life under a policy of equal rights, he is making a big mistake... There is no place for him in the European community above the level of certain forms of labour.’⁴³

Nevertheless, Africans experienced a slow process of decentralisation beginning with advisory boards in 1923 and ending up with fully-fledged separate municipalities in the 1980s. A common aspect of the two systems of township local government was their lack of constitutional protection. Similar to other systems of local government discussed above, they derived their existence and powers from national legislation. Advisory Boards were appointed in terms of the Black (Urban Areas) Act 1923 and later Black Urban Councils Act 1961. Black Local Authorities (BLAs) were provided for under the Black Local Authorities Act 1982. This legislative framework meant that township local government was subject to central control.

⁴⁰ Powell (2017) 145.

⁴¹ Khunou (2009) 92.

⁴² Reddy (1996) 54.

⁴³ Thompson (2000) 196.

As the name suggests, advisory boards were introduced not to govern but to advise the white municipal councils on matters regarding any township that fell within the boundaries of the municipality.⁴⁴ The boards were made up of appointed individuals who would be consulted by representatives of the white municipalities for their information. As a consequence, advisory boards played the role of administrative extensions of white municipalities rather than political institutions of local self-governance. Besides, being merely advisory bodies, they had no substantive powers of governance and consequently lacked the resources necessary for the promotion of local government autonomy.

A string of union strikes and public protests that included the Soweto uprising in the 1970s forced the white minority government to accept that its ambitious policy of influx control⁴⁵ had failed. As Powell observed, 'By the late 1970s it was apparent that influx control had failed and the black urban population was not only permanently settled in white areas but growing.'⁴⁶ Fredrick de Klerk, a former President of SA under minority rule echoed similar sentiments, revealing that 'By the late seventies and early eighties it was becoming increasingly obvious that our country was on the wrong course...there was no way that the prevailing policy of trying to create viable separate states for all our different national groups was going to work.'⁴⁷ Hit by this crisis, the apartheid government turned to decentralisation as a solution. Advisory boards were transformed into elected local authorities through the 1977 Community Councils Act and the 1982 Black Local Authorities Act. The two laws sought to bring township local government to a level similar to that of white municipalities by conceding some controlled political space to the African residents. As in the white municipalities, elected local authorities were introduced, a move away from the administrative status of advisory boards. However, Steytler and De Visser noted that this legal reform did not make local government in townships more democratic as the elections were largely boycotted and the councillors were shorn of legitimacy.⁴⁸

⁴⁴ De Visser (2005) 58.

⁴⁵ A racist segregating policy meant to control the permanent settlement of Africans in white urban areas to restrict their citizenship to homelands.

⁴⁶ Powell D M *State formation in national peace transitions: A case study of South Africa's national and local peace transitions* (Unpublished DPhil Thesis, University of the Western Cape, 2013) 209.

⁴⁷ De Klerk 'South Africa: The Miracle Revisited' *Former President FW De Klerk's Speech Delivered to Stanford University in Palo Alto, California 29 January 2001* available at <https://www.fwdeklark.org/index.php/en/speeches-archive> (accessed 08 August 2017) 2.

⁴⁸ Steytler & De Visser (2016) 1-6.

The elected local authorities were conferred with the same functions as white municipalities, including the powers for the revenue collection necessary to fund their services. However, in terms of financial autonomy, township local government never approached the level of white municipalities. It was financially incapacitated as it lacked a proper tax base that would accord it some reasonable functionality. As Thompson noted, housing infrastructure was made up of single-sex compounds, leaking houses and impoverished shacks.⁴⁹ Electricity, running water, sewerage systems, and parks were rare, leading to a dearth of legitimacy and the steady rise of resistance.⁵⁰ In general, township local government rendered poor services that could not compare with the ones enjoyed in the white communities and hence township protests continued.

2.4. Local Authorities for Coloured and Indian Communities

For the greater part of the white minority rule period, the Coloured and Indian population in all Provinces did not have a system of local government separate from the white municipalities. However, unlike the African population, Coloureds and Indians were initially part of the white municipalities, and qualified to vote in local government elections in the Cape and Natal.⁵¹ When the NP came to power in 1948, Coloureds and Indians lost their voting franchise in the Cape and Natal, aligning the voting system with that of the Orange Free State and Transvaal. In 1962, the white minority government passed the Group Areas Amendment Act which provided for a separate system of local government for the separate coloured and Indian communities.

In terms of the 1962 Group Areas Amendment Act, every Coloured or Indian community would establish a Consultative Committee (CC) first, then proceed to a Management Committee (MC) which, if it met the necessary requirements, eventually become a full-fledged municipality. CCs were similar to the advisory boards in African townships. They were made up of nominated members who would not be subject to election in regular multi-party democratic elections. Accordingly, CCs failed to promote local democracy as leaders could not

⁴⁹ Thompson (2000) 201.

⁵⁰ Thompson (2000) 201; Steytler & De Visser (2016) 1-6; Powell (2017) 145.

⁵¹ Cameron R G *Local Government Policy in South Africa 1980-1989 (With Specific Reference to the Western Cape): Devolution, Delegation, Deconcentration or Centralisation?* (Unpublished DPhil Thesis, University of Cape Town, 1991) 131.

be held to account. Besides, CCs operated under the guidance of what Robert Cameron called their 'mother' white municipalities.⁵² The fact that white municipalities played a significant role in the operations of CCs indicated that the CCs had limited autonomy.

By 1964, the stage of CCs had been dropped, leaving the Coloured and Indian community with MCs that could be promoted to a full-fledged municipality.

The autonomy of MCs and LACs was better than that of CCs but still far from matching that of white municipalities. Their composition was made up of a combination of elected and nominated members, giving the Committees a partial democratic status. However, the election of some members did not produce the expected democratic benefits as suitable candidates for the elections were reportedly hard to come by.⁵³

Substantive powers of MCs and LACs were still weak in that the committees did not have legislative and executive powers but occasionally received bits and pieces of certain powers delegated by their 'mother' white municipalities.⁵⁴ Similar to CCs, the MCs and LACs depended heavily on personnel and financial support from the white municipalities, and effectively remained administrative appendages of the white municipalities, rather than becoming the autonomous political entities that mark self-government.

Although MCs and LACs were expected to evolve into full-fledged municipalities, most of them failed to meet the necessary requirements. According to Cameron, conditions for graduating to a fully-fledged municipality independent from the white municipality included the ability to raise sufficient revenue, the employment of trained staff, and a minimum area-size capable of geographic consolidation.⁵⁵ However, most MCs and LACs lacked viability potential due to the absence of rate-generating commercial, industrial and housing properties; shortage of trained personnel, and lack of suitable candidates for council.⁵⁶ It is against this

⁵² Cameron (1991) 132.

⁵³ Cameron (1991) 133.

⁵⁴ Cameron (1991) 132.

⁵⁵ Cameron (1991) 132.

⁵⁶ Cameron (1991) 133.

backdrop that Israel Tsatsire and others rightly observed that the areas of jurisdiction of Coloured and Indian local authorities resembled those of black local authorities.⁵⁷

According to Cameron, part of the reason for the failure of Coloured and Indian local authorities was the lack of mutual goodwill that existed between white municipalities and the Coloured and Indian local authorities themselves.⁵⁸ On one hand, whites did not want to integrate all people of colour into their local government system. The move to create separate local authorities for Coloureds and Indians was simply racist. On the other hand, while Coloureds and Indians were being prepared to govern themselves in their communities, they themselves had always rejected the idea of separate representation. As Cameron noted, 'they argue that participation in these structures is a short-term strategy in order to achieve their ultimate goal, viz. non-racial representation on currently White city councils.'⁵⁹

The failure of Coloured and Indian local government contributed to the political crisis facing the apartheid regime. The government responded through the 1983 Constitution that established a tri-cameral parliament resembling some form of consociationalism, and bringing non-Africans into a grand coalition government. It was composed of a House of Assembly for whites, a House of Representatives for Coloureds, a House of Delegates for Indians and three administrations for the 'own affairs' of each group, including local government.⁶⁰ The problem with this constitutional reform was that it continued the policy of racial discrimination which the Coloured and Indian community rejected in favour of non-racialism. The rejection was evident in the low turnout for the 1984 Indians House of Delegates and Coloureds House of Representatives elections – 16.2 per cent and 30.9 per cent respectively.⁶¹ As discussed below, the Coloured and Indian communities subsequently joined forces with Africans, escalating the resistance to apartheid.

⁵⁷ Tsatsire I, et al 'Historical overview of specific local government transformatory developments in South Africa' (2009) 57 *New Contree* 139.

⁵⁸ Cameron (1991) 134.

⁵⁹ Cameron (1991) 135.

⁶⁰ Steytler & De Visser (2016) 1-7.

⁶¹ African Elections Database 'Elections in South Africa' available at http://africanelections.tripod.com/za.html#1984_House_of_Delegates_Election (accessed 06 September 2019).

2.5. Organised Resistance and Instability in Black Local Authorities

During the period of white minority rule, several political parties representing Africans, Coloureds and Indians were formed. Such organisations include the ANC, formed in 1912; the South African Communist Party (SACP), formed in 1921; the South African Indian Congress (SAIC), founded in 1921; the South African Coloured People's Organisation (SACPO), formed in 1953 and the Pan Africanist Congress of Azania (PAC) formed in 1959.

Initially, most of these political organisations were committed to non-violent ways of resisting the racist policies of the white minority government but, as Thompson asserted, they became more aggressive in the 1960s, organising protest action and violent resistance.⁶² All the main anti-apartheid organisations were eventually banned in 1960 following a protest in a township called Sharpeville, which had led to the death of 67 Africans and a series of disturbances in other townships. In the aftermath of violent clashes that followed between the government and black people, most of the black nationalist leaders were arrested whilst some fled into exile from where they launched insurgency operations.⁶³ Whilst this was a national level resistance, a parallel and perhaps more effective form of organised resistance was mounted at the local government level, making local communities the face of resistance to apartheid during the mid-1970s and 1980s.

As discussed earlier, the government's attempt to give more autonomy to the non-white local authorities in the 1970s and early 1980s did not work principally because local government continued to be racist. In the early 1980s, black communities at a local government level started resisting all forms of local government that separated them from white municipalities. The straw that broke the camel's back was the 1983 Constitution that established the tri-cameral parliament. Specifically, the non-integration of the majority African community brought rebellion in black townships to the very edge of civil war.

Separating the early 1980s wave of resistance from its predecessors was not only the fact that it was localised, but also that it was also very well organised. The epitome of organised resistance was the formation of the United Democratic Front (UDF) in 1983. The UDF was a coalition of more than 500 civic groups and community organisations consisting of:

⁶² Thompson (2000) 211.

⁶³ Powell (2017) 146.

‘professional organisations with fast-growing black membership; community organisations in settled urban areas; student organisations in the burgeoning secondary and tertiary sectors; and youth organisations bringing together highly politicised and well-educated activists and unemployed school leavers.’⁶⁴

Affirming the link between resistance to apartheid and local government, Louis Picard and Thomas Mogale stated that the UDF ‘arose out of the township challenges to the racially defined reforms of local government and the racially segregated, so-called, tricameral Constitution.’⁶⁵ According to Thompson, the underlining objective of the UDF was to create a democratic South Africa free of homelands and group areas and governed in line with the will of the people.⁶⁶ Observably, this objective was the very antithesis of the system of local government prevailing under minority rule, hence it is not surprising that black local government, especially in the townships became the focus of resistance. Powell corroborates this observation, arguing that ‘Local government was a central actor in the enforcement, reform and later in the undoing of apartheid policy.’⁶⁷

Organised by the UDF, a wave of resistance spread to all African, Coloured and Indian townships in every province, taking on a nationwide form. Powell summed up the viral nature of this organised resistance as ‘local action framed as national liberation struggle.’⁶⁸ The civic resistance measures consisted of rent and service boycotts, bus boycotts, squatter revolts, housing movements, labour strikes, school protests, communal stay-aways, bloody demonstrations and the assassination of black councillors.⁶⁹ Since local government was the vehicle of apartheid policies, council premises, local government elections and individual councillors were some of the major casualties of civic resistance.

The pressure from organised resistance increased over time to a stage of state fragility and instability. As observed by Thompson, by 1989, the country was teetering on the brink of a civil war as vigorous resistance, violent conflict and several killings spread to almost every city

⁶⁴ Houston G ‘The re-establishment of the ANC inside the country, 1990-1994’ in South African Democracy Education Trust (ed) *The Road to Democracy in South Africa Vol 6 Part 1 & 2 (1990- 1996)* (2013) 194.

⁶⁵ Picard L A & Mogale T ‘Comparative assessment of decentralisation in Africa: South Africa desk study’ (2010) *Report Prepared for the United States Agency for International Development* 4.

⁶⁶ Thompson (2000) 228-9.

⁶⁷ Powell (2013) 206.

⁶⁸ Powell (2013) 292.

⁶⁹ Tsatsire et al (2009) 136; Thompson (2000) 229; Powell (2013) 285.

and nearly every homeland.⁷⁰ The resultant crisis spurred the country into peace negotiations at both the national and local government levels.

Before the national formal negotiations commenced in 1990, conflict resolution negotiations were already underway at a local government level. According to Powell, at the height of township revolts in the late 1980s, some white municipalities and local black civic associations came together to make local peace agreements.⁷¹ The negotiations sought to reform local government across the white and non-white communities that shared boundaries. One of the peace agreements was the Soweto Accord of 1989. According to Powell, the Accord was an agreement between civic associations and local and regional authorities to end a four-year rent boycott in Johannesburg's three black local authorities.⁷² One of the inventions of the Soweto Accord which shaped the structure of local government for a democratic RSA was the establishment of a metropolitan chamber, bringing together the Transvaal Provincial Authority, the Soweto People's Delegation, the three Greater Soweto black local authorities, and, later, the Johannesburg City Council.⁷³ Therefore, the introduction of metropolitan municipalities in the democratic RSA, integrating white and non-white local authorities under one tax base can be traced back to this period. This background also shows that the formal national negotiations that commenced in 1990 were to a greater extent influenced (when it comes to local government) by the negotiations and agreements already underway at the local level.

3. Local Government Reforms during Transition to Majority Rule (1993)

Whilst informal peace negotiations were underway at a local government level, the NP government was engaging the ANC to build a democratic RSA. The culmination of these informal negotiations was the unbanning of the ANC and other anti-apartheid parties and the release of their leaders in 1990. When the ANC was unbanned in 1990 most of the important affiliates of the UDF were drawn into its structures, leading to a politically active membership.⁷⁴ This membership composition meant that the negotiating position of the ANC had to resonate with the civic associations' quest for an effective system of local government.

⁷⁰ Thompson (2000) 229.

⁷¹ Powell (2013) 300.

⁷² Powell (2013) 302.

⁷³ See Powell (2013) 303.

⁷⁴ Houston (2013) 194.

Formal negotiations commenced with the establishment of the Convention for a Democratic South Africa (CODESA) in 1991 where 19 political parties and other political organisations were brought together.⁷⁵ The negotiations broke down after a deadlock on whether a new constitution should be agreed upon before or after multi-party elections. In 1992 the ANC and NP agreed to renew negotiations on new terms. The new terms included the following: first, a Multi-Party Negotiating Forum (MPNF) would negotiate an interim constitution to set out several principles that would guide the drafting of the final constitution;⁷⁶ second, an elected Constitutional Assembly (CA) would draft a final constitution in line with the principles agreed at the MPNF;⁷⁷ third, the newly established constitutional court would certify that the final constitution complies with the negotiated principles;⁷⁸ and fourth, a separate forum would be established for a specific role of negotiating a new local government system. This was the National Local Government Negotiating Forum (NLGNF).⁷⁹

The NLGNF reflected a formalisation of negotiations that were already in motion between a few white municipalities and civic organisations. Its membership comprised two groups, including both statutory and non-statutory members. Statutory members included representatives of formal local government structures of that time – white municipalities, black local authorities, Coloured and Indian local authorities. Non-statutory members included representatives of ANC-aligned civic organisations operating under the new banner, South African National Civic Organisation (SANCO),⁸⁰ community organisations, trade unions and previously unrepresented political parties.⁸¹ The separation of local government negotiations from the main debate at the MPNF signifies two important factors. First, it shows that both the ANC and the NP held local government in high regard. Secondly, it underlines the fact that the civic groups' input was critical to the process of building peace in the new democratic SA. The two negotiation processes ended in 1993 with the production of the Constitution of South Africa 1993 (interim Constitution) and the Local Government Transition Act 1993 (LGTA). Both legislative instruments brought a higher level of decentralisation to RSA, with discernible

⁷⁵ Powell (2017) 148.

⁷⁶ Powell (2013) 217.

⁷⁷ Powell (2013) 217.

⁷⁸ Powell (2013) 217.

⁷⁹ De Visser (2005) 60.

⁸⁰ SANCO was a rebranded version of the UDF under the ANC.

⁸¹ De Visser (2005) 60-1.

improvements in most aspects in local government autonomy. As noted by Steytler and De Visser, significant contributions to provisions of both the LGTA and the local government Chapter in the interim Constitution emerged from discussions held at the NLGNF.⁸² This shows the critical role played by the ANC-aligned SANCO in shifting the system of local government towards greater decentralisation.

3.1. Interim Constitution (1993)

The system of local government was not a central part of the peace negotiations that led to the adoption of the interim Constitution. The main debate was centred on the adoption of a federal or unitary state organisation. The demands of negotiating parties were all informed by the real prospect that the ANC was going to win the country's first democratic election with a clear majority.⁸³ The ANC's stance towards local government was inconsistent. The Freedom Charter of 1955⁸⁴ declared that in a democratic SA, all apartheid councils and advisory boards would be replaced by 'democratic organs of self-government.' However, when it published its constitutional guidelines for a democratic SA in 1988, the ANC displayed some strong centralist tenets, including the 'delegation of the powers of the central authority to subordinate administrative units for purposes of more efficient administration and democratic participation.'⁸⁵ Accordingly, when negotiations commenced at the MPNF, the ANC demonstrated a preference for a non-racial, unitary state with a strong central government and subordinate subnational entities.⁸⁶

Three factors explain the ANC's centralist preference. First, as a liberation movement turned political party, the ANC had a highly centralised power structure that revolved around a small national executive responsible for directing strategy and decision-making (democratic centralism).⁸⁷ Secondly, the ANC viewed a unitary state as a necessary tool for unifying the

⁸² See Steytler & De Visser (2016) 1-11.

⁸³ Powell (2017) 148.

⁸⁴ A statement of consolidated demands and principles for a democratic SA adopted by the ANC and its allies in the fight against apartheid - the South African Indian Congress, the South African Congress of Democrats, the South African Coloured People's Congress and the South African Congress of Trade Unions.

⁸⁵ Mastenbroek R & Steytler N 'Local government and development: The new constitutional enterprise' (1997) 1 (2) *Law, Democracy and Development* 239.

⁸⁶ Steytler (2005) 316.

⁸⁷ Powell (2017) 161.

nation and forging the bonds of common citizenship after apartheid.⁸⁸ Thirdly, it saw a strong national government with a centralised fiscus as necessary for the redistribution of wealth and alleviation of poverty.⁸⁹ Against this centralist tendency, the NP, the Inkatha Freedom Party (IFP)⁹⁰ and some homeland leaders argued a preference for a state with federal characteristics, that is, with a strong provincial level of government and a weak central government. Three objectives were driving these parties' proposal: to weaken an ANC-controlled central government by dispersing power to subnational entities; to capitalise on their own regional appeal and capture some provincial spaces of power; and, ultimately, to neutralise the ANC's majoritarian domination.⁹¹ Naturally, as some scholars have put it, the ANC opposed federalism for fear that it would preserve minority interests, undermine majority rule, reinforce racial and ethnic identities and provide homeland elites with a political platform to resist integration.⁹²

Due to the divergent demands of the negotiating parties, the process became complicated and fragile, marred by both threats and acts of violence from some minority parties, including the right-wing Afrikaners and the IFP. With peace and stability at stake, the ANC compromised on the idea of decentralising some power to provincial governments.⁹³ Observably, local government was not a major issue at the MPNF. Major local government reforms were discussed by parties to the NLGNF and culminated into Chapter 10 of the interim Constitution and the Local Government Transitional Act 1993 (LGTA).

The system of local government provided for under the interim Constitution was radically changed from the one prevailing under the NP, but differed from the ANC's earlier preferences. First, it ushered in the constitutional protection of local government, recognising local government as a third tier of government, though under the control of provinces. Section 174 specifically affirmed that local government should be established.⁹⁴ This meant that local government was no longer a mere creature of statute, as was the case under minority rule, but

⁸⁸ Powell (2017) 161; Steytler (2005) 316.

⁸⁹ Powell (2017) 161.

⁹⁰ An African political party that was formed in the KwaZulu homeland and derives its popular support from a nationalist traditional Zulu community.

⁹¹ Steytler (2005) 316.

⁹² Powell (2017) 162; Steytler (2005) 316.

⁹³ Steytler (2005) 317.

⁹⁴ S 174 (1) Constitution of South Africa 1993.

rather as Powell remarked, it ‘was elevated from a statutory authority to a primary order of government with original powers in the country’s constitution.’⁹⁵ Reflecting the outcomes of the late 1980s peace negotiations between white municipalities and civic organisations, the Constitution went further and made provision for three categories of local government – metropolitan, urban and rural local authorities.⁹⁶

Secondly, the interim Constitution established the democratic status of local government by extending the voting franchise to every South African citizen of 18 years and above.⁹⁷ A new demarcation process would create non-racial boundaries but (as shall be seen below) the composition of councils still retained some traces of racial demarcation. The Constitution also prescribed that the local government elections must be regularly conducted at an interval of not less than three and not more than five years, subject to terms of an enabling Act (LGTA).⁹⁸ This meant that residents now had a formal way of holding their councillors to account.

In addition, substantive powers for local government were also constitutionally entrenched, albeit to a somewhat limited degree. Section 175 (1) provided that powers, functions and structures of local government should be determined by the law of a competent authority. Besides, subsection 3 provided a list of local government functions which included water supply, transportation, sanitation, electricity reticulation, primary health, education and housing.⁹⁹ This was an improvement on the white municipalities, whose functions were not constitutionally protected. At the same time, the Constitution conferred both legislative and executive powers on local government.¹⁰⁰ On personnel administration, the Constitution subdivided powers between the central government and municipalities. Thus, whilst national legislation would provide policy guidance, municipalities would retain the power to hire and fire their employees.

In terms of finance, the interim Constitution provided local government with the power to levy and recover property rates, fees, levies and tariffs subject to conditions prescribed by the law

⁹⁵ Powell (2013) 298.

⁹⁶ S 174 (2) Constitution, 1993.

⁹⁷ S 6 Constitution, 1993.

⁹⁸ S 179 (1) Constitution, 1993.

⁹⁹ S 175 (3) Constitution, 1993.

¹⁰⁰ S 175 (4-5) Constitution, 1993.

of a competent legislature.¹⁰¹ In addition, local authorities were entitled to an equitable share of provincial revenue subject to recommendations of the Finance and Fiscal Commission (FFC).¹⁰² The provisions strengthened local government autonomy as taxing powers of local authorities were entrenched in the constitution whilst transfers from the provincial government were guaranteed as a constitutional right, and were not to be regarded as a discretionary issue.

From the foregoing, it is observable that the system of local government negotiated during the transitional period was a huge breakthrough for decentralisation. The system improved on the previous systems prevailing in both black and white municipalities. It was constitutionally protected, local democracy was entrenched, the powers and functions of local government set down, financial autonomy guaranteed and the application extended across the rest of the country.

As alluded to earlier, Chapter 10 of the interim Constitution, which provided for local government, was strongly influenced by negotiations at the NLGNF. This indicates that the new system of local government adopted during the transitional period was equally driven by the participation of the ANC-aligned civic groups in the national local government negotiations. This makes it the home-grown product of conflict resolution negotiations following decades of racial discrimination and township instability. The fact that the interim constitution conferred more autonomy to local government indicates that the ANC had shifted from its earlier stance on promoting a weaker system of local government. It also shows that the ANC was a divided coalition made up of both the pro-decentralisation civic movement under the UDF (later SANCO) and also the internal party elites who were largely favoured democratic centralism. Observably, this internal crisis was addressed through the ANC leadership's concession to the decentralisation demands of the civic movement which had become the face of the struggle against apartheid at a community level.

3.2. Local Government Transition Act (1993)

The system of local government envisioned in Chapter 10 of the interim Constitution was operationalised through the LGTA. The Act established a transitional local government system

¹⁰¹ S 178 (2) Constitution, 1993.

¹⁰² S 178 (2) and (3) Constitution, 1993.

that would serve SA until the first local government elections were conducted under the final constitution (1996 Constitution). Most aspects of local government autonomy reflected compromises between those demanding full decentralisation (the anti-apartheid groups) and representatives from the white municipalities who were seeking to retain their former privileges.

Driven by the mutual interest of both representatives from the white municipalities and the civic organisations in building integrated local authorities, the LGTA provided for the establishment of transitional councils. As a compromise formation, the councils were not fully democratic. They were composed of members of a local government negotiating forum established for each area based on the principle of ‘inclusivity and representation.’¹⁰³ The members were drawn from statutory (white, black, Coloured and Indian local authorities) and non-statutory bodies (civic organisations, trade unions and other political parties).¹⁰⁴ Since all apartheid local government structures were the guaranteed statutory representation of their groups, it means that discrimination continued under the transitional councils. Transitional metropolitan councils were also established for densely populated, extensively developed and urbanised areas with more than one central business district. While economically interdependent in terms of services, group representation was retained.¹⁰⁵ Observably, the new local government system enshrined in the LGTA sought to enfranchise non-white racial groups and improve service delivery in their areas of residence but doing so in ways that would not radically neutralise the role of white minorities. This shows that the councils were a temporary compromise arrangement that had yet to be fully democratised. Following the passing of the LGTA, demarcation boards were established in each province for a delimitation exercise intended to integrate the black townships with white municipalities. New boundaries were drawn for the three metropolitan municipalities of Cape Town, Durban and Johannesburg and other urban and rural local authorities.¹⁰⁶ In November 1995 and May 1996, the first local government elections under the LGTA were conducted across the country.

¹⁰³ S 3 (1) Schedule 1 Local Government Transition Act, 1993.

¹⁰⁴ De Visser (2005) 61.

¹⁰⁵ S 1 (vii) Local Government Transition Act, 1993.

¹⁰⁶ Steytler & De Visser (2016) 1-13.

In the homelands, local democracy was also not fully realised as a result of efforts to accommodate traditional leaders who had acted as the local authority all along. In line with provisions of the interim Constitution, traditional leaders whose jurisdiction fell under any of the transitional councils qualified as *ex officio* members of council with full voting rights.¹⁰⁷ As was clarified by the Constitutional Court, the purpose of this provision was to ensure continuity and to avoid disruption of local governance during the period of transition.¹⁰⁸

Substantive powers envisaged by the interim Constitution were further specified in the LGTA. The Act provided ‘access by all persons residing within the areas of jurisdiction of the individual local government bodies’ to a wide range of services that include water, electricity, refuse collection, sewerage and health facilities.¹⁰⁹ In addition, transitional metropolitan councils were conferred with more elaborate functions that include the bulk supply of water and electricity, hospital services and airports.¹¹⁰

The financial status of transitional councils was varied. Members of the NLGNF agreed that the transitional system of local government finances and services should be anchored on the principle of ‘one city, one tax base’ and equal service provision for all residents.¹¹¹ In terms of implementation, financial autonomy was extended to most of the transitional councils that unified the former white towns and non-white townships into a single municipality with one tax base and access to some central government grants. However, in the transitional metropolitan councils, the apartheid spatial geography problem was not completely addressed as some black townships such as Soweto were full substructures of the overarching metropolitan council.¹¹² However, their financial autonomy improved dramatically as they now had access to resources raised in former white areas, distributed by the transitional metropolitan council.¹¹³ The process also signifies that the transitional system of local government was being driven by practical socio-economic and political realities experienced by both white and non-white communities. These include exclusive politics of racial marginalisation, uneven socio-

¹⁰⁷ S 182 Constitution, 1993.

¹⁰⁸ See *African National Congress v Minister of Local Government and Housing* 1997 (3) BCLR 295 (CC): 1998 (3) SA 1 (CC) at para 29.

¹⁰⁹ S 7(1) (C) (i) (aa) Local Government Transition Act, 1993.

¹¹⁰ Schedule 2 Local Government Transition Act, 1993.

¹¹¹ De Visser (2005) 60.

¹¹² See *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) at para 11 (referred to as *Fedsure*).

¹¹³ See *Fedsure* at para 13.

economic development and unequal access to social services. However, the compromises associated with the negotiation process culminated in partial improvements with regard to decentralisation.

4. Strong Sphere of Local Government under Majority Rule (1996)

In April 1994, SA's first democratic election was held, setting the stage for the drafting of a final constitution. As expected, the ANC trounced its opponents, winning 62.5 per cent of the votes, the NP trailing with a distant 20.39 per cent, the IFP with 10.54 per cent, and the rest shared among the small political parties.¹¹⁴ Since the final constitution was to be written by an elected Constitutional Assembly (CA), this outcome meant that the drafting of the final constitution would be dominated by the ANC. However, since the ANC did not secure a two-thirds majority, it had to make some compromises with opposition parties in order to pass the constitution into law. Immediately after the 1994 election, the CA, comprising 400 members of the National Assembly and 90 senators, commenced the process of drafting a final constitution for a democratic SA in line with principles negotiated at the MPNF in 1993. Contrary to the transitional period where negotiations on local government were conducted separately from the main debate at the MPNF, the new system of local government was part of the main constitutional debate in the CA. The constitution-making process was accomplished in 1996 with the passing of the final Constitution and its certification by the Constitutional Court of SA.

The schedule of negotiated constitutional principles annexed to the interim Constitution provided that the final constitution should enshrine local government as a level in a three-tier government system.¹¹⁵ It also provided for local democracy, legislative and executive powers of local government and its right to an equitable share of centrally-raised revenue.¹¹⁶ In addition, it mandated that a framework for local government powers, functions and structures shall be set out in the constitution, implying that a detailed outline was not necessary.¹¹⁷ The detail was reserved for national and provincial legislatures, suggesting some continuity with

¹¹⁴ Lodge T 'The South Africa general election, April 1994: Results analysis and implications' (1995) 94 (377) *African Affairs* 471-500.

¹¹⁵ Principle XVI Constitution of the Republic of South Africa, 1993: Government shall be structured at national, provincial and local government levels.

¹¹⁶ Principles XVII, XX & XXVI Constitution, 1993.

¹¹⁷ Principle XXIV Constitution, 1993.

interim constitutional provisions.¹¹⁸ When the CA commenced the drafting of the final constitution, they went beyond the 1993 constitutional principles in several important ways which will be detailed below.

4.1. Constitutional Protection

Similar to the interim Constitution, the final Constitution protected local government by recognising its existence as a government, and acknowledging its powers and functions. However, contrary to its predecessor, the final Constitution did not recognise local government as a junior tier of government. It insisted that it was a ‘sphere’ of government distinct from central and provincial government.¹¹⁹ According to Steytler and De Visser, this suggests equality in that local government is no longer a competence of provinces.¹²⁰ The consequence of this high level of constitutional recognition was an expansion of local government autonomy beyond provisions made by the interim Constitution.

4.2. Local Democracy

The final Constitution provided that the first object of the local government sphere was ‘to provide a democratic and accountable government for local communities.’¹²¹ It also elaborated that local authorities will be governed by Municipal Councils, with these composed of members elected by registered voters on a mixed system of both proportional and ward representation.¹²² These municipalities were to be established throughout the country’s territorial space, thus including areas formerly governed by traditional authorities.¹²³ This expansion earned the new municipalities the tag of ‘wall-to-wall’ municipalities.¹²⁴ According to De Visser, the wall-to-wall municipalities signified a relegation of traditional authorities and ‘an unequivocal choice for a ‘Western type’ of democracy for local government.’¹²⁵ Under the

¹¹⁸ Principle XXIV Constitution, 1993: The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

¹¹⁹ S 40(1)-(2) Constitution of the Republic of South Africa, 1996: the nation’s government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated that must adhere to principles of co-operative government.

¹²⁰ Steytler & De Visser (2016) 1-12.

¹²¹ S 152(1) (a) Constitution, 1996.

¹²² S 157(1-3) Constitution, 1996.

¹²³ S 151(1) Constitution, 1996.

¹²⁴ See De Visser (2005) 90.

¹²⁵ De Visser (2005) 90.

now repealed schedule 6, traditional leaders were made *ex officio* members of municipalities in their jurisdiction to the extent provided in an Act of Parliament or up to the end of transitional councils.¹²⁶ Their voting powers and number of representatives were not specified, leaving room for the Local Government: Municipal Structures Act to specify further.

Provincial governments were conferred with some supervisory powers over local government. This supervisory role presented an opportunity for the subversion of the autonomy of municipal councils. However, checks and balances on the exercise of these supervisory powers were entrenched in the Constitution. For instance, intervention by a provincial executive was limited to cases where a municipality fails to fulfil an executive obligation in terms of the Constitution or relevant legislation, and was linked to political checks and balances through the National Council of Provinces.¹²⁷

4.3. Substantive Powers

The substantive powers of local government to discharge a wide range of functions, to legislate and to appoint their own personnel were entrenched in detail under the final Constitution. The Constitution lists several key functions that include electricity reticulation, health services, public transport, public works, trade regulation and licensing, municipal planning, water and sanitation, urban and rural development.¹²⁸ The municipal council is constitutionally recognised as the legislative authority over these local government functions.¹²⁹ This means municipalities have the power to make and administer by-laws for the effective discharge of their mandate. Besides, the Constitution specifically endows municipal councils with the administrative power to employ personnel that is necessary for the discharge of their mandate.¹³⁰ The Constitution did not empower the provincial and national sphere of government a role in the administration of municipal employees.

The elaborate protection of substantive local government powers in the final constitution went beyond the principles of the interim Constitution. This had only provided that ‘the

¹²⁶ Rugege S ‘Traditional leadership and its future role in local governance’ (2003) 2 *Law Democracy and Development* 179.

¹²⁷ S 139 (1) Constitution, 1996.

¹²⁸ Schedules 4B and 5B Constitution, 1996.

¹²⁹ S 43 (c); S 156 (3) Constitution, 1996.

¹³⁰ S 160 (1) (d) Constitution, 1996.

comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.’¹³¹ Both the ANC and NP members of the CA had interests in this strong system of local government. The NP openly opposed legislative (compared to constitutional) allocation, fearing that this would be open to abuse. Debating the draft constitution a month before its adoption by the CA, J W Maree, a member of the NP, singled out local government autonomy as one of the issues that still needed closure. He argued that:

‘We all started off with the knowledge that local government had been a creature of statute. We intended to create an independent sphere for local government. However, paragraph 148(3) now reads that national legislation must determine... I would argue that national legislation can be too inhibitive. If Minister Pik Botha takes away electricity through national legislation, and Prof Kader Asmal takes water away through national legislation, then councillors will sit with crumbs like parks and gardens. They must be sensitive to that, and we must protect the third sphere as much as possible. With this provision in section 148, we are back to square one. We now again have municipalities a creature of statute-in the past a creature of provincial legislation, now a creature of national legislation. The only answer to this dilemma is to put more in the constitution and less in national legislation.’¹³²

It is important to note that the final draft adopted by the CA in May 1996 mirrored Maree’s proposal. Here we can see how the comprehensive provision of specific functions of local government in the final constitution can be credited partly to the compromises emanating from the negotiations during the drafting of the final Constitution.

4.4. Financial Autonomy

In terms of finance, the final Constitution conferred local government with revenue-raising powers. Municipal councils are empowered to impose rates on property and surcharges on fees for services rendered, as well as other taxes, levies and duties authorised by national legislation.¹³³ The power to decide on the rates, surcharges and taxes, fees for services and to

¹³¹ Principle XXIV Schedule 4 Constitution, 1993.

¹³² Maree J W *Constitution of the Republic of South Africa Bill (first reading debate) Proceeding of the Constitutional Assembly* 23 April 1996.

¹³³ S 229 (1) Constitution, 1996.

approve budgets was constitutionally lodged in the elected municipal council.¹³⁴ In addition to the internal sources of revenue, entitlement to an equitable share of nationally-generated revenue is entrenched in the constitution.¹³⁵ The fact that these fiscal powers were entrenched in the constitution and not left to determination by central government through national legislation means that local government enjoys some measure of autonomy and protection against subversion by other spheres of government.

The 1996 constitutional order's placement of local government at the same level with national and provincial spheres of government was a new invention. It cannot be explained by the national negotiations between white municipalities and non-white civic groups aligned to the ANC. The local actors had negotiated a local government system reflected in the interim Constitution and affirmed by the Schedule 4 principles. As explained earlier, the system of local government negotiated by the local actors was even stronger than what the ANC itself, whilst in exile, had had in mind. At the same time, while the system of local government in the interim Constitution reflected the interests of the NP, the system in the final Constitution was very different. So, what factors may explain this major shift?

The local government provisions of the 1996 Constitution were only finalised at the eve of the finalisation of the CA negotiations.¹³⁶ The main debate here focused on the relationship between the central government and provincial governments. The ANC was still dissatisfied with the provincial level of government but was bound by the 1993 Constitutional principles which provided for it. As Picard and Mogale attested, 'after 1994, the ANC remained ambivalent about provincial government, with some in the movement calling for its abolition and others demanding that it be shorn of political autonomy.'¹³⁷ Against this, the NP and IFP were uncompromising on their preferences for a strong provincial level of government, as in the areas where they were now governing. Mastenbroek and Steytler assert that in response, the ANC later supported constitutional provision for a stronger system of local government that would diminish the powers of provinces.¹³⁸

¹³⁴ S 160 (2) Constitution, 1996.

¹³⁵ S 227 (1) Constitution, 1996.

¹³⁶ Mastenbroek & Steytler (1997) 238.

¹³⁷ Picard & Mogale (2010) 5.

¹³⁸ Mastenbroek & Steytler (1997) 240.

Whilst a strong system of local government had already been provided by the interim Constitution under the significant influence of the ANC-aligned civic movement, the expansion of local government autonomy in the final Constitution was driven by the ANC's quest to undermine the power of provincial governments. This position was confirmed by the Constitutional Court in its first certification judgement of the final draft of the CA's constitution.¹³⁹ Amongst other factors, the court ruled that the amount of autonomy awarded to local government had substantially diminished provincial powers and functions with the result that provincial powers in the final constitution were substantially less than those provided for in the interim Constitution.¹⁴⁰ Although the Constitutional court later approved the amended version, it is observed that there was no change in the diminution of provincial powers by local government.¹⁴¹

5. Operationalisation of a Strong Local Government under the Mandela Government (1996-1999)

The process of operationalising the strong system of local government was initiated by the Mandela-led government and continued with no signs of backtracking. Immediately after the final Constitution was passed in 1996, the Ministry for Provincial Affairs and Constitutional Development commenced a process of drafting a White Paper on local government. The White Paper was finalised in 1998 enshrining a policy framework for transforming the transitional system of local government into the one envisioned by the final Constitution. Two pieces of legislation were passed in 1998 in preparation for the country's first local government elections under the final Constitution. These are the Local Government: Municipal Demarcation Act and the Local Government: Municipal Structures Act. The three legal and policy documents further bolstered the country's decentralisation process, detailing the three aspects of local government autonomy: local democracy, substantive powers and financial autonomy.

The broader policy direction of the White Paper was that of a system of developmental local government anchored in four main points. These are the maximisation of social development and economic growth, the need for integration and coordination, the democratisation of

¹³⁹ *In re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC).

¹⁴⁰ *In re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) at para 364.

¹⁴¹ See Steytler & De Visser (2016) 1-18.

development and leadership and learning.¹⁴² This thrust was a reaffirmation of the new role that local government was now expected to play as the face of the socio-economic and political restructuring of communities. In other words, the White Paper affirmed local government as a key developmental partner and not just as a function of central and provincial governments. At the same time, the developmental role was to be played through people-centred democratic institutions. This was in line with the very basis of the new constitutional dispensation of local government that was grounded in the struggles of communities and civic organisations against apartheid. In its introduction, the White Paper affirmed this view, outlining that the new developmental local government system was driven by an understanding that local government has a critical role to play in rebuilding the communities destroyed by apartheid.¹⁴³ Similarly, in his foreword to the White Paper, Pravin Gordhan, a former member of the UDF and the Chairperson of the White Paper Political Committee, explained that the system of developmental local government was a product of a long history of civic movements and popular participation in and across the years of struggle.¹⁴⁴

5.1. Local Democracy

The Municipal Structures Act provided for the establishment of new non-racial and democratic municipalities in line with the categories set out in the final Constitution. Three types of municipalities were provided for - metropolitan, local and district municipalities. Metropolitan municipalities were defined as conurbations with a high population density, extensive development, multiple business districts and industrial areas; a single area where integrated development planning is desirable and featuring strong interdependent social and economic linkages between its constituent units.¹⁴⁵ Those areas falling outside the definition of metropolitan municipalities would have both local municipalities and district municipalities, with the later having executive and legislative authority in an area that includes more than one municipality.¹⁴⁶

¹⁴² Ministry of Provincial Affairs and Constitutional Development *The White Paper on Local Government* (1998).

¹⁴³ Ministry of Provincial Affairs and Constitutional Development (1998) 1.

¹⁴⁴ Ministry of Provincial Affairs and Constitutional Development (1998) 1.

¹⁴⁵ S 2 Local Government: Municipal Structures Act, 1998.

¹⁴⁶ S 81 (1) Local Government: Municipal Structures Act, 1998.

The Act further provided for the election of a council in every municipality through a mixed system of ward and proportional representation.¹⁴⁷ The mixed system deepened democracy by enhancing the representation of small political parties through proportional representation and also facilitated downward accountability to communities through the ward system. The legislation also provided for the selection of executive mayors and executive committees from the elected councillors.¹⁴⁸ In addition, the Act provided for the establishment of Ward Committees, enhancing public participation in the developmental system of local government.¹⁴⁹ The role of traditional leaders continued to diminish as the Act conferred them with a simple participatory role without voting rights.¹⁵⁰ Further, the participation itself was not reserved for all of these leaders, but rather a representative number not exceeding 10 percent of council members. This new composition sparked protests by the traditional leaders. This delayed the 2000 local government election and led to the amendment of the Municipal Structure Act which increased membership by traditional leaders to 20 per cent of council members.¹⁵¹

With the democratic structures of local government determined, the Local Government: Municipal Demarcation Act provided for the establishment of an independent Demarcation Board that would redraw boundaries of the three categories of municipalities envisaged by the final Constitution. The result of the Board's work saw the number of municipalities across the country being rationalised from the 843 under the LGTA to an integrated and more inclusive 284.¹⁵² Six cities were categorised as metropolitan municipalities - Cape Town, Ekurhuleni (East Rand), eThekweni (Durban), Johannesburg, Nelson Mandela Bay (Port Elizabeth) and Tshwane (Pretoria).¹⁵³ In addition, 231 local municipalities were demarcated and grouped into 47 district municipalities. The combining of several local municipalities in small towns and rural areas under district municipalities was driven by the need to promote economies of scale.¹⁵⁴ However, the resultant consolidation of several local municipalities into metropolitan

¹⁴⁷ Ss 18 & 22 Local Government: Municipal Structures Act, 1998.

¹⁴⁸ Ss 42-60 Local Government: Municipal Structures Act, 1998.

¹⁴⁹ Ss 72-78 Local Government: Municipal Structures Act, 1998.

¹⁵⁰ S 81 (1) Local Government: Municipal Structures Act, 1998.

¹⁵¹ Rugege (2003) 180. See also S 81 (2) (b) Local Government: Municipal Structures Act, 1998.

¹⁵² See Thornhill C 'Local government after 15 years: Issues and challenges' in De Villiers B (ed) *Review of Provinces and Local Governments in South Africa: Constitutional Foundations and Practice* (2008) 66.

¹⁵³ South African Government 'Local government' Available at <http://www.gov.za/about-government/government-system/local-government> (accessed 24 April 2017).

¹⁵⁴ Thornhill (2008) 68.

and district councils also meant that municipalities increased their distance from their communities.

5.2. Substantive Powers

The substantive powers of local government provided for in the final Constitution were reiterated by the White Paper, albeit with a developmental focus. Thus, apart from affirming the functions allocated to municipalities, the White Paper stressed that these functions and powers should be exercised in a way that maximises impact on the socio-economic development of communities.¹⁵⁵ Due to the overlapping jurisdictions of local and district municipalities, the final Constitution mandated national government to enact legislation to make a clear distinction between their functions and their powers. Accordingly, the Municipal Structures Act separated the two categories, specifying functions exclusive to district councils. These functions include integrated district development planning, portable water supply, bulk electricity supply, district road transport system, waste disposal, municipal airports serving districts, municipal health and fire services.¹⁵⁶ In line with personnel administration powers provided for by the final Constitution, the Municipal Structures Act conferred the municipal council with the power to appoint a municipal manager as head of administration and accounting officer.¹⁵⁷

5.3. Financial Autonomy

In the White Paper, the government made it clear that the root cause of the problems facing municipalities needed to be addressed through a new framework of municipal finance, one that promoted financial autonomy. The White Paper outlined a number of basic policy principles to guide this vision. One of the principles was that municipalities' financial and fiscal system should be restructured to ensure that municipalities enjoy revenue that is both adequate and certain for the effective execution of their mandates.¹⁵⁸ This provision indicated that the new government was against the allocation of unfunded mandates. The White Paper further

¹⁵⁵ Ministry of Provincial Affairs and Constitutional Development (1998) 23.

¹⁵⁶ S 84 Local Government: Municipal Structures Act, 1998.

¹⁵⁷ S 82 Local Government: Municipal Structures Act, 1998.

¹⁵⁸ Ministry of Provincial Affairs and Constitutional Development (1998) 85-6.

recommended several measures to improve financial autonomy. These included the freedom of municipalities to determine the tax rate and the user charges for public utilities.¹⁵⁹

All in all, the local government reforms put in place by the Mandela government gave effect to the letter and spirit of the final Constitution's local government provisions. It breathed life into the constitutional vision of developmental local government by setting up integrated democratic municipalities which enjoyed substantive and fiscal powers. This operationalisation of a strong sphere of local government signifies that the outcomes of the thorough and inclusive local and national level negotiations that took place in the period from the 1980s to 1996 were still being respected. Susan Booyesen and Grant Masterson share the same observation, noting that 'in the period between 1994 and 1999, the mood in South Africa was overwhelmingly inclusive, reconciliatory and strongly pro-transformation.'¹⁶⁰ President Mandela stepped down at the end of his government's term in 1999. He was replaced by Thabo Mbeki, who had the task of conducting the first local government elections that were to take place under the Mandela government's new legislative framework.

6. Ambivalence under the Mbeki Government (1999- 2008)

The Mbeki administration that governed SA between 1999 and 2007 brought about some major local government reforms that had a mixed effect on the process of decentralisation. Contrary to the Mandela government, which faithfully implemented the final Constitution's provisions for local government, the Mbeki government displayed ambivalence towards decentralisation. In its first term (1999 - 2004), it implemented the final Constitution's local government system, conducting the first fully democratic local government election in 2000. It further added the legal framework for local government through the Municipal Systems Act in 2000, the Municipal Finance Management Act in 2003 and the Property Rates Act in 2004. However, its second term (2004 – 2008) saw the emergence of attempts to make alterations to the substantive powers of local government, partially altering the form of decentralisation in the process.

¹⁵⁹ Ministry of Provincial Affairs and Constitutional Development (1998) 86-9.

¹⁶⁰Booyesen S & Masterson G 'Chapter 11: South Africa' in Kadima D & Booyesen S (eds) *Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multi-party Democracy* (2009) 390.

6.1. Local Democracy

Immediately after taking over from the Mandela government, the Mbeki government began to implement the democratic vision of the White Paper. The first local government elections under the new constitutional order were held on 1 December 2000. These established fresh municipal councils that replaced the quasi-democratic transitional councils and traditional authorities of the former homelands. Since national and provincial elections had been conducted in 1999, this separation of local government elections from the other spheres of government affirmed its autonomy and distinctiveness as an order of government.

Free and fair multi-party competition in local government was made a reality with the 2000 election: more than one hundred political parties contested the election.¹⁶¹ The main contenders were the ANC, the Democratic Alliance (DA)¹⁶² and the IFP. Of the three, only the ANC had a state-wide presence and following. As reflected in the 2000 local government election results, the DA was strong in the Western Cape, whilst the IFP had hardly any presence outside KwaZulu-Natal.¹⁶³ Of the six metropolitan municipalities, the ANC had absolute majorities in four, losing to the DA in Cape Town and taking control of Durban but without an absolute majority.¹⁶⁴ Notwithstanding its failure to register a significant impact in Durban, the IFP won control of 36 municipal councils concentrated in KwaZulu-Natal.¹⁶⁵ The IFP's victories in parts of KwaZulu-Natal and its lacklustre performance in the metropolitan municipality of Durban was explained by Tom Lodge as a product of its historically rural support base.¹⁶⁶

The ANC later took over control of Cape Town in 2002 after some members of the former NP left the DA and joined the ANC. However, when the next local government elections were conducted in 2006, the ANC ceded control of Cape Town to the DA once again, but retained control of the other five metropolitan municipalities. This distribution of political support meant that although the ANC dominated SA politics at a national level, competition was

¹⁶¹ Lodge T 'The South African local government elections of December 2000' (2001) 28 (1) *Politikon* 31.

¹⁶² The DA was born out of a coalition of traditionally white political parties that included the Democratic Party and the former National Party, now renamed New National Party (NNP).

¹⁶³ Lodge (2001) 30-1.

¹⁶⁴ Lodge (2001) 41.

¹⁶⁵ See Electoral Commission 'Report: Municipal elections 5 December 2000' available at <https://www.elections.org.za/content/Documents/Election-reports/Municipal-Elections/2000-Municipal-Elections-Report/> (accessed 05 May 2019) 69.

¹⁶⁶ Lodge (2001) 31.

significantly higher at the local government level, where opposition parties commanded regional support.

The two sets of local government elections conducted during the Mbeki government were both held in a generally free and fair environment. Although the DA faced some difficulties campaigning in the ANC strongholds of formerly African townships, the interparty hostilities that are common in other African countries were limited to a few isolated points in the democratic process in RSA. The electoral experience indicates that the ANC was still committed to the transformative agenda of multi-party democracy. According to Steytler, this smooth multi-party competition could be attributed to the fact that ‘the ruling party has been at risk of losing only bits and pieces of its power.’¹⁶⁷

6.2. Substantive Powers

As the Mbeki government approached its second term, the drive towards decentralisation was seemingly ambivalent. It sought to transform the electricity sector to ensure a more equitable distribution of electricity reticulation income amongst rich and poor municipalities. Also earmarked for reform were the personnel administration powers of municipalities which the government wanted to integrate into the national public service administration framework.

6.1.1. Regional Electricity Distributors (REDs)

In 2001, the Mbeki government's cabinet approved a blueprint for reforming the Electricity Distribution Industry (EDI). Part of the blueprint included a decision to establish six wall-to-wall REDs as consolidated public entities.¹⁶⁸ The outcome of the REDs would be an integration of Eskom's¹⁶⁹ electricity distribution business with that of the country's municipalities, forming powerful business entities which neither Eskom nor municipalities would have total control over.¹⁷⁰ The reasons provided for the reform included the need to reduce inequality between the municipalities that raised revenue from electricity reticulation and those that did

¹⁶⁷ Steytler (2016) 4.

¹⁶⁸ See Memorandum on the Objects of the Constitution Seventeenth Amendment Bill of 2009, Republic of South Africa Constitution Seventeenth Amendment Bill, 2009.

¹⁶⁹ Eskom is an power generation and distribution company owned by the government of South Africa.

¹⁷⁰ Johnson V ‘Electricity restructuring: Short-circuiting municipalities’ (2002) 4 (2) *Local Government Law Bulletin* 4.

not, and the need to avoid the burden of rescuing failing municipal distributors by way of *ad hoc* arrangements.¹⁷¹ The biggest challenge to the proposed reform was that electricity reticulation is a constitutionally entrenched function of local government, with municipalities intended to have legislative and executive powers over it. The introduction of the reforms meant that municipalities had to involuntarily relinquish their distribution assets to the REDs. Some municipalities, especially the large metropolitan municipalities, would lose a lucrative source of revenue and naturally opposed the proposal. The City of Cape Town went on to challenge its constitutionality in the High Court, arguing that the proposal violated a municipality's constitutional right to supply and distribute electricity.¹⁷² As a result, no meaningful progress was made with the restructuring plan. In its second term in office, the Mbeki government became more aggressive, manifesting a will to ride roughshod over the resisting municipalities. It initiated a process of amending the Constitution to mandate municipalities to comply with the proposed restructuring, but Mbeki left office in 2008 before the amendment was made.

6.1.2. Single Public Service

As explained earlier, the final Constitution provides for a local government system in which the power to administer employees is lodged in the municipality. In their analysis of the powers and functions of SA's provinces and municipalities, Jaap de Visser and Annette May observed that the exercise of personnel administration by municipalities has been 'a positive manifestation of local autonomy.'¹⁷³ Yet, in 2006, the Mbeki cabinet decided to transfer some (though not all) of these personnel administration powers to the central government under a broad framework of a single public service for all spheres of government.¹⁷⁴ A draft Public Administration Management Bill (popularly known as Single Public Service Bill) was tabled in parliament in June 2008.¹⁷⁵ The introduction of the Bill raised fears that the government was

¹⁷¹ Gaunt C T 'Electricity distribution industry restructuring in South Africa: A case study' (2008) 36 *Energy Policy* 3453.

¹⁷² Johnson (2002) 4.

¹⁷³ De Visser J & May A 'Functions and powers of South Africa's provinces and municipalities' in Steytler N and Ghai Y (eds) *Kenyan and South African Dialogue on Devolution* (2015) 168.

¹⁷⁴ Manana M 'Integrated/Single Public Service Bill progress: Department of Public Service and Administration Briefing; PALAMA Strategy on scarce skills in the public service: Briefing' *Public Service and Administration, Performance Monitoring and Evaluation Committee Meeting Report* 15 February 2012.

¹⁷⁵ Manana (2012).

moving towards recentralisation.¹⁷⁶ More specifically, the Bill sought to reform personnel administration powers of local government by allowing municipalities to appoint, remunerate and discharge personnel subject to conditions and procedures set by the central government.¹⁷⁷

The Bill was met with a barrage of criticisms from various sources including both academics and opposition parties. For instance, De Visser raised two concerns with the Bill. First, he argued that it encroached on the constitutional right of local government to organise an administration that suits local needs.¹⁷⁸ Secondly, it had an undemocratic and disruptive effect on municipal performance management.¹⁷⁹ Hendrick Kroukamp, a professor of public management, viewed it as an attempt by the national government to create opportunities for the determination and implementation of its policies in local government.¹⁸⁰ Kroukamp's views were shared by Hellen Zille, the then leader of the opposition DA and mayor of Cape Town. He argued that the true motive of the Bill was for the ANC to appoint its supporters to senior positions in Cape Town in order to undermine the implementation of DA policies.¹⁸¹ Following these and other criticisms, the Bill was withdrawn from parliament in November 2008 for further review.¹⁸²

6.3. Financial Autonomy

After the 2000 election had set up new municipal councils, the Mbeki government passed legislation on the management of municipal finances for the realisation of developmental local government. In this regard, two Acts of Parliament were passed – the Local Government: Municipal Finance Management Act, 2003 and the Local Government: Municipal Property Rates Act, 2004. The two laws signified the Mbeki government's commitment to the implementation of the final Constitution. With the operationalisation of financial powers, revenue generation and expenditure autonomy were extended to all the urban and rural

¹⁷⁶ Kroukamp H 'The single public service and local government turnaround strategy: Incompatible or complementary for improved local government service delivery?' (2010) 9 (2) *Journal for New Generation Sciences* 32.

¹⁷⁷ De Visser J 'Single public service: Great white hope or disaster in the making?' (2008) 10 (2) *Local Government Bulletin* 5.

¹⁷⁸ De Visser (2008) 7.

¹⁷⁹ De Visser (2008) 7.

¹⁸⁰ Kroukamp (2010) 36.

¹⁸¹ Cameron (2014) 92.

¹⁸² Manana (2012).

municipalities, as envisaged by the White Paper. Consequently, all municipalities enjoy taxation powers mainly confined to property rates and a wide array of user charges. The user charges are mainly raised from the reticulation of electricity, water, refuse and sewerage services.¹⁸³ They have proved to be the most significant contributors to municipal revenue, accounting for 42,5 per cent of the 2003-2004 income budget.¹⁸⁴ As shall be seen in the next section, the critical role of electricity reticulation in revenue-generation explains why attempts to reform electricity distribution were contested by metropolitan municipalities.

According to Steytler, the significant revenue-raising powers of municipalities were reflected by the fact that municipalities were largely self-sufficient, depending on central government transfers for a mere 17 per cent of their revenue.¹⁸⁵ In addition to their own revenue generation, municipalities have also benefited from the equitable share, an unconditional grant guaranteed by the Constitution, and some conditional grants from central government. Conditional grants were introduced in 1998 and have substantially increased over time. These promote infrastructure development and capacity building, mainly focusing on the previously disadvantaged homeland areas.¹⁸⁶ The equitable share has also been rising steadily, and also increasing the financial autonomy of municipalities.¹⁸⁷ The financial capacity of municipalities has varied, with the metropolitan municipalities having budgets that rival (and in some cases surpass) those of whole provinces.¹⁸⁸ On the other hand, most local municipalities faced severe financial problems to the extent that when the Zuma government took over in 2009, local government was said to be in crisis.¹⁸⁹

From the above, it is observable that the Mbeki government dutifully implemented the new system of local government designed under the Mandela government. It established new municipal councils, promoting local democracy in line with the final Constitution and put in

¹⁸³ Khumalo B et al 'South Africa's intergovernmental fiscal relations system' in Steytler N and Ghai Y (eds) *Kenyan and South African Dialogue on Devolution* (2015) 208.

¹⁸⁴ Steytler N 'Local Government in South Africa: Entrenching Decentralised Government' in Steytler N (ed) *The Place and Role of Local Government in Federal Systems* (2005) 200.

¹⁸⁵ Steytler (2005) 199.

¹⁸⁶ Khumalo et al (2015) 215.

¹⁸⁷ Steytler (2005) 201: The equitable share to local government constituted 2.2 per cent of the national budget in the 2003-2004 period, increased to 2.4 per cent in the 2004-2005 budget and reached 2.5 percent in the 2005-2006 budget.

¹⁸⁸ Steytler (2005) 198-9.

¹⁸⁹ See Powell D 'Imperfect Transition – Local Government Policy Reform in South Africa 1994-2012' in Booyesen S (ed) *Local Elections in South Africa: Parties, People, Politics* (2011) 20-1.

place a legislative framework for the financing of municipalities in line with the developmental vision of the White Paper. However, in the course of its second term, the government made some isolated attempts at local government reforms altering the substantive powers of municipalities. A couple of political factors explain this shift – the struggle for regional opposition dominance and President Mbeki’s struggle for power. This explanation is reflected in Powell’s observation that political and economic realities, competing national objectives and competition for power in the ANC had taken over, becoming more influential on local government reforms than the original vision of the White Paper.¹⁹⁰ Although the ANC had a national appeal and dominance, the strong system of local government yielded sustainable local footholds of power to its rivals, and especially to the DA, which controlled Cape Town, a powerful metropolitan municipality.

The Mbeki government’s attempted reforms were not only limited to local government but also extended to the provincial sphere. Notwithstanding that the final Constitution had entrenched a distinctive provincial sphere of government and allocated it some legislative and executive powers, the Mbeki government sought to reverse this decentralisation process. In January 2007 the Mbeki cabinet gave the Department of Provincial and Local Government a mandate to develop a White Paper on the future of provincial governments, arguing that they had already served their peace-making purpose.¹⁹¹ In June 2007, the ANC policy conference adopted three options for consideration as follows: ‘(1) retain the status quo by shifting certain functions to metropolitan and district municipalities; (2) reduce the provinces in number and realign their functions; or (3) abolish them entirely.’¹⁹² The three options signified an attempt to weaken the provincial sphere of government. The reform process lost its steam when Mbeki lost the ANC presidency to Jacob Zuma at the party’s December 2007 conference. This loss of steam was mainly because Zuma’s success was anchored on the mobilisation of provincial structures.¹⁹³

¹⁹⁰ Powell (2011) 12.

¹⁹¹ Steytler N ‘The Politics of Provinces and Provincialisation of Politics’ in Maluwa T (ed) *Law Politics and Rights: Essays in Memory of Kader Asmal* (2014) 194-5.

¹⁹² Steytler (2016) 15.

¹⁹³ Steytler (2019) 165-6: Zuma won the election because the majority of provincial structures of the ANC voted for him at the conference.

7. Change and Continuity under Zuma Government (2009-2018)¹⁹⁴

After defeating Mbeki at the 2007 ANC national conference, Jacob Zuma took over the presidency of SA in 2009. His new government announced that although local government had – in terms of service delivery - contributed to local democracy, it was generally in a state of crisis and showing signs of distress.¹⁹⁵ This was visible in significant service delivery backlogs, the breakdown of accountability mechanisms, increasing political interference, corruption, mismanagement and rampant service delivery protests.¹⁹⁶ The government promised to strengthen local government, and adopted a five-year Turnaround Strategy for Local Government (TAS) in 2010. Three priority areas were earmarked for transformation – ‘improving access to basic services, deepening participatory democracy; and improving financial management and administrative capacity.’¹⁹⁷ Whilst this was an enthusiastic beginning for a new government, the Zuma government's promotion of local government autonomy remained just as ambivalent as the Mbeki government's in actual practice. There were attempts to shift the holding of local government elections from a separate process to a joint election alongside the national and provincial governments, a continuation of the pursuit of electricity sector reforms and single public service, and a fresh attempt to centralise the municipal police service.

7.1. Local Democracy

Whilst the Zuma government was trumpeting its strategy for transforming local government by, among other things, deepening democracy, it did not take long before the strategy began to ring hollow. In 2010, the government made a proposal that signalled a retreat on the distinctive nature of local government elections. Whilst addressing the national members' assembly of the South Africa Local Government Association (SALGA) in 2010, the Minister in charge of the newly named Department of Co-operative Governance and Traditional Affairs¹⁹⁸ announced that the country would have a single election for all spheres of government by 2014.¹⁹⁹ He

¹⁹⁴ Developments under President Cyril Ramaphosa are not discussed in this case study because the study's cut off point is July 2019, and no new local government initiatives have been embarked upon.

¹⁹⁵ Powell (2011) 21.

¹⁹⁶ Powell (2011) 21.

¹⁹⁷ Powell (2011) 21.

¹⁹⁸ An equivalent of the Ministry responsible for local government in other countries.

¹⁹⁹ Staff Reporter 'Shiceka: Single election for SA by 2014' *Mail & Guardian* 11 May 2010 available at <https://mg.co.za/article/2010-05-11-shiceka-single-election-for-sa-by-2014> (accessed 30 April 2017).

argued this was necessary because the current system where local government elections are held two years after national and provincial elections leaves no time available for service delivery, as the country is constantly busy with elections.²⁰⁰

By 2011, the Zuma government's ambivalence on the issue of local government elections was deepening, with President Zuma himself making some contradictory statements during his budget vote speech. On one hand, he acknowledged the increasing value placed on local government elections by South Africans when he stated that:

‘On 18 May we held the fourth democratic local government elections. The elections illustrated the importance that South Africans are beginning to place on this sphere of government, and the depth of their concerns with service delivery and municipal accountability.’²⁰¹

But this apparent vote of confidence in local government elections by the highest office in the country was followed by another statement, backtracking on the thrust to deepen local democracy. In the same speech, the President warned that ‘We are seriously exploring the need to have a single election for national, provincial and local government.’²⁰² By making South Africans vote for their national, provincial and local government members on the same day, the President raised an efficiency argument. He argued that there will be a common financial year across spheres, a common five-year medium-term planning and an alignment to the budgeting and human resources frameworks.²⁰³

The Zuma government's efficiency argument was dismissed by some scholars for lacking any logic or merit.²⁰⁴ Instead of deepening democracy as envisioned by the 2010 transformation strategy, the single election would undermine decentralisation in three ways. First, from a local democracy perspective, the distinctiveness of local government as a sphere of government would be neutralised by the integration of local government elections with national and

²⁰⁰ Staff Reporter (2010).

²⁰¹ The Presidency ‘SA: Zuma: Budget vote speech by the President of South Africa, in the National Assembly 14 June 2011.’ Available at <https://www.polity.org.za/article/sa-zuma-budget-vote-speech-by-the-president-of-south-africa-in-the-national-assembly-14062011-2011-06-14/searchString:common+five-year+medium-term+planning+framework> (accessed 15 May 2019).

²⁰² The Presidency (2011).

²⁰³ Presidency (2011).

²⁰⁴ See Powell D ‘Why a Single Election for all Three Spheres Would be a Bad Move’ available at <https://dullahomarinate.org.za/multilevel-govt/local-government-bulletin/volume-13-issue-1-april-2011/lgb-13-1-april-2011-10-a-single-election-for-all-three-spheres.pdf/view> (accessed 15 May 2019).

provincial elections. Secondly, opportunities for residents to hold their councillors accountable through local government elections would be limited as ‘noisier national politics’ would dominate the campaign promises, debates and voting decisions.²⁰⁵ Thirdly, and as a consequence, the integration would benefit political parties with a national appeal at the expense of minority and opposition parties with a regional concentration of support.

Robert Cameron’s analysis of national and local government elections results in Cape Town attests to the correctness of the third observation. He found out that the opposition DA party performs much better in local government elections compared to national and provincial government elections in the same cities. Table 3 below illustrates this variation:

Table 3: DA and ANC electoral performance in Cape Town

Political Parties	2000 Local Government Election	2004 National Government Election	2006 Local Government Election	2009 National Government Election	2011 Local Government Election
DA	53.02	27.13	41.96	48.78	60.92
ANC	38.06	45.39	38.57	32.86	32.80

Source: Cameron (2014: 90)

The Zuma government’s single election proposition did not only face criticism from scholars. Municipalities themselves equally expressed their resentment at this proposal. At its 2011 national conference, SALGA considered the proposal damaging to local democracy and doubted the merit of the Zuma government’s argument for introducing it.²⁰⁶ It resolved that the desirability of a single election and its implications needed to be thoroughly investigated and that more stakeholders should be involved in the discussion.²⁰⁷ Considering that SALGA membership is dominated by ANC-controlled municipalities, it is notable that resistance to the introduction of a single election came both from the ANC as much as it did from opposition political parties. By the time that the 2014 national and provincial elections were conducted,

²⁰⁵ Powell (2011) 1-3.

²⁰⁶ South African Local Government Association (SALGA) *SALGA National Conference 29 August - 1 September 2011 Kwazulu-Natal* 34-8.

²⁰⁷ SALGA *Outcomes Report of the SALGA National Conference Held on 29 August – 1 September 2011: "Building Municipal and Social Cohesion for Improved Service Delivery: 2011 and Beyond"* 36.

the Zuma government's pursuit of a single election had been resisted, and the distinctive status of local government elections maintained.

On several occasions, provincial and central governments have exercised their intervention powers as provided for by the Constitution. The interventions were in line with Steytler's observation that under the Zuma government period, local government was partly characterised by state failure in a significant number of municipalities.²⁰⁸ It is important to note that the intervention powers have not been abused for political purposes. Jaap De Visser and Jerome November's study of 39 municipal interventions that were invoked between 2008 and 2014 in South Africa attest to this view. They discovered that although allowed by the Constitution, provisions on the dissolution of a council have hardly ever been used.²⁰⁹ Considering that most of the councils were controlled by the ANC, this shows that the ruling party was reluctant to dissolve its own municipalities.

7.2. Substantive Powers

7.2.1. Regional Electricity Distributors

The quest for electricity reforms continued under the Zuma government. In 2009, the Seventeenth Amendment Bill was tabled before parliament. The Bill sought to add a provision authorising the central government to pass legislation that will facilitate compulsory participation by municipalities and handover of their assets in a project that seeks 'to achieve regional efficiencies and economies of scale in respect of a specific municipal function'.²¹⁰ The Bill provoked resistance from some municipalities and parliamentarians and led to prolonged debate.²¹¹ Eberhard summed up the length and breadth of the debate arguing that 'I can think of no other policy issue that has gone back to Cabinet as many times and with so little success.'²¹² According to Chris Yelland, 'the 17th Amendment Bill was seen as an effort to

²⁰⁸ Steytler (2019) 173.

²⁰⁹ De Visser J & November J 'Overseeing the overseers: Assessing compliance with municipal intervention rules in South Africa' (2017) 9 *Hague Journal of Rule of Law* 130.

²¹⁰ See S 1 Republic of South Africa Constitution Seventeenth Amendment Bill, 2009.

²¹¹ De Visser 'Concurrent powers in South Africa' in Steytler N *Concurrent Powers in Federal Systems: Meaning, Making, Manging* (2017) 238.

²¹² Eberhard A 'The REDs are dead' *Creamer Media's Engineering News Online* 17 August 2012 available at <https://www.gsb.uct.ac.za/files/TheRedsaredead.pdf> (accessed 25 April 2017)

enable the central government to impose its way over the reluctant municipalities.’²¹³ Eventually, the Bill was abandoned in 2010 because Cabinet was certain that it would not pass through Parliament.²¹⁴ Thus, this case indicates the importance of entrenching local government functions in the constitution as distinct from these being located as a simple provision in national legislation.

7.2.2. Single Public Service

The attempt to exert central government control on the administration of local government employees did not stop with the demise of President Mbeki’s government. Rather it was continued with renewed vigour by the Zuma government. The ‘Single Public Service’ Bill was brought back to parliament but faced similar resistance on account that it promoted recentralisation at the expense of decentralisation. More expressive was the DA’s submission to the Parliamentary Committee on Public Service and Administration, Performance Monitoring and Evaluation. The opposition party stated that in its original form the Bill would lead to a crisis of accountability. The DA’s argument was premised on the fact that if services are to be discharged by personnel that cannot be controlled by municipal councils, then local government elections must be scrapped because they will be of no use.²¹⁵ The Bill was later passed into law in 2014 but the provisions that sought to promote central control had been shrunk down to a negligible status.²¹⁶

7.2.3. Single Police Service

Another attempt to undermine substantive powers of local government under the Zuma government involved a proposal to centralise the municipal police function. At the centre of the debate were two sections of the Constitution. First, was Section 199 (1) which states that ‘The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.’²¹⁷ The second was Section 206 (7) which states that ‘National legislation must provide a framework for the

²¹³ Yelland (2010).

²¹⁴ Eberhard (2012).

²¹⁵ Manana (2012).

²¹⁶ See Public Administration Management Act, 2014.

²¹⁷ S 199 (1) Constitution, 1996.

establishment, powers, functions and control of municipal police services.’²¹⁸ The proposal emerged from the 2007 ANC National Conference in which Mbeki lost control of the ANC to Zuma. The Conference resolved that the constitutional imperative that there be a single police service should be implemented by placing the municipal, metro and traffic police under the command and control of the National Commissioner of the South African Police Service (SAPS) as a force multiplier.²¹⁹

The 2012 ANC national conference emphasised that the proposal of the 2007 national conference must be implemented.²²⁰ In line with that imperative, a Green Paper on Policing was dispatched for public comments followed by a White Paper on Safety and Security in 2015. The Green Paper outlined two positions. The first one was that in constitutional terms there cannot be a police service outside the SAPS.²²¹ The second was that there was a need to standardize training, command control and discipline by way of integrating the MPS into SAPS.²²² It was argued in the White Paper that this integration did not mean replacing the MPS with the SAPS, but would only be a streamlining of command and the introduction of uniform standards. This, it argued was to be achieved by making sure that municipalities keep their MPS whilst the SAPS exercise central command and control over metro police chiefs.²²³ What this proposal meant was that although municipalities were to retain their police services, their control no longer sits in the council but would now lie in central government. In the process, local government would lose autonomous control over the municipal police service.

The initiatives by central government discussed above bring two issues to the fore. First, the government’s major concern is not necessarily that of duplication of efforts and neither is it that of having municipal police. It is rather about having a police service that is not controlled

²¹⁸ S 206 (7) Constitution, 1996.

²¹⁹ African National Congress (ANC) ‘52nd National Conference: Resolutions 20 December 2007’ available at <http://www.anc.org.za/content/52nd-national-conference-resolutions> (accessed 28 April 2017).

²²⁰ Magome M ‘ANC plans to merge SAPS, metro cops’ *IOL* 29 August 2015 available at <http://www.iol.co.za/news/crime-courts/anc-plans-to-merge-sapss-metro-cops-1902069> (accessed on 28 April 2017).

²²¹ Burger J ‘Why the argument for a single police service in SA should be questioned’ *ISS Today* 20 January 2014 available at <https://issafrica.org/iss-today/why-the-argument-for-a-single-police-service-in-sa-should-be-questioned>) (accessed on 28 April 2017).

²²² Burger (2014).

²²³ Meyer W ‘Police, metro cops merger criticised’ *IOL* 16 March 2015 available at <http://www.iol.co.za/news/crime-courts/police-metro-cops-merger-criticised-1832358> (accessed on 28 April 2017).

by the ANC through its deployees at the helm of the SAPS. As the only other political party to have a (metropolitan) police service under its control, the DA was quick to criticise the proposal. It argued that since the MPS was performing better than the SAPS, there could be no other explanation for a single police service than the centralisation of power by the ANC.²²⁴ In addition, the City of Cape Town threatened legal action against the measure, based on the fact that the Constitution allowed local government to have its own municipal police service. The resultant stalemate on the proposal once again shows the importance of the constitutional protection of local government powers.

8. Conclusion

The process of decentralisation in SA reflects phases of major reforms shifting local government autonomy or attempting to shift it towards more decentralisation or recentralisation. As shall be seen in the next case studies, this is a common pattern associated with the process of decentralisation in Southern Africa. The major shifts are observable in the apartheid era, the period of transition to a democratic SA, the making of the final Constitution of 1996 and its operationalisation under the Mandela government and the period of ambivalence during the successive terms of Presidents Mbeki and Zuma.

An analysis of these phases reflects a pattern where decentralisation is driven internally by a variety of crises situations that necessitate negotiations and compromises between political actors. The actors can be ruling parties as was the case with the NP and the ANC, opposition parties as was the case with the DA and the IFP, civic groups as was the case with the UDF and SANCO or other state institutions such as local and traditional authorities. In virtually almost every political crisis, decentralisation has been instrumental in resolving conflicts.

First, there was the township uprising against apartheid in the 1960s and 1970s where non-white communities demanded equal treatment of all racial groupings. In the early 1980s, the NP responded by conferring more local government autonomy to African, Indian and Coloured communities resisting apartheid policies. African townships were upgraded to black local authorities with a composition, powers and functions similar to those of white municipalities. Indian and Coloured communities also had their local government autonomy upgraded in two

²²⁴ Magome (2015).

ways. First was the promotion of some consultative and management committees to fully-fledged municipalities with autonomy aspects similar to white municipalities. Second was the incorporation of Coloured and Indian representatives in the 1983 tricameral parliament with administrative responsibilities for own affairs. These reforms visibly failed to resolve the crisis because the local government system was still racist and thus lacked legitimacy.

Second was the collapse of apartheid under the weight of organised civic resistance and the inevitable resumption of negotiations for a democratic government in the early 1990s. Observably, the transitional negotiations led to huge compromises between the incumbent NP which represented white interests and the anti-apartheid movements including the ANC. The result was the beginnings of serious local government reforms that promote decentralisation including the constitutional protection of local government and provision for more powers and functions.

Running parallel to the broader national crisis was an internal crisis within the ANC. This took the form of divisions between the party executive's commitment to a system of democratic centralism, and the network of ANC-aligned civic groups that had been pursuing decentralisation since the apartheid era. To resolve this crisis, the ANC provided the SANCO-led civic groups with a platform to negotiate the new system of local government at the NLGNF in which decentralisation was promoted. Major breakthroughs were realised, and these included the integration of formerly segregated black townships with the rich white municipalities and the sharing of financial resources raised by the former white municipalities.

Immediately after the transitional settlement, the ANC, as the new ruling party, was faced with a crisis on how to deal with a provincial level of government that threatened to compete with central government for power. Again, this crisis was addressed by decentralisation as more autonomy was conferred to local government at the expense of provincial governments. This included the upgrading of local government from a junior and subordinate tier in a hierarchy of government levels to a distinctive and autonomous sphere of government.

The adoption of multi-party democracy in the 1996 Constitution and its operationalisation at the local government level, commencing with the 2000 election, brought new challenges, and notably the importance of regional opposition in the competition for power, and the failure and

breakdown of several municipalities. These challenges saw the ANC government becoming ambivalent about decentralisation to the point of making spirited attempts to recentralise some local government powers and functions. The powers and functions include electricity reticulation, personnel administration and municipal policing. The wave of attempts at recentralisation attempts were driven by two main factors. The first was the ambivalence of the ANC under Presidents Mbeki and Zuma about the sharing of power with opposition political parties who controlled a number of local authorities. The resultant competition at the local government level stems from the fact that although the ANC dominates national politics, opposition parties have a regional appeal, and strategically position them for regional dominance. For instance, the IFP used to be dominant in local government elections in the KwaZulu-Natal Province, the home of its traditional ethnic Zulu supporters. At the same time, the DA, which initially enjoyed dominance in Cape Town, a city with a huge coloured and white population, has recently expanded its sphere of influence (in coalition with other small parties) into other major urban metropolitan municipalities. As seen from this case study, the opposition political parties, especially the DA and its opposition-controlled municipalities, have been on the forefront of resisting the efforts by the ANC government to reform local government, in order to defend its localized power bases.

Also discernible from this case study is how the return of multi-party democracy has been responsible for both the resurgence and unravelling of decentralisation. Thus, the commencement of negotiations for a democratic SA opened doors for opposition parties to demand decentralisation. The reasons for this demand varied amongst parties. Some small parties such as the IFP and NP supported decentralisation for purposes of strengthening institutions in the areas where they are likely to govern. The ANC sought to use decentralisation as a way of appeasing its broad network of civic and community groups that had been pursuing local government autonomy during the apartheid struggle. On assuming power as a pro-democracy ruling party, the ANC operationalised the new local government reforms, something which resonated well with its commitments to democracy during the constitutional negotiations. However, as soon as the resultant power-sharing outcomes of decentralisation in a multi-party democracy became a reality in the post-2000 era, the ANC started showing signs of ambivalence towards the very process of decentralisation.

It is also evident from this case study that not all recentralisation attempts are driven by political competition with the opposition. A second driving factor is the failure of local government itself, that is, when municipalities fail to adequately utilise their space or misuse it through maladministration and corruption. Thus, the failure by municipalities to effectively utilise decentralisation can leave central government with no choice but to take over some powers and functions of local government. Consequently, an initial wave of decentralisation is gradually succeeded (soon after implementation) by a reverse wave of recentralisation. However, since most of the failing municipalities in SA are controlled by the ruling party, government intervention has been a hesitant process. As shall be seen in the next case study, waves of recentralisation move quickly and more radically when most of the important local authorities are controlled by opposition political parties.

CHAPTER FOUR

Zimbabwe: Decentralisation and the Struggle for Power

1. Introduction

Zimbabwe's experience with decentralisation looks somewhat different from that of South Africa (SA). In SA, a major wave of decentralisation followed the attainment of majority rule in 1994 and this remained in place notwithstanding attempts by the ANC to recentralise some local government powers and functions. To the contrary, in Zimbabwe, decentralisation and recentralisation processes are trapped in a vicious cycle. Each time they are introduced, decentralisation reforms are often short-lived and mild and are then followed by aggressive and long-lasting waves of recentralisation. From time to time, decentralisation is reintroduced but recentralisation follows with remarkable consistency.

The attainment of majority rule in 1980 presented an opportunity to reform the colonial and racist system of local government and to use decentralisation to make it more inclusive. When the reforms commenced, they were clouded in rhetoric. The new government led by the Zimbabwe African National Union – Patriotic Front (ZANU-PF) promised to increase decentralisation but delivered little. As time progressed, further changes were introduced, initiating a recentralisation of power. From 1992 to 1999, new local government reforms were introduced tilting the country back to decentralisation. The decentralisation trajectory was short-lived as a wave of recentralisation reforms commenced in the year 2000 and peaked with the deterioration of local government autonomy to unprecedented levels in 2008. The year 2013 saw a dramatic shift to the promotion of decentralisation through the adoption of a new constitution favouring local government. However, the promise quickly fizzled out as ZANU-PF started renegeing on the implementation of most local government provisions, in wanton disregard of the rule of law.

The main argument of this chapter is that waves of decentralisation and recentralisation observable in Zimbabwe's local government system are centred on ZANU-PF's struggle to consolidate and preserve its hold on power. Accordingly, two sets of circumstances can be seen

to have promoted decentralisation. First, there were the efforts to address an economic crisis in the 1990s and second, the negotiations arising from a political crisis between 2008 and 2013. On the other hand, recentralisation can be attributed to ZANU-PF's determined quest to preserve its power. This has been pursued when political opposition was weak at the central government level but strong at the local government level during the 1980s. Secondly, recentralisation has been vigorously pursued when political opposition was strong at both the central and local government level between 2000 and 2013. Thirdly, when political opposition was weak at the central level but strong at the local government level again following the 2013 election, when recentralisation followed through non-implementation of constitutional provisions.

This argument must be understood within the country's historical, political and demographic context. Zimbabwe was previously known as Southern Rhodesia under British rule (1890-1964) and then Rhodesia under Ian Smith (1965-1979). It is demographically composed of (but not limited to) two main ethnic groups, the Mashona and Matabele, with the former constituting the majority.¹ Robert Mugabe became the first Prime Minister (1980-1987) and then the President of Zimbabwe from 1987 to 2017. He ruled the country with firmness, ruthlessly consolidating power, and tenaciously clinging to it, until he was toppled through a military coup in 2017. Mugabe's ruling political party, ZANU-PF, a former liberation movement with socialist orientations, has employed various strategies to stay in power from 1980 and up until now. ZANU-PF's methods have ranged from the popular mobilisation of support, patronage politics and the co-optation of opposition political parties, to unpopular means that include violence, repression and persecution of opposition party members.² One of the features of Robert Mugabe and ZANU-PF's struggle to consolidate and preserve power is that it has also been intricately interwoven with the country's decentralisation process.

2. Diverse levels of Decentralisation under Minority Rule (1890-1979)

Prior to colonial rule, the territory between the Limpopo and Zambezi rivers (present-day Zimbabwe) was occupied by a variety of largely Shona-speaking tribes (Mashona). In 1836 the territory became ethnically diluted with the arrival of Ndebele-speaking tribes (Matabele) led

¹ The Mashona make up about 70 per cent of the population whilst the Matabele accounts for about 20 per cent.

² See Masunungure E V 'A Militarised Election: The 27 June Presidential Run-off' in Masunungure E V (ed) *Defying the Winds of Change: The 2008 Elections in Zimbabwe* (2009) 97.

by a fugitive Zulu general, Mzilikazi who had fallen out with Shaka in what is now the KwaZulu-Natal Province of South Africa.³ The Matabele people settled in the southern and western parts of the territory (present-day Bulawayo, Matabeleland North and Matabeleland South Provinces) whilst the Mashona occupied the northern and eastern parts (present-day Harare, Manicaland, Mashonaland Central, Mashonaland East, Mashonaland West, Masvingo and Midlands Provinces). It is instructive to note that immediately after independence (and as discussed in detail below), the polity reverted sharply to this South Western-North Eastern divide. The two ethnic groups had some important differences. Whilst the Mashona were in the majority, they were generally a timid and peaceable people whereas the Matabele, though a minority, were militant, courageous and extremely brutal in battles.⁴ As a result, the Matabele would from time to time launch raids in the Mashona territories with little fear of reprisal. It is in this context that a *modus vivendi* ensued with most of the Mashona paying some kind of tribute, usually through cattle to the Matabele king who accordingly established some suzerainty over the Mashona territory (Mashonaland).⁵

State organisation among the Mashona and Matabele during the pre-colonial era was based on a largely decentralised system of tribal governance. This was a three-tier structure, particularly in the Mashona majority, made up of the *musha* (village) made up of closely-related family units and kinship ties; the *dunhu* (ward) made up of a number of villages; and the *nyika* (chiefdom) made up of a group of semi-autonomous wards of the same tribe.⁶ Traditionally-selected village heads, headmen and chiefs presided over these three fairly autonomous levels. Each of these traditional leaders was assisted in governance matters by a set of trusted councillors chosen on both a hereditary and a competence basis. At all levels, there was also a customary assembly or tribal court of privileged adult males known as *dare* where all important matters affecting the community were discussed and decisions made based on consensus.⁷ Similarly, the Matabele were organised into a kingdom presided over by a king who governed the territory with the support of chiefs and headmen who presided over military regiments of

³ Marsh E G Roper E D & Kotzé D A 'Local Government in Rhodesia' in Vosloo W B Kotzé D A & Jeppe W J O (eds) *Local Government in Southern Africa* (1974) 183.

⁴ Bourne R *Catastrophe: What Went Wrong in Zimbabwe* (2011) 6; Chigwata T C 'Decentralization in Africa and the Resilience of Traditional Authorities: Evaluating Zimbabwe's Track Record' (2015) 25 (5) *Regional and Federal Studies* 445-6.

⁵ Bowman L W *Politics in Rhodesia: White Power in an African State* (1973) 9.

⁶ Holleman J F *Chief, Council and Commissioner: Some Problems of Government in Rhodesia* (1969) 83.

⁷ Passmore G C *Theoretical Aspects of Local Government and Community Action in the African Rural Areas of Rhodesia* (1971) 8.

varying sizes.⁸ The three levels hardly interfered with each other except on matters of appeal, inter-village or inter-ward conflicts, and on matters of mutual interest.

Colonial rule formally commenced in 1889 when Cecil John Rhodes' British South Africa Company (BSAC) acquired a Charter⁹ from the British government in London to establish an administration over the territory.¹⁰ Company rule under the Royal Charter ended in 1923 when the British government took over control by granting a responsible government to settler Europeans. The settler regime governed the colony under the name Southern Rhodesia and it was subsequently renamed Rhodesia after the 1965 unilateral declaration of independence (UDI). Throughout the colonial¹¹ period, the minority government of white settlers pursued a system of government that maximised white interests and marginalised black interests. As a consequence, different types of local government were established for different races, bearing varying levels of decentralisation.

During the colonial period, there were two types of local government, one for whites and one for black people (a practice that cuts across all countries in this study). Whites enjoyed a relatively autonomous modern system of local government similar to the one that existed in Britain. Because whites were settled in both urban areas and in rural areas, there were two systems of local government. These were municipalities for the cities and Town Management Boards (TMBs) for the small towns ; and Rural Councils (RCs) for commercial farms, conservancies and mining areas in rural districts.¹² Meanwhile, black people in the rural area initially maintained tribal governance before they were placed under a centrally-controlled system of Native Authorities (NA), which were later transformed into African Councils (ACs). Black people living in urban areas were governed separately by the 'white' municipalities, TMBs, private companies and the central government, initially with no 'voice' or representation at all and later, in some areas, through a consultative system of Advisory Boards (ABs).¹³

⁸ Chigwata (2015) 445.

⁹ The Royal Charter of the BSAC 1889.

¹⁰ Holleman (1969) 3.

¹¹ The term colonial period is used here as a general term denoting the period of white minority rule, including the post-UDI period under Ian Smith.

¹² Jordan J D *Local Government in Zimbabwe* (1984) 7-14.

¹³ Palley C *The Constitutional History and Law of Southern Rhodesia 1888-1965* (1966) 668.

2.1 Local Government in White Communities

The local government system for whites was internally driven from the bottom-up by the white inhabitants themselves, starting with the 1892 Salisbury Sanitary Board. According to Edward Marsh et al, white inhabitants of urban areas pressed the Company administration for the establishment of a local government in order to improve their primitive environmental conditions.¹⁴ The result was the establishment of the Salisbury Sanitary Board in 1892. This was made up of three elected and two Company-nominated members. The Board had powers to levy a centrally-determined rate on property, and discharge a wide array of functions.¹⁵ In 1894, the British government through the Cape-based High Commissioner passed the Town Management Ordinance, replacing sanitary boards with Town Management Boards (TMBs). The system of TMBs soon spread to other towns such as Bulawayo, Gwelo (now Gweru) and Umtali (now Mutare).¹⁶

Borrowing heavily from the Cape Municipal Ordinance of 1836, the Company administration introduced a Municipal Ordinance in 1897, elevating Salisbury and Bulawayo TMBs to municipalities with a wholly elected council.¹⁷ The municipalities were body corporates governed by a council of members elected annually on the basis of property ownership and educational qualification.¹⁸ In addition to local democracy, the municipalities had generous substantive and fiscal powers which made them autonomous from central government control. They had the power to provide sewerage works, water supply, electricity reticulation, housing, motor vehicle licencing, municipal police, education, health and public transport service.¹⁹ Furthermore, they could establish by-laws, employ and administer their own personnel, charge property tax and pass their own budgets without having to seek central government approval.²⁰

Similar to urban local authorities, Rural Councils (RCs) evolved out of bottom-up internal pressure by a small, scattered population of white commercial farmers and entrepreneurs involved in different projects in rural areas. Driven by the glaring need to make their

¹⁴ Marsh, Roper & Kotzé (1974) 184.

¹⁵ Marsh, Roper & Kotzé (1974) 184.

¹⁶ Marsh, Roper & Kotzé (1974) 184.

¹⁷ Marsh, Roper & Kotzé (1974) 184.

¹⁸ Palley (1966) 646: In order to take part in the municipal elections one was supposed to own an immovable property valued at no less than £50 and must be able to read and write without assistance.

¹⁹ Palley (1966) 644-52.

²⁰ Palley (1966) 644-52.

environment more habitable and conducive to their different projects, the white inhabitants influenced the establishment of two local government structures under two different pieces of legislation. These were Road Councils under the Road Traffic Act, and Intensive Conservation Area Committees under the Natural Resources Act. When later amalgamated under the 1966 Rural Councils Act as RCs, these local government structures had election qualifications and powers similar to those of urban municipalities. RCs were composed of regularly-elected members and had powers to construct and maintain roads and bridges, attend to soil and water conservation, and execute all necessary works.²¹ The same criterion of immovable property ownership and educational qualification was applied, ostensibly to disqualify black people from participation in the elections. Similar to urban municipalities, RCs had property taxing powers and received generous grants-in-aid from central government, could employ their own staff and pass budgets without having to seek central government approval.²² It is against this background that RCs operated as relatively autonomous local government entities.

2.2 Local Government in Black Communities

The system of local government in black communities was inferior to that enjoyed by white communities. It was not democratically constituted, was only permitted to discharge a narrow range of functions, had no meaningful tax base, and received limited central government grants. Compared to the local government system in white communities, local authorities in black communities had limited autonomy. The inferiority of local government in black communities was a result of racist national policies by the white minority settler regime. Legislation such as the 1930 Land Apportionment Act,²³ restricted black people to the margins of white communities in both rural and urban areas. In rural areas, black people were evicted from productive land to make way for white commercial farming, mining and conservancy activities. They were settled in crowded reserves near white commercial farms so as to provide cheap labour for white business activities. At the same time, urban areas were developed primarily for white settlement. While a large number of black people provided cheap labour to the urban white community, they were treated as sojourners whose real home was in rural areas. Accordingly, they lived in dormitory townships with low-cost housing. According to Claire

²¹ Palley (1966) 658.

²² Palley (1966) 658; Marsh et al (1974) 187.

²³ The Act divided the territory into European area, Native area, Native land and unreserved land.

Palley, the nature of the area and its inhabitants determined both the form of local government and its autonomy.²⁴

Two separate systems of local government were established and reformed over time for black people living in rural areas, and those living in urban townships. In the rural areas, local government evolved from a fairly decentralised traditional system of tribal governance inherited from the pre-colonial period to a partly-elected system of Native Councils (NCs) and African Councils (ACs). During the period of Company rule, traditional leaders and their tribal councils continued with their role as the local government. When Company rule came to an end in 1923, the traditional system of local government was replaced by NCs (in terms of the law). This was done through the 1923 Constitution of Southern Rhodesia. Section 47 of the Constitution provided for the establishment of NCs in any Native Reserve by the Governor of Southern Rhodesia as platforms for natives to discuss matters of direct interest to them, and to exercise any other powers conferred on them by the Governor.²⁵

Although limited in terms of scope, this system enhanced local autonomy in two ways. First, it was conferred with constitutional protection that would guarantee its existence. Secondly, it promoted local democracy by making NCs institutions of public participation. Contrary to the local government system in the white community (which was internally-driven from the bottom-up by the white inhabitants) the black system of NCs was externally-driven in top-down fashion by the British government in London. According to Palley, the system of NCs was suggested by the British High Commissioner for South Africa during the framing of the 1923 Constitution, and this culminated in section 47 of the Constitution.²⁶ This background reveals that NCs were neither demanded by the natives themselves nor by the settler regime in the colony.

As observed by Palley, section 47 was never implemented and was eventually repealed in 1937.²⁷ Instead of implementing section 47 of the 1923 constitution, the settler regime simply left it in abeyance. In 1931, whilst continuing to ignore the 1923 Constitutional provisions that

²⁴ Palley (1966) 629.

²⁵ Palley (1966) 659.

²⁶ Palley (1966) 659.

²⁷ Palley (1966) 660.

extended some autonomy to black communities, the settler regime established some informal structures called Native Boards (NBs).²⁸ NBs did not arrive at the democratic feature of self-governance envisaged by the 1923 Constitution. Rather, they operated as agencies of central government, more akin to deconcentration than decentralisation. Under the system of NBs, central government representatives with dictatorial powers (Native Commissioners) would hold consultative and advisory meetings with traditional leaders of each district.²⁹ Information gathered from the meetings would then be relayed to the central government for decision-making.³⁰

In 1937, the Native Councils Act was passed in order to upgrade Native Boards to formal NCs. In terms of composition, NCs were made up from Native Commissioners (NCrs) as chairpersons, chiefs and headmen as *ex officio* members, and a number of other nominated members.³¹ The nomination of members other than traditional leaders was not as democratic as the election of councillors in white municipalities. According to John Makumbe, it was done at the discretion of the white NCr and their number would not exceed that of chiefs and headmen.³² The appointment of Native Commissioners (NCrs) as chairpersons of NCs curtailed the councils' autonomy in three ways. First, NCrs were appointed by central government and not by community members. Secondly, they represented the central government and safeguarded its interests, which lay in preserving the political power and dominance of the white minority. Thirdly, NCrs were accountable upwards to the central government rather than downwards to community members, as were the heads of white municipalities and RCs. Over time, the NCs were conferred with a mandate to discharge a number of functions that included road construction, water supply, soil conservation, public health, natural resource management and motor vehicle licencing.³³ In addition, they were accorded powers to hire and fire their own members of staff.³⁴ Initially, they had no powers to

²⁸ See Makumbe J Mw *Democracy and Development in Zimbabwe: Constraints of Decentralisation* (1998) 20.

²⁹ Stewart F Klugman J & Helmsing A H 'Decentralisation in Zimbabwe' *Human Development Occasional Papers (1992-2007) HDOCPA-1994-10*, Human Development Report Office (HDRO), United Nations Development Programme (UNDP) (1994) 4; Palley (1966) 660.

³⁰ Stewart et al (1994) 4; Palley (1966) 660.

³¹ Marsh et al (1974) 216-17.

³² Makumbe (1998) 21.

³³ Marsh et al (1974) 219-25.

³⁴ Marsh et al (1974) 225.

raise taxes, but were gradually conferred powers to collect personal rates and service fees from licencing, education and health services, and received some central government grants.³⁵

The composition, powers and functions of NCs described above gives an impression that in terms of the law, increased decentralisation was at work. Yet, in practice, the situation was somewhat different. Palley observed that ‘all appointments to a council and their tenure and approval of, amendment of, and repeal of all council by-laws were at the mercy of the Governor who was also vested with further considerable regulatory powers and might abolish a council at any time.’³⁶ Appointment and dismissal of council employees were subject to central government approval and so were the council budgets.³⁷ In addition, most of the functions were never executed due to a lack of capacity. Palley quotes a confidential report to the British government in London by Lord Hailey indicating that most NCs were ‘suffering from financial paralysis.’³⁸ According to historian, Dickson Mungazi, the financial paralysis of NCs was driven by the settler regime as part of Southern Rhodesia’s deliberate effort to make sure that whatever role Africans played in government, it had to be as insignificant as possible.³⁹ As a result, NCs failed to appeal to black people as something that was meant to develop their lives.⁴⁰ With their legitimacy thus in question, Mungazi notes that the level of participation was so low that the central government was forced to leave the implementation of NCs in abeyance for seven years.⁴¹

In 1957, the colonial regime made another reform transforming NCs to African Councils (ACs) through the African Councils Act, 1957. Internally driving this reform was a report from the 1951 Howmen Commission which recommended the need to capacitate NCs but doing so without throwing caution to the wind. According to Holleman, the Commission recommended that when increasing capacity of NCs, the central government should not make the ‘foolish’ mistake of making them powerful enough to have political influence or an effect on national governance.⁴² Makumbe endorses this view, arguing that the real intention behind NCs was not

³⁵ Marsh et al (1974) 217-19.

³⁶ Palley (1966) 661.

³⁷ Marsh et al (1974) 220.

³⁸ Palley (1966) 661.

³⁹ Mungazi D A *Colonial Policy and Conflict in Zimbabwe* (1992) 27.

⁴⁰ Mungazi (1992) 61.

⁴¹ Mungazi (1992) 61.

⁴² Holleman (1969) 61.

to promote local self-government but rather to counter the development of independent political organisation among black people.⁴³ Consequently, very little separated NCs from the new ACs which Holleman described as simply ‘old wine in new bottles’.⁴⁴ Although this was partly true in terms of practice, there were some theoretical differences in terms of structure and in the intent of central government. First, there was a very reluctant attempt from the settler regime in the country to create a ‘training ground’ for modern local self-government.⁴⁵ This culminated in the mixed composition of the new ACs, now made up of a blend of traditional leaders and elected members. NCrs retained their paramount position as Presidents and Chairpersons of the AC, and chiefs were allocated respectful but redundant positions as Vice Presidents.⁴⁶ Secondly, there was another reluctant attempt to rein in the tyranny of NCrs over ACs. In this regard, Holleman makes reference to a set of instructions that were circulated to all NCrs in 1958. These outlined their duty as follows: ‘find out what the people want and help them to do it, do not get them to agree to a scheme devised by you because you think they ought to do it.’⁴⁷

The objective to strengthen rural local government through ACs failed dismally. As mentioned earlier, there was a contradiction between the views and intentions of the British government in London and the white regime in the colony. Holleman, himself part of the Native Affairs department at the time, observed that ‘while head office proclaimed the new gospel according to the Act of 1957 and insisted upon councils’ right of self-determination, most Commissioners wittingly or unwittingly pursued their sinful habit of trying to impose their will upon their reluctant councils.’⁴⁸ In addition to the NCrs, central government apparatus continued to keep a tight leash on the ACs, limiting their autonomy. The Governor retained powers to approve, repeal and amend by-laws whilst the Minister of Internal Affairs defined rate-levying powers and approved budgets.⁴⁹

In and through the 1960s, the British government granted independence to most of its colonies in Africa. In this context, the white minority regime in Southern Rhodesia approached the

⁴³ Makumbe (1998) 23.

⁴⁴ Holleman (1969) 253.

⁴⁵ Holleman (1969) 70.

⁴⁶ Holleman (1969) 70.

⁴⁷ Holleman (1969) 70: Circular No. 280 of 13/03/58

⁴⁸ Holleman (1969) 75.

⁴⁹ Palley (1966) 665-66.

British government with demands for independence. This request was turned down on the basis that independence would be granted only under majority rule. The problem with the majority rule condition was that it would inevitably remove the white minority government from power. It is against this backdrop that, in 1965, the white minority government led by Ian Smith made a Unilateral Declaration of Independence (UDI) from Britain. This had dire consequences. The British government refused to accept the declared independence and pressed the United Nations Security Council to impose sanctions on Rhodesia. According to Larry Bowman, no nation in the world (except apartheid South Africa) recognised the ‘rebel’ government, leading to its international isolation.⁵⁰ Internally, the black majority opposed the idea of independence without majority rule and a liberation war broke out. By then, two black liberation movements whose gestation dated back to 1957 were already in place. In 1957 a nation-wide political movement called the Southern Rhodesian African National Congress led by Joshua Nkomo of the Matabele ethnic group had been formed as a vehicle of black dissent.⁵¹ The colonial government responded by banning it and arresting its leaders. This led, in turn, to the formation of a new party called the National Democratic Party which was also banned. However, this bounced back as the renamed Zimbabwe African People’s Union (ZAPU), with Nkomo still in charge.⁵² In 1963, divisions rocked ZAPU and led to the formation of a splinter party named the Zimbabwe African National Union (ZANU). This was led by Ndabaningi Sithole.⁵³ Amongst those who left ZAPU together with Sithole was Robert Mugabe who was from the Mashona ethnic group. Mugabe subsequently ‘pulled the rug from beneath Sithole's feet’ and took over ZANU's presidency in 1975. As a result, there were now two nationalist movements, one led by Nkomo of the Matabele, and the other by Mugabe of the Mashona. Most of their operations were conducted in the rural areas where ACs and traditional leaders became important resources for both the Smith regime and the liberation movements.

The Rhodesian regime’s response to the negative reaction to their UDI had effects on the effectiveness of ACs as a system of local government. As part of its strategy, the regime sought to entice and, where necessary, coerce traditional leaders to support UDI. A raft of legislative amendments was made with a view to awarding more powers to chiefs at the expense of ACs.

⁵⁰ Bowman L W *Politics in Rhodesia: White Power in an African State* (1973) 2.

⁵¹ Bratton M *Power Politics in Zimbabwe* (2014) 41.

⁵² Blair D *Degrees in Violence: Robert Mugabe and the Struggle for Power* (2002) 20.

⁵³ Laakso L “Opposition Politics in Independent Zimbabwe” (2003) 7 (2&3) *African Studies Quarterly* 120.

The legislative reforms include the 1965 African Law and Tribal Court Act - this restored powers to chiefs to preside over civil and some criminal cases involving black people – and the 1967 Tribal Trust Lands Act, which restored land allocation powers to chiefs and headmen.⁵⁴ In 1973, the African Councils Act was amended to give chiefs greater administrative and executive powers than their ACs. In addition, the ACs themselves were further fragmented into smaller entities with a view to ensuring that every chief had an AC in his area.⁵⁵ Makumbe observed that in the process, the white minority regime succeeded in bringing chiefs into their corner, but alienating them from the people.⁵⁶ Any chiefs that resisted co-optation by the white regime were simply replaced by more cooperative ones, or, in worse cases, arrested and incarcerated for lengthy periods.

With chiefs and NCRs dominating local governance in the black reserves, the legitimacy and value of ACs came into question. According to Makumbe, members of the public were able to see and rightly reject the ACs for what they were: a desperate desire for the effective social and political control of black people by the white minority regime.⁵⁷ As a result, the people became more and more alienated from the ACs and very few of these remained operational. It is against this background that scholars like Palley and Makumbe have concluded that ACs turned out to be a largely unsuccessful experiment.⁵⁸

Viewed from the case study perspective, ACs cannot really be classed as decentralised units since they had very little autonomy. Instead, they are perhaps best regarded as a smokescreen designed by the Rhodesian regime to deceive and manipulate black people into believing they had some degree of self-rule whilst keeping them away from any genuine governing power. This façade was put to the test, and the reality behind it laid bare for all to see, in the case of Mangwende Reserve (now Murehwa Rural District). Members of the Mangwende Reserve AC resolved at a council meeting that they wanted a government-built school for their children but the NCR individually opposed the ‘people’s interest on the basis that they must make use of the (expensive) missionary schools available.⁵⁹ A revised decision taken by the Council to build

⁵⁴ See Makumbe (1998) 21.

⁵⁵ Makumbe (1998) 23.

⁵⁶ Makumbe (1998) 23.

⁵⁷ Makumbe (1998) 23.

⁵⁸ Palley (1966) 662; Makumbe (1998) 21.

⁵⁹ Mungazi (1992) 70

the school using its own funds was similarly rejected, leading to a long acrimonious relationship between the Rhodesian government and the Council.⁶⁰ In 1960, Chief Mangwende was deposed by the central government (against the tradition of chieftaincy) and later arrested and detained for a lengthy period. A year later, the Council itself was later dissolved due to lack of popular interest and participation.⁶¹

Since urban areas were designed primarily for white settlement, black people were only allowed to stay there on condition of employment in the white minority's industrial or commercial ventures, or in white households as helpers.⁶² As temporary sojourners, urban black people resided in primitive townships where the system of local government depended not on residence, but on house ownership. Some working black people resided in houses owned by central government, some in company-owned houses, and others in houses owned by municipalities or TMBs. Those who lived in townships where houses were owned by either central government or by companies had no local government structures at all since the owners were the 'government'.⁶³ Those who lived in townships where houses were owned by municipalities and TMBs had Native (African) Advisory Boards (NABs) whose main role was to make proposals or advise the 'white' municipality in their requirements.⁶⁴ They also had a narrow list of basic functions such as assisting the white municipality with the administration of housing, recreational and social services and with the collection of rents.⁶⁵ The Boards were so lacking in terms of autonomy that some scholars have argued that they cannot be considered as real local government structures, but merely as channels for communicating grievances.⁶⁶ Similar to the response of black people to ACs, NABs lacked the legitimacy and interest in participation present in the white communities. Palley supports this view, noting that by 1964, only seven out of the 13 NABs established in six municipalities were still operating.⁶⁷

All in all, the colonial system of local government was a product of a decentralisation process that was strategically designed and managed to preserve political power and economic

⁶⁰ Mungazi (1992) 72.

⁶¹ Holleman (1969) 235.

⁶² See Makumbe (1998) 19.

⁶³ Palley (1966) 668.

⁶⁴ Palley (1966) 668.

⁶⁵ Makumbe (1998) 20.

⁶⁶ See Chigwata (2018) 81; Palley (1966) 688.

⁶⁷ Palley (1966) 670.

privilege for a minority group of whites. Crucial in this regard is the observation that this strategy was not a general effect of colonialism, nor a simple expression of racism. From the discussion above, it is noticeable that the British government saw decentralisation in the colony as an opportunity to spread the British system of local government in line with the conventional goals of democracy and development. It was believed that through gradual orientation, black people would eventually be able to govern themselves the modern (British) way. To the contrary, the regime of whites settled in the colony pursued a different and more selfish goal: the safeguarding of white minority rule. To maintain this, the settlers knew very well that they had to keep at bay black majority political consciousness, competition and opposition. As the 1951 Howman Commission warned, it would be a 'foolish' mistake for the white minority regime to allow black people to become powerful enough to influence national governance. Observably, a similar pattern prevailed in apartheid South Africa and for strikingly similar reasons.

The white minority regime's strategy of using local government to keep black people out of power eventually became unsustainable. This was due to a number of factors that included growing international isolation and the huge losses imposed by the liberation struggle. Cornered, the Rhodesian government had no choice but to concede to British-mediated negotiations with the nationalist movements. It is against this backdrop that negotiations for the conferment of formal independence under majority rule were, in 1979, held at Lancaster House in London. An agreement was reached to end the war and to establish a majority government under a new constitution drafted by the British: the Lancaster House Constitution.

3. Decentralisation Rhetoric under Majority Rule (1980-1992)

In 1980, the first general election based on universal adult suffrage was held to select a government in line with the Lancaster House agreement. By that time, the relationship between Mugabe and Nkomo had deteriorated to one of mutual distrust. Naturally, they contested the election as separate political parties – the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Zimbabwe African People's Union-Patriotic Front (PF-ZAPU) respectively. Out of the 100 parliamentary seats, Mugabe's ZANU-PF won 57, Nkomo's PF-ZAPU won 20 and the United African National Congress (UANC), a smaller black party,

gained three.⁶⁸ The 20 seats reserved for whites were won by Ian Smith's Rhodesian Front (RF). Ndabaningi Sithole's ZANU (Ndonga) also contested the election but did not win a single seat, despite a strong following in parts of Manicaland Province. These results restored the country to its 'factory settings' – a sharp divide of political support between Matabele and Mashona territories. Of the 16 seats in the south-west part of the country, (Bulawayo and Matabeleland provinces) Nkomo's PF-ZAPU took 15 whilst Mugabe's ZANU-PF managed one. A similar ethnic pattern emerged in the north-eastern part of the country (Mashona-dominated Provinces) where out of a total of 64 seats, 56 were resoundingly won by ZANU-PF and only five went to PF-ZAPU.⁶⁹ Mugabe became the first Prime Minister of independent Zimbabwe under majority rule. A ceremonial role as President was offered to Nkomo, but he declined, citing the redundant nature of the position.⁷⁰ It was later offered to Canaan Banana, a Methodist church Reverend who had earned respect from nationalist movements for his brave condemnation of the white minority regime. Banana held the ceremonial role of President until 1988 when Mugabe became executive President. Mugabe sought to unite the country through what was termed a 'broad-based government' in which PF-ZAPU was allocated three cabinet positions while its military wing, Zimbabwe People's Revolutionary Army (ZIPRA) was integrated into the newly-formed Zimbabwe National Army.⁷¹

During the first 12 years of majority rule, the new government led by Mugabe and ZANU-PF made decentralisation policy pronouncements and legal reforms that intimated a transformation of local government. In May 1980, President Banana made a statement on the government's policy on local government, stressing the need to democratise councils, deracialise local government, create a unified system of local government, and strengthen rural local authorities.⁷² This 'gospel' was followed by the repeal of the 1957 African Councils Act and its replacement with the 1980 District Councils Act. The 1980 District Councils Act transformed the fragmented ACs into fewer and more effective District Councils (DCs).⁷³ The

⁶⁸ Laakso (2003) 120.

⁶⁹ Blair (2002) 11. At that time the Mashona constituted 70 per cent of the total population whilst the Matabele accounted for 20 per cent.

⁷⁰ Laakso (2003) 122. The position of President was ceremonial because executive powers lay in the Prime Minister's office held by Robert Mugabe.

⁷¹ Laakso (2003) 122. Nkomo became the country's Minister of Home Affairs after rejecting the ceremonial role of President.

⁷² See speech referred to in Swilling M 'A Review of Local Government and Development in the Southern African Region' in Reddy P S (ed) *Readings in Local Government Management: A Southern African Perspective* (1996) 39-40.

⁷³ Chigwata (2018) 90: The District Councils Act 1980 consolidated 220 ACs to 55 DCs.

1973 Urban Councils Act had already been amended by the Smith regime with a view to deracialising urban local government by amalgamating white municipalities with black ABs under one tax base. A Prime Minister's Directive on Provincial Governors and Local Authorities followed in 1984. This established extended development planning and participatory platforms down to the village level.⁷⁴ In 1988 new legislation (the Rural District Councils Act) was enacted providing for the integration of DCs and RCs into a single local authority named the Rural District Council (RDC). These policy and legal reforms reflected a commitment to extending the decentralised system of local government in former 'white' areas to areas inhabited by black people. However, a huge variation emerged between policy pronouncements and practice. The system of local government continued to operate in a fragmented and discriminatory way as before. RCs and DCs continued to operate separately all the way up to 1992.⁷⁵ DCs continued to lack autonomy, whilst urban councils struggled under increased demand for services, recentralisation of some powers, and withdrawal of central government support. The period was thus characterised by the deployment of a decentralisation rhetoric in the concrete situation of a thinly-veiled return to the centralisation of power.

3.1. Constitutional Protection.

As was the case with most British colonies that attained independence in the 1960s, the Lancaster House Constitution made no provision for local government. That being the case, the autonomy of local government and its very existence as a tier of government was at the mercy of the incoming ZANU-PF government. Coming into power, ZANU-PF made it clear that it was pursuing a socialist ideology that was anchored in central planning, and offered little scope for local autonomy. Consequently, driven by the socialist desire to 'centrally plan' and champion national development, local government was either undermined or abandoned, whilst resources and efforts were directed towards a deconcentrated system of central government structures.⁷⁶

⁷⁴ The Directive included the establishment of a parallel structure of Provincial Development Committees, District Development Committees, Ward Development Committees and Village Development Committees.

⁷⁵ This was notwithstanding the fact that the Rural District Councils Act amalgamating the two had been passed in 1988.

⁷⁶ See Conyers D 'Decentralisation in Zimbabwe: A Local Perspective' (2003) 23 *Public Administration and Development* 119.

3.2. Local Democracy.

The dawn of majority rule in 1980 was accompanied by an extension of the voting franchise to the majority black population as age and citizenship replaced race and property ownership as a voting qualification.⁷⁷ Whilst this breakthrough, popularly known as ‘One man one vote’, was immediately implemented at the national level, the situation was awkwardly different at the local government level. Although local government elections were regularly held in urban, rural and district councils and, indeed, as more black people participated than ever before, the elections continued to discriminate on the basis of property ownership and literacy. In urban councils, universal adult suffrage was not automatically extended as the requirement to own property was maintained for a long time.⁷⁸ In rural areas, the dual system of local government (RCs for commercial farms, conservancies and mines; DCs for peasant farmers) was maintained throughout the first decade. Although the Rural District Councils Act was passed in 1988 to amalgamate these two into one system of local government, this was left in abeyance for five years, and implemented only in 1993. In RCs, local elections still excluded black farmworkers since the ‘whites only’ electoral roll was maintained up until 1987.⁷⁹

Driving the limited progress with local democracy after independence is the simple fact that while ZANU-PF was dominant at the centre of government, it was vulnerable at the local level, and thus sought to keep local government elitist. This argument is corroborated by Makumbe's observation that, courtesy of the property and educational requirements for enfranchisement, local democracy became an elite affair. The majority of peasants and other ordinary people retreated to their pre-1980 situation: voiceless and detached from the state.⁸⁰ Why would ZANU-PF pursue a system it had fought to dismantle during the liberation struggle? The answer lay in the configuration of the Zimbabwean polity after independence and how it affected the nature of political competition.

The opening up of the polity to multiparty democracy and non-racial politics in 1980 saw a proliferation of opposition political parties who enjoyed varying degrees of regional dominance. Thus, although ZANU-PF had a strong national appeal that had led to its victory

⁷⁷ Kamete A ‘In Defence of National Sovereignty? Urban Governance and Democracy in Zimbabwe’ in Melber H (ed) *Limits to Liberation in Southern Africa: The Unfinished Business of Democratic Consolidation* (2003) 53.

⁷⁸ Kamete (2003) 53.

⁷⁹ Stewart Klugman & Helmsing (1994) 8.

⁸⁰ Makumbe (1998) 75.

at the national level in 1980, opposition competition was intense at the regional level. PF-ZAPU was dominant in the Matabeleland North and Matabeleland South Provinces and parts of the Midlands Province where it won overwhelmingly in both national and local government elections.⁸¹ The UANC diluted some of ZANU-PF's support, winning seats in two ZANU-PF strongholds of Mashonaland East and Mashonaland West in 1980.⁸² In 1985, another regional challenge emerged when ZANU (Ndonga) took control of Chipinge District in Manicaland Province, home to its leader Ndabaningi Sithole. PF-ZAPU retained its unyielding dominance in Matabeleland and parts of the Midlands in 1985. It is therefore observable that the first decade of independence had one national ruling party, but multiple regional ruling parties. That is, although ZANU-PF was Zimbabwe's ruling party, it was definitely not the ruling party in Matabeleland and neither was it in Chipinge. Accordingly, Liisa Laakso refers to this era as a period of regional dissent.⁸³ Similarly, Daniel Tevera concluded that, during the first decade of independence, ethnicity was indisputably the major factor in influencing voting behaviour.⁸⁴

The outcome of multiparty competition post-1980 was clearly unwelcome to ZANU-PF. As observed by Christine Sylvester, ZANU-PF viewed multiparty competition as a threat to regime security.⁸⁵ Similar views were offered by Ronald Weitzer. He observed that although ZANU-PF enjoyed a firm incumbency, the multiparty order would not guarantee it forever.⁸⁶ In order to guarantee its security, ZANU-PF vigorously pursued two objectives: the establishment of a *de facto* one-party state, and the hegemony of a Marxist ideology.⁸⁷ The consolidation of a one-party rule without challenging and changing the constitution meant that political competition had to be subdued. Accordingly, opposition members became the target of state repression, with many people suffering harassment on the basis of unproven allegations.

Following some military clashes between former ZIPRA and ZANLA soldiers, and further reports of some dissident activity in Matabeleland and parts of the Midlands Province (PF-

⁸¹ See Tevera D S 'Voting Patterns in Zimbabwe's Elections of 1980 and 1985' (1989) 74 (2) *Geography* 163.

⁸² Tevera (1989) 163.

⁸³ Laakso (2003) 120.

⁸⁴ Tevera (1989) 164.

⁸⁵ Sylvester C 'Zimbabwe's 1985 Elections: A Search for National Mythology' (1986) 24 (2) *The Journal of Modern African Studies* 229.

⁸⁶ Weitzer R 'In Search of Regime Security: Zimbabwe since Independence' (1984) 22 (4) *The Journal of Modern African Studies* 542.

⁸⁷ Sylvester (1986) 229.

ZAPU strongholds), Nkomo was demoted from his position as Minister of Home Affairs to a redundant position as Minister without portfolio.⁸⁸ In 1982, he was dismissed from government together with his fellow PF-ZAPU ministers, and the relationship between PF-ZAPU supporters and the government deteriorated to one of mutual distrust. In 1983 Mugabe referred to PF-ZAPU and Nkomo as ‘cobras in the house’ that needed to be crushed.⁸⁹ A North Korean-trained army brigade (the Fifth Brigade) was unleashed on PF-ZAPU strongholds with the said dissident activities in an operation dubbed *Gukurahundi*.⁹⁰ It unleashed considerable brutality on Matabeleland and parts of the Midlands without discriminating between former ZIPRA fighters and civilians. In the process, more than 20 000 people were left dead and Nkomo fled into exile after a failed attempt at assassination.⁹¹ The ZANU-PF government was so determined in its quest for a one-party rule that even the smaller opposition parties were not spared. Abel Muzorewa, leader of the UANC was incarcerated, and spent almost a year in detention without trial, only to be released a few months before the 1985 election.⁹² A member of Ian Smith’s RF was also detained for a similar period before he too was set free by an order of the High Court.⁹³ At the time of the 1985 election, Ndabaningi Sithole, leader of ZANU (Ndonga), was already in self-exile as he fled to escape government harassment.⁹⁴ In 1987, PF ZAPU was banned and the six DCs under its control were dissolved.⁹⁵ Under siege, PF ZAPU was forced into a merger with ZANU-PF under the Unity Accord of December 1987. In the agreement, Nkomo was offered the position of Vice President and some of his senior party members were allocated senior positions in the ZANU-PF structure.

It is within this context of ZANU-PF’s quest to consolidate one-party rule that the role of local government became increasingly problematic. During this period, all institutions and avenues that promoted multiparty democracy automatically became a threat to ZANU-PF’s political agenda. This view is corroborated by a National Assembly statement by the Minister of Home Affairs in 1982. In this, he claimed that the government’s priority was to get ‘all the machinery of the state acting in concert for the same and only objectives.’⁹⁶ As a consequence, local

⁸⁸ Laakso (2003) 122.

⁸⁹ Blair (2002) 29.

⁹⁰ Shona name for the early rains that wash away the chaff gathered during the dry season.

⁹¹ Bourne (2011) 106-7; Blair (2002) 33.

⁹² Weitzer (1984) 542.

⁹³ Weitzer (1984) 542.

⁹⁴ Sylvester (1986) 242.

⁹⁵ Laakso (2003) 123.

⁹⁶ Weitzer (1984) 540.

government was intended to serve the objective of consolidating power under one-party rule, and not for the promotion of democracy. As discussed earlier, the system of local government under ZANU-PF rule did very little to enfranchise most ordinary members of the public.⁹⁷ In addition, DCs were alienated from the development agenda. A parallel structure of district administration was established through the Prime Minister's Directive (PMD) of 1984. Through the PMD, central government (ZANU-PF) was to be represented at every level of government from the province to the village. At the provincial level, provincial administrators were put in place to chair a provincial council of all central government heads in that province.⁹⁸ In every district, there was to be a District Administrator (DA) who chaired the District Development Committee (DDC). Ward Development Committees (WADCOs) and Village Development Committee (VIDCOs) were also established to spearhead development at the ward and village level respectively. Makumbe observed that most of these structures were dominated by the ZANU-PF women's league and youth league members.⁹⁹ Central government support was subsequently channelled towards this parallel system of district administration whilst DCs were starved for resources. The obvious differences in capacity became so visible that some members of the public openly suggested that DCs be abolished or combined with the district administration structures.¹⁰⁰

The system of district administration was not fashioned for the promotion of local democracy. As Makumbe succinctly put it, the system was meant to facilitate 'the penetration of the state right down to the village level, but only in terms of visibility of [central government] CG rather than in terms of any meaningful empowerment of the citizens at the village, ward and district levels.'¹⁰¹ In other words, the system of district administration was meant to systematically close down the space for political participation by opposition parties whilst at the same time entrenching the ruling party's grip on the levers of state power.

⁹⁷ The property ownership and literacy qualification kept the poor outside councils.

⁹⁸ See Makumbe (1998) 80.

⁹⁹ Makumbe (1998) 63.

¹⁰⁰ See Makumbe (1998) 77.

¹⁰¹ Makumbe (1998) 74.

3.3. Substantive Powers.

During the period under review, policy-making powers, the scope of functions, legislative powers and the personnel administration powers of local government did not improve. Indeed, most were undermined, while others were centralised. When the Urban Councils Act was amended in 1980, this did not tamper with most powers and responsibilities.¹⁰² This meant the colonial status quo continued up until 1995 when the Act was finally amended in some detail. Their competences declined in 1989 when they were stripped of the electricity generation and distribution function and this was allotted to a newly created parastatal controlled by the central government.¹⁰³

The position of ceremonial mayors without executive powers was retained as inherited from the colonial period. In consequence, the policy-making function was placed firmly under the Town Clerk and his or her departmental heads.¹⁰⁴ Yet, the appointment and discharge of Town Clerks and heads of departments by councils were subject to approval and veto by central government through a structure named the Local Government Board.¹⁰⁵ DCs succumbed to the same fate as early as 1982 when the temporarily discarded position of District (Native) Commissioners was brought back under the new title of District Administrator (DA).¹⁰⁶ The DAs automatically became the Chief Executive Officers (CEOs) of DCs,¹⁰⁷ but operated under the Ministry of Local Government.¹⁰⁸ Most of them were appointed on a strictly partisan basis, had participated in the liberation struggle, and held senior ZANU-PF posts and became effectively ‘untouchable’.¹⁰⁹ Within this context, personnel administration power was centralised as the accountability of senior local authority employees turned upwards to elites in central government and ZANU-PF.

¹⁰² Masuko L & Nyoni D *Decentralisation Policy in Zimbabwe* (1995) 5.

¹⁰³ Jonga W ‘Local Government System in Zimbabwe and Associated Challenges: Synthesis and Antithesis’ (2014) 2 (1) *Archives of Business Research* 82.

¹⁰⁴ Swilling (1996) 41.

¹⁰⁵ S 123 (1) (e) Urban Councils Act [*Chapter 29:15*].

¹⁰⁶ Masuko & Nyoni (1995) 7.

¹⁰⁷ An equivalent of the Urban Councils’ Town Clerk.

¹⁰⁸ Mandiyanike D ‘Nebulous Labour Relations in Zimbabwe’s Rural Local Authorities’ (2013a) 12 *Commonwealth Journal of Local Government* 40.

¹⁰⁹ Mandiyanike D ‘Capacity Building in a Hostile Environment: The Case of Zimbabwe’s Rural District Councils’ (2013b) 13/14 *Commonwealth Journal of Local Governance* 121.

3.4. Financial Autonomy.

Compared to the colonial period, the fiscal powers of local government during the first 12 years of independence deteriorated in both urban and rural local authorities. Whilst nothing changed in terms of autonomous expenditure, there were significant reforms to revenue powers which resulted in centralisation. Upon coming to power in 1980, the new government, in pursuit of its socialist ideology, was openly pro-poor and pro-rural development.¹¹⁰ The result was a bias towards the rural areas in terms of public sector investment and the withdrawal of central government support for urban infrastructure.¹¹¹ Given that this came at a time when demand for urban service delivery was on the rise following the de-racialisation of urban areas, UCs had to rely on the generation of internal revenue. Naturally enough, this was inadequate. The disconnect became so wide that by 1990 UCs were in need of about Zim\$20 billion to upgrade their infrastructure, yet on their own it would take them about ten years to raise 10 per cent of that amount.¹¹²

Ironically, the policy bias towards rural development did not improve the revenue position of DCs and RCs. These actually turned from bad to worse (especially for the poor DCs). Whilst RCs were relatively self-sufficient, DCs became entirely dependent on the central government for their administrative and financial requirements. This was due to the fact that the taxation powers enjoyed during the colonial period were repealed at independence.¹¹³ Instead of bailing out the DCs through central government transfers, the government created a parallel centrally-controlled but deconcentrated facility called the District Development Fund (DDF). The DDF was funded by the government, donors and private players, had offices in every district, and took control of almost all infrastructure development projects.¹¹⁴ In consequence, DCs became redundant and were worse off than their preceding ACs in that regard. The centrally-engineered redundancy of local authorities therefore conveniently facilitated the dominance of Mugabe and ZANU-PF in national development, falling squarely into the ruling party's agenda of creating a one-party state.

¹¹⁰ Both the Transitional Development Plan (1983-86) and the First National Development Plan (1986-1990) were exclusively focused on rural development.

¹¹¹ Swilling (1996) 42.

¹¹² Swilling (1996) 43.

¹¹³ Masuko & Nyoni (1995) 5. They were viewed as a bad memory of how the poor black people suffered under a punitive taxation system of the colonial regime.

¹¹⁴ Masuko & Nyoni (1995) 5.

The fact that no improvement occurred in any of the aspects of local government autonomy discussed above indicates the ZANU-PF government's reluctance to decentralise power. This ambivalence was being driven by three endogenous factors. These are the renewed ethno-regional tensions between the Mashona and Matabele; ZANU-PF's pursuit of a socialist ideological orientation; and Mugabe's own quest to consolidate personal power.

4. Quasi-decentralisation during Global Wave of Democratisation (1993-1999)

The period between 1993 and 1999 saw central government introducing some narrow political reforms which extended democracy to local government, but did so without conceding any substantive or fiscal powers. This development suggested a deliberate strategy by the ZANU-PF government to show a democratic face whilst maintaining an authoritarian grip on state structures, resources and power. According to David Mandiyanike, a former chief executive officer in some of the country's RDCs, decentralisation had become a major talk show as 'parties to the decentralisation initiative glorified it by day and savagely resisted it by night'.¹¹⁵ Similarly, Diana Conyers (who spend two years closely studying one of the country's RDCs through participatory observation) concluded that 'there has been a major gap between rhetoric and reality.'¹¹⁶ It is argued in this section that the hollow system of local government (which bears some similarities to that of most African countries during the same period of democratisation) appears to have been driven by two factors, one external and one internal. Thus, whilst it was driven externally by donor pressure under the auspices of the Economic Structural Adjustment Programme (ESAP), Mugabe and ZANU-PF internally seized the moment, and did this not to promote local government autonomy, but to penetrate the state infrastructure and expand both his and the party's presence and influence. As we shall see in the next case study on Malawi, donor pressure was instrumental in the decentralisation reforms of 1994. But similar to Zimbabwe's experience, its effect on decentralisation was mainly rhetorical.

¹¹⁵ Mandiyanike (2013b) 114.

¹¹⁶ Conyers (2003) 115.

4.1. Constitutional Protection.

The wave of democratisation that swept through the continent in the early 1990s, and the dawn of majority rule in Namibia and South Africa in the same era, saw Malawi, Namibia and South Africa adopt new constitutions which promoted local government. Zimbabwe, like Botswana, did not follow this path despite the ZANU-PF government's commitment to democratic reforms under ESAP. The Lancaster House constitution was retained with no mention of local government, showing the ZANU-PF government's determination to maintain the status quo. Local government continued to derive its existence and powers from flexible national legislation. This meant that the central government retained its firm control on the amount of autonomy to be enjoyed by local government.

4.2. Local Democracy.

Out of the four aspects of local government autonomy – constitutional protection, local democracy, substantive powers and financial autonomy - the only area in which local government reforms were implemented was with regard to local democracy. These reforms took the form of an extension of more democratic space to RDCs and Urban Councils (UCs). The creation of RDCs in 1993 saw the right to participate in local government elections extended to all rural dwellers of voting age.¹¹⁷ Similarly, the Urban Councils Act was amended in 1997. Here, the provision for property ownership as a voting qualification was repealed and voting was extended to tenants.¹¹⁸

In 1996, the post of executive mayor replaced that of the ceremonial mayor of the 1980s and a new requirement was made that these should be directly elected by members of the public through local government elections. The introduction of executive mayors brought with it some policymaking powers for council. This was mainly because the executive mayor combined the roles of chairman of council, chief executive officer, and representative of the central state.¹¹⁹ Central government's explanation for these changes was that there was a glaring need to close the gap created by the absence of a full-time political figurehead in the day to day activities of

¹¹⁷ Bland G 'Overcoming a Decade of Crisis: Zimbabwe's Local Authorities in Transition' (2011) 31 *Public Administration and Development* 342.

¹¹⁸ Repealed by section 23 of Act 21 of 1997.

¹¹⁹ Mhlahlo R 'Assessment of Urban Governance in Zimbabwe: Case of City of Gweru' (2007) XX111 (1) *EASSRR* 116.

local authorities and promote accountability.¹²⁰ The fact that no meaningful changes were extended at the same time to other aspects of local government autonomy suggests that the ZANU-PF government had mastered the art of deception by centralising power beneath a democratic mask.

This would suggest that it took the government 16 years to realise the importance of the basic democratic initiatives that promote accountability. It definitely shows that either the polity had reached a stage where making such democratic reforms did not threaten the interests of ZANU-PF (as was the case in the first decade of independence) or that there was sudden external pressure to do this. As already argued, it was both. The two factors driving the democratic reforms were the external pressure from donors under ESAP and also the internal opportunity presented for further entrenching ruling party presence and influence.

The background to the adoption of the Economic Structural Adjustment Programme (ESAP) can be traced back to the failure of ZANU-PF's socialist policies. These had seen the state playing a major role in the economic development agenda. But by 1989, the economy had deteriorated to such an extent that the need for a financial bailout was inescapable. The African Development Bank reported that investment levels were declining, and that Gross Domestic Product (GDP) was falling while public sector deficits were ballooning.¹²¹ Against this backdrop, the Zimbabwean government was forced to adopt ESAP, in order to attract funding from a group of donors including the World Bank, the International Monetary Fund (IMF), the African Development Bank (ADB) and USAID. The major thrust of the programme was a policy shift towards a market-based economy that would see the rolling back of the state frontiers.¹²² Some of the donor requirements included the demonstration of political will and the promotion of political stability.¹²³ It is within this context that local democracy was extended to local authorities. Thus, the deepening of democracy served the regime well in its bid to access credit lines from international institutions without moving away from its quest for one-party rule. In his speech to the Danish Volunteer Service in 1992, Zimbabwean lawyer and politician, David Coltart, raised a similar suspicion when he warned that the adoption of ESAP

¹²⁰ Jonga (2014) 96.

¹²¹ Ojo O & Ajayi S I 'Zimbabwe Economic Structural Adjustment Programme' (1997) *Project Performance Evaluation Report (PPER) for the African Development Bank 09 December 1997* 4.

¹²² Ojo & Ajayi (1997) 25.

¹²³ Ojo & Ajayi (1997) 25.

did not mean that ZANU-PF had changed its ideology to support for capitalism, but that it was only a strategy to secure assistance with economic stabilisation and to stay in power.¹²⁴

The external pressure from the conditions set by donors was complemented by internal political developments that decimated opposition competition to ZANU-PF. By the time the ESAP commenced, the objective of making Zimbabwe a one-party state had already been largely realised. In 1987, ZANU-PF had managed to co-opt PF-ZAPU under the Unity Accord that had seen the two revolutionary parties merging into one: ZANU-PF. With ZAPU out of the way, ZANU-PF was now the only political party worth mentioning in Zimbabwe. After the Unity Accord, ZANU-PF's membership in Parliament rose to 99 out of 100 seats. As Sara Rich puts it, 'say "opposition party" in Zimbabwe and people either laugh or cry'.¹²⁵ The 1995 and 1996 parliamentary and Presidential elections further vindicate Rich's conclusion. In the 1995 parliamentary election, ZANU-PF won 147 out of 150 parliamentary seats; in the 1996 presidential elections Mugabe won with 92.7 per cent of the vote.¹²⁶ In the 1995 parliamentary election, political opposition was so thin that ZANU-PF candidates were elected unopposed in 55 constituencies.¹²⁷ With very minimal opposition to talk about, ZANU-PF's comfort with deepening local democracy could thus be explained as a deliberate strategy to extend the reach of the party through the process of offering patronage to supporters and thus expanding Mugabe's political power. This explanation confirms Riedl and Dickovick's argument that decentralisation can be driven by governments' quest to extend and deepen the influence of dominant ruling parties'.¹²⁸

With political opposition to ZANU-PF subdued at both the national and local government levels, it was now time to grow the party. Solomon Tawengwa's case exemplifies this process. Upon the introduction of executive mayors, Tawengwa relinquished his national position as a member of parliament to become the mayor of Harare, Zimbabwe's capital city. The mayoral position was so important to ZANU-PF that he was promoted to ZANU-PF's highest decision-making authority, the Politburo, and became the deputy secretary for finance and able to attend

¹²⁴ See Coltart D 'Speech by David Coltart: An Introduction to ESAP: Zimbabwe 1992' *David Coltart: Taking Zimbabwe Forward* 31 July 1992 available at <http://www.davidcoltart.com/1992/01/speech-by-david-coltart-an-introduction-to-esap-zimbabwe-1992/> (accessed 06 November 2016).

¹²⁵ Rich S 'Going it Alone: Opposition Politics in Zimbabwe' (1997) *Southern Africa Report* 24.

¹²⁶ Blair (2002) 38.

¹²⁷ Laakso (2003) 127.

¹²⁸ Riedl & Dickovick (2014) 327.

cabinet committee meetings.¹²⁹ In this fashion, central government and local government became integrated under the party's centralised structure.

4.3. Substantive Powers.

Although one can note some improvements to local democracy, no major changes were made that effected the substantive powers of local government. Central government continued to control the administration of employees in both UCs and RDCs. It also retained veto power on local by-laws. As will be discussed in detail below, whilst central government ministries continued to cling to functions earmarked for devolution, the reality was that the functions already notionally within the power of local government could not be fully discharged due to chronic fiscal challenges. In addition, the conferment of policymaking powers to UCs through executive mayors did not translate into meaningful decentralisation because, as explained above, ZANU-PF hegemony meant that the autonomy of local government was undermined by the centralised system of the party.

4.4. Financial Autonomy.

During the period under review, the financial situation of local government went from bad to worse. By 1990 the Zimbabwean government was struggling with crippling overheads, huge debt, and economic recession. The adoption of ESAP brought with it a number of austerity measures that worsened the financial autonomy of local government. These included a retreat from government interventions, the removal of subsidies, the reduction of government expenditure and the rationalisation of the bloated civil service.¹³⁰

These ESAP developments had direct effects on local government finances in two ways. First, the unfavourable economic environment made it difficult for councils to raise sufficient internal revenue, consequently leading to increased dependence on central government support.¹³¹ Secondly, ESAP encouraged the reduction of subsidies and central government expenditure. Hence it became impossible for central government to meet the local

¹²⁹ Madanhire N 'The Mayor Who is Milking Harare' *Mail & Guardian*, 27 November 1998 available at <http://mg.co.za/article/1998-11-27-the-mayor-whos-milking-harare> (accessed 01 September 2016).

¹³⁰ Ojo & Ajayi (1997) 1.

¹³¹ Conyers (2003) 116.

government's demands for assistance. As Conyers puts it, the main impact was 'frustration at a subnational level'.¹³² Accordingly, the failure of ESAP to improve the fiscal power of local government resulted in the elected councils becoming no more than hollow shells created during a hesitant process of quasi-decentralisation.

5. Overt Recentralisation at the Height of Political Competition (2000-2013)

The preceding section indicates that the ZANU-PF government extended democratic reforms to local government as a response to the conditions set by donors for the financial bailout that had been necessitated by the economic crisis. However, by the late 1990s, it became clear that ESAP was failing dismally to arrest an economic decline that went from bad to worse. As ZANU-PF feared, the economic crisis generated civil and political unrest. In 1999, this unrest culminated in the formation of a strong labour-backed opposition party led by trade unionist Morgan Tsvangirai – the Movement for Democratic Change (MDC). In the late 1990s, the country's economy was teetering on the brink of total collapse (which it finally reached in 2008). The high cost of living, fuel queues, strike actions and food riots wreaked havoc.¹³³ By 2004 the country's inflation rate was 622.8 per cent while in 2008 it reached a record 89.7 sextillion per cent.¹³⁴ It is within this context that the electorate became determined to dump the ruling party. A bruising power struggle then started between the ruling party and the new opposition party. In no time, Zimbabwe was seen to share striking similarities with the former colonial order, with black elite privilege replacing white elite privilege through exactly the same means: the consolidation of political power through the deliberate erosion of local power so as to neutralise and disenfranchise opposition forces. It therefore appears that the emergence of multiparty competition makes governments reluctant to commit to the process of decentralisation.

5.1. Local Democracy.

The local democratic reforms that were implemented in the 1993-1999 period were abandoned when the MDC made its entrance to the political arena in 1999. The country's polity turned from a *de facto* one-party state to a competitive multiparty democracy. When local government

¹³² Conyers (2003) 116.

¹³³ Bourne (2011) 191.

¹³⁴ Bauer & Taylor (2011) 191.

elections were eventually held later in the year 2000, ZANU-PF was ready for action. The 2000 local government elections were held in all councils except for the capital city, Harare. The background to this anomaly was that when Harare's whole council was dissolved in 1999 a commission made up of ZANU-PF sympathisers was appointed to run council business for a period of six months.¹³⁵ The tenure of the commission was repeatedly and illegally extended as the Minister resisted calls for an elected council.¹³⁶ Denied the democratic right to an elected council in 2000, Harare residents, civil society and opposition parties sought legal recourse. The High Court declared the Commission illegal, and ordered the holding of elections. The government appealed to the Supreme Court and the case dragged on.¹³⁷ The Supreme Court ordered elections to be conducted but the government ignored the order and maintained that elections would be held in 2002, at the same time as Presidential elections.¹³⁸ According to Zimbabwe local government expert, Amin Kamete, ZANU-PF was certain it would lose the local election to the MDC, a development which would diminish Mugabe's popularity ahead of the 2002 Presidential elections.¹³⁹

In 2002, local government elections for the city of Harare were finally held alongside presidential elections, but not before some effort had been made towards disenfranchising the pro-opposition urban electorate. The law on citizenship was changed so that all citizens of foreign descent had to renounce their foreign citizenship in order to vote, but the timing made it impossible to do so before the election¹⁴⁰ The election itself was chaotic as the number of polling stations was reduced by 40 per cent with the result of disenfranchising about a quarter of the urban population.¹⁴¹ Both the 2000 and the 2002 elections were marred by electoral violence.¹⁴² Fear gripped the rural areas where ZANU-PF militia and veterans of the liberation struggle terrorised villagers and fished out suspected opposition party members.¹⁴³ Michael Bratton described ZANU-P's conduct as a return to 'tried-and-true tactics'.¹⁴⁴ Nonetheless, the 2000 local government election was the most competitive since independence, with ZANU-PF

¹³⁵ Jonga (2014) 84.

¹³⁶ Kamete (2003) 60.

¹³⁷ Kamete (2003) 60-1.

¹³⁸ Jonga (2014) 85.

¹³⁹ Kamete (2003) 61.

¹⁴⁰ Kamete (2003) 61.

¹⁴¹ Kamete (2003) 62.

¹⁴² Laakso (2003)129.

¹⁴³ Mandiyanike (2013 a) 49.

¹⁴⁴ Bratton (2014) 75.

losing control of most urban councils including those of all the country's big cities (Bulawayo, Gweru, Mutare and Masvingo).¹⁴⁵ A similar pattern was reflected in the 2002 Harare city council election, which ZANU-PF lost to the MDC. The two elections signified the erosion of ZANU-PF's support at grassroots level, leaving the ruling party vulnerable at local government level.

After the 2000 and 2002 local elections, the ZANU-PF government was determined to make sure that the elected opposition councillors and executive mayors would not govern. It resorted to the use of directives to control local authorities under the opposition. Harare City Council was the biggest prize of the election for the MDC but the ZANU-PF government met the challenge. As the MDC council and mayor took office in 2002, the Minister responsible for local government, Ignatius Chombo, immediately issued three successive directives. The first reversed a council resolution to terminate all recruitments and promotions effected in the Commission's last six months; the second instructed council to refer all resolutions on personnel and financial matters to him, while the third banned mayors from attending cabinet committee meetings.¹⁴⁶ Later in the same year, Harare city council suspended its Public Relations Manager, its Director of Health and the Town Clerk on allegations of corruption and incompetence but Chombo reversed these decisions and reinstated them.¹⁴⁷

Kamete asserted that Chombo set out to deliberately frustrate the council, hoping that its executive mayor, Elias Mudzuri would become exhausted and give up because of such interventions. Further harassment appeared when Mudzuri addressed a meeting with residents in 2003 and was arrested for holding a public meeting without police permission. The residents protested the arrest, and police laid into them and arrested the leaders.¹⁴⁸ Chombo appointed a committee in the same year 'to assist council with a turnaround plan' and directed the council to stick to it. Mudzuri refused and was suspended for this, among other reasons.¹⁴⁹ A nine-member commission made up of ZANU-PF loyalists was appointed by Chombo to investigate

¹⁴⁵ Exhaustive results of all wards are not available in literature. The Electoral Supervisory Commission that conducted the election has since been disbanded.

¹⁴⁶ Kamete (2003) 62. Over 2000 workers most of who were ZANU-PF supporters had been employed just before the commission had handed over the city to the elected council.

¹⁴⁷ Kamete A Y 'The Return of the Jettisoned: ZANU-PF's Crack at 'Re-urbanising' in Harare' (2006) 32 (2) *Journal of Southern African Studies* 260.

¹⁴⁸ Kamete (2006) 264.

¹⁴⁹ Kamete (2006) 260.

him. Mudzuri appealed to the High Court. The court ruled that the commission was improperly formed and its recommendations could not be used to relieve the mayor of his duties.¹⁵⁰ Chombo appointed a fresh committee which again recommended the mayor's dismissal, and was this time successful.¹⁵¹

With Mudzuri out, Chombo promoted deputy mayor Sekesai Makwavarara to the position of acting mayor. Makwavarara developed a close relationship with the Minister and the MDC council decided to pass a vote of no confidence in her and to elect a new deputy mayor.¹⁵² Chombo banned the election but the council defiantly proceeded. He nullified the results and suspended 13 councillors.¹⁵³ In the midst of this power struggle, Chombo refused to approve the 2003 supplementary budget, undermining the Council's autonomy in expenditure. The dismissal of Harare councillors by the Minister meant that by December 2004 the number of councillors was no longer sufficient to constitute a quorum. This enabled Chombo to dissolve the council and replace it with a commission.¹⁵⁴ The Minister's interventions were not only limited to the capital. Most urban councils controlled by the opposition suffered similar fates. Mayors and councillors were dismissed in Chitungwiza, Mutare, Chegutu and Kariba.¹⁵⁵

As the Minister responsible for local government asserted centralisation over urban councils controlled by the MDC, RDCs also faced similar challenges to their autonomy, but these came from a multiplicity of political actors, though all enjoying power through their association with ZANU-PF. Ministerial approval for budgets and borrowings 'took forever', while veterans of the liberation struggle forced the closure of RDCs linked to the opposition or suspected of disloyalty to ZANU-PF, and took council files for investigation.¹⁵⁶ Mandiyanike recalled that in and through this process, decision-making became extremely complicated as many powerful actors such as the DA, the Minister responsible for local government, the Provincial Governors,

¹⁵⁰ Muchadenyika D 'Land for Housing: A political Resource – Reflections from Zimbabwe's Urban Areas' (2015) 41 (6) *Journal of Southern African Studies* 1222.

¹⁵¹ Muchadenyika (2015) 1222.

¹⁵² Kamete (2006) 261.

¹⁵³ Kamete (2006) 261.

¹⁵⁴ Kamete (2006) 261.

¹⁵⁵ Muchadenyika (2015) 1222.

¹⁵⁶ Mandiyanike (2013 b) 120. During the period 2000 and 2008 veterans of the liberation struggle became very active players as political commissars in ZANU-PF's fight against the opposition which it termed a puppet of imperialists bent on making Zimbabwe a colony again.

local ZANU-PF leaders, Members of Parliament (MPs), and veterans of the liberation struggle or indeed, any person with political connections, got to ‘call the shots’.¹⁵⁷

In 2003 the government introduced the posts of Provincial Governors to Harare and Bulawayo and appointed District Administrators to all urban councils in order to coordinate and exercise oversight on all government and local government activities in their jurisdictions. This created a parallel structure made up of ZANU-PF senior politicians who enjoyed direct access and accountability to the President and Minister.¹⁵⁸ Some scholars believed that this was a tactical move to suppress executive mayors, most of whom did not take instructions from the ruling party.¹⁵⁹ The irony of the introduction of this new layer of supervisors is that these displayed striking structural similarities with the colonial regime's prefectural instruments of political control, the Provincial Commissioners and the District Commissioners. These developments indicate that the ZANU-PF government was committed to its quest to regain control of local government, even at the cost of riding roughshod over democracy.

In 2008, local government elections were combined with presidential and parliamentary elections in a recentralisation strategy that undermines the significance of local government. At the same time, mayoral elections could not be conducted as the position of executive mayors had been outlawed by an amendment to the Urban Councils Act in the same year. This amendment appeared intended to weaken the role played by (opposition) mayors in local government. In its own explanation, the ZANU-PF government argued that the decision to abolish the post of executive mayor was triggered by the observation that mayors were abusing their executive powers.¹⁶⁰

At the time of the 2008 local government election, the MDC had itself split into two separate parties. The one was led by Morgan Tsvangirai (MDC-T) and the other by Arthur Mutambara (MDC). Out of 1958 wards, ZANU-PF won control of 1001, the MDC-T won 775 and the

¹⁵⁷ Mandiyanike (2013 b) 120.

¹⁵⁸ See Jonga (2014) 84.

¹⁵⁹ Jonga (2014) 84.

¹⁶⁰ See Jonga W & Chirisa I ‘Urban Local Governance in the Crucible: Empirical Overtones of Central Government Meddling in Local Urban Councils Affairs in Zimbabwe’ (2009) 3 (12) *Theoretical and Empirical Researches in Urban Governance* 177.

MDC-M (led by Mutambara) 165.¹⁶¹ Urban councils remained opposition strongholds since out of the 30 urban councils, MDC-T won control of 27, the MDC-M two, and ZANU-PF one.¹⁶² The pith of the electoral contest was the Presidential election where for the first time in the country's history, Mugabe was defeated by Morgan Tsvangirai. When the results of the March 2008 Presidential election were announced, Tsvangirai emerged the leader (but not winner) with 47.9 per cent of the vote whilst Mugabe came second with 43.2 per cent of the vote.¹⁶³ Since Tsvangirai did not attain 50 per cent plus one, the election was set for a runoff between the Mugabe and Tsvangirai. Tsvangirai later pulled out from this, citing state-sponsored violence against his supporters. An intervention by the Southern African Development Community (SADC) led to the formation of a government of national unity which brought together the top three political parties in the country.

ZANU-PF's 'war mode' reached its height in the 2008 elections in which Mugabe brutally deployed the coercive force of the state to cling to power. According to political scientist Eldred Masunungure, 'the political process was overthrown and in its place came a militarised process in which the military elite came to the aid of their political counterparts in a toxic combination of ZANU(PF) and the military/security complex.'¹⁶⁴ State-sponsored violence included frequent arrests, torture, home invasions, abductions and physical assaults directed at opposition supporters.¹⁶⁵ The 2008 election resulted in the deaths of some 200 MDC officials and supporters, with thousands injured, and around 200 000 people displaced.¹⁶⁶

The use of terror continued in the post-election period, with a number of victorious opposition candidates having to go into hiding. Consequently, although local government elections were held in March 2008, there were no functioning urban councils and mayors until well into the second half of the year.¹⁶⁷ In Harare, elected councillors met in secret and selected Chirotto as mayor. Shortly after, Chirotto's wife was abducted and brutally murdered under unclear

¹⁶¹ Chakaipa S 'Local Government Institutions and Elections' in De Visser J Steytler N and Machingauta N (eds) *Local Government Reform in Zimbabwe: A Policy Dialogue* (2010) 59.

¹⁶² Chakaipa (2010) 60.

¹⁶³ Zimbabwe Election Support Network *Report on the Zimbabwe 29 March 2008 Harmonized Elections and 27 June Presidential Run-off* (2008) 48.

¹⁶⁴ Masunungure E V 'A Militarised Election: The 27 June Presidential Run-off' in Masunungure E V (ed) *Defying the Winds of Change: The 2008 Elections in Zimbabwe* (2009) 97

¹⁶⁵ Bratton (2014) 87.

¹⁶⁶ Bratton (2014) 87.

¹⁶⁷ Masunungure (2009) 86.

circumstances.¹⁶⁸ Following this, Chiroto resigned as mayor. Unsurprisingly, no one in the party was interested in taking over. The councillors eventually appointed Muchadei Masunda, a non-partisan lawyer from the corporate sector as Mayor of the capital city.

In this ‘gloves-off’ showdown with the MDC, ZANU-PF did not only rely on the tried and tested tactic of the terror campaign. It also resorted to legal manoeuvres. In 2008, it amended the Urban Councils Act and Rural District Councils Act to provide for the appointment of special interest councillors.¹⁶⁹ These councillors, constituting at most 25 per cent of the council, were not elected. Instead, they were appointed by the Minister with the stated purpose of filling gaps in the representation of various groups and skills such as women, accountants, lawyers and the disabled. However, in practice, the provision was abused by the Minister to appoint ZANU-PF functionaries and these included party candidates who had failed in council or parliamentary elections.¹⁷⁰

Although the opposition won control of most urban councils, they were not allowed to freely govern, an outcome that limited the quality of local democracy. To retain lost control, the ZANU-PF government used its supervisory powers to make decisions in opposition-controlled councils. The Minister responsible for local government was the main actor in this process. The Minister relied on three main forms of manipulation: the use of arbitrary directives, the reversal of council resolutions, and the suspension and dismissal of mayors and councillors. Even with the formation of an inclusive government in the period 2008 to 2013, the Minister continued to deploy manipulative strategies with impunity. For instance, in what was widely condemned as a campaign gimmick, Minister Chombo directed all local authorities to write-off all water bills, taxes, rates and fees that had accumulated between 2009 and 2013 on the very eve of the 2013 general election.¹⁷¹ This was done despite the fact that the Urban Councils Act only empowers the Minister to issue directives on matters of policy (and not make specific

¹⁶⁸ Masunungure (2009) 86.

¹⁶⁹ This arrangement is similar to Botswana's specially nominated councillors.

¹⁷⁰ Mushamba S ‘The Powers and Functions of Local Government Authorities’ in De Visser J Steytler N and Machingauta N (eds) *Local Government Reform in Zimbabwe: A Policy Dialogue* (2010) 103; De Visser J & Mapuva J ‘Special Interest Councillors in Zimbabwe: A Review of Law and Practice in terms of the 2013 Constitution’ (2013) 17 *Law Democracy & Development* 170-2.

¹⁷¹ Muperi W ‘Chombo Debt Write-off Illegal-Masunda’ *Daily News* 24 July 2013 available at <https://www.dailynews.co.zw/articles/2013/07/24/chombo-debt-write-off-illegal-masunda> (accessed 10 November 2017).

accounting decisions). Similarly, MDC mayors and councillors were dismissed under controversial circumstances in Bindura (2011), Gwanda (2012) and Mutare (2012).¹⁷²

5.2. Substantive Powers.

As urban councils (UCs) became opposition strongholds after the formation of the MDC, ZANU-PF sought to weaken local government by taking away its revenue-generating functions and reallocating these to the national level. In 2001, motor vehicle licencing was transferred to the Zimbabwe National Roads Authority (ZINARA), a parastatal entity under the Ministry of Transport. Since then, UCs have struggled to finance road infrastructure maintenance. With the visible deterioration of the road system, the impression of a failure by the opposition governing urban local authorities is created, though the truth is that these had been set up to fail by the central government. This is the argument put forward by the then Mayor of Harare in 2016. Addressing a council meeting over the state of the city's roads, Mayor Bernard Manyenyeni argued that:

‘Residents should direct their complaints on potholes and poor roads to ZINARA not [Harare City Council] HCC. We should be getting about \$40 million per year from ZINARA for road maintenance but they are only remitting \$1 million which is not enough for standard repairs.’¹⁷³

In 2005, water reticulation, one of UC's major sources of revenue was earmarked for recentralisation. But similar to the fate of motor vehicle licencing, water reticulation was transferred from local government to the Zimbabwe National Water Authority (ZINWA), another parastatal under the Ministry of Environment Water and Climate. When the central government took over water supply it cited the need to improve service delivery. Ironically, water supply became even more erratic after this shift.¹⁷⁴ Four years later, the function was returned to local government as a part of the negotiations for a government of national unity that followed the disputed presidential election of 2008.

¹⁷² Jonga (2014) 79.

¹⁷³ Kadirire H ‘Potholes Zinara’s Responsibility’ *Daily News* 21 December 2016 available at <https://www.dailynews.co.zw/articles/2016/12/21/potholes-zinara-s-responsibility> (accessed 19 March 2019).

¹⁷⁴ Mushamba (2010) 109.

5.3. Financial Autonomy.

In terms of financial autonomy, there was a decline in revenue power. This was partly due to the recentralisation of the water supply and motor vehicle licencing, and partly to the escalating economic crisis, but was also complemented by a clampdown on expenditure autonomy. RDCs were perhaps the biggest losers given that most donor-funded programmes were discontinued with the abandonment of ESAP in 1997.¹⁷⁵ In 2002 the Minister responsible for local government, Ignatius Chombo issued a directive that all financial resolutions (including budgets) by councils had to be submitted for his approval.¹⁷⁶ This directive was in flagrant disregard of the Urban Councils Act which does not allow for the ministerial approval of council budgets. The Act only allowed that ‘three copies of the estimates [be] forwarded within two months to the Minister for his information.’¹⁷⁷ But cowed into submission, councils have been sheepishly complying.

During the period 2000 to 2013, it can be argued that a conspicuous wave of recentralisation swept across the country. The wave was driven by two internal forces, combining together to create a governance crisis that continue to haunt the country up until now. The factors are the meteoric rise of the MDC, with its perpetual threat to remove ZANU-PF from power; and ZANU-PF’s vigorous pursuit of patronage politics and authoritarianism. As these two factors began to play out, there soon became no need for the ZANU-PF elites to pretend to be what they were not (democrats). Thus some of the democratic reforms (such as directly elected executive mayors) that had been introduced during the period of *de facto* one-party rule were reversed, whilst new measures aimed at reducing local political autonomy were introduced. Opposition mayors and councillors were arbitrarily dismissed from council as the Minister responsible for local government sought to undermine opposition control of urban councils. Some core local government functions such as motor-vehicle licencing and water reticulation were recentralised. Financial autonomy was eroded further through a battery of measures that included central government directives and approval of local government expenditures. Against this backdrop, most scholars argued the need to give local government constitutional

¹⁷⁵ Conyers (2003) 116.

¹⁷⁶ Kamete (2003) 62.

¹⁷⁷ S 288 (1) (b) Urban Councils Act.

protection, as it enjoyed in other countries, and notably in South Africa.¹⁷⁸ Similarly, the opposition parties themselves took advantage of the constitution-making process that commenced in 2009 to lobby for the constitutional protection of local government.

6. Decentralisation under the 2013 Constitution

In 2013, a new constitution was enacted, replacing the Lancaster House Constitution with a home-grown law. The enactment of the 2013 Constitution was a major breakthrough in terms of decentralisation. For the first time, local government was entrenched in the constitution, and included a whole chapter on devolution. Other aspects of local government autonomy such as local democracy, substantive powers and financial autonomy were also improved albeit with many ambiguities. The trend for new constitutions to embody and promote decentralisation had been set by the SA Constitutions of 1993 and 1996, and is also reflected in both Zimbabwe and (the topic of the next case study) in Malawi.

6.1. Negotiating the Constitution

The disputed election of 2008 and its violent aftermath resulted in the intervention of the Southern Africa Development Community (SADC). SADC-mediated negotiation culminated in the Global Political Agreement (GPA), a pact that established a Government of National Unity (GNU) for the period 2009 to 2013. The GPA had three major provisions that influenced the 2013 constitutional provisions on local government. First, the GPA established an inclusive government in which though Mugabe remained President, Tsvangirai became the new Prime Minister and Arthur Mutambara of MDC-M became the Deputy Prime Minister.¹⁷⁹ In addition, the three political parties were to share 31 cabinet positions, with 15 posts allocated to ZANU-PF, 13 TO MDC-T and three to MDC-M.¹⁸⁰ Second, the operation of the GNU was premised on a spirit of ‘great sensitivity, flexibility and willingness to compromise.’¹⁸¹ Third, the GPA recognised that since the Lancaster House Constitution of 1979 was intended primarily for the transfer of power from the colonial authority to the people of Zimbabwe, it was inadequate as

¹⁷⁸ See Chatiza K ‘Can Local Government Steer Socio-Economic Transformation in Zimbabwe? Analysing Historical Trends and Gazing into the Future’ in De Visser J Steytler N and Machingauta N (eds) *Local Government Reform in Zimbabwe: A Policy Dialogue* (2010) 26; Chakaipa (2010) 32-3; Jonga & Chirisa (2009) 179.

¹⁷⁹ Art XX (20) GPA.

¹⁸⁰ Art XX (20) GPA.

¹⁸¹ Art XX (20) GPA.

a constitution for the people of Zimbabwe's constitution.¹⁸² To that effect, the GPA tasked the GNU to facilitate 'the fundamental right and duty of the Zimbabwean people to make a constitution by themselves and for themselves; aware that the process of making this constitution must be owned and driven by the people and must be inclusive and democratic.'¹⁸³ This provision meant that, contrary to the year 2000, ZANU-PF would not have unfettered control over the constitution-making process.

In April 2009, a Constitution Parliamentary Committee (COPAC) was established in line with Article VI of the GPA. The composition of COPAC was inclusive, with three co-chairpersons drawn from the parliamentary representatives of the three political parties to the GNU. The other 22 members of COPAC were selected equally from the three political parties. The composition of COPAC itself suggested that the constitution-making process was likely to be a very partisan process, driven as it was by the three political parties in the GNU. During the outreach meetings, the three parties would mobilise their supporters to attend, and half the time most would simply toe the party line on which provisions to support or criticise.¹⁸⁴ In the end, the constitutional provisions selected were more a reflection of political party positions than the preferences of individual Zimbabweans.

During the outreach meetings, opinion was divided over the appropriate system of government. Public views reflected the contrasting positions of ZANU-PF on one hand, and the two MDC parties on the other. ZANU-PF vigorously campaigned for a unitary system of government that would maintain the status quo. To the contrary, the two MDC formations publicly campaigned for a devolved system, ostensibly to give power to their strongholds in the urban municipalities. Out of the ten provinces, five, including Harare, had majorities which preferred to maintain the status quo (the ZANU-PF position) while five, including all three of the Matabele-dominated provinces, preferred devolution (the MDC position).¹⁸⁵ Against this, an independent national survey of the views of Zimbabweans by *Afrobarometer* indicated overwhelming support for

¹⁸² Art VI (6) GPA.

¹⁸³ Art VI (6) GPA.

¹⁸⁴ See Zimbabwe Independent Constitution Monitoring Project (ZCOMP) *Final Report Shadowing the Outreach Process November 2010* (2010) 8: The project reported an omnipresence of coaching by the two main partners to the GNU – ZANU-PF and MDC-T.

¹⁸⁵ ZCOMP (2010) 26-45.

devolution in eight out of the country's ten provinces.¹⁸⁶ The telling disparity in results between the two reports is a testament to how politically polarised the constitution-making process was. Indeed, as rightly observed by the Zimbabwe Independent Constitution Monitoring Project (ZICOMP), 'in the main, outreach consultations appear to have been reduced to a contest between the ideological positions of ZANU PF and the MDC T' with the former in a dominant position.¹⁸⁷

The debate on devolution became so hotly contested that ZANU-PF threatened to abandon the whole constitution-making process.¹⁸⁸ In May 2012, it pulled out of COPAC citing the need to consult over 'parked' issues (with devolution high on the agenda). This crippled the whole process, which abruptly came to a halt, and only resumed months later.¹⁸⁹ The deadlock was only resolved in a meeting between the three principals, Mugabe, Tsvangirai and Mutambara in which some concessions were made. In 2013, the new constitution was passed into law; it included some comprehensive but ambiguous provisions regarding the devolution of power to provincial and local government.

6.2 Constitutional Recognition

When the GNU enacted the 2013 Constitution, local government was enshrined, with some provisions indicating a strong influence from the South African Constitution. The 2013 Constitution expressly provided for local government as a tier of government under a three-tier system of devolved government.¹⁹⁰ Local government was not only provided for in a distinct chapter of the 2013 Constitution, but was also firmly entrenched in the first chapter of the Constitution's founding provisions.¹⁹¹ Although mentioned as a junior level in a three-tier

¹⁸⁶ Mass Public Opinion Institute (MPOI) 'Summary of Results Afrobarometer Round 5 Survey in Zimbabwe' (2012) *Overview the Quality of Democracy and Governance in Zimbabwe Afrobarometer Round 5, 2012* 53.

¹⁸⁷ ZCOMP (2010) 47.

¹⁸⁸ Staff reporter 'ZANU-PF Threat to Sink Constitution over Devolution' *New Zimbabwe* 07 March 2012 available at <http://www.newzimbabwe.com/news-7387Zanu%20PF%20spoils%20for%20fight%20over%20devolution/news.aspx> (accessed 09 November 2017).

¹⁸⁹ See Dlamini M 'Zanu-PF takes indefinite break from Zim constitution making' *Bulawayo24 News* 7 May 2012 available at <https://bulawayo24.com/index-id-news-sc-national-byo-14979-article-zanu-pf-takes-indefinite-break-from-zim-constitution-making.html> (accessed 20 March 2019).

¹⁹⁰ See S 5 Constitution of Zimbabwe Amendment (No. 20) Act 2013.

¹⁹¹ S 5 Constitution of Zimbabwe Amendment (No. 20) Act 2013: The tiers of government are (a) the national Government; (b) provincial and metropolitan councils; and (c) local authorities, that is to say - (i) urban councils, by whatever name called, to represent and manage the affairs of people in urban areas; and (ii) rural councils, by whatever name called, to represent and manage the affairs of people in rural areas within the districts into which the provinces are divided.

system of government, this was a major improvement to local government autonomy. Local government was no longer a mere creature of statute, but could now derive its existence directly from the constitution. In addition, decentralisation was also recognised in the same chapter as one of the principles of good governance binding the state.¹⁹² Put together, the two provisions raised the status of local government to a constitutionally recognised tier of government with a guaranteed existence.

Constitutional recognition also meant that local government no longer derived its existence from national legislation, but this now came directly from the constitution. At least from the narrow perspective of constitutional protection, the autonomy of local government was significantly improved. However, the Constitution did not go beyond this broad protection, and left crucial aspects of autonomy (such as the question of substantive powers, and the financial autonomy of local government) to the discretion of parliament.

6.2. Local Democracy.

Along with constitutional recognition, this is arguably one of the aspects where significant decentralisation progress was made under the 2013 Constitution. Reflecting the significant role played by the two MDC formations, the undemocratic practices that had enabled ZANU-PF to regain control of local government were addressed in three ways. First, the appointment of special interest councillors was discontinued by a provision that required that ‘all members of local authorities must be elected by registered voters.’¹⁹³ Secondly, in what appears to be a balancing act, the Constitution vaguely provided that executive mayors ‘may’ be provided for in an Act of Parliament.¹⁹⁴ Thirdly, although the 2013 Constitution was silent on the Minister’s powers to issue directives and veto council resolutions, it took some steps to limit the Minister’s power to dismiss mayors and councillors. Any removal of councillors and mayors was limited to five circumstances, with the discharge of that intervention to be reserved for an independent tribunal established by an Act of Parliament.¹⁹⁵ This meant that the Minister no longer had powers to dismiss councillors and mayors at will, as in the old constitutional dispensation. Considering that ZANU-PF’s proposals supported a strong executive, these democratic

¹⁹² S 3 (2) (1) Constitution 2013.

¹⁹³ S 265 (2) 2013 Constitution.

¹⁹⁴ S 274 (5) 2013 Constitution.

¹⁹⁵ S 278 (2) 2013 Constitution.

reforms reflected a significant compromise that can only have been made possible by pressure from the two MDC formations.

6.3. Substantive Powers.

Chigwata and De Visser analysed the degree of autonomy provided by the 2013 Constitution with regards to substantive powers and concluded that ‘the new Constitution presents a mixed picture.’¹⁹⁶ The fact of the ‘mixed picture’ resides in the fact that the Constitution makes a bold provision that ‘subject to this Constitution and any Act of Parliament, a local authority has the right to govern, on its own initiative, the local affairs of the people within the area for which it has been established and has all the powers necessary for it to do so.’¹⁹⁷ However, beyond the existence of this right, no clarity is offered with regard to the specific powers and functions of local government. It appears that operational substance was to be decided either by Act of Parliament (under ZANU-PF’s control) or through judicial interpretation.

The vacuum left by the Constitution with regard to the powers and functions of local government indicates the reluctance with which ZANU-PF gave in to pressure from the two MDC parties for the protection of local government, and reflects the compromise effected by the MDC formations with regard to parliamentary discretion. Given that the 2008 elections continued to reflect the same rural-urban divide in support for ZANU-PF and the MDC parties through control of councils, it could not be expected that ZANU-PF support the entrenchment of substantive powers in the constitution. To the contrary, it was expected for the two MDC formations to push for greater powers, given their realistic chances of controlling the more influential UCs.

6.4. Financial Autonomy.

As with the question of substantive powers, the 2013 Constitution is vague with regards to the fiscal powers of local government. Apart from the very general section 276 (1), and an equally open section 276 (2) (b) which provides that local authorities’ power to levy rates and taxes *may* (or may not) be conferred by an Act of Parliament, there is no mention of specific revenue-

¹⁹⁶ Chigwata T C & De Visser J ‘Local Government in the 2013 Constitution of Zimbabwe: Defining the Boundaries of Local Autonomy’ (2018) 10 *Hague J Rule Law* 178.

¹⁹⁷ S 276 (1) 2013 Constitution.

raising powers in the 2013 Constitution. Yet, considering the long history of fiscal incapacity in Zimbabwean local authorities, a guaranteed share of central government revenue was needed. The 2013 Constitution does address this matter, but again in an ambiguous way. Thus the Constitution mandates that an Act of Parliament must provide for the allocation of not less than five per cent of national revenue in the form of capital grants to both provincial and local authorities.¹⁹⁸ The problem with this provision, though, is the lack of clarity on how exactly this is to be executed.

From the foregoing, the codification of local government into the constitution can be explained by the presence of the two MDC parties in government during the constitution-making process and conditions from the GPA that pinned ZANU-PF to an inclusive consensus-based constitution-making process. Driving the two MDCs was their need to limit centralisation of power under the ZANU-PF central government whilst strengthening their footholds of power in the UCs and parts of the Matabeleland region's RDCs which they controlled and had the assurance of retaining in the next election

7. Recentralisation through Non-Implementation of 2013 Constitution (2013-2018)

Because of the lack of clarity in the Constitution, implementation of constitutional provisions on local government and improvements to decentralisation were heavily dependent on the outcome of the 2013 general election. The crucial factor would be whether the election was won by the party in favour of devolution (MDC-T) or against it (ZANU-PF). In fact, ZANU-PF gained a two-thirds majority in parliament, beating back their MDC opponents. ZANU-PF won 76.67 per cent of national assembly seats, the MDC-T a mere 23.33 per cent, while the MDC-N¹⁹⁹ failed to win a single seat.²⁰⁰ Similarly, Mugabe registered a resounding victory in the Presidential race with 61.09 per cent of the vote against Tsvangirai's distant 34.94 per cent.²⁰¹ The fate of the decentralisation process was sealed. ZANU-PF, secure in its majority, simply ignored any implementation of the constitutional provisions on devolution for the rest of its term of office (2013 – 2018). The fact of non-implementation meant that despite the

¹⁹⁸ S 301 2013 Constitution.

¹⁹⁹ In 2011, Welshman Ncube took over the leadership of MDC-M from Arthur Mutambara, leading to the party's shift from MDC-M to MDC-N. However, legally, the party was simply registered as MDC.

²⁰⁰ Zimbabwe Election Support Network (ZESN) *Report on the 31 July 2013 Harmonised Elections* (2013) 66.

²⁰¹ ZESN (2013) 69.

progress realised in terms of the constitutional *de jure* protection of local government, recentralisation took place in terms of practice.

6.1. Local Democracy.

The 2013 Constitution strengthened local democracy through a provision that allowed the introduction of executive mayors. In practice, this did not happen. The ZANU-PF government continued to maintain the old system of ceremonial mayors introduced by the 2008 amendment to the Urban Councils Act. This opting for a weaker mayoral system suggests that ZANU-PF was not in favour of any constitutional provisions aimed at deepening democracy and that it would seek to undermine them at every opportunity as long as these were seen to be of benefit to opposition parties.²⁰²

Chief amongst the factors which drove the ZANU-PF government's quest to weaken the power of mayors was the results of the 2013 local government elections in which the MDC-T won control of most urban councils. These local government elections had been conducted at the same time as the national elections won by ZANU-PF with a wide margin. Out of the 1958 wards, ZANU-PF won control of 1493, MDC-T 442 whilst the MDC won control of a paltry 14.²⁰³ Although generally weaker than it was in 2008, the MDC-T still dominated control of urban councils, indicating popularity with the urban electorate. Consequently, any strengthening of the mayoral system was seen by ZANU-PF to mean strengthening the opposition's control of local authorities. As we shall see with the next cases studies on Malawi and Botswana, governments of countries with strong regional or urban opposition or competition tend to settle on ceremonial rather than executive mayors.

As with the mayoral system, constitutional provision had not been successful in limiting the Minister's intrusion in local government by way of arbitrary supervision. The ZANU-PF government here outmanoeuvred the MDC in two ways: first, by simply ignoring the provision that the Minister can no longer dismiss councillors and secondly, by establishing a supposedly 'independent' tribunal that it could continue to control.

²⁰² In 1995 whilst at the epitome of its supremacy the ZANU-PF government had introduced these directly elected mayors which it then turned around to resist under the new order where UCs are controlled by the opposition.

²⁰³ Veritaszim 'ZEC 2013 Harmonised Elections Report' available at http://www.veritaszim.net/sites/veritas_d/files/ZEC%202013%2 (accessed 13 June 2014).

The case of Gweru City Council under the control of the MDC-T is a typical example of this dynamic.

In 2015, Minister Chombo was replaced by Saviour Kasukuwere, who used the sweeping supervision powers in the Urban Councils Act to suspend the mayor of Gweru, Hamutendi Kombayi, and 16 councillors on corruption allegations.²⁰⁴ The mayor and councillors approached the court for protection. The High Court ruled that the Minister no longer had powers to suspend and dismiss mayors and councillors as that was now the responsibility of an independent tribunal provided for in the constitution.²⁰⁵ But Kasukuwere defied the order, and gave strict instructions to the Town Clerk that if the councillors were allowed to enter the council's premises, he would lose his job.²⁰⁶ In addition, the Minister appointed a Commission to run the city and appealed his case to the Supreme Court.

After a similar encounter in Harare where Kasukuwere suspended Mayor Bernard Manyenyeni, a new law was passed in parliament. Its sole purpose was to amend the Urban Councils Act and the Rural District Councils Act in order to provide for the establishment of an independent tribunal and the suspension and removal of councillors from office.²⁰⁷ This 2016 amendment is so far the only piece of legislation giving effect to the 2013 Constitutional provisions on local government. However, scholars such as Chigwata have cautioned that the amendment should not be viewed as an improvement in local government autonomy principally because the tribunal lacks independence from the Minister.²⁰⁸ True to Chigwata's analysis, Kombayi and the other Gweru City councillors have since been 'lawfully' dismissed by the supposedly 'independent' tribunal. Observably, instead of being an instrument in the safeguarding of local democracy from the excesses of central government politicians, the tribunal has ironically assumed a different role. It has turned out to be an instrument in the hands of the ZANU-PF government, fashioned for the covert control and persecution of its political opponents.

²⁰⁴ Chenga N & Ndhlovu R 'MDC-T on the Ropes' *The Financial Gazette* 09 June 2016 available at <http://www.financialgazette.co.zw/mdc-t-on-the-ropes/> (accessed 02 December 2016).

²⁰⁵ See *Hamutendi Kombayi and Ten Others vs Minister of Local Government, Public Works and National Housing* (2015) HB 188-15.

²⁰⁶ Matendere B 'Kasukuwere defies High Court Order' *The Zimbabwean* 28 October 2015 available at <http://thezimbabwean.co/2015/10/kasukuwere-defies-high-court-order/> (accessed 02 December 2016).

²⁰⁷ See Local Government Laws Amendment Act, 2016.

²⁰⁸ Chigwata T C 'Decentralisation and Constitutionalism in Zimbabwe: Can the Leviathan be Tamed?' in Fombad C M & Steytler N (eds) *Decentralisation and Constitutionalism in Africa* (2019) 320.

6.2. Substantive Powers.

Section 276 (1) of the 2013 Constitution sought to broaden local government autonomy by providing that ‘a local authority has the right to govern, on its own initiative, the local affairs of the people within the area for which it has been established, and has all the powers necessary for it to do so.’²⁰⁹ However, actual practice has been far from observing the spirit of this provision, and has effectively reversed the decentralisation improvements of 2013. An aspect of local government autonomy in which this has been reflected concerns the personnel administration powers of local government. An attempt by the Harare City Council to appoint a Town clerk without the approval of the centrally-controlled Local Government Board on the basis of section 276 (1) in 2016 ended with the suspension of the City's Mayor.²¹⁰ In 2016 it was reported that ZANU-PF has embarked on a grand strategy of parcelling out residential stands to ‘the people’ (party supporters and clients in the patronage network) as a campaign strategy for 2018 elections.²¹¹ How do they do that when the majority of urban councils are controlled by the MDC-T? A study by Davison Muchadenyika reveals that ZANU-PF has been using a network of officials in the Ministry responsible for local government, centrally-controlled senior management of local authorities and a string of party-aligned cooperatives and ‘land barons’ to exploit urban and peri-urban land as a political resource.²¹² This explains why the ZANU-PF government has insisted on controlling the appointment of all senior employees in local authorities and how the Mayor of Harare almost lost his job after appointing a Town Clerk without approval from the Ministry responsible for local government.

6.3. Financial Autonomy.

The provision of the 2013 Constitution that obliges the Treasurer to set aside at least five per cent of national revenue for sharing with subnational authorities was left in abeyance during ZANU-PF's term of office (2013-2017). The dissenting voices of opposition members of

²⁰⁹ S 276 (1) Constitution 2013.

²¹⁰ The City has since backed down on its ‘constitutionally-based’ boldness. The new Town Clerk's contract has been cancelled and a new process following the old procedure provided under the Urban Councils Act is underway. A tedious court battle has also been initiated for the court to interpret the Constitution in this regard.

²¹¹ Manayi O & Mushava E ‘Norton: ZANU-PF Shows its Ugly Side ahead of 2018’ *The Standard* 23 October 2016 available at <https://www.thestandard.co.zw/2016/10/23/norton-zanu-pf-shows-ugly-side-ahead-2018/> (accessed 02 December 2016).

²¹² Muchadenyika (2015) 1219.

parliament were drowned out by a two-thirds majority which enables the ruling party to pass or block any law with or without support from the opposition members of parliament. In the light of this, scholars such as Chigwata have concluded that the non-implementation of constitutional provisions on local government finances should be viewed more as a sign of lack of political will than of resource constraints.²¹³ Despite continued revenue challenges, autonomy in expenditure continues to be undermined as the Minister insists on his self-proclaimed power to approve budgets.

From the foregoing, it is observable that the progress with decentralisation made by the 2013 Constitution has not come through in practice. By leaving the constitutional provisions in abeyance, the government has succeeded in recentralising its lost powers. Two factors explain this shift back to centralisation. First, is ZANU-PF's quest to consolidate power after the GNU. Second is the MDC-T's continued dominance in urban councils and the resultant strong political competition at the local government level.

8. Conclusion

Zimbabwe has gone through five phases of critical reforms that each signal important shifts in local government autonomy. First there was the period of racially-fragmented local government as it existed under colonial rule. This was driven by the intent to preserve white privilege and dominance. Despite the official end to white minority rule in 1980, this same system was ironically maintained by the new black majority government albeit, though cloaked in the rhetoric of decentralisation. In a display of path dependence, the parochial penchant to use local government for the preservation of power by one political party over others continued to play a critical role in shaping the process of decentralisation. The end of the Cold War in the 1990s brought with it new reforms. These sought to promote local democracy under a hegemonic and centralised ruling party. Mounting economic instability and the return of competition from the opposition saw an abandonment of the pretence of political decentralisation, and a new wave of blatant recentralisation. This wave of recentralisation reforms proceeded with huge determination until it was interrupted (at least in terms of the law) by the enactment of a new constitution in favour of decentralisation in 2013. The *de jure*

²¹³ Chigwata (2019) 321.

decentralisation enshrined in the 2013 Constitution was the product of the opposition's influence during the GNU period. However, the shrinking presence of the opposition parties in government after the 2013 general election saw the 2013 constitutional recognition of local government unable to do much to constrain renewed centralisation.

A common trend in the history of local government in Zimbabwe from 1890 to date is the determination by regimes to ensure that the system of local government in place does not work to diminish their own hold on state power. Rather, the system must work to advance their racial, factional and partisan interests and privileges, and help to keep opposition threats at bay. This trend is present in the white minority regime's fragmentation of local government to preserve their rule. It is also present in ZANU-PF's protracted struggle to reduce local government autonomy as a way of depriving opposition parties with regional dominance of meaningful political influence. Strikingly, the two regimes, for all their racial and ideological differences, converge on a similar objective: to ensure that only their political organisation (and not the opposition's) enjoys political control over the state. Thus while colonial regimes were focused on making sure that local government helped to ensure white minority rule, ZANU-PF similarly pursued a system of local government that preserves one-party dominance in the state. Consequently, in any political system that accommodates multiparty competition, it is almost a default position that ruling regimes will find comfort in recentralising rather than decentralising power. While they may publicly declare their commitment to decentralisation and even go as far as codifying that commitment into law, as long as opposition parties are consolidating their power in regional spaces, actual practice will always support centralisation.

The pervasive quest for local government control discussed above does not mean that the struggle for decentralisation is futile. There are times when governments institute local government reforms that promote decentralisation. Often, these reforms commence when the regime has its back against the wall. In other words, local government reforms that promote decentralisation are entertained during times of crisis when the regime has limited choice but to let go of some of its grip on local government. Two such circumstances were noticeable in Zimbabwe. First, during the economic difficulties that created a desperate need for international assistance in the early 1990s. The process of accessing international funding coincided with the end of the Cold War that itself triggered a global wave of democratisation. It thus became imperative for the government of Zimbabwe to institute democratic reforms -

including at the subnational level – at a moment when donors stressed the need to curtail centralised state control.

That the ZANU-PF government proceeded to implement such reforms should be viewed from the perspective of the outright dominance of the ruling party under a *de facto* one-party state. It can therefore be concluded that the actual implementation of local government reforms that seek to promote decentralisation depend not only on the pressure from donors, but also on the strength of political opposition in the country. When such reforms were implemented in Zimbabwe, political opposition was weak at both the national and local-regional levels. Accordingly, when a strong political opposition emerged in 2000, most of the progress with decentralisation was blatantly reversed.

The second time significant local government reforms promoting decentralisation were introduced was in 2013, following the enactment of a new constitution which provided for local government. The new constitution-making process itself, and the resultant provisions on the devolution of power to provincial and local government, emerged from the heavily contested election of 2008 that had led to the formation of a GNU. The GNU required joint decision-making between ZANU-PF and the two former opposition parties (MDC-T and MDC-M). This explains the promotion of decentralisation (against ZANU-PF's will) through the 2013 Constitution. Contrary to the commitment with which the ZANU-PF had implemented decentralisation following the economic crisis of the 1990s, most 2013 constitutional provisions on local government were left in abeyance for years. This result is consistent with the conclusion that although pressured by a crisis to adopt decentralisation reforms, the actual implementation depends on whether political opposition is strong or weak. Following the 2013 general election, although nationally subdued, political opposition was still very strong at a regional-local level.

Finally, what is visible from the Zimbabwean case is that when political opposition is strong at a regional or national level, the penchant to undermine decentralisation reforms adopted under pressure is so pervasive and inevitable that it can only be concluded to be the nature of power politics. It cuts across races, time periods and regimes. The striking similarities between the 1923 and 2013 Constitutional reforms support this conclusion. In 1923, the British government in London pressured the settler government to decentralise political power to democratic

Native Councils. This was done through local government provisions in the 1923 Constitution that ended company rule. The minority white government simply ignored the local government provisions for years before amending the constitution to repeal them. When the black majority government of ZANU-PF was subjected to similar pressures under the 2013 Constitution, history repeated itself with remarkable consistency. In the main, the cycles of decentralisation and recentralisation reforms reflect more of sitting governments' struggle to preserve its own power than anything else.

CHAPTER FIVE

Malawi: The Rhetoric of Decentralisation

1. Introduction.

Akin to Zimbabwe, local government in Malawi has gone through a series of phases signifying competing waves of decentralisation and recentralisation since the country's founding as a British protectorate in 1891. The waves of decentralisation and recentralisation in Malawi can be traced over six phases. The first phase is the colonial period (1891-1961) where separate local government systems for rural and urban areas were established. During this phase, urban local government was developed to serve a small white population in the country's few towns. To the contrary, rural local government serving the majority of black people was left largely undeveloped throughout a slow process of decentralisation. This phase (which spanned seven decades) was followed by a more progressive period.

This was the period of transition from British rule to black majority rule between 1961 and 1966. During this transitional period, rural local government was transformed to meet a decentralisation level similar to the one obtaining in urban areas. It was made more democratic, conferred with more substantive powers and awarded more financial autonomy. This progressive phase was, however, short-lived. It was replaced by local government reforms that promoted recentralisation once President Hastings Kamuzu Banda and his Malawi Congress Party (MCP) transformed Malawi into a one-party state between 1966 and 1993. When the system of one-party rule was abolished in 1994, the wave of recentralisation was replaced by a new wave of decentralisation that came on the coattails of multiparty democracy. This wave of decentralisation, which lasted over United Democratic Front President Bakili Muluzi's ten-year rule, was marred by a legislative and policy rhetoric that was not realised by genuine local government reforms.

Once President Muluzi was succeeded by the Democratic Progressive Party President Bingu wa Mutharika in 2005, a new wave of recentralisation followed. President Mutharika implemented local government reforms that reversed even some of the legislative and policy rhetoric of the Muluzi era. In 2012, President Mutharika was succeeded by the People's Party

(PP) president Joyce Banda (not related to Hastings Banda) and a new wave of limited decentralisation commenced. This wave has been sustained notwithstanding Joyce Banda's electoral loss to the DPP's Peter Mutharika in 2014.

From the foregoing, it is observable that colonial rule, albeit racist, left Malawi on a decentralisation trajectory. However, the successive governments of an independent Malawi have introduced local government reforms that indicate a tendency to recentralise rather than decentralise power. However, this tendency to limit local government autonomy has not unfolded in an uninterrupted fashion. Occasionally, some local government reforms are undertaken in pursuit of decentralisation though most of the time implementation of these is disingenuous.

Here it is argued that these waves of decentralisation and recentralisation are mainly driven by two factors: donor pressure and the regional competition for political power.¹ Thus, whilst donor pressure for local government reforms often promotes decentralisation, the political realities of a highly competitive polity discourages Malawian politicians from genuinely implementing them. This explains why decentralisation reforms in Malawi have been short-lived; why they often tend to be rhetorical; and why recentralisation always consistently follows decentralisation.

A constant feature of the process of decentralisation in Malawi, almost throughout history, is the preponderance of rhetoric over practice. This feature, which has led to the stunted development of local government, has its roots in the historical, geographical, demographic, political and economic makeup of Malawi as a country. In terms of land area, Malawi is one of the smallest countries in Southern Africa yet, its population is huge.² This combination of small land area and huge population means that the country is densely populated.³ In addition to its population size, a key feature of Malawi is that it is one of the poorest countries in the world, with a majority 50.7 per cent living below the poverty datum line and 25 per cent living

¹ Malawi has three administrative Regions, each with an ethnic majority that normally votes for political parties led by individuals whose background identifies with the group.

² World Atlas 'Geography Statistics of Malawi' available at <https://www.worldatlas.com/webimage/countrys/africa/malawi/mwlandst.htm> (accessed 23 June 2019): It has a total land area of 118,484km² and a population size of 18,570,321 people.

³ World Atlas (2017): Malawi's population density is 197.39/km²

in extreme poverty.⁴ In 2017, the United Nations Development Programme (UNDP) reported the country's Human Development Index (HDI) value as 0.477, classifying it in the low human development category with a rank position of 171 out of 189 countries.⁵ One factor that explains the poverty levels of Malawi is that, contrary to other Southern African Countries such as South Africa and Zimbabwe, the country has no mineral wealth. Its major economic driver is agriculture which contributes 30 per cent to the Gross Domestic Product (GDP).⁶ Although agriculture is the most important source of livelihoods for Malawians, the country is vulnerable to frequent natural disasters such as droughts and floods. The overall result of these socio-economic and geographical factors is that most people in Malawi are trapped in a vicious cycle of poverty.

The poor economic state of Malawi has influenced its politics in three ways. First, it has created a highly competitive political environment as the state has itself become a major source of wealth and economic opportunities.⁷ The competitive nature of Malawian politics in a country of great poverty has fuelled corruption and, with this, the emergence of political parties that are not built on ideology, but firmly anchored in the cult of personality and the ethnic identity of competing leaders. Secondly, in terms of state organisation, the small territory is made up of three administrative regions – Central, Northern and Southern. Each of the three regions have ethnic majorities.⁸ The existence of these ethno-regional fault lines in a poverty-stricken country has sustained a political polarisation that in turn has made the process of decentralisation problematic since the return of multiparty democracy. Thirdly, the high levels of poverty have made the country heavily dependent on donor funding for its developmental programmes. This heavy dependence on donor support means that Malawian politicians are constantly under external pressure to engage in political reforms. As a result, since

⁴ Ministry of Finance, Economic Planning and Development *Economic Development Document* (2017) 4.

⁵ United Nations Development Program (UNDP) *Human Development Indices and Indicators 2018 Statistical Update Briefing note for countries on the 2018 Statistical Update: Malawi* (2018) 2.

⁶ Ministry of Finance, Economic Planning and Development (2017) 4.

⁷ Since the return of multiparty democracy in 1994, Malawi has been governed by three different political parties. It has been governed by four different Presidents since independence in 1964. In most cases, the ruling party has a minority status in parliament. Independent candidates have been very successful, outnumbering members of any opposition political party in parliament.

⁸ World Atlas 'Ethnic Groups of Malawi' available at <https://www.worldatlas.com/articles/ethnic-groups-of-malawi.html> (accessed 26 June 2019): The largest group is the Chewa, constituting 36 per cent of the country's total population. It is concentrated in the Central Region. The Southern Region is dominated by the Lomwe and Yao groups, constituting 18 and 14 per cent of the country's population respectively. The Northern Region is dominated by the Ngoni and Tumbuka groups, accounting for 12 and nine per cent of the country's population respectively.

independence, successive Malawian governments have been trapped in a cycle of decentralisation rhetoric but actual recentralisation of power.

2. Diverse levels of Decentralisation under British Colonial Rule.

Prior to colonial rule, the territory now known as Malawi was inhabited by various Bantu tribal groupings. The northern part of the territory was occupied by the Tumbuka and Ngoni tribes as well as some smaller Ngonde and Tonga groups; the Chewa were settled in the central part of the country, whilst the Yao, Lomwe and some other smaller tribal groups occupied the southern end.⁹ Each tribal grouping had a chiefdom as its polity, autonomous from other tribes. The chief was the political head of the tribe who governed his followers with the help of a council of advisors and (chief's council) and headmen (subordinates). Gradually, some white missionaries (mainly Scottish) together with European traders and farmers trickled in. They settled mainly in the Southern part of the territory where the Shire Highlands¹⁰ provided a conducive agricultural environment for the cultivation of tea, coffee, groundnuts, tobacco and maize. Consequently, huge plantations and estates were established by a number of Europeans, with some local chiefs assisting them with a supply of cheap labour.¹¹ In addition to the missionaries and farmers, some Europeans, especially the Portuguese, engaged in both the ivory trade and the slave trade, with the local chiefs complicit in this. In 1891, the territory was declared a British protectorate. This meant that in contrast with other colonies, such as South Africa and Zimbabwe, control by the British government was limited. A unitary state was established, integrating the previously autonomous chiefdoms, missionaries and European estates under one administration. Initially, the territory was named the British Central Africa Protectorate but this was later changed to Nyasaland in 1907.

Unlike the South African and Zimbabwean cases, the main objective for annexing Malawi as a British protectorate did not lie with the exploitation of natural resources but rather with the need to safeguard the interests of British missionaries, planters and traders against encroachment by other European nations.¹² The main reason for the British government's lack

⁹ Williams T D *Malawi: The Politics of Despair* (1978) 17.

¹⁰ A huge plateau in the Southern Region characterised by massive agricultural production and high population density.

¹¹ See McCracken J A *History of Malawi 1859-1966* (2012) 50-1.

¹² Nkhata M J 'Malawi' (2011) in Institute for International and Comparative Law in South Africa (eds) *Oxford Constitutions of the World Country Reports* 1.

of direct interest was the poor state of the territory which made it economically unprofitable against the cost of colonial administration. As Guy Mhone, a Malawian Professor of Public and Development Management, put it: the territory was ‘a “colonial slum” given its lack of known exploitable minerals.’¹³ As shall be seen in the subsequent case studies, Botswana, commonly referred to as a ‘barren desert’ due to its lack of known mineral wealth during the colonial period shares this feature with Malawi. State organisation under British rule was decentralised, with varying degrees of local government autonomy allowed on the basis of the area of habitat. At the top was a Governor who stood as the chief representative of the British government and head of both the legislative and executive councils.¹⁴ Africans had no direct say in decision-making until the twilight years of colonial rule. Instead, they were indirectly represented by a white missionary in the Legislative Council (parliament).¹⁵ The Legislative Council itself was not an independent arm of government because it made legislation under the direction and approval of the Governor.¹⁶ Members of the two arms were not designated but merely appointees by the British government, and trusted to protect and serve its interests.¹⁷ The system of government was deconcentrated to provincial and district levels. The objective was not to promote local democratic self-government but to facilitate easy administration and control over the territory by the Governor.

At the provincial level, the country was divided into three provinces: Southern, Central and Northern.¹⁸ Although the provincial demarcation was not explicitly done on ethnic lines, each province had a dominant ethno-linguistic group as discussed above. Each province was headed by a Provincial Commissioner (PC) who was assisted by a provincial council.¹⁹ Provincial councils had no legislative powers and their members, most of whom were chiefs loyal to the colonial regime, were not elected.²⁰ They performed administrative and advisory duties and acted as extensions of the central government. The PCs were representatives of the Governor

¹³ Mhone G ‘The Political Economy of Malawi: An Overview’ in Mhone G (ed) *Malawi at the Crossroads: The Post-Colonial Political Economy* (1992) 3.

¹⁴ Kaunda J M ‘Malawi: Local Government Democratisation and Decentralisation – an Uncertain Agenda’ in Reddy P S (ed) *Democratisation and Decentralisation: A Review of the Southern African Region* (1999a) 114.

¹⁵ Kaunda (1999a) 114.

¹⁶ Kaunda (1999a) 114.

¹⁷ Kaunda (1999a) 114.

¹⁸ Vail L & White L ‘Tribalism in the Political History of Malawi’ in Vail L (ed) *The Creation of Tribalism in Southern Africa* (1989) 153.

¹⁹ Cramp G L & Jeppe W J O ‘Local Government in Malawi’ in Vosloo W B, Kotze D A & Jeppe W J O (eds) *Local Government in Southern Africa* (1974) 250.

²⁰ Cramp & Jeppe (1974) 250.

at the provincial level and had total control over the council members and their activities. As a result, provincial councils did not assume the status of a government of provincial residents but, as Cramp and Jeppe noted, they were instruments of oppression and co-option in the hands of the colonial regime.²¹ Below the level of the provincial administration, a local government tier was made up of two separate systems. The first covered the rural areas where the majority of black people resided, and a second was designated for the urban areas where most white people were settled. The two varied in terms of their levels of autonomy from central government.

2.1. Local Government in Rural Areas.

During the colonial period, some 95 per cent of Nyasaland's population was resident in the rural areas. Here most black people survived on subsistence farming.²² In these rural areas, local government developed slowly, moving from direct rule by District Commissioners (DCr) to indirect rule by chiefs, and eventually to fully-fledged elected District Councils (DCs). The first system of local government was established through the District Administration (Native) Ordinance of 1912. Under this law, every district in the country was governed by a DCr, a (white) civil servant appointed to represent the central government. To assist the DCr in the discharge of his duties, each district was demarcated into seven administrative sections, with each overseen by a Principal Headman (PH).²³ The PH was not necessarily a traditional leader but could be any individual of good standing who had a prior record of assisting the DCr in the execution of his duties.²⁴ As a result, although most PH were traditional leaders, there were circumstances in which some ordinary local people were preferred above their tribal leaders.²⁵ In comparison with the other systems that followed this form of local government (discussed below), here local government autonomy was extremely limited. First, local democracy, in terms of traditional acceptance and representation was limited by the selection criteria for PH. Secondly, the PH had no functions beyond those of assisting the DCr in his administrative duties for the central government. Third, the PH had no

²¹ Cramp & Jeppe (1974) 250.

²² McCracken (2012) 282.

²³ Cramp & Jeppe (1974) 245.

²⁴ Cramp & Jeppe (1974) 245.

²⁵ Cramp & Jeppe (1974) 245.

independent powers to raise taxes, reducing them to mere appendages of the central government.

Driving this system of local government was the colonial government's quest to assert unitary control over a territory with various authorities, operating independent of each other. This quest is evident in the Deputy Governor of Nyasaland's 1912 explanation that the aim of the system was to:

Formulate a subsidiary local government in the districts which would be manned by the people themselves...chosen by the people themselves under the...superintendence of the District Resident [Commissioner]...As government has already maintained most strongly, there should be only one Chief of a District, and that should be the District Resident.²⁶

The government's emphasis on the role of the DCr as a replacement for local chiefs indicates that the system of local government was not at all decentralised. To this extent, Malawian scholars such as Jonathan Kaunda have argued that 'the colonial model of administration was basically government by civil servants.'²⁷

In 1933, this system of rural local government was transformed into indirect rule. This transformation was ushered in by the Native Authority Ordinance of 1933, which elevated the chief as the sole native (local) authority representing their tribesmen in governance matters. Accordingly, the position of PH was repealed to pave the way for the chiefs. Although the 1933 Ordinance recognised the chief as the NA, in practice, they did not operate alone. They retained their traditional structures of tribal councils and recognised their headmen as subordinate NAs.²⁸ This composition meant that the government now formally recognised the traditional leadership system of natives as a part of the country's formal system of government. Since the chiefs were regarded as legitimate leaders by their tribesmen, the NA system was more democratic than its predecessor. At the same time, a major drawback in terms of local democracy was the fact that in exercising their duties as an NA, the chiefs had strictly limited

²⁶ Kaunda J 'The Administrative Organisation and Process of National Development Planning in Malawi' Mhone G C Z (ed) *Malawi at the Crossroads: The Post-Colonial Political Economy* (1992) 54.

²⁷ Kaunda (1992) 54.

²⁸ Cramp & Jeppe (1974) 245.

autonomy. They were kept in check through the office of the DCr who supervised all the NAs in his district.²⁹ Under this new structure, the DCr continued to govern at the local level but now did so indirectly through the traditional leaders. In addition to this subordination under the DCr, the chiefs were placed on the colonial government's payroll, and received a monthly stipend based on the amount of tax they collected in their area of jurisdiction.³⁰ In consequence, their accountability shifted upwards to the central government rather than downwards to the people. As a result, chiefs began to lose their legitimacy as representatives of the people. This conclusion is visible in Kaunda's observation that 'traditional institutions became estranged from the people since the chiefs were now mere agents of the colonial administration, which was abhorred.'³¹

As NAs, chiefs were awarded a narrow scope of substantive powers that centred on the maintenance of law and order. They had limited legislative powers. These allowed them to issue, subject to the approval of the Governor, minor rules meant to promote good order and welfare.³² In addition to legislation, chiefs were formally awarded a judicial function. This was done through the Native Courts Ordinance of 1933. This empowered traditional leaders to establish native courts for hearing civil and criminal cases. According to Cramp and Jeppe, despite the new designation, in practice the native courts were simply the traditional chiefs and headmen's courts.³³ Beyond the legislative and judicial functions, NAs did not render any important developmental services. Most services were discharged by the central government through the DCr.³⁴ As a result, NAs effectively played a very limited role in assisting the central government to bring the large black population under control.

In terms of finances, chiefs were awarded some revenue collection powers, but these were not matched by autonomy in expenditure. They collected tax from their subjects on behalf of the central government for a fee, a duty that practically made them appear more like the DCr's assistants than a form of local government.³⁵ Since they did not determine the amount of tax to

²⁹ Tilitonse Foundation 'The Political Economy of Local Government in Malawi' (2011) *Working Paper 3*.

³⁰ Kaunda (1992) 54.

³¹ Kaunda (1999a) 115.

³² Cramp & Jeppe (1974) 245.

³³ Cramp & Jeppe (1974) 246.

³⁴ Dulani B 'The Status of Decentralisation in Malawi' (2003) *Research Report 4*.

³⁵ Kaunda J M 'State Centralisation and the Decline of Local Government in Malawi' (1999b) 65 (4) *International Review of Administrative Sciences* 581.

be paid and how the money was to be spent, the financial autonomy of NAs was severely limited.

In 1953, NAs were replaced by District Councils (DCs) under the Local Government (District Councils) Ordinance of 1953. This Ordinance brought about a major transfer of rural local government from the powerless traditional authorities to elected councils. The DCs were based on the British system of local government as it was already being practised in urban areas. The 1953 Ordinance provided for the direct election of councillors by members of the public. Chiefs were allocated an *ex officio* membership status, whilst the DCr became the chairperson of the council.³⁶ This composition addressed the problem of upward accountability that limited the quality of local democracy under NAs. This is because the introduction of direct elections enabled members of the public to hold their councillors to account. However, the appointment of the DCr as the chairman of the DC still had a limiting effect on local democracy since he was not accountable downwards to the people but upwards to his superiors in central government.

In terms of substantive powers, more autonomy was extended to the DCs. Their scope of functions was broadened to include education services, public health, roads, customary land and forests.³⁷ In addition, DCs were conferred with the power to make by-laws subject to the Governor's approval. This broad scope of substantive powers meant that rural local government was no longer a mere instrument for the maintenance of good order, but an active participant in local development and administration. In terms of local government finance, DCs had more autonomy than the NAs. Their sources of revenue were expanded to include user fees and charges as well as a modicum of central government transfers.³⁸

Driving the 1953 local government reforms was the change in British foreign policy towards the colonies. This emphasised the guarded extension of European standards of self-governance to natives.³⁹ This shift was partly spurred by the integration of Nyasaland into a federation with Southern Rhodesia (Zimbabwe), Northern Rhodesia (Zambia) – Federation of Rhodesia and

³⁶ Kaunda (1999a) 115.

³⁷ Sikwese L C 'The Politics of Decentralisation in Malawi' in Immink B et al (eds) *From Freedom to Empowerment: Ten Years of Democratisation in Malawi* (2003) 138; Dulani (2003) 4

³⁸ Sikwese (2003) 138.

³⁹ Kaunda (1999b) 581-2.

Nyasaland. The establishment of the federation itself was (among other factors) premised upon the British endeavour to create an African government different from the radically racist Union of South Africa. It was to be a multiracial society where Africans were afforded an opportunity for political participation.⁴⁰ Although this was the case, in terms of the law, most provisions of the 1953 Ordinance were not implemented, while others were reversed. For instance, the colonial government deliberately ignored the requirement for elected councils and also stripped the DCs of law-making and fiscal powers. According to Kaunda, the reason for this backtracking with regard to decentralisation was the colonial government's fear that the new system of local government could provide a basis for developing political consciousness and strengthening nationalist opposition.⁴¹

2.2. Local Government in Urban Areas

Urban areas began developing in the Shire Highlands of the Southern Region where the majority of European missionaries and planters were settled. Accordingly, European towns were established in Blantyre, Zomba, Limbe and Lilongwe to service the small white population.⁴² The first urban council was established in Blantyre in 1897 when the white residents of the town elected a council of white males to administer the area. However, the first legislation governing urban areas was promulgated in 1912: the Township Ordinance of 1912. The 1912 Ordinance was followed by the 1953 Local Government (Urban Councils) Ordinance which expanded the powers of urban councils. The two Ordinances provided for the establishment of a town council in every urban area. Although democratic in the sense that councillors were elected by residents, the town councils were racist and exclusionary as black people were not included on the voters' roll.⁴³ In addition, black people were not allowed to own properties in the urban areas yet, and very few companies managed to build houses for them. The end result was that the leafy suburbs of the urban areas were reserved for whites whilst most black people were relegated to villages on the edge of the towns.⁴⁴ The councils discharged a number of important functions such as providing piped water, electricity, public health, education and township police.⁴⁵ In addition, they were empowered to pass by-laws and

⁴⁰ Chigwata (2018) 73.

⁴¹ Kaunda (1999a) 116.

⁴² Pike J *Malawi: A Political Economy* (1968) 95: By 1930, there were less than 1500 whites in Malawi.

⁴³ McCracken (2012) 288.

⁴⁴ McCracken (2012) 228.

⁴⁵ McCracken (2012) 286-8.

employ their own personnel. In terms of financial resources, the town councils had more revenue sources than their rural counterparts. This increased their autonomy. This was because they were situated in areas with a strong tax base whilst serving a very small population of white people.

The main factor driving the urban system of local government was racism, a narrow interest in serving the interests of the minority of white people at the expense of the majority of black people who were relegated to areas of great poverty. As noted by Kaunda, the main objective of the colonial government was ‘to establish conditions that would enable settler planters to achieve commercial success and a comfortable standard of living.’⁴⁶

Another factor that compounded the racist system of urban local governance was that (contrary to towns in South Africa and Zimbabwe) Malawian towns had limited financial capacity to provide services to urban black people. This was mainly because the economy of Nyasaland was narrowly dependant on the European estate sector and its export of agricultural products. As noted by John McCracken, a British historian, despite the growing demand for African accommodation in urban areas, neither the town councils nor the central government was prepared to pay for this.⁴⁷ As a result, very few houses were built for black people in urban areas, with most of these being of ‘unbelievable’ quality, ‘windowless brick and thatch hovels in poor repair.’⁴⁸

From the above discussion, it is observable that the system of government practised in Nyasaland was just as discriminatory as the one prevailing in other colonies such as South Africa and Southern Rhodesia (Zimbabwe). Naturally, a nationalist movement emerged, one that represented African interests and eventually opposed white minority rule. In 1944, a number of regional groupings representing Africans created the Nyasaland African Congress (NAC). One of the major supporters of the Congress was Hastings Kamuzu Banda, a Malawian medical doctor based in London. As one of the few educated and successful Malawians, Banda acted as an advisor to the leadership of the Congress and also provided it with both financial support and public advocacy at an international level. In 1953, Nyasaland was integrated with

⁴⁶ Kaunda (1992) 51.

⁴⁷ McCracken (2012) 288.

⁴⁸ McCracken (2012) 288.

Southern Rhodesia and Northern Rhodesia (Zambia) under the Federation of Rhodesia and Nyasaland. NAC was vehemently opposed to this federation as it was viewed as an obstacle to the achievement of self-rule.⁴⁹ In 1958, when Banda returned to Nyasaland to take over the leadership of NAC, the struggle against African segregation and incorporation into the Federation of Rhodesia and Nyasaland escalated. NAC was banned in 1959, leading to its transformation into the Malawi Congress Party (MCP) but the struggle continued. The rise of nationalism under Banda's leadership put pressure on the British government to open negotiations for majority rule.

3. Decentralisation during Transition to Majority Rule (1961-1966).

The transition to majority rule took place in three stages. The first stage was the 1960 Nyasaland Constitutional Conference held at Lancaster House in London. The Conference was presided over by the Colonial Secretary of the British government and attended by representatives of all interested groups including Banda's MCP team and members of the Nyasaland government.⁵⁰ A new Constitution was agreed upon, This provided for a government comprising of the Governor, an Executive Council of 10 members, a Legislative Council of 28 elected members, and five official members of the Executive Council.⁵¹ In 1961, general elections were held with, for the first time, a majority of black people added onto the voters' roll. The MCP won the majority of seats, not only sweeping up all the seats reserved for Africans, but also winning two out of the eight seats reserved for white voters.⁵² Three MCP members including Dr Banda were appointed to the new executive.⁵³ The second stage involved the constitutional negotiations held at the Marlborough House in London in 1962. The Marlborough House agreement involved, among other things, the replacement of the Executive Council with a Cabinet headed by Banda as the first Prime Minister of Nyasaland.⁵⁴ The final stage was the negotiations which began in 1963 where it was finally agreed on 6 July 1964 that Nyasaland would become the independent state of Malawi.⁵⁵ These major reforms had effects on the system of local government which was granted more autonomy in terms of

⁴⁹ Pike (1968) 111.

⁵⁰ Pachai B *Malawi: The History of a Nation* (1973) 242.

⁵¹ Pachai (1973) 242.

⁵² Nkhata (2011) 3.

⁵³ Kaunda (1999b) 582.

⁵⁴ Pachai (1973) 243: This agreement was implemented on the 1st of February 1963.

⁵⁵ Pachai (1963) 244.

local democracy, substantive powers and financial resources. The process of decentralisation remained progressive when Nyasaland became independent in 1964, but deteriorated when the country was declared a republic under one-party rule from 1966 to 1993. The democratic transition of the 1960s, epitomised in 1964, was instrumental in promoting decentralisation but, as we shall see below, internal competition for power within the MCP saw the Banda government make radical shifts towards the centralisation of power and authoritarianism.

3.1. Constitutional Protection

During the transitional period to majority rule, local government was a creature of statutes. The 1960 constitutional amendments did not go beyond the organisation of central government discussed above. The 1964 Constitution which granted independence to Malawi followed a standard British template that was applied to almost all the colonies that attained independence in the 1960s. It also had similarities with the Lancaster House Constitution adopted for Zimbabwe in 1979. One of the key features of this constitution was its standard silence on local government. Local government remained a creature of statute and therefore vulnerable to amendment.

3.2. Local Democracy

In the previous section, it was noted that colonial local government suffered from two kinds of democratic gap. First, at the height of nationalist resistance, the requirement for elected DCs was ignored. Secondly, urban council election continued to discriminate against black people who were not allowed on the voters' roll. Both of these gaps were addressed in 1962 when the first multiparty local government elections based on universal adult suffrage were held. Similar to the 1961 parliamentary elections, the MCP gained control of most of the councils.⁵⁶ In addition, DCs were stripped of their privileged position as chairpersons of DC. The position was reallocated to an elected councillor, whilst DCs were relegated to the less influential role of advisor to the elected council.⁵⁷ The effect of these reform measures was that council leadership was made more accountable to the people who now assumed the role of the appointing authority.

⁵⁶ Kayuni H M 'The Local Government Elections in 2014: The Legal and Political Context and their Implications on the Future of Malawi Local Governance' (2014) in Friedrich Ebert Stiftung (FES) Botswana & The Institute for Policy Interaction (IPI) Malawi *Malawi before the 2014 Tripartite Elections* 47.

⁵⁷ Kaunda (1999) 116.

3.3. Substantive Powers

The substantive powers of local authorities were equally expanded. Most of the functions conferred to DCs by the 1953 Ordinance were eventually decentralised. As a result, both DCs and urban councils discharged a wide range of services that included the provision of water, health, education, and the development of infrastructure.⁵⁸ In addition, DCs had their law-making powers restored, and the employment of personnel allowed.⁵⁹ Consequently, service delivery improved to such an extent that some scholars describe the period between 1961 and 1965 (transitional period) as the ‘heyday’ of local governance.⁶⁰

3.4. Financial Autonomy

In terms of revenue, the local government enjoyed a healthy financial position. The improvement in revenue can be attributed to two factors: central government allotted generous funding to local authorities, and members of the public paid their taxes, fees and charges on time.⁶¹ The revenue growth of local government went hand in hand with an increase in the autonomy of expenditure and central government supervision of expenditure was limited to non-performing authorities.⁶² This financial autonomy was clearly a result of the changes that had taken place at the national level. First, the introduction of majority rule had brought an end to the wave of civil disobedience that had encouraged tax and service boycotts by black people. Secondly, under a black majority government, the central government's preferential treatment of white urban councils at the expense of DCs came to an end.

In general, the period of transition to majority rule witnessed local government reforms that signified a wave of decentralisation across the country. This wave can be explained by the measures adopted by the British government to contain the conflict between the nationalist movement and the Nyasaland government. Nationalist resistance to white minority rule had

⁵⁸ Cramp & Jeppe (1974) 258.

⁵⁹ Cramp & Jeppe (1974) 265-6.

⁶⁰ Chirwa W et al ‘Democracy Report for Malawi’ (2002) *IDEA Handbook for Democracy Assessment* 118. Tilitonse Foundation (2011) 3.

⁶¹ Hussein M K ‘Local Governance in Malawi-Sighs and Sobs in District Councils’ (2017) 4 (1) *The International Journal of Social Sciences and Humanities Invention* 3224; Cammack D et al ‘Town Chiefs in Malawi’ (2009) *African Power and Politics Working Paper No. 3 June 2009*, 4.

⁶² Cramp & Jeppe (1974) 265-6.

escalated to a conflict with the colonial government since Banda had taken control of the NAC in 1958. Six months after his election as NAC leader, Banda made a speech at the All African People's Conference in Accra where he made clear his intentions. He outlined that:

My policy for Nyasaland is simple. It is part of my general policy for the whole of Africa. I am a democrat. I believe that anywhere in the world the majority must rule. And in Africa, the majority are Africans. Therefore, in Africa, in Nyasaland and anywhere else in Africa, Africans must rule.⁶³

In 1959, the Congress made demands for constitutional reforms that would give its members a majority in the legislature, but the government refused.⁶⁴ A wave of non-violent and violent disturbances broke out across the country. Several people were killed in the violent clashes with the police. A state of emergency was declared, and many NAC leaders, including Banda himself, were arrested.⁶⁵ In its bid to address the conflict in the colony, the British government responded with a new imperial policy of 'cooperation with Africans.'⁶⁶ It is against this background that constitutional reforms were made to pave the way for the 1961 elections that created a new black majority government.

4. Recentralisation under the One-Party State (1966-1993)

The wave of decentralisation that prevailed during the transitional period was short-lived. In 1966 the Constitution was amended to make Malawi a republic, effectively separating the country from the remnants of British control. In the process, the Governor's role as head of state was abandoned, and Banda became an executive President. At the same time, multiparty democracy was brought to an end as Malawi was declared a one-party state. In addition to the outlawing of opposition political parties, the 1966 constitution also removed some of the existing checks and balances on the President, leaving him in a clearly dictatorial position. For instance, it did away with the position of Vice President (on the grounds of promoting division); it precluded a Bill of Rights, and subordinated all government structures to the MCP and Banda

⁶³ Chimphamba B 'What We Fought For' in Immink B et al (eds) *From Freedom to Empowerment: Ten Years of Democratisation in Malawi* (2003) 39.

⁶⁴ Pike (1968) 145.

⁶⁵ Pike (1968) 146-51: 51 people were killed, several were wounded, 1328 were arrested, buildings were burnt, roads and bridges were destroyed, police stations and airfields were damaged.

⁶⁶ Pike (1968) 153.

was later declared President for life.⁶⁷ During this period, therefore, Malawi began to follow a common trend across independent African countries. In this trend, the new leaders sought to consolidate their personal power through centralisation. Accordingly, Malawi shared a similar pattern to that followed in Zimbabwe after Robert Mugabe came to power. A wave of recentralisation swept across the country as several legislative reforms gradually reversed the decentralisation initiatives of the previous transitional era.

4.1. Constitutional Protection

In 1965 Prime Minister Banda appointed a Constitutional Committee to draft proposals for a new Constitution that would constitute Malawi as a republic.⁶⁸ The Committee's proposals were adopted and passed into law as the 1966 Constitution. Similar to most African constitutions of that time, the 1966 Constitution did not address provisions for local government.⁶⁹ Rather, it focused more on the concentration of power in the executive and, more specifically, in the President.⁷⁰ Local government remained a creature of statute vulnerable to different forms of both rational and arbitrary amendment by the ruling party. It derived its powers from two Acts of parliament – the Local Government (District Councils) Act⁷¹ and the Local Government (Urban Areas) Act.⁷² As demonstrated below, these two pieces of legislation were either amended or ignored in order to fit local government into the new centrally-driven state.

4.2. Local Democracy

The 1966 Constitution terminated multiparty democracy by declaring the country a one-party state. In so doing, it outlawed opposition parties and narrowed down the public's electoral choices to members of the MCP. In addition, members of the public played a very limited role in selecting their councillors since the ultimate decision in this lay with the President. The election process had two stages. First, members of President Banda's highest decision-making board (the National Executive Committee (NEC)) would conduct public meetings for each

⁶⁷ Nkhata (2011) 4-6; Kaunda (199b) 583.

⁶⁸ Nkhata (2011) 4.

⁶⁹ This was the case with South Africa's 1961 and Zimbabwe's 1980 Constitutions. As shall be seen in the next chapter, Botswana's 1966 Constitution was equally silent on local government.

⁷⁰ Nkhata (2011) 4.

⁷¹ No. 22:02 of 1965.

⁷² No. 22:01 of 1965.

ward at which three to five candidates would be nominated.⁷³ Secondly, the names of the nominated candidates would then be forwarded to the President for his final choice of candidate.⁷⁴ Naturally, it became very important for all councillors to exhibit unquestionable loyalty to the President who was now the sole appointing authority. The consequences of questionable loyalty were not only limited to loss of council membership, but included detention without trial, and even mysterious disappearance.⁷⁵ It can thus be concluded that, during the one-party state period, communities were alienated from their local authorities, whose control had now been lost to the MCP and President Banda himself.

Similar to other government institutions in Malawi, the upward accountability of councillors to the President was enforced through politically-motivated supervision. First, the Minister of Local Government was empowered to dissolve the council and remove councillors for either administrative or political reasons, so that the Minister was empowered to dismiss a councillor for displaying an attitude inimical to the interests of the government.⁷⁶ Secondly, the colonial period position of the DCr was added to assist the Minister and the President with the supervision of local authorities under the guise of district development coordination. So powerful was the DCr that he or she was entitled to speak at any council meeting, they could examine any of the council's documents and inspect any of its activities, and bring to the attention of the minister any improper, illegal or inefficient acts in order to ensure that councils remain in line with central government policies and priorities.⁷⁷ These features were also corroborated by Mhone, who argued that under Banda, the state resembled a leviathan and predatory nature.⁷⁸ Thirdly, the 1966 Constitution subordinated all state institutions, including local government, to the MCP under the party's four cornerstones of 'unity, loyalty, obedience and discipline.'⁷⁹ Two youth organisations were established to monitor local authorities and other government structures and to ensure compliance with the party's values. These were a paramilitary wing, the Malawi Young Pioneers and a political one, the League of Malawi

⁷³ Kaunda (1999a) 119.

⁷⁴ Kaunda (1999a) 119.

⁷⁵ Kaunda (1999a) 118.

⁷⁶ Hussein (2017) 3224-5; Kaunda (1999a) 119.

⁷⁷ Kaunda (1999a) 121.

⁷⁸ Mhone (1992) 5.

⁷⁹ Kaunda (1999a) 117.

Youths.⁸⁰ Quoting Rijk Van Dijk, Clement Mweso explained just how these youth groups became so effective in their supervisory responsibilities:

The youth groups and their related secret bodies had become so effective that by the end of 1980s Malawi had turned into one of the most supervised countries in Africa. State power was represented in almost every corner of society through an intricate network of informants, training camps, teachers, roadblocks and checkpoints which was almost beyond imagination in its effectiveness for such a country, one of the ten poorest in the world.⁸¹

A common denominator in the weakening of local democracy during the one-party state period is, therefore, President Banda's determination to consolidate his personal power and monopolise control of all state footholds of power. This he did backed by a powerful constituency of the Chewa people in the Central Region (where he hailed from) and loyal supporters in the MCP who idolised him as the nation's saviour.

4.3. Substantive Powers

During the transitional period to majority rule, local government had become the centre of local development. It appropriated functions from the traditional authorities and, in the process, became more powerful (as already discussed). This substantive power did not increase during President Banda's regime and neither did it survive recentralisation. President Banda's regime had a different approach to the country's governance and this partly shaped the scope of local government functions. Similar to most independent states in Africa at that time, the Banda government viewed a highly centralised government as a vehicle for rapid socio-economic development.⁸² Consequently, the focus on service delivery strengthened a deconcentrated system of central government ministries at the expense of local authorities. The result was a dual system of local government. On one hand there were the local authorities led by appointed councillors; on the other, a central government-controlled District Development Committee (DDC) led by the DCr.⁸³

⁸⁰ Mweso C *Legacy of One Party Dictatorship: Collective Memory and Contestation in Malawi 1994-2004* (Unpublished M.Phil, University of Cape Town, 2014) 22.

⁸¹ Rijk Van Dijk in Mweso (2014) 23.

⁸² Dulani (2003) 5.

⁸³ Tilitonse Foundation (2011) 3.

Under the dual system, councils lost control over a various functions and these were transferred to the deconcentrated central government structures. These included district development planning, public health, policy-making, and road maintenance.⁸⁴ In addition to this takeover of local government functions by central government structures, there was concurrency on those functions that local government could discharge. As noted by Mustafa Hussein, it was difficult to tell which functions belonged to the DDC and which were the responsibility of DCs.⁸⁵ In practice, scholars attest that DCs were the ‘biggest losers’ as they were gradually side-lined and effectively paralysed.⁸⁶

Legislative powers of local government did not escape the long arm of the central government during the time of President Banda. Councils had the authority to pass by-laws, but did not enjoy autonomy in exercising this authority. All by-laws were subjected to approval by the Minister who had the right to nullify or amend them.⁸⁷ With no power to make their own by-laws, it also followed that local authorities could not make any major decisions on their own since they could not enforce them without a centrally-approved law. In addition, President Banda monopolised policy and decision-making processes, even on the most trivial matters, and these policies could not be questioned or debated.⁸⁸ There was therefore very limited room for local government legislation to differ in any meaningful way from central government’s interests and priorities.

Banda’s regime did not only take control of councillors but also recentralised personnel appointment and dismissal. In 1975, the central government passed a law to create a centralised personnel administration body for all local authorities called Local Government Service Commission (LGSC).⁸⁹ The law came into force in 1984 and the LGSC assumed the responsibility of recruiting and administering employees on behalf of local authorities.⁹⁰ Although in theory, the LGSC appeared to be an independent body, in practice, it was firmly

⁸⁴ Tilitonse Foundation (2011) 4; Dulani (2003) 5; Hussein (2017) 3224.

⁸⁵ Hussein (2017) 3225.

⁸⁶ Tambulasi (2011) 341; Tilitonse Foundation (2011) 4.

⁸⁷ Kaunda (1999a) 120.

⁸⁸ Tambulasi R I C ‘Local Government without Governance: A New Institutional Perspective of Local Governance Policy Paralysis in Malawi’ (2011) 26 (3) *Public Policy and Administration* 341.

⁸⁹ Local Government Service Commission Act 1975.

⁹⁰ Kaunda (1999b) 585.

controlled by the central government.⁹¹ The Local Government Service Commission Act itself curtailed Commission's autonomy by providing that the LGSC should exercise its appointment and employment powers subject to the approval of the Minister responsible for local government. Notwithstanding the fact that some benefits were derived from such an initiative (such as the uniform treatment of local government employees across the country), there was a reduction in local government autonomy. Since council employees were legally accountable to a centrally-controlled body, councillors had no control over their appointment and performance.

4.4. Financial Autonomy

The *modus operandi* of President Banda's government was centralised development planning and administration. Since the central government was now the critical player in the nation's development agenda, the need to financially support local government wilted. The central government took over most revenue sources except property rates and controlled external borrowing.⁹² As a consequence, the revenue-raising powers of urban councils were spread thin whilst those of DCs were almost wiped out. In the absence of meaningful internally-generated revenue, local authorities became highly dependent on central government grants for their operations. However, the central government constantly breached their responsibility, sinking local authorities deeper into a financial crisis as grants were reduced and disbursements were erratic.⁹³

The loss of revenue-raising power discussed above went hand in hand with a decline in spending power. Local authorities were stripped of control over their budgets which were subjected to approval, amendment and nullification by the Minister.⁹⁴ The 'veto power' of the Minister in this regard consequently limited local autonomy as councils could not make final decisions on their spending priorities. In addition, grave consequences awaited councillors if council expenditure did not meet central government expectations. They could be removed by the Minister or surcharges could be levied on them.⁹⁵ Put together these fiscal initiatives undermined not only local government's authority, but its autonomy and capacity as well.

⁹¹ Kaunda (1999b) 588.

⁹² Chirwa Patel & Kanyongolo (2002) 118-9.

⁹³ Chirwa Patel & Kanyongolo (2002) 118.

⁹⁴ Cammack Kanyongolo & O'neil (2009) 4.

⁹⁵ Kaunda (1999b) 586.

Having side-lined the local authorities inherited from the transitional period, President Banda's government created a parallel structure under its direct control: the District Development Committee (DDC). In the process, financial resources for development interventions were channelled away from local authorities to the DDCs.⁹⁶ Observably, local government's financial problems were deliberately created by the central government. The consequences of these financial reforms were the opposite of those undertaken in the transitional period. Local authorities experienced difficulties in attracting qualified personnel and also in retaining those already employed.⁹⁷ In turn, the skills gap created more challenges in the form of inappropriate accounting, ineffective debt management, an increase in logistical problems, and unchecked corruption by council personnel as well as wanton tax evasion by property owners.⁹⁸

Two narratives have been put forward to explain the shift to recentralisation under the Banda's one-party state. The first one (put forward by the Banda government itself) was that centralisation of power was necessary for nurturing a national identity and for tackling the problems of underdevelopment.⁹⁹ This argument is unconvincing because, in practice, the outcomes of the 1966 Constitutional amendments were far from those of intended nation-building as people became more alienated from government, and more divided than united. President Banda prioritised Chewa culture and the people of the Central Region, where he hailed from, and systematically alienated the other ethnic groups in the Southern and Northern Regions.¹⁰⁰ His government managed to keep a lid on these divisions through repression and dictatorship, but once the Cold War ended in the 1990s, his western allies started demanding the introduction of multiparty democracy. With the introduction of multiparty democracy in the 1994 general elections, Banda's reign came to an end and the ethno-regional divisions in the country were exposed. President Banda lost the Presidential race to Bakili Muluzi though the MCP dominated parliamentary seats in the Central Region. Muluzi of the UDF and Chakufwa Chihana of the Alliance for Democracy (AFORD) equally dominated the Southern and Northern Regions where they hailed from respectively.¹⁰¹ Therefore, Banda's

⁹⁶ Cammack Kanyongolo & O'neil (2009) 5.

⁹⁷ Chirwa Patel & Kanyongolo (2002) 119.

⁹⁸ Chirwa Patel & Kanyongolo (2002) 119.

⁹⁹ Kaunda (1999b) 583.

¹⁰⁰ Vail & White (1989) 1; Mweso (2014) 21.

¹⁰¹ Meinhardt (1999) 561.

recentralisation reforms had more to do with self-interest and the suppression of political opposition than nation-building.

The nature of political opposition to President Banda was different to that experienced by Zimbabwe's Mugabe. In Zimbabwe, political opposition was strong at the regional level, while in Malawi, it was weak at both national and subnational levels, but strong within the ruling party itself. Prior to the declaration of the one-party state in 1966, Banda and the MCP enjoyed unparalleled support political support. As explained earlier, the MCP was so popular that in the 1961 elections it did not only win all seats reserved for Africans but also won two out of the five seats reserved for white people. The 1964 elections further affirmed MCP domination as all its candidates were elected unopposed. It would be difficult to consider the Banda government to have been under threat from the opposition in so far as this evidence is concerned. The 1961 and 1964 national elections and the 1962 local government election results all indicated that the whole country, in its diversity, was firmly behind the MCP.

The second argument, therefore, is that Banda, with the heavy support of the Chewa ethnic group sought to secure personal power in the face of opposition from within the MCP leadership. The epitome of this opposition was the so called 'cabinet crisis' when six cabinet Ministers disagreed with Banda's governance style and policy direction, culminating in a brutal power struggle. The six Ministers (Augustin Bwanausi, Henry Chipembere, Kanyama Chiume, Orton Chirwa, Willie Chokani and Dunduza Chisiza) were all senior members of the MCP and had supported the invitation of Banda to take over the leadership of the party in 1958. Prior to the rebellion, the Ministers were such close allies of Banda that he openly referred to them as 'my boys'.¹⁰²

In August 1964, the Ministers confronted Banda with a list of grievances. These focused on the reversal of five policy issues. First, they wanted the Prime Minister to reverse his adoption of the Skinner report (this had recommended a reduction to the salaries of civil servants); secondly, they wanted him to increase the pace of the Africanisation of the civil service which they accused him of delaying; thirdly, they wanted the discontinuation of diplomatic ties with

¹⁰² Kayuni H M & Tambulasi R I C 'The Malawi 1964 Cabinet Crisis and it's Legacy of 'perpetual regression of trust' among Malawian Politicians' (2010) 36 (2) *Social Dynamics* 411. The Ministers were also younger than Banda in terms of age.

the apartheid government in South Africa and the colonial Portuguese regime in Mozambique; fourthly, they wanted him to revise his reluctance to accept aid from communist China and to forge diplomatic links with I; and finally, they opposed the recently introduced hospital charge of a *tickey* (three pence).

When Banda responded by telling the Ministers to put their grievances in writing, they added yet more grievances and accused him of ‘running the government as his personal estate, of nepotism and favouritism in his appointments.’¹⁰³

The Ministers’ documented grievances were not taken lightly by Banda, who treated the document as ‘Bill of Indictment.’¹⁰⁴ After an altercation, Bwanausi, Chirwa and Chiume were dismissed from cabinet and the other three Ministers immediately resigned in solidarity. Thereafter, the Ministers, some of whom commanded a huge mass of followers, embarked on a series of mass public meetings in which they continued to denounce Banda. The Prime Minister responded by calling them ‘wild animals who needed to be destroyed at all costs.’¹⁰⁵ A conflict ensued as some of the Ministers launched a military uprising which was violently crushed. The Ministers then fled into exile from where a number of them formed opposition political parties. It is within this context that Banda sought to consolidate his power and close all pockets of political opposition to his authority at the expense of local government autonomy.

A comparison of Banda’s one-party state period and Mugabe’s first decade in power sheds more light on the force behind the wave of recentralisation, and how it had little to do with ideology. It is best considered as simply a power grab by the new African elites. As stated in the Zimbabwean case study, Mugabe’s government was openly socialist. To the contrary, Banda was an open critic of socialism and a controversial ally of the Western Bloc. Yet, the two leaders had one factor in common – a selfish, narrow pursuit of power consolidation in the face of emerging pockets of political opposition.

When the Cold War came to an end in the 1990s, Banda’s proxy significance to the Western Bloc as an ardent critic of communism waned. His government succumbed to both internal and

¹⁰³ Pikey (1968) 166.

¹⁰⁴ Pikey (1968) 166.

¹⁰⁵ Kayuni & Tambulasi (2010) 411.

external pressure to adopt democratic reforms. During this time, Western aid was critical to Malawi, contributing 40 per cent of the government budget, and 22.6 per cent of the country's GDP in 1992.¹⁰⁶ The reforms demanded by the donors were at both the national and local government level. At the national level, Banda was under pressure to open the political field to multiparty democracy and to respect human rights. At the local government level, he faced pressure to abandon the centrally controlled system of DDCs that had failed to address poverty. Various internal actors took advantage of the Banda government's new vulnerability to dissent. The Catholic Church and the Church of Central Africa Presbyterian (CCAP) publicly criticised the government, while students protested, industrial strikes erupted and exiled opposition leaders called for the opening up of democratic space.¹⁰⁷ Caught between a rock and a hard place, on 14 June 1993, the Banda government held a referendum in which the people overwhelmingly voted in support of a multiparty system of government. Negotiations for a new constitution began, leading to the end of Banda's three-decade authoritarian rule.

5. The Rhetoric of Decentralisation under the UDF Government (1994-2004).

To facilitate the transition to multiparty democracy, the government created a National Consultative Council (NCC) comprising representatives from the country's seven registered political parties. Of the seven, only three had a large following: the MCP, Bakili Muluzi's United Democratic Front (UDF), and Chakufwa Chihana's Alliance for Democracy (AFORD). In February 1994, the NCC organised a Constitutional Symposium which was attended by representatives of various sectors. At the Symposium, Malawian and international experts in constitutional law and local governance presented papers for discussion on various aspects of the new constitution. For the first time in the history of constitution-making in Malawi, local government was discussed as one of the key constitutional provisions.¹⁰⁸ A Constitutional Drafting Conference followed in the same month where additional issues were discussed. In barely four months' time, in May 1994, a draft constitution was hurriedly presented to parliament and it passed into law in one day.¹⁰⁹ The swiftness of the process indicates that any wider consultation, beyond the circles of the experts, was not conducted. On 17 May 1994,

¹⁰⁶ Meinhardt H & Patel N *Malawi's Process of Democratic Transition* (2003) 7.

¹⁰⁷ Mweso (2014) 27.

¹⁰⁸ Chirwa V M 'What We Fought For' in Immink B et al (eds) *From Freedom to Empowerment: Ten Years of Democratisation in Malawi* (2003) 53.

¹⁰⁹ Nkhata (2011) 7.

multiparty presidential and parliamentary elections were held and Banda lost to the UDF's Muluzi. With significant assistance from donors, the UDF government enacted a new Local Government Act and developed a Decentralisation Policy in support of the new Constitutional vision. However, for the UDF's two terms in power (1994-2004), most of the legislative and policy provisions on local government were left in abeyance. As a result, the new wave of decentralisation was reduced to rhetoric.

5.1. Constitutional Protection.

Unlike the 1966 Constitution, which was silent on local government, the 1994 Constitution had a whole chapter (Chapter XIV) dedicated to local government. Section 146 (1) specifically provides that 'there shall be local government authorities which shall have such powers as vested in them by this Constitution and an Act of Parliament'.¹¹⁰ This provision guaranteed the existence of local government as a level of government whose dissolution would be unconstitutional. The boundaries of the individual local government entities are protected against arbitrary adjustment as the Constitution insists that two considerations be taken into account when drawing boundaries: they must be subject to the recommendations of the Electoral Commission, and they must be in line with principles of the Constitution and electoral laws.¹¹¹ In addition, the Constitution provided for the composition of local authorities, thus guaranteeing the democratic status of local government. The general functions of local government and personnel administration powers were equally guaranteed. However, little was provided for in terms of the financial autonomy of local government save for the introduction of an independent body to coordinate the administration of local authority budgets and allocation of central government transfers.

The 1994 Constitution was a product of a Constitutional Drafting Conference made up of appointees of various political parties. These included an MCP which had earlier shown no interest in decentralisation. This indicates that there was internal interest from the political parties themselves as well as external influence from donors. It should be noted that the Conference took place after the 1993 referendum where the MCP had lost its bid to retain the one-party state. It is therefore plausible to suggest that the referendum represented the spectre

¹¹⁰ S 14 (1) Republic of Malawi (Constitution) Act, 1994.

¹¹¹ S 148 (1) Constitution 1994.

of impending defeat to the MCP in the upcoming 1994 general multiparty elections. Although the MCP lost the referendum, it retained majority support in its stronghold, the Central Region, where a majority had voted to remain in the one-party state. Logically, therefore, decentralisation was going to allow it to retain some local footholds of power in the Central Region. The same could also be said about the other parties, given that AFORD had the Northern Region as its stronghold, whilst the UDF was strong in the Southern Region.

Although the UDF did not seem supportive of decentralisation, it actively participated in developing the law and policy for it. Scholars have attributed this ambivalence to the heavy tie-in between decentralisation and democratisation.¹¹² Decentralisation was generally understood to be part and parcel of democratisation. The UDF came into power as a strong advocate for democracy, and the saviour of Malawians from the authoritarian regime of Banda and the MCP. Logically it treated decentralisation as a critical instrument to the expansion of its legitimacy.¹¹³ Simply put, to elites in the UDF, decentralisation was a populist strategy for gaining public support. This is why the introduction of the decentralisation policy was 'big bang', dominated by popular mantras such as *mphamvu ku anthu* (power to the people).¹¹⁴

Notwithstanding the shortcomings of the Constitutional provisions, the very fact that local government was enshrined in the Constitution signified a major step towards decentralisation, at least in terms of the law. However, the UDF government's delays in the implementation of the Constitutional provisions discussed below undermined the actual level of constitutional protection. Although the Constitution was made at more or less the same time as South Africa's Malawi's decentralisation did not follow the success story of South Africa. Rather, it reflects greater similarity to what happened in Zimbabwe after the 2013 Constitution. The non-implementation of constitutional provisions in the two countries indicates the effect that opposition competition has on decentralisation and affirms the inseparable relationship between constitutionalism and decentralisation in African countries.

¹¹² Ndegwa & Levy (2003) 25; Cammack et al (2007) 7.

¹¹³ Ndegwa & Levy (2003) 26.

¹¹⁴ Tilitonse Foundation 'Summary of Key Issues on Local Governance' (2013) *Working Paper* 1.

5.2. Local Democracy.

The 1994 Constitution provided for multiparty competition and repealed the system of one-party rule. At the local government level, it provided for local government officers to be freely and secretly elected by universal adult suffrage, with elections supervised by the independent Malawi Electoral Commission (MEC).¹¹⁵ The conduct of elections at the two levels of government was separated, with local elections scheduled to take place a year after national elections.¹¹⁶ Therefore, with presidential and parliamentary elections held on the 17th of May 1994, it means local government elections had to follow in 1995.

The democratic spirit of the constitution on local government was interpreted through the Local Government Act 1998 and the Decentralisation Policy 1998. These documents were not entirely a government initiative and were heavily driven by donors. A decentralisation secretariat based at the Ministry responsible for local government was set up to work hand in hand with the World Bank, UNDP, and the Danish International Development Agency (DANIDA) in implementing the decentralisation policy.¹¹⁷ The Act stated the objective of local government as ‘to further the constitutional order based on democratic principles, accountability, transparency and participation of the people in decision making and development processes’.¹¹⁸ The Decentralisation policy waded in with an emphasis on the need to create a democratic local environment and institutions to facilitate public participation in decision making and to end the dual system of local government.¹¹⁹ As a result, President Banda's deconcentrated DDCs were abolished and replaced by one democratic local government institution christened the District Assembly (DA).¹²⁰ In terms of composition, the DA had one weakness – it was a ‘broad church’. It composed of elected Councillors and three other groups with no voting rights: Traditional Leaders (TLs), Members of Parliament (MPs) and representatives from special interest groups (appointed by the elected councillors).¹²¹

¹¹⁵ S 147 (1) Constitution 1994.

¹¹⁶ Kaunda (1999a) 126.

¹¹⁷ Chirwa Patel & Kanyongolo (2002) 122.

¹¹⁸ S 3 Local Government Act 1998.

¹¹⁹ S 2-3 National Decentralisation Policy 1998.

¹²⁰ S 4 Decentralisation Policy. The term District Assembly applied to cities, towns, municipalities and the rural districts.

¹²¹ See S 5 Local Government Act 1998.

From a law and policy perspective, the local government system of Malawi under the UDF government was all set to enhance local democracy, but, in practice this was hardly the case. Local government elections did not take place in 1995 as scheduled; neither were they held at all for the next four years of the UDF's first term of office. In the absence of elected DAs, the deconcentrated system of DDCs continued to administer local government. The government claimed its failure to conduct the election was from lack of resources.¹²² This explanation was largely viewed as unconvincing given that the 1994 general elections had been held using funds from foreign donors who supported multiparty democracy, and no explanation was given as to why it was impossible to do the same for local government elections.¹²³

The real reason for delaying local government elections lay in the party's fear of empowering opposition parties. The fear emanated from the results of the 1994 parliamentary elections and their sharp divisions on regional lines. The elections were won by the opposition UDF, but produced two outcomes that left it jealously and desperately clinging to power. First, electoral support markedly reflected a regional distribution that led some authors to conclude that the electorate had voted on ethno-regional lines.¹²⁴ The AFORD won all the 33 parliamentary seats in the Northern Region with both the outgoing and incoming ruling parties (MCP and UDF respectively) failing to win a single seat there.¹²⁵ In turn, the AFORD did not win even a single seat in the Southern Region where the UDF scooped 71 out of a total of 76 seats.¹²⁶ The MCP dominated the Central region where it took 51 out of a total of 65 seats.¹²⁷ Secondly, although the UDF emerged the winner, it had only 84 out of 177 parliamentary seats. This outcome earned it the tag of a 'minority ruling party' as the two opposition parties combined had more seats than the UDF.¹²⁸

If local government elections were to be held, it was likely that the UDF would only be able to control Assemblies in the Southern region with the rest going to opposition parties. Such results would have deepened its minority status whilst giving opposition parties some footholds of power they could use to reorganise and expand their power. Chinsinga supports this view,

¹²² Kaunda (1999a) 126.

¹²³ Kaunda (1999a) 126.

¹²⁴ See for example Meinhardt (1999) 550.

¹²⁵ Meinhardt (1999) 561.

¹²⁶ Meinhardt (1999) 561.

¹²⁷ Meinhardt (1999) 561.

¹²⁸ Kaunda (1999a) 126.

arguing that the ruling party interpreted decentralisation as a potential means of giving the opposition an opportunity to mobilise politically against it.¹²⁹

In 1999, the second round of national elections was held and despite the hopes raised around the long-awaited local government elections, that took place at the same time, nothing changed. Local government elections still proved to be somehow difficult to conduct. This was in spite of the fact that donor funding for the local elections had been secured in 1997.¹³⁰ The assumption that the failure to conduct local government elections was not about money was thus confirmed. It appeared the UDF wanted to test if its support still exhibited a minority status. The results of the 1999 elections demonstrated an increase in support for the UDF, though it still missed the chance for an outright parliamentary majority. Out of the 192 seats, the UDF obtained 93, MCP 66, AFORD 29 and four seats were won by independent candidates.¹³¹ Overall, the results remained regionally concentrated but with improvements on the influence of the UDF. In the Northern Region, the AFORD won 28 out of 33 seats whilst the MCP and the UDF won four and one respectively.¹³² The Central Region was dominated by the MCP as usual, with 54 out of 72 seats, but the UDF did make some inroads, gaining 16 seats.¹³³ The Southern Region was dominated by the UDF with 76 of the 87 seats, whilst the MCP and the some independent candidates won eight and 3 seats respectively.¹³⁴ Once again, the AFORD did not win a single seat in the Southern Region. This improvement in the UDF's performance should have relaxed its fears as the first local government elections since the return of multiparty democracy were to be held in November 2000.

It should be noted that, despite marginal inroads into opposition strongholds, the UDF government reluctantly conceded democratic space in the form of the 2000 local government elections. The reluctance is evidenced by its failed attempt to amend the local government laws in the Local Government Bill of 2000. The Bill sought to empower President Muluzi to appoint

¹²⁹ See Chinsinga B 'Reflections on the Amendments to the Electoral and Local Government Acts' (2010) *Think Piece Prepared for the Malawi Germany Programme for Democracy and Decentralisation (MGPDD)* 8.

¹³⁰ Kaunda (1999) 126.

¹³¹ African Democracy Encyclopaedia Project 'Malawi: 1999 National Assembly election results' *EISA* 2008 available at <https://www.eisa.org.za/wep/mal1999results.htm> (accessed 27 September 2019).

¹³² African Democracy Encyclopaedia Project (2008).

¹³³ African Democracy Encyclopaedia Project (2008).

¹³⁴ African Democracy Encyclopaedia Project (2008).

mayors for all Das, but it was withdrawn just a month before local government elections after considerable public criticism.¹³⁵

Results of the November 2000 local government elections were characterised by the dominance of the UDF. It won 610 out of 860 contested seats with the MCP and AFORD winning 84 and 120 seats respectively.¹³⁶ It should be noted that despite taking control of most Das, the UDF did not manage to control the capital Lilongwe. This went to the MCP. The AFORD dominated control of Assemblies in the Northern Region as expected, the UDF equally controlled the Southern Region and uncharacteristically dominated the Central Region courtesy of divisions within the MCP.¹³⁷ The democratic quality of the election was highly questionable as most registered voters did not participate. Voter turnout was a paltry 14.2 per cent, with only one person out of a total of 4000 registered voters turning up to a ward in the Northern region.¹³⁸ This was in sharp contrast to the 1999 general election's record of 94% turnout. In addition to voter apathy, the level of real competition was equally low and candidates were elected unopposed in 131 out of the 610 wards (115 of them being UDF members).¹³⁹ The campaigns themselves were reported as lacklustre, with voter education very low key.¹⁴⁰ Many reasons were put forward for this apathy, including the lack of confidence (from both people in general and opposition parties in particular) in the value of local government, given both the history of centralisation under President Banda and President Muluzi's equally discernible indifference.¹⁴¹

The 2000 elections were the first and last local government elections to be held under the UDF's 10-year rule. In 2004, the MEC made a proposal to parliament that local government elections should be held alongside the 2004 presidential and parliamentary elections, though this proposal was rejected by parliament as coming too late in the day. According to Nandini Patel et al, the main reason for the proposal was the MPs' fear of competition from councillors for

¹³⁵ Ligomeka B 'Malawi Withdraws Controversial Bill' *African Eye News Service* 2 November 2000 available at <http://allafrica.com/stories/200011020249.html> (accessed 18 September 2016).

¹³⁶ Pottie D 'Malawi: Voter Apathy Hits Local Elections' *EISA* 2000 available at <https://www.eisa.org.za/wep/mal2000local2.htm> (accessed 18 September 2016) 1.

¹³⁷ See Dulani (2003) 19. The MCP had split into two factions, one led by the President and another by the Vice President. During nominations, each faction had a candidate for the same party and both were disqualified.

¹³⁸ Pottie (2000) 1.

¹³⁹ Pottie (2000) 1.

¹⁴⁰ Pottie (2000) 1.

¹⁴¹ Tambulasi (2010) 342; Pottie (2000) 2.

local democratic space.¹⁴² Related to the competitive relationship between MPs and Councillors is the fact that the composition of the DA worked to the disadvantage of Councillors who were clearly overshadowed and 'outmuscled' by their central government colleagues (MPs). Better remunerated and financially supported by the central government, the MPs easily eclipsed councillors in their competition to serve the same community. Consequently, members of the public denigrated Councillors by addressing them as the MPs' *Katundu boys* (porters).¹⁴³

Central government interference with DA decisions also limited local democracy as the elected councillors could not freely govern. For instance, in 2003 President Muluzi directed the Lilongwe City Assembly to renew the contract of the city's CEO against its will.¹⁴⁴ In the same year, the Kasungu District Assembly suspended its chairperson on theft allegations, but the Minister of Local Government directed it to reinstate him.¹⁴⁵ This abuse of supervisory powers by central government politicians to settle scores with opposition-controlled local authorities has a recentralisation effect similar to that found in the Zimbabwean case study. Both cases share a similar presence of strong opposition competition at both the central and local government levels. The similar response of the two countries' governments indicates the resilience of intolerance to opposition political parties in African states despite their claim of democratic credentials. It also shows that the adoption of decentralisation reforms at the end of the Cold War was a pretentious act of appeasing the donor community.

5.3. Substantive Powers.

The 1994 Constitution did not provide a detailed list of functions that local government had the competence to discharge. Instead, it made provision for broad responsibilities such as the promotion of infrastructural development, local development planning, birth and death certificate registration, and participation in the delivery of essential services.¹⁴⁶ The specific essential services themselves were left to determination by an Act of Parliament.¹⁴⁷

¹⁴² Patel N et al 'Consolidating Democratic Governance in Southern Africa: Malawi' (2007) *EISA Research Report Number 33* 73.

¹⁴³ Kayuni (2014) 52.

¹⁴⁴ Tambulasi R I C 'Decentralisation as a Breeding Ground for Conflicts: An Analysis of Institutional Conflicts in Malawi's Decentralised System' (2009) 4 (2) *Journal of Administration and Governance* 30.

¹⁴⁵ Tambulasi (2009) 30.

¹⁴⁶ S 146 (2) Constitution 1994.

¹⁴⁷ S 146 (2) (d).

Emphasising the principle of subsidiarity, the Constitution provided that issues of local policy and administration should be decided at the local level.¹⁴⁸ Subsequently, provisions of the Local Government Act and the abolition of the Banda regime's dual system saw more functions being conferred on the DAs. The Second Schedule of the Local Government Act listed in detail a host of functions that local government could discharge. These included provision for primary education, medical and health services, emergency services, water supply, housing, the licencing of businesses and trade, and road rehabilitation and maintenance. Although this marked an improvement from the Banda regime, the central government still maintained some control through a provision which empowered the Minister responsible for local government to unilaterally amend the Second Schedule.¹⁴⁹ Even though there is no evidence of this power was exercised, it should be noted that, in practice, the UDF government simply ignored the transfer of functions from most Ministries.¹⁵⁰

Since local government elections were not conducted for five years the legislative and personnel administration powers of DAs were irrelevant until 2000. Even then, central government retained some control over these, continuing to some extent the legacy of centralisation under President Banda. DAs could make by-laws, but they would not come into effect until the Minister had approved them.¹⁵¹ Embedded in the Minister's 'veto' was a discretion to approve or refuse to approve the by-laws.¹⁵² With regards to personnel administration, the LGSC was retained, and was now firmly recognised by the Constitution, but its powers, functions and composition were left to determination by an Act of Parliament.¹⁵³ Accordingly, local government still did not enjoy control over its own personnel as the central government retained control of the LGSC.

5.4. Financial Autonomy

The previous section on the one-party state period indicated that local government lost revenue collection powers and expenditure autonomy. From a constitutional and legislative perspective, the UDF government sought to reverse the fiscal crisis that clogged local government,

¹⁴⁸ S 146 (3) Constitution 1994.

¹⁴⁹ S 6 (4) Local Government Act 1998.

¹⁵⁰ Dulani (2003) 14.

¹⁵¹ S 104 (1) Local Government Act 1998.

¹⁵² S 104 (5) Local Government Act 1998.

¹⁵³ S 147 (4) Constitution 1994.

devolving more fiscal powers and conceding autonomy. The 1994 Constitution specifically conferred central government with a duty to provide adequate financial resources and some measure of expenditure autonomy.¹⁵⁴

It provided for the establishment of a National Local Government Finance Committee (NLGFC) to facilitate an impartial distribution of revenue to local government.¹⁵⁵ The Committee would also assist in the consolidation of local authority budgets and make recommendations for supplementary funding where necessary.¹⁵⁶ In comparison, this Committee has some similarities to South Africa's Finance and Fiscal Commission (FFC). The budgeting process of local government was in a way designed to circumvent the arbitrary powers the Minister had enjoyed under the one-party state. The Constitution provided that local government budget estimates be consolidated by the NLGFC which would forward them to the Minister for presentation in Parliament.¹⁵⁷ Thus although local government could not make a final decision on budgeting, the oversight process was constitutionally placed under the total control of the Minister.

Whilst property rates were the only real source of revenue for local government under the one-party state, the 1998 Local Government Act made provision for other internal sources such as ground rentals, fees and licences, commercial undertakings and service charges.¹⁵⁸ Government transfers and ceded revenue were to complement internally-generated revenue.¹⁵⁹ Central government transfers included at least five per cent of national revenue. Other grants were to be made in accordance with a formula determined by the NLGFC whilst devolved revenue sources assumed the form of toll fees, road maintenance levy, motor vehicle registration and industrial registration.¹⁶⁰

The progress made under the UDF government in terms of the law and policy of decentralisation was not supported in practice. Even after the 2000 local government election,

¹⁵⁴ S 150 Constitution 1994.

¹⁵⁵ S 150 Constitution 1994.

¹⁵⁶ S 149 (2) (*d-e*) Constitution 1994.

¹⁵⁷ S 149 (2) (*a-b*) Constitution.

¹⁵⁸ Third Schedule Local Government Act 1998.

¹⁵⁹ Third Schedule Local Government Act 1998.

¹⁶⁰ S 10 (3-4) Decentralisation Policy.

DAs remained weak and undeveloped.¹⁶¹ The transfer of functions from line ministries to the DAs was done at snail's pace as did the transfer of accompanying resources.¹⁶² A sluggish economy, the suspension of donor funds, and lack of central government support saw the DAs facing serious constraints in revenue generation, thus rendering them heavily dependent on central government transfers which, on their own, were erratically disbursed.¹⁶³ Thus the enthusiasm exhibited by legislation in pursuit of some measure of fiscal decentralisation was hardly followed through in practice. The NLGFC did not take off for the greater part of the UDF era. Implementation was delayed until 2001, despite legal provision for it in 1994. And even when established, the autonomy implied in its conception did not materialise. This was because the central government, through the Minister and the President, had unfettered control over the appointment and discharge of the members.¹⁶⁴

Due to their inevitable financial constraints, local authorities struggled to employ their own staff whilst efforts by the LGSC were intermittent. As a result, most DAs lacked key personnel such as Directors of Finance and Internal Auditors. In addition, they had a crippling shortage of technical and physical equipment and succumbed to a shambolic record-keeping process.¹⁶⁵ Instead of plugging the gap, non-governmental organisations and donors side-lined the DAs and created parallel structures at the local level. As a result, notwithstanding the reformed legal and policy framework, members of the public remained detached from local authorities. Malawian political scientist, Blessing Chinsinga's study attests to this conclusion, revealing that members of the public viewed participating in DA activities as 'time completely wasted.'¹⁶⁶

The above discussion indicates that during the UDF government era, there was a break from the Banda regime's centralised rule in terms of the law and policy of local government. Thus a wave of decentralisation in its *de jure* form is evident. However, in practice, the wave of recentralisation that characterised the Banda regime appears to have survived the constitutional

¹⁶¹ Chirwa Patel & Kannyongolo (2002) 122.

¹⁶² Cammack D Golooba-Mutebi F Kanyongolo F & O'Neil T 'Neopatrimonial Politics, Decentralisation and Local Government: Uganda and Malawi in 2006' (2007) *Research Project (RP-05-GG) of the Advisory Board for Irish Aid Working Paper 2 December 2007* 7.

¹⁶³ Dulani (2003) 10

¹⁶⁴ Dulani (2003) 11.

¹⁶⁵ Dulani (2003) 10.

¹⁶⁶ See Chinsinga B 'District Assemblies in a Fix: The Perils of the Politics of Capacity in the Political and Administrative Reforms in Malawi' (2005) 22 (4) *Development Southern Africa* 537.

and policy limitations introduced by the UDF government. This stark paradox calls for the need to understand the factors driving both *de jure* decentralisation and those making the UDF government fail to fulfil its mandate.

Evidence from the literature indicates that the decentralisation process was largely driven by donor agencies. These actively participated through advocacy, pressure, funding, and technical assistance. The background to this lies in the 1988/89 United Nations Development Program (UNDP) poverty assessment exercise where it was recommended that decentralisation be adopted as a policy framework.¹⁶⁷ Of course, the Banda regime rejected this process in its move for centralisation. The process of formulating the decentralisation policy later commenced in 1993 with the adoption of the District Focus for Rural Development program (DFRD). This program had a budget of US\$30.7 million in which the United Nations Capital Development Fund (UNCDF) and the UNDP contributed US\$13.3 million and US\$9.4 million respectively.¹⁶⁸ Donor support continued into the UDF government era.

As already argued, the adoption of decentralisation was not solely a product of donor pressure. Partly driving it was the wave of democratisation that followed the end of the Cold War. Thus, although donors advocated decentralisation, they did not take part in the Constitutional Conference where opposition political parties lobbied for the entrenchment of local government in the constitution for the first time in the country's history. As observed from the UDF's mantra of democracy and the belief that democracy and decentralisation were inseparable, the party's support for decentralisation was a major trump card in search of internal political support and international legitimacy.

The UDF's backtracking on implementation of local government reforms was mainly driven by the regional fragmentation of political support and the minority status of the UDF in Parliament. A study by Diana Cammack et al explains that 'the logic behind centralising fiscal and political power was strong, as was the fear of creating alternative seats of power for opposition politicians to exploit'. This is why despite spirited efforts by the donor community, decentralisation made very little progress: there was no buy-in from the ruling party. Why?

¹⁶⁷ Ndegwa S N & Levy B 'The Politics of Decentralisation in Africa: A Comparative Analysis' (2003) *Working Paper August 2003* 24.

¹⁶⁸ Cammack Golooba-Mutebi Kanyongolo & O'Neil (2007) 7.

Because it was not in its best interests. In other words, decentralisation was not going to expand the UDF's power. Instead, it would magnify its minority status and complicate the implementation of its projects. To the contrary, it looked very certain to serve interests of the two main opposition parties - the Northern Region's popular AFORD and the dreaded MCP and its control over the Central Region.

6. Recentralisation under the Democratic Progressive Party (DPP) Government (2005-2012).

Under the 1994 constitution, a President can only remain in office for a maximum of two five-year terms.¹⁶⁹ Consequently, President Muluzi was ineligible to contest the 2004 election. After a failed attempt to amend the Constitution and run for a third term, he appointed his Minister of Economic Planning and Development, Bingu wa Mutharika, as his successor. With support from Muluzi, Mutharika won the 2004 presidential election on a UDF ticket. A year later, Mutharika left the UDF and formed his own party (the DPP), citing interference from Muluzi. While several MPs defected to the DPP, that did not help President Mutharika avoid the minority status in parliament that had haunted the UDF during its first term in government.¹⁷⁰ In his first term in power, President Mutharika maintained the rhetoric of decentralisation inherited from the UDF. The second round of national elections in 2009 gave Mutharika a parliamentary majority which enabled him to amend legislation with ease. One of the pieces of legislation that fell victim to Mutharika's newly-found power was the Local Government Act. It was amended in 2010 to strengthen the central government control of local authorities. A recentralisation wave ensued, undoing the decentralisation progress (in terms of the law) made under the UDF government.

6.1. Constitutional Protection.

Although the 1994 Constitution protected local government as a distinct level of government, it did not provide details on the structure of the local authorities. This 'Achilles heel' was exploited by the DPP government through the 2010 amendment to the Local Government Act. This was done in two ways. First, the DAs were renamed District Councils (DCs), replacing

¹⁶⁹ S 83 (3) Constitution 1994.

¹⁷⁰ Tilitonse Foundation (2011) 4.

the name 'Assembly' with a perceived lighter one - 'Council'.¹⁷¹ The government's justification for this change was that the word 'Assembly' carried an assumption of sovereign status.¹⁷² Implied in this reasoning was the intention to downgrade the value of local government as a centre of power.

6.2. Local Democracy.

In 2005, the term of office for the elected Councillors came to an end but, in a way reminiscent of the UDF's first term in power, the DPP government was not prepared to conduct subsequent local government elections as required by the law. It opted instead to continuously postpone them. Pressure for decentralisation was, however, present as it had been during the UDF era, but the DPP government had a reason not to yield to it: the famine that affected the country in the 2004 to 2005 agricultural season.¹⁷³ Resources to conduct the elections were finally provided in 2007 after opposition parties had flagged them as a precondition for passing the 2007/2008 national budget.¹⁷⁴ Although financial resources were now in place, the government continued to play 'hide and seek'. It was therefore clear that financial resources were only an excuse for the failure to hold local government elections as required by law. The real reason appeared to be the 'rookie' status of the DPP which desperately needed to establish grassroots structures. Accordingly, President Mutharika feared the party would register massive losses and undermine his legitimacy.¹⁷⁵

In 2009 the DPP won a second term in office with a majority of seats in Parliament. With continued pressure for local government elections, President Mutharika amended the Constitutional provision that specified the date for local government elections as the next year after general elections to read as follows: local government elections shall take place after five years on 'a date to be determined by the President in consultation with the Electoral Commission.'¹⁷⁶ The timing of local government elections was now firmly in the President's hands. Politically, this worked as a strategic tool for the President to systematically control the

¹⁷¹ S 3 Local Government (Amendment) Act, 2010

¹⁷² Chinsinga (2010) 9.

¹⁷³ Chinsinga (2010) 5.

¹⁷⁴ Chinsinga (2010) 6. Because the DPP had a minority of members in Parliament it had to court opposition members to pass anything.

¹⁷⁵ Patel Tambulasi Malande & Mpesi (2007) 61.

¹⁷⁶ Chinsinga (2010) 6.

pace and timing of local government elections.¹⁷⁷ In other words, it enabled him to conduct local government elections only when he was confident of his party's winning chances, and to delay them when it appeared vulnerable. As a consequence, Mutharika took his time, but renewed donor pressure made some difference. In 2012, he amended the Constitution once again to provide that local government elections shall take place concurrently with general elections.¹⁷⁸ Considering the fact that the next general elections were scheduled to take place in 2014, it effectively meant President Mutharika was going to complete his two maximum terms without conducting local government elections. Therefore, the 2012 amendment should be viewed as a strategy to appease donors whilst buying as much time as he required.

Another change brought about by the 2010 amendment was the awarding of voting rights to MPs in Council.¹⁷⁹ Considering the fact that the number of councillors had been reduced under the same amendment, the new council composition was largely seen as reducing council chambers to mere extensions of Parliament while expanding the role of MPs to development officers.¹⁸⁰ The DPP government had clearly decided to strengthen central government structures instead of local government (a strategy reminiscent of President Banda's approach during the one-party state era). Given that MPs had an additional source of funds in the form of the Constituency Development Fund (CDF), councillors were set to be eclipsed and their value in the eyes of the community diminished, continuing the derogatory legacy of *katundu boys*. The ability of local government to deepen democracy was therefore effectively diluted. The strengthening of MPs' role and depletion of councillors' democratic significance appears to have been a well-calculated move to increase central government penetration into the local sphere of government. It should be noted that when the above amendments were made, the DPP had a majority of MPs in 23 out of 28 Districts.¹⁸¹ Therefore, the amendment did not only strengthen the central government but also strengthened the dominance of the ruling party at the local government level.

¹⁷⁷ Tilitonse Foundation (2011) 6.

¹⁷⁸ S 147 (5) Constitution 1994 (as amended by 25 of 2012).

¹⁷⁹ S 3 Local Government (Amendment) Act 2010.

¹⁸⁰ Chinsinga (2010) 9.

¹⁸¹ Tilitonse Foundation (2011) 6.

In addition to the two changes discussed above, the term of mayors and chairpersons of districts was reduced from five years to two and a half years and one year respectively.¹⁸² The downside of this provision is that it created a system of local government where it is very difficult for local leaders to settle down and stand up as powerful figures that can challenge the centre at some point. In short, the ability of locally elected leaders to become competing centres of power was neutralised.

Since the DPP government did not conduct local government elections, no councillors were elected during its first and second term in office. This meant that whatever was left of the local government power allotted to councillors could not in practice be realised. In 2005 the Minister of Local Government sought to creatively address this absence in decision-making by making regulations through a temporary decision-making structure called the District Consultative Committee (DCC).¹⁸³ The DCC was a pool of all the *ex officio* members of council who in themselves did not possess voting rights. Another problem with the DCC was that it had no legal standing and thus local authorities were neither able to borrow money, nor make changes to outdated by-laws, a situation that was very problematic in urban areas.¹⁸⁴

6.3. Substantive Powers.

The UDF government left local government largely undeveloped, with a lot of substantive functions still under the control of central government Ministries. Naturally, pressure was brought to bear on President Mutharika to expedite the process, which he did, but making sure not to concede meaningful power in the process. Consequently, functions such as education and health were transferred to local government whilst water supply remained centralised.¹⁸⁵ However, the central government still retained substantial control over the transferred services. This was enabled by its control of human resources, payroll administration and capital development projects.¹⁸⁶ According to the Tilitonse foundation, this piecemeal approach to decentralisation was a reflection of the fact that the DPP government was simply trying to

¹⁸² S 5 Local Government (Amendment) Act 2010.

¹⁸³ Tilitonse Foundation (2011) 6.

¹⁸⁴ Tilitonse Foundation (2011) 6.

¹⁸⁵ O'Neil T & Cammack D 'Fragmented Governance and Local Service Delivery in Malawi' (2014) *Overseas Development Institute (ODI) Report* viii.

¹⁸⁶ O'Neil & Cammack (2014) viii.

manage pressure from donors who insisted on visible progress as a basis for continued funding.¹⁸⁷

To further undermine the autonomy of DCs, they were stripped of their policy-making function through the 2010 Amendment. Section 6 (1) of the Local Government Act used to read that ‘The *Assembly* shall perform the following functions (a) to *make policy and decisions* on local governance and development for the local government area.’ After the amendment it now reads, ‘The *Council* shall perform the following functions (a) to *make decisions* on local governance and development for the local government area.’ The government’s justification was that local policymaking undermined the much-needed complementarity between central and local government.¹⁸⁸ What this means is that although local government now had more functions, in exercising those functions it only played an implementation role in line with the central government's policy direction.

In addition, the appointment of Chief Executive Officers (CEOs) was moved from the LGSC to become the sole responsibility of the Minister whilst the determination of remuneration now had to be approved by the Minister.¹⁸⁹ Whilst this applied to Urban Councils, it should not be forgotten that, in the rural areas, the notorious centrally-appointed DCrs had assumed leadership of the administrative wing of DCs as the equivalent of the urban CEOs. Bearing in mind that this was taking place at a time when there were no elected councillors or mayors, central government effectively took over control of DCs through their carefully selected CEOs and DCrs.

6.4. Financial Autonomy.

The transfer of more functions to local government under the DPP government was never accompanied by financial autonomy. Internally-generated revenue remained weak whilst dependence on central government transfers increased. The transfers themselves were structured in a way that promoted central government control, as these were mainly made in the form of specific grants. For instance, a study conducted by Tilitonse Foundation revealed that between 2004 and 2009 specific grants increased from between 10 to 30 per cent and up

¹⁸⁷ Tilitonse Foundation (2011) 6.

¹⁸⁸ Chinsinga (2010) 9.

¹⁸⁹ S 6 and 7 Local Government (Amendment) Act 2010.

to 90 per cent, whilst general grants showed no movement.¹⁹⁰ Observably, this development emphasised the new role of local government as an implementing agent of central government policies.

In 2006, additional centrally-controlled revenue was unveiled in the form of a Constituency Development Fund (CDF). Both MPs and councillors were involved in its distribution, with the latter playing a supportive role. Whilst MPs were given full control and responsibility for the launch and handover of all projects under the CDF, councillors were relegated to an inferior 'assistant' role of mobilising communities, liaising with the MP, and reporting the fund's progress in their wards to DC.¹⁹¹

As a result, most local authorities remained financially incapacitated as the government prioritised central structures, and projects in the District, whilst donors circumvented the DC. This persuaded Rémy Prud'homme to conclude in his World Bank 2010 assessment of decentralisation in Malawi that whatever capacity there was at the District level, it hardly belonged to local government.¹⁹²

The above discussion bears testimony to the wave of recentralisation that swept through the country under the leadership of Bingu wa Mutharika. Two factors explain this wave. The first factor is the nascent state of the DPP and its minority status in parliament. The background to the formation of the DPP is anchored in succession politics in the UDF. When the Muluzi's second term ended in 2004, he tried to amend the Constitution in order to run for a third term, but to no avail. His next strategy was to seek indirect control of the state through the party. This he did by nominating a political lightweight, Mutharika, with a view to making him his puppet.¹⁹³ In hindsight, Muluzi's mistake was that he had seriously underestimated Mutharika. His efforts to control Mutharika crumbled when Mutharika decided to form his own party (the DPP) just a year after his election as President. Mutharika's handicap was that his party had no MPs of his own, no cabinet Ministers and no councillors, though he was the President. He courted MPs from other parties to join the DPP, leading to mass defections, especially from

¹⁹⁰ Tilitonse Foundation (2011) 5.

¹⁹¹ Hussein (2017) 3228.

¹⁹² Prud'homme R 'Decentralisation in Malawi: An Overview' (2010) *Paper Prepared for the World Bank* 14.

¹⁹³ Bingu wa Mutharika had contested in the 1999 Presidential election as a candidate of the United Party. He came last in a race of five candidates with 0.47 per cent of the vote.

the UDF.¹⁹⁴ In response, opposition parties initiated litigation on the grounds that the Constitution prohibited floor-crossing.¹⁹⁵ A lengthy legal battle ensued with Mutharika struggling to control the legislature. It was within this context that local government elections were suspended. To Mutharika, whose new party had no grassroots structures, conducting local government elections was political suicide. Local government elections and the strengthening of DAs were clearly set to benefit already established opposition parties, including the UDF. His only political option was to delay local government elections for as long as he could, and this he did, echoing a similar strategy used by the UDF in its first term of office.

In 2009, another round of national elections was conducted for the selection of MPs and the President. The DPP and President Mutharika won with a landslide. The DPP won a majority in parliament (113 out of 193 seats) whilst President Mutharika won majorities in all three regions with 66.1 per cent of the national vote.¹⁹⁶ As argued earlier, local government elections did not take place during the first term because the DPP was a nascent party lacking in grassroots structures. By 2009, this threat was clearly removed. Nonetheless, recentralisation was pursued with vigour. It therefore follows that the budding state of the DPP was not the only driving factor behind recentralisation. This brings a second factor into focus: Mutharika's quest for the consolidation of his political power.

Malawi is a small poor country with few sources of wealth outside politics. Consequently, state power and economic wealth go together, and politics effectively turns out to be a zero-sum game. An interview with a Malawian professor revealed that the political environment in Malawi is extremely competitive, the turnover of power in constituencies is high, and candidates struggle to keep a seat for more than one or two terms.¹⁹⁷ Because of the deep levels of poverty, patronage and power go hand in hand. As alluded to by the Malawian professor, election campaigns embody the dynamics of 'poverty patronage and power' to such an extent that people line up to receive cash at political rallies.¹⁹⁸

¹⁹⁴ Cammack et al (2007) 13.

¹⁹⁵ Cammack et al (2007) 15.

¹⁹⁶ Patel N 'Malawi's 2009 Elections: A Critical Evaluation' (2010) *A Paper Presented at The Conference on "Election Process, Liberation Movements and Democratic Change in Africa" Maputo 8-11 April 2010* 7.

¹⁹⁷ Interview with a Malawian Professor of Law, Cape Town (09 November 2016).

¹⁹⁸ Interview Malawian Professor (09 November 2016).

Due to the unique nature of Malawi's polity, it is important to note that the conventional politics of political parties understood to be anchored in their different ideological orientations and with their manifestos expressing clear policy divides does not exist in Malawi. A study by Cammack et al supports this view, arguing that:

‘Power and legitimacy are built on personalism, centred on ‘big men’ and their networks rather than parties with clear ideologies and programmes. They are based on patronage, anchored in the appropriation and distribution of state resources, or rents acquired through access to the state, which pass towards particular constituencies rather than national development.’¹⁹⁹

The fact that politics in Malawi is centred on individuals is reflected very clearly in the significant success of independent candidates in parliamentary elections, something very different from the visible strength of political parties in South Africa and Zimbabwe. For instance, in the 2004 parliamentary election, independent candidates went head to head with political parties. Out of 193 seats, the UDF won 49 and the MCP 47 while independent candidates won 40.²⁰⁰ In 2009, there were more independent candidates in parliament than in any single opposition party. The DPP had 114 seats, independent candidates had 32, the MCP 26 and the UDF 17.²⁰¹

The wave of recentralisation under the DPP should therefore be viewed in the context of Mutharika's quest to consolidate his personal power, the default practice of politics in Malawi. All politicians in Malawi seek to maintain a tight grip over the state in order to preserve their power. Decentralisation seeks to create alternative power bases outside the ‘big man's’ control, and consequently, a strong local government competes with the President and central government for power (access to state resources and structures). The President, in turn, responds by undermining local government.

This practice is not only peculiar to Mutharika but can be traced back to the Banda government where recentralisation was pursued for purposes of political control. A similar trend is apparent in the case of Zimbabwe under Mugabe’s rule. These similarities paint a picture of

¹⁹⁹ Cammack et al (2007) 11.

²⁰⁰ Malawi Electoral Commission (MEC) ‘Parliamentary Summary Results for 2004 Elections’ available at <http://www.mec.org.mw/res/PARLIAMENTARY%20SUMMARY%20RESULTS%20FOR%202004%20ELECTIONS.pdf> (accessed 08 July 2019).

²⁰¹ Malawi Electoral Commission (MEC) ‘Parliamentary Results 29 May 2009’ <http://www.mec.org.mw/files/Parliamentary%20Results%20@29May09.pdf> (accessed 08 July 2019).

decentralisation as a natural antithesis to the consolidation of power. Unless inhibited, ruling elites will always seek to undermine decentralisation. The major reason is the fear of losing control and the natural power insecurities that decentralisation creates in a multiparty democracy. This fear is exacerbated by the emergence of power struggles, both within the ruling party (as was the case during Banda's rule) or between parties (as in Zimbabwe under Mugabe). Mutharika's government was not an exception to these struggles, hence recentralisation was intensified during his second term, when he swiftly moved in to consolidate control in the face of divisions within the DPP.

Divisions within the DPP commenced when President Mutharika decided to strategically position his brother, Peter Mutharika, for succession, and in the process side-lining Joyce Banda, his deputy in the party and government. The relationship between President Mutharika and Joyce Banda became problematic and the party fractured.²⁰² The latter was subsequently expelled from the DPP in 2011. Joyce Banda then formed the People's Party (PP), though remaining the country's Vice President courtesy of the 'running mates' provision in the Constitution.²⁰³ It is precisely these kinds of power struggle that encourage ruling elites to perpetually pursue power consolidation and their total control of state structures. In 2012 President Mutharika passed away and Joyce Banda took over, notwithstanding the fact that she was no longer a member of the DPP.²⁰⁴

7. Decentralisation under the PP Government (2012-2014)

When Joyce Banda became President in 2012, a repeat of Mutharika's 1995 experience ensued. The PP was less than a year old. It had no MPs and councillors, and its grass root structures in their infancy. However, considering the nature of Malawian politics, it was not difficult for Joyce Banda to form a PP government. In resonance with Mutharika's shift from the UDF to the DPP, sitting MPs and party members defected *en masse* to the new party in power, the PP.²⁰⁵ This development confirms the argument that the politics of genuine political parties

²⁰² Tilitonse Foundation *The Political Economy of Local Government in Malawi* (2011) 6.

²⁰³ S 86 (1) Constitution 1994: A Vice President is jointly elected with the President as a running mate and holds office for the rest of the term unless removed by impeachment.

²⁰⁴ S 83 (4) Constitution 1994: Whenever there is a vacancy in the office of the President, the Vice President takes over for the remainder of the term.

²⁰⁵ Nhlane S 'The syndrome killing Malawi's political parties' *The Nation* 19 May 2018 available at <https://mwnation.com/the-syndrome-killing-malawis-political-parties/> (accessed 11 July 2019).

with specific ideological premises does not exist in Malawi. In its place there is the personality politics of the ‘big man’ in power, surrounded by an entourage of political actors that float around, angling for opportunities. The mass defections of MPs to the PP also indicate that, apart from the fact of Joyce Banda assuming the Presidency, nothing much changed in terms of the government of the day.

In spite of all the continuities, the PP government’s major break with the DPP came in the form of local democracy. In 2014, the PP government conducted local government elections at the same time as national elections, bringing to an end a decade of the delaying tactics that had characterised the DPP government. Results of the 2014 tripartite election saw a return to the regional distribution of votes, and a minority ruling party in parliament. The election was won by the DPP, whose majority of support came from the Southern region; the MCP won majorities in its stronghold the Central Region; the PP dominated in the Northern region, whilst Independent candidates held more parliamentary seats than any single political party.²⁰⁶

Local government election results were further fragmented as out of a total of 462 seats the DPP won 165, the MCP 131, the PP 65, UDF 57, independent candidates 35 and two other small parties three.²⁰⁷ The most strategic local authorities in Malawi are the three cities located in each of the three regions, Blantyre in the Southern, Lilongwe in Central and Muzuzu in the Northern region. The DPP won control of Blantyre and Lilongwe, but lost Muzuzu to the PP.

Although the holding of local government elections concurrently with national elections had already been provided for in the Constitution in 2012, it is important to note that there were no guarantees. This is because previous governments of Muluzi and Mutharika had both ignored such constitutional provisions and resisted pressures to respect the constitution. It is therefore important to explain why Joyce Banda could not follow the same path, given the competitive nature of Malawian politics and the fragility of her political party. Two factors may help to explain this: the manner in which Joyce Banda assumed power, and her quest for both internal and external legitimacy.

²⁰⁶ Patel N & Wahman M ‘The Presidential, Parliamentary and Local Elections in Malawi, May 2014’ (2015) 1 *African Spectrum* 80.

²⁰⁷ Patel & Wahman (2015) 89.

When Joyce Banda assumed power in 2012, she did so with support and confidence from both domestic and international communities. She was seen as a saviour of the country from Bingu wa Mutharika's increasingly authoritarian and corrupt practices.²⁰⁸ She was internationally hailed as "one of Africa's great thinkers" and 'a beacon of democratic practice in Africa', christened 'Madame President', and invited to speak at several international fora.²⁰⁹ Donor funding that had been suspended was renewed as she spoke openly against corruption and the late President Mutharika's patrimonial and nepotistic politics.²¹⁰ Put simply, during her two-year reign, Joyce Banda succeeded in representing herself as a true democrat, a straightforward woman and a different kind of leader, one who had broken decisively with ranks with patronage politics. Yet, for some scholars, all of this was also a sign of weakness. A Malawian professor of law thus could refer to Joyce Banda as 'a spineless leader being driven by an agenda not her own', and argued that she too easily succumbed to political and donor pressure.

A comparison of Mutharika, an elected President with Joyce Banda as an unelected leader shows that Banda was under pressure from both political popularity and international legitimacy. In 2011, Mutharika was under pressure not to sign into law a Civil Procedures Bill that sought to 'prevent courts from granting *ex parte* injunctions against the government or public officers.'²¹¹ He proceeded to sign it amidst criticism of authoritarian tendencies. In 2012, when Joyce Banda was under pressure to sign the Disability Bill into law, she quickly conceded.²¹² The IMF and World Bank advised Mutharika to devalue the Malawian currency, the Kwacha, but he declined.²¹³ When Joyce Banda took over in 2012, the IMF and the World Bank made the same recommendation to her and she immediately devalued the Kwacha by almost 34 per cent, a publicly unpopular decision that impoverished the masses.²¹⁴ This pattern was repeated with

²⁰⁸ Gabay C 'Joyce Banda's Regime: Business (and politics) as Usual' (2014) *Democracy in Africa* 25 September 2014 available at <http://democracyin africa.org/joyce-bandas-regime-business-politics-usual/> (accessed 13 September 2017).

²⁰⁹ Gabay (2014); Ntata A Z 'Licence to Loot' (2013) *A Report on the CASHGATE Corruption Scandal in Malawi* 5.

²¹⁰ Gabay (2014).

²¹¹ The Economist 'Parliament passes a controversial "injunctions bill"' *The Economist* 7 July 2011 available at <http://country.eiu.com/article.aspx?articleid=1818306966&Country=Malawi&topic=Politics&subtopic=Recent+developments&subsubtopic=The+political+scene:+Parliament+passes+a+controversial> (accessed 11 July 2019).

²¹² Interview Malawian Professor (2009).

²¹³ Pelz D 'Elections in Malawi: Joyce Banda under pressure' *DW.COM* 19 May 2014 available at <https://www.dw.com/en/elections-in-malawi-joyce-banda-under-pressure/a-17646738> (accessed 29 September 2019).

²¹⁴ Pelz (2014).

regard to local government elections. The Constitution mandated Mutharika to conduct local government elections, but he deferred them throughout the DPP's two terms. To the contrary, when Joyce Banda came to power, the Constitution had been amended for local government elections to be held at the same time as national elections. In 2014, she followed the Constitution, conducting the so-called tripartite election – presidential, parliamentary and local government elections - at the same time. This discussion shows that the respect for constitutional provisions on decentralisation varies inversely with the strength of ruling elites and their quest for power. It also shows that decentralisation stands a better chance of being implemented when a dramatic change of government produces a new leader who is under pressure for legitimacy. It is this pressure for legitimacy that made Joyce Banda appear weak. She was generally trying hard to be different and gain some political popularity in a short space of time.

Joyce Banda's limited popularity in Malawian politics was exposed in the national elections that were held together with the local government elections in 2014. The PP won a majority of seats in the Northern Region, but suffered heavy defeats in the other two larger Regions, the Central and the Southern. Joyce Banda herself came a distant third in a Presidential race won by Peter Mutharika, her bitter rival in the DPP. Joyce Banda's defeat meant that she is the only incumbent President who failed to win a second term in the history of Malawi.

8. Faltering Decentralisation Reforms under the DPP Government (2014-2018)

Local government reforms that were introduced by the PP government were extremely narrow. This was because they focused on a single aspect of local autonomy, local government elections. Aside from the question of elections, Bingu wa Mutharika's 2010 local government reforms (that recentralised power) remained intact. When the DPP returned to power under the new leadership of Peter Mutharika in 2014, it initiated a local government reform process which ended in disappointment. It sought to amend the Local Government Act in order to enhance the efficient and effective performance of DCs and align the Act with the country's

1998 decentralisation policy.²¹⁵ A Local Government Amendment Bill was drafted and tabled before parliament for discussion in 2016.

A huge debate ensued between the DPP government, civil society groups and opposition parties.²¹⁶ The government wanted to stay clear of all aspects of local government autonomy, concentrating only on administrative matters of efficiency improvement. To the contrary, civil society groups advocated for the two amendments to the Act which would have the effect of enhancing the autonomy of local government. First, they wanted to repeal the provision of voting rights for MPs in DCs, arguing that this blurred the separation of powers between central and local government.²¹⁷ Secondly, they wanted to transfer the power to appoint DCs²¹⁸ from the Minister to DCs. They argued that this was important for the promotion of accountability down to the people, rather than upwards to the central government.²¹⁹ The DPP government rejected both proposals on the basis that councillors had low levels of education, and hence lacked the capacity to make important decisions.²²⁰ As shall be seen in the case study on Botswana, the putting forward of such unconvincing arguments by the government is not unique to Malawi. This is common in all cases where there is serious competition for power at the local government level.

In 2017, the DPP government defied civil society and opposition pressure for increased local government autonomy, and signed into law the Local Government Amendment Act. Its provisions embodied only the preferred reforms for efficient administration. The 2017 Amendment Act centred on guidelines for effective land use management and property rating.²²¹ Voting rights for MPs and the Minister's powers to appoint DCs remained in place, indicating the continuity of DPP resistance to donor pressure.

²¹⁵ Chione M 'Some local government amendment bill provisions yet to be tabled in parliament bad for Malawi-PAC' *The Maravi Post* 02 November 2016 available at <http://www.maravipost.com/local-government-amendment-bill-provisions-yet-tabled-parliament-bad-malawi-pac/> (accessed 24 November 2016).

²¹⁶ Chione (2016).

²¹⁷ Chione (2016).

²¹⁸ The DCr plays the role of Chief Executive Officer of the DC, equivalent to the Town Clerk or City Manager in other countries.

²¹⁹ Chione (2016).

²²⁰ Chione (2016).

²²¹ See Local Government (Amendment) Act, 2017.

The continuity of Bingu wa Mutharika's legacy of central control of local government is a product of two factors. First, the DPP that assumed power in 2014 was not a new political party, but a return of the same leadership that was behind the 2010 amendment to the Local Government Act. Secondly, the results of the 2014 national and local government elections were less persuasive as the polity continued to mirror the 1994 polarisation that made the UDF government reluctant to promote decentralisation. Political party support was sharply divided along regional lines. The DPP was dominant in the Southern Region (where the Mutharika's came from), but also won seats in the Central and Northern Regions. In the local government election, it won control of 11 councils, 10 in the Southern Region and one in the Central Region.²²² The MCP dominated the Central Region where the people continued to demonstrate their loyalty to the former ruling party. It won control of nine councils, all in the Central Region.²²³ The PP had most of its seats from the Northern Region and a handful from the Southern Region. It won control of four councils, all in the Northern Region.²²⁴ In all of this, it was apparent that the decentralisation of power to local government meant the strengthening of opposition political parties in a country where the ruling party had a minority status in parliament.

9. Conclusion

The case of Malawi presents a fluctuating process of decentralisation in which gradual phases of local government reform initiate counter moves of recentralisation. The outcome has been a pattern of successive waves of decentralisation and recentralisation, competing with each other over time and across governments. The first wave saw a gradual introduction of decentralisation in diverse degrees (based on race) during the colonial period. This wave was consolidated into a stronger form of decentralisation during the transition to majority rule between 1960 and 1965. This progress was reversed through a wave of recentralisation reforms that swept through the country under Banda's one-party state government from 1966 to 1993. The resultant centralised control endured for almost three decades before important local government reforms were initiated to change course towards decentralisation, mainly through the adoption of the 1994 Constitution. This in turn was interrupted by a wave of

²²² Dulani B & Dionne K Y 'Presidential, parliamentary, and local government elections in Malawi, May 2014' (2014) 36 *Electoral Studies* 223.

²²³ Dulani & Dionne (2014) 223.

²²⁴ Dulani & Dionne (2014) 223.

decentralisation that took place in the 1990s under Muluzi's UDF government. Observably, the decentralisation process was reduced to rhetoric as the government reneged on implementation. The limited gains of the UDF government era were reversed through a wave of local government reforms that strengthened central government control under Mutharika's DPP government. The wave of recentralisation initiated by Mutharika eased when Joyce Banda took over power under a PP government and reintroduced local government elections in 2014. The wave of decentralisation initiated by Joyce Banda quickly fizzled out when the DPP government returned to power in 2014 under Peter Mutharika. All further demands for decentralisation have so far been rejected by a stubborn government.

This pattern raises three critical observations. The first one is that there is continuous pressure for decentralisation from donors, civil society groups and opposition political parties. Motivating this pressure is the quest to curb centralised rule and promote a more inclusive and democratic political environment. The poor state of the country and the government's substantial reliance on donor funding gives donors some leverage at the bargaining table.

The second observation is that in spite of all the pressure on a government that is heavily donor reliant, the penchant to centralise power remains strong. The main driver of this resilience is the patrimonial nature of Malawi's politics: the interface between poverty, public interest in politics, patronage and the competition for power. This political economy has led to four outcomes which support centralisation. First, the country is highly polarised on ethno-regional lines; secondly, the visible success of opposition political parties at the local government level; thirdly, the fact that competition for power is high at both national and subnational levels; and fourthly, that the ruling parties are often fragile, fighting against a minority status in parliament and undergoing internal struggles for power. Under these circumstances, ruling parties are forced to retreat into a default mode of centralisation even if they have made public commitments to decentralisation.

The third observation is that this tendency to centralise power is not permanent. Once in a while, donors and civil society succeed in making the government concede to decentralisation reforms. This happens at moments when the ruling party is in a crisis situation that makes it vulnerable. Such crises include civil unrest, economic meltdown, and challenges to their political legitimacy. However, even when the ruling party succumbs to the pressure to

decentralise, the decentralisation reforms tend to become a populist instrument for political grandstanding with little genuine commitment. In no time, the cycle is repeated as recentralisation is vigorously pursued. All in all, the case of Malawi suggests that when decentralisation reforms have no buy-in from ruling elites, they are less likely to succeed. This is much more likely to happen in poverty-stricken countries where political power and wealth accumulation are intricately interwoven.

Naturally, when faced with political competition, nothing stops the ruling party from recentralising power, neither the constitution nor threats from donors. This explains why Malawi and Zimbabwe, both poor countries with extreme levels of political competition, stand out among the five case studies. Each display high levels of intolerance that include ignoring constitutional provisions on local government. Lastly, it should be noted that Malawi's experience is not unique. The push and pull between decentralisation and recentralisation is also visible in other Southern African states. The only difference with Malawi is that this push and pull is made much more visible because of the underlying poverty and the 'dog fight' for political power that ensues.

CHAPTER SIX

Namibia: A Contested Decentralisation Process

1. Introduction

The case of Namibia shares similarities with other countries in the Southern African region in the sense that the process of decentralisation has not been a smooth flow. It reflects a wave of decentralisation that commenced in the colonial period and reached its peak with the adoption of a new constitution for a democratic Namibia in 1990. The new system of local government adopted at independence was a major breakthrough for decentralisation. It provided constitutional protection; a wholly and democratically elected council; expansive powers for personnel administration; financial autonomy and for a further number of narrow but important functions. In addition, supporting legislation and policy documents were put in place to facilitate the implementation of decentralisation.

It is argued here that this decentralisation process was a product of a two-pronged effort to solve a political crisis generated by the contested end of apartheid SA's colonial occupation of Namibia. First, there was the international influence of the Western Contact Group (WCG)¹ and the United Nations (UN) which together elaborated a framework of principles for guiding the making of a new constitution for an independent Namibia. Second came the quest by opposition political parties, during constitutional negotiations, to limit the centralisation of power in a strong executive controlled by the liberation movement, SWAPO, and, against this, to strengthen local levels of government in which the opposition groups stood a more realistic chance of gaining some power.

Whilst these juridical developments set decentralisation in motion, the practical outcomes were very different. For despite the ruling South West Africa People's Organisation's (SWAPO) near absolute dominance in Namibian politics, it has not behaved very differently from the governments of Malawi, Zimbabwe, South Africa (SA) and Botswana. The SWAPO government has consistently pursued local government reforms that seek to recentralise power.

¹ A group formed by the then five Western members of the United Nations Security Council - Canada, France, United Kingdom, United States of America and West Germany.

It has moved gradually from a reconciliatory phase of legislative progress, across and through a period of renegeing and delaying tactics, to a final blatant assertion of central government control. As a result, the wave of decentralisation has been succeeded by a process of recentralisation, intent on strong central government control. However, this wave of recentralisation has not been smooth either.

Similar to RSA, there has been an emerging fight back from regional and local authorities, aimed at resisting the diminution of local government powers. Considering that SWAPO's power is not under threat from opposition competition at either the national or local government levels, the Namibian case nuances the discussion around factors driving waves of decentralisation and recentralisation. It is argued that centralisation is a default process and a comfort zone for politicians that comes with the natural trappings of power. Therefore, once a major decentralisation reform is adopted, recentralisation automatically follows regardless of whether the ruling party is under threat from opposition competition or not. In other words, recentralisation is driven by ruling elites' natural quest for power consolidation, a self-serving penchant for control, monopoly and domination.

To support this argument, this chapter is divided into five important phases that signify alternating waves of decentralisation and recentralisation of power. First, the precolonial and colonial period which saw diverse levels of decentralisation under native, German and SA rule prior to 1975. Second, the transitional period in which Namibia was controlled first by the SA government and then the UN from 1975 to 1989. Third, the phase of decentralisation immediately following independence under a SWAPO government (1990 to 1997). Fourth, a period of the 'gradual' implementation of decentralisation between 1997 and 2009. Fifth, a period of recentralisation in Regional Councils and Local Authorities from 2010 to 2018.

The narrative analysis must be seen not only in terms of the country's politics, but also in relation to geographical, economic and historical factors. Namibia is a huge territory with a small but ethnically diverse population.² Most of the land area (southern part) is a desert, but is rich in minerals (mainly diamonds), copper and uranium, and also has opportunities for both cattle- and sheep- rearing. It was previously colonised by Germany and later by South Africa

² The World Bank 'Namibia: Overview' available at <https://www.worldbank.org/en/country/namibia/overview> (accessed 31 July 2019): As at 2016 the country's population was about 2.5 million.

(SA). Both of these deployed racist systems of local government that were entirely lacking in democratic legitimacy.

2. Slow Introduction of Modern Local Government under Germany Rule (1884-1915)

Before colonial rule, the territory now known as Namibia was inhabited by several self-governing ethnic groups. These practised a traditional system of governance in which hereditary chiefs ruled with the aid of trusted councillors. The largest ethnic group is that of the Ovambo people who settled in the northern part of the territory, along the Kunene River, and bordering Angola.³ Further east, along the Kavango River, there were the Okavango people. The Masubiya and Mafwe tribal groupings occupied the present-day Caprivi Strip (Zambezi Region), a somewhat odd extension stretching to the Zambezi River, and sharing a border with Zambia.⁴ These northern tribes practised mixed farming due to relatively stable rainfalls.⁵ At the centre of the territory lived the Herero people; these were dedicated cattle farmers.⁶ Herero-speaking Ovahimba and Nama-related Damara people settled in the north-western part of the territory close to the Atlantic Ocean whilst a small population of San people occupied the south-eastern part of the territory.⁷ The Nama, a Namibian version of the Khoikhoi, settled further south raising small herds, hunting and gathering.⁸ They were joined by the Oorlam, a group of largely mixed-race descendants of the Khoikhoi and Europeans who had migrated from the Cape during the early period of colonialism.⁹ Between the central and southern part of the territory (south of present-day Windhoek) a community of mixed-race people called Basters came to settle. Like the Oorlam, they had migrated from the South African Cape of Good Hope.¹⁰

³ Bauer G & Taylor S D *Politics in Southern Africa: Transition and Transformation* (2011) 228. Vosloo W B 'Local Government in South West Africa' in Vosloo W B, Kotzé D A & Jeppe W J O (eds) *Local Government in Southern Africa* (1974) 105: by 1970 Ovambo people constituted 45.9 per cent of the territory's total population.

⁴ Bauer & Taylor (2011) 228.

⁵ To date, more than half of Namibia's population is concentrated in the North whilst the central and southern parts are sparsely populated.

⁶ Bauer & Taylor (2011) 228.

⁷ Katjavivi P H A *History of Resistance in Namibia* (1988) 1-3.

⁸ Bauer & Taylor (2011) 229; Katjavivi (1988) 1.

⁹ Melber H 'Economic and Social Transformation in the process of Colonisation: Society and State Before and During Germany rule' in Keulder C (ed) *State, Society and Democracy: A Reader in Namibian Politics* (2010) 21.

¹⁰ Katjavivi (1988) 1.

In 1883, the territory was declared a Germany protectorate, and this marked the beginning of colonial occupation.¹¹ Germans settled around the wealthy mines and established large commercial farms and factories in the southern and central parts of the territory, but hardly extending into the overcrowded northern parts. Accordingly, the territory was divided into two. One became popularly known as the ‘police zone’, an area covering the southern and central parts of the country and settled by white people who enjoyed the security provided by German police patrols. In the wake of conflict¹² between the settlers and the natives, the traditional system of local government disintegrated and European-type local authorities were introduced to govern the white communities.¹³ The second part was the largely undeveloped and overcrowded northern part, outside the focus of German interest (except for cheap labour) and here indirect rule was applied.¹⁴ In general, the state, organised at both central and local government levels was intended to serve the white capitalist community in the country, a model that was taken up with vigour under SA rule.

3. Diverse Levels of Decentralisation under South African Rule (1915-1975)

After the occupation of Namibia during World War I in 1915, South Africa (SA) was given a mandate to administer the territory on behalf of the League of Nations. This administration was subject to a number of principles and conditions which included the obligation to administer the territory in the interests, and for the wellbeing, of the inhabitants.¹⁵ To the contrary, SA’s interests lay in the exploitation of profitable mining and commercial opportunities in the territory for the expansion of its own economy. Accordingly, instead of helping to prepare the territory, now named South West Africa (SWA), for eventual independence, SA pursued the goal of incorporating it as its fifth province.¹⁶ Accordingly, SA legislation was applied in SWA, and local government became a tool for imposing racial separation, creating abhorred

¹¹ Mutumba B S ‘The Evolution of Regional and Local Government’ (2013) 2 (1) *University of Namibia Journal for Studies in Humanities and Social Sciences* 55.

¹² The Catholic Institute for International Relations (CICR) and The British Council of Churches (BCC) *Namibia in the 1980s* (1986) 10: The Herero population was reduced from 70 000 to 16 000 whilst the Nama population was reduced from 50 000 to 20 000.

¹³ Vosloo (1974) 110; Melber (2010) 40.

¹⁴ Vosloo (1974) 104.

¹⁵ Kaela L C W *The Question of Namibia* (1996) 2-3: This principle was informed by one of former USA President Woodrow Wilson’s 14 principles upon which the LN was built.

¹⁶ Kaela (1996) 61. At that time the Union of South Africa was made up of four provinces – The Cape, Natal, Orange Free State and Transvaal. In his 1920 Windhoek speech, SA Prime Minister, Jan Smuts stated that ‘In effect the relations between the South West Protectorate and the Union amount to annexation in all but name.’

Bantustans and separate local authorities for black and coloured people. SA's colonial model had both similarities with and differences from the Germany model. Similar to the German model, it was anchored in the development of the SA government's economic interests, the preservation of the white settler population's privileges, and, above all, the exploitation of the native population for cheap labour. As with the Germany model, SA sought to use decentralisation as a strategy for imposing and maintaining racial exclusion.

3.1. Local Government in the White Community

In 1920, the SA government issued a Proclamation providing for elected municipal authorities to service white areas, and Advisory Boards (ABs) to overlook the non-white racial groups. All black people who were settled in the white community's old locations were relocated to new townships situated at the outskirts of the towns. In the capital, Windhoek, where about a third of the white population were settled, black people were moved to Katutura, a new township that was far from the city, whilst coloureds were restricted to Khomasdale.¹⁷ When the National Party came to power in SA in 1948, local government legislation was realigned with the apartheid policy. Three laws are pertinent in this case – the Natives (Urban Areas) Proclamation (No.56 of 1951), the South West Africa Municipal Ordinance (No. 13 of 1963) and the Village Management Boards Ordinance (No. 14 of 1963).¹⁸

Municipal Councils (MCs) were composed of white councillors elected by white voters enfranchised on prescribed residential and fixed property qualifications.¹⁹ As was the case with most British colonies, the system of local government for whites promoted local democracy with members of MCs being elected annually by the white residents. Small commercial areas inhabited by whites had Village Management Boards (VMBs) composed of the magistrate of that area, or, in his absence any person appointed by the central government to play the role of both chairperson and treasury assisted by not more than four additional members appointed by the central government.²⁰

¹⁷ Simon (1983) 130.

¹⁸ Töttemeyer (2010) 116.

¹⁹ Töttemeyer (2010) 116.

²⁰ Vosloo (1974) 115.

The MCs were empowered to discharge a wide range of basic local government functions such as water supply, electricity reticulation, urban planning, health control, street maintenance, housing, roads, commercial activities and native affairs.²¹ In addition, they had the authority to create by-laws and employ their staff, though subject to central control in the appointment of senior personnel.²² Their strong financial capacity (discussed below) enabled them to discharge these functions, rendering high-quality services to the small white population with a high degree of autonomy.

MCs enjoyed a high level of financial autonomy primarily because they were financially self-sufficient. They had strong powers of taxation, and could raise revenue through property rates, rentals, user charges and trading activities. The central government exercised oversight through the approval of budgets, rates, taxes, regulations and the acquisition of fixed property.²³ As a result, Windhoek, the country's only big city, was self-sufficient, depended on internally-generated revenue for its operations, and even enjoyed surplus revenue. What drove this healthy financial position was the fact that the white population controlled the Central Business District (CBD), and the industrial and commercial centres and affluent suburbs which together formed a very strong tax base. As shall be seen below, this was not the case with the black and coloured townships. These had no meaningful tax base, though they were densely populated.

Although urban areas were designed to serve white people, these were in the minority compared to the non-white population. By 1970, for instance, the black and coloured population in the urban areas of the 'police zone' was more than double that of the whites population.²⁴ Yet, in terms of local government, blacks and coloureds were subjected to a weak system of black Advisory Boards (ABs) and Coloured Consultative Committees (CCCs).²⁵ Neither of these were fully autonomous local bodies, since they operated under the authority of white MCs. This had been set in place by the Natives (Urban Areas) Proclamation (No. 56 of 1951), which provided for MCs to administer black and coloured townships on an agency

²¹ Simon D 'Decolonisation and Local Government in Namibia: The Neo-Apartheid Plan' (1985) 23 (3) *The Journal of Modern African Studies* 513; Vosloo (1974) 115.

²² Töttemeyer G 'Decentralisation and State-Building at the Local Level' in Keulder C *State, Society and Democracy: A Reader in Namibian Politics* (2010) 117.

²³ Töttemeyer (2010) 117.

²⁴ Serfontein (1976) 17: As of 1970, whites in the urban areas (67 000) of the police zone amounted to a population of 67 000 whilst blacks and coloureds amounted to 119 000.

²⁵ Töttemeyer (2010) 116.

basis, and on behalf of the central government.²⁶ As a result, the two bodies had little autonomy when it came to everyday local governance.

The membership composition of ABs and CCCs reflected a very limited form of local democracy. Half of the members were elected by residents while another half was appointed by the MC.²⁷ In addition, the white MC ensured that members of the two bodies were accountable to it, and not to the residents. Serious consequences awaited those members who were outspoken as the MC would immediately remove them from the AB or CCC.²⁸ As a result, the two bodies commanded little support among the black and coloured communities which generally viewed their members as 'stooges' and 'sell-outs.'²⁹

In addition to these constraints on local democracy, the two bodies had limited substantive powers. They had no decision-making powers of their own and could only make non-binding recommendations to the MC.³⁰ In turn, the MC would accept recommendations only provided that they did not conflict with white interests. It is for this reason that David Simon referred to them as 'toothless' bodies.³¹ Since they did not provide meaningful services, the ABs and CCCs were not conferred with revenue-raising powers and expenditure autonomy. They only assisted the MCs in collecting revenue and did not have taxation powers of their own. In any case, the revenue raised from the townships was insufficient for the operation of a local authority because there was no meaningful tax base.³² The reason for the poor state of black and coloured townships lay in the very objective behind their establishment. They were never meant to be viable local authorities but rather, as Simon explained, were meant only to serve as dormitories for the town's black and Coloured working class.³³ In summation, the three types of local authorities existing in the so-called 'white' area was not designed for effective decentralisation, but rather to further the related goals of racial exclusion and white domination. The Natives (Urban Areas) Proclamation of 1951 specifically made this objective clear, stating

²⁶ Simon (1935) 513.

²⁷ Simon (1983) 121.

²⁸ Simon (1985) 514.

²⁹ Simon (1985) 514.

³⁰ Töttemeyer (2010) 116.

³¹ Simon (1985) 513.

³² Simon (1985) 521.

³³ Simon (1985) 517

that black people were simply temporary residents, sojourning in the white area subject to repatriation to their respective homelands on the termination of their contracts.³⁴

3.2. Local Government in African Communities

In the 1920s, the SA government entrenched a system of indirect rule through the establishment of Native Reserves (NRs).³⁵ This system sought to create some standard form of local government that could be fitted over a modified traditional system of government. First, a piece of land would be proclaimed an NR for a specific ethnic or tribal group by the SA government-appointed Administrator.³⁶ Members of the tribe or ethnic group in question were then expected to reside there and there exercise their political rights.³⁷ This land could be one already inhabited by the tribes (as was the case in the northern part of the country) or it could be a new territory which the earmarked tribal groups had to move into and adopt as their own (as was the case with most tribes in the 'police zone'). Once the proclamation has been made, chiefs and their tribal councils would form a Reserve Board (RB) responsible for administering the area under the supervision of a white Bantu Affairs Commissioner or Superintendent.³⁸ Since the traditional system of government had been destroyed by the Germans in the 'police zone', the SA government created tribal structures in most of the NRs. It would appoint the RB made up of a Headman and not more than six adult men and place these under the supervision of a white Bantu Affairs Commissioner.³⁹ The RBs were empowered to raise revenue from tribesmen which would be placed into a Tribal Trust Fund (TTF), but this fund had limited expenditure autonomy since moneys could only be expended 'as directed by the Administrator'.⁴⁰

In the main, the NRs hardly fulfilled the role of a genuine local government institution as they turned out to be too incapacitated to handle meaningful developmental matters and neither did they manage to restore the autonomy of tribal communities and their leaders.⁴¹ This outcome

³⁴ Simon (1983) 134.

³⁵ Du Pisani A 'State and Society under South African Rule' in Keulder C (ed) *State, Society and Democracy: A Reader in Namibian Politics* (2010) 55-6.

³⁶ An equivalent of the Germany Governor.

³⁷ Du Pisani (2010) 56.

³⁸ Du Pisani (2010) 55-6.

³⁹ Du Pisani (2010) 56.

⁴⁰ Du Pisani (2010) 56.

⁴¹ See Katjavivi (1988) 15.

was deliberately in line with the official motive of the SA regime to achieve spatial separation of the native tribes before regional development.⁴² The NR system was further modified when the SA government appointed a Commission of Inquiry into the Affairs of South West Africa (Odendaal⁴³ Commission) in 1962. The major task of the Commission was to ‘enquire into the promotion of the material and moral welfare and social progress particularly of the non-white inhabitants of the territory.’⁴⁴ The Commission observed that a system of government where there is a central authority based on a general franchise (majority rule) was not possible because the various population groups in the territory had irreconcilable differences.⁴⁵ As a result, it recommended an extension of SA’s apartheid policy on the pretext that the non-white groups had reached a stage where they could be granted ‘limited self-government.’⁴⁶ Ten ethnic homelands were recommended: Bushmanland, Damaraland, East Caprivi, Hereroland, Kaokoveld, Namaland, Okavangoland, Ovamboland, Rehoboth Gabet and Tswanaland.⁴⁷ As observed from the SA case study, the outlook of the Odendaal Commission and its recommendations were based on the ideology of ‘grand apartheid’. These amounted to little more than a scheme of the SA government intended to support a narrative that SWA was a country of minorities, i.e. that black people were not in fact a majority in the country, but rather a collection of minority ethnic groups with irreconcilable differences, and with group more or less on par with whites in terms of number.

The Commission’s recommendations were implemented through the Development of Self Government for Native Nations in South West Africa Act (No. 54 of 1968). The Act provided for the establishment of an elected legislative council in each homeland. These had the powers to appoint an executive council and legislate on matters regarding education, welfare, health, road maintenance, waterworks, trading control, taxation and employee administration.⁴⁸ The homeland governments’ legislative powers were limited by a provision providing for override by the SA government which had the power to repeal or amend legislation and also make new laws for enforcement in the homelands.⁴⁹ The composition of the legislative council was made

⁴² Du Pisani (2010) 58.

⁴³ Named after its chairperson, Fox Odendaal.

⁴⁴ Vosloo (1974) 110.

⁴⁵ Vosloo (1974) 111.

⁴⁶ Kaela (1996) 79.

⁴⁷ Kaela (1996) 79.

⁴⁸ Vosloo (1974) 111.

⁴⁹ Vosloo (1974) 112.

up of a majority of traditional leaders as *ex-officio* members and a minority of elected members.⁵⁰ Similar to the way the system operated in SA, the traditional leaders functioned as the local authorities for black people living in the Bantustans. The new system generated increasing resistance from the natives, most of whom shunned participation and rendered the new governments redundant, as evidenced, for instance, in the 1973 elections of the Ovamboland Legislative Council, where only 1300 people voted out of 50 000 eligible voters.⁵¹

3.3. Coloured Community

The coloured community (mixed race) had a separate local government system which, like the homeland system, had limited autonomy. In it, there were two separate systems of local government to match the divisions into two coloured communities, the Rehoboth Basters and the coloureds who lived outside Rehoboth.⁵² Under German rule, the Rehoboth Basters had managed to retain some autonomy because of their assistance to the Germans in the war against the Herero and Nama.⁵³ When SA took over from the Germans, the Basters tried to resist central control, but were not successful in this. A new system of government made up of the magistrate of Rehoboth (a white representative from the central government) and assisted by an advisory board of six elected members replaced the traditional system of the *Kaptein* and his council.⁵⁴ The local authority had similar functions to those discharged by the homeland governments except that the coloured communities enjoyed even less autonomy in that they played merely an advisory rather than a decision-making role. The second category of coloured people was made up of all those living outside Rehoboth, but within SWA. For this group, governance was even more centralised. They were represented by a CCC (already discussed under the section on local government in the white community). The Council was made up of 11 members, at first, all by appointment and subsequently with five elected and six appointed.⁵⁵ It had no decision-making powers of its own, and only served to advise the SA Minister of Coloured Affairs or the management committee of the white-controlled MC. Like the advisory board of

⁵⁰ Du Pisani (2010) 66.

⁵¹ Du Pisani (2010) 70.

⁵² Vosloo (1974) 113.

⁵³ Melber (2010) 35.

⁵⁴ Vosloo (1974) 113.

⁵⁵ Vosloo (1974) 113.

the Rehoboth Council, it had few powers outside the putting forward of non-binding requests and recommendations.

3.4. Resistance

SA's strategy of using a racist system of local government to preserve its political and economic interests came under immense pressure from the moves for independence emanating from international, regional and internal sources. When the UN took over the mandates from the League of Nations in 1946, SA refused to acknowledge its authority, arguing that all the obligations of mandate holders had lapsed with the dissolution of the LN.⁵⁶ In 1949, the UN General Assembly referred the dispute to the International Court of Justice (ICJ) for advice. The court advised that the UN had legally taken over the mandate hence SA's argument had no substance.⁵⁷ In the 1950s, the UN General assembly adopted the advice of the ICJ, but did not take decisive action against SA even when several members of the Assembly protested against SA's defiance.⁵⁸ Two African states, Ethiopia and Liberia, also approached the ICJ in 1960, for an order declaring the illegality of SA occupation of SWA. They were not successful on the grounds that they had neither legal right nor direct interest in the case.⁵⁹ In 1966, the General Assembly resolved to revoke SA's mandate but the SA government continued its defiance, rolling out its Bantustan policy as recommended by the Odendaal Commission.⁶⁰

SA's defiance of UN pressure prompted the rise of nationalist movements and the escalation of organised internal resistance. These movements included the north-based Ovambo People's Organisation, founded in 1958 but transformed into a nation-wide movement in 1960; SWAPO; the Herero Chiefs Council which operated alongside the South West Africa National Union (SWANU); and the Caprivi African National Union (CANU) founded in 1962.⁶¹ After

⁵⁶ CICR & BCC (1986) 11; Horn N 'An Introduction to the Namibian Constitution' *University of Pretoria, Institute for International and Comparative Law in Africa (ICLA): Country Reports* (2015) 1.

⁵⁷ Horn (2015) 2.

⁵⁸ Saunders C 'Decolonisation in Southern Africa: Reflections on the Namibian and South African Cases' (2017) 42 (1) *Journal of Contemporary History* 102: The reason why stiffer penalties were not imposed on SA was because the calls were resisted by leading Western countries that had strong trading links with SA.

⁵⁹ Wiechers M 'Namibia's Long Walk to Freedom' in Miller L E & Aucoin L (eds) *Framing the State in Time of Transition: Case Studies in Constitution Making* (2010) 82.

⁶⁰ Horn (2015) 2.

⁶¹ Zeller W & Kangumu B K 'Caprivi under Old and New Indirect Rule: Falling off the map or a 19th Century Dream Come True' in Melber H *Transitions in Namibia: Which Changes for Whom?* (2007)196; CICR & BCC (1986) 13.

a 1966 UN order for SA to withdraw from SWA was ignored, SWAPO and CANU escalated dissent to an armed struggle whilst churches and local chiefs petitioned the UN to increase pressure on SA.⁶² In the urban areas, industrial action by native contract workers in the mining and commercial sectors broke out.⁶³ Following SA's continued defiance of UN supervision, the UN General Assembly finally declared SA's presence in SWA illegal in 1970.⁶⁴ This was followed by the International Court of Justice (ICJ)'s 1971 pronouncement that 'As the continued presence of South Africa in South West Africa is illegal, South Africa is under obligation to withdraw its administration immediately and thus put an end to its occupation of the territory.'⁶⁵ The pressure was exacerbated by the 1974 coup in Portugal that led to the independence of both neighbouring Angola and Mozambique. This SA under no illusion whatsoever that its days in SWA were numbered.⁶⁶ According to Dirk Mudge, a former member of the Executive Committee that administered SWA, after these two decisions, SA experienced tremendous pressure to withdraw its administration from SWA, but at the same time to maintain its and the white settler community's interests.⁶⁷ In an attempt to resolve this political crisis, both the SA government and the UN began a parallel process of reforms that established a foundation for decentralisation.

4. Establishing the Foundation of Decentralisation (1975-1989)

Namibia's transition to independence was somewhat different from that experienced in either Malawi, Zimbabwe or Botswana. There were no Lancaster House negotiations of the kind that had led to the adoption of a British-style independence constitution. Rather, independence constitution negotiations had two sides. First, there was the negotiation process controlled by the SA government. This lacked international legitimacy but gave birth to a political alternative to SWAPO – the Democratic Turnhalle Alliance (DTA)⁶⁸, a white-controlled alliance of small non-Ovambo ethnic political parties. Second, there was the final transitional process organised by the United Nations (UN).

⁶² Du Pisani (2010) 68.

⁶³ Du Pisani (2010) 68.

⁶⁴ Horn (2015) 3.

⁶⁵ Mudge D 'The Art of Compromise: Constitution-making in Namibia' in Bösl A Horn N & Du Pisani A (eds) *Constitutional Democracy in Namibia: A Critical Analysis After Two Decades* (2010) 121.

⁶⁶ Kaela (1996) 84.

⁶⁷ Mudge (2010) 121.

⁶⁸ The DTA's name was derived from the venue where the SA-sponsored constitutional negotiations took place in 1975 – the Turnhalle building in Windhoek.

As both these developments pointed towards the inevitability of independence under a SWAPO-led government, SA was faced with the dilemma of how to exit the territory whilst preserving its economic and political interests there.⁶⁹ Consequently, it pursued a goal to ensure that it (and not the UN) controlled the transition to independence that in the process it could reduce the chances of an independent Namibia under SWAPO leadership.⁷⁰ One of the key initiatives here was to seek to control the process of drafting an constitution for independence, but based on its (SA) terms.

In September 1975, the SA government invited representatives of the country's eleven ethnic groups to a constitutional conference at the Turnhalle building in Windhoek.⁷¹ The constitution-making process was tightly controlled by the SA government and the white population in SWA. Dirk Mudge of the National Party (NP)⁷² in SWA chaired the process in which most leaders of the participating ethnic groups appeared clueless.⁷³

During the course of the conference, most ethnic groupings and the NP proposed a three-tier system of government which featured powerful regional ethnic authorities.⁷⁴ SWAPO was not invited to the conference as the SA government sought to neutralise its influence. Nonetheless SWAPO submitted proposals in which it dismissed the idea of autonomous regional authorities as a 'product of psychosis' and a 'way of advancing tribalist, racist bantustans, [and] enabling the privileged few to go on running the country.'⁷⁵ As shall be shown in detail later, this background partly explains the continued contest over Regional Councils in Namibia post-independence. These were never a structure popular with the majority party, but they were the only hope for minorities to remain politically relevant. As an alternative, SWAPO proposed that there could be a few administrative regions, and a local government whose powers would be determined by ordinary legislation.⁷⁶ It further proposed that there was no need for the two

⁶⁹ See Wiechers (2010) 83. SWAPO was the only political organisation which commanded nation-wide support and was recognised by the UN as the genuine representation of the people of SWA.

⁷⁰ Du Pisani (2010) 71.

⁷¹ Mudge (2010) 124. Courtesy of the venue, the conference is popularly known as the Turnhalle Conference.

⁷² A white people's party in SWA with ties with SA's ruling party of that time, National Party.

⁷³ Mudge (2010) 124.

⁷⁴ Mudge (2010) 124.

⁷⁵ SWAPO's proposal to the Turnhalle Constitutional Conference in Serfontein (1976) 395.

⁷⁶ Serfontein (1976) 395-6.

structures (Regional councils and Local government) to be enshrined in the constitution.⁷⁷ As shall be discussed in more detail below, the post-independence government led by SWAPO continues to argue that Regional Councils should only serve an administrative function, despite the constitution being clear that they are to be regarded as a devolved sphere of government.

The conference produced an interim constitution that was approved in an ‘all-white’ referendum in 1977.⁷⁸ In the same year, a new coalition of small political parties, the DTA, made up of delegates of the Turnhalle Constitutional Conference was formed, with Dirk Mudge as its Chairman.⁷⁹ According to Du Pisani, the DTA was an creation of the SA government in its attempt to construct a moderate and legitimate alternative to SWAPO.⁸⁰ However, this did not take place as planned, as in the end SA lost its control over the transitional process. Nevertheless, the formation of the DTA played a significant role in the 1990 constitutional negotiations (to be discussed below).

The Turnhalle Constitution provided for a three-tier government structure composed of a central government, a number of ethnic representative authorities and local authorities.⁸¹ An Administrator General (AG) appointed by the SA government assumed the role of head of state. On the level of constitutional protection, the autonomy of local government was improved by this. However, specific details of powers, functions and the financing of local government were not covered in the Constitution, leaving these matters to further legislation by the SA-controlled new government.

In 1980, the AG issued a Proclamation (Proclamation of the AG 8) which established Representative Authorities (RAs) for each of the country’s ethnic groups. These replaced the controversial Bantustan authorities with non-geographical ethnic bodies. Members of the RAs were subject to regular elections, consequently promoting downward accountability. The elections themselves attracted participation from a number of small ethnic political parties outside the DTA. Since SWAPO did not participate, most small ethnic political parties and the

⁷⁷ Serfontein (1976) 396.

⁷⁸ Du Pisani (2010) 71.

⁷⁹ Mudge (2010) 125.

⁸⁰ Du Pisani (2010) 71.

⁸¹ Simon (1985) 509.

DTA were successful in those elections.⁸² This background partly explains the spirited fight for the establishment of Regional Councils by small political parties during the independence constitution negotiations (as discussed below).

Several functions were allocated to the RAs. These included primary and secondary education, the health service, sub-economic housing, cultural promotion, agriculture, forestry, social services and traditional law.⁸³ The configuration of the RAs was effectively designed to pursue the SA government's objective of racial separation while at the same time prohibiting the country's black ethnic groups from uniting against it. In this sense, the RAs served as instruments of division rather than cohesion. Besides, the wide array of functions allocated to them did not improve service provision in the country's various ethnic groups. Problems of financial sustainability coupled by corruption, mismanagement and the overlap of jurisdictions crippled their operations.⁸⁴

In terms of local authorities, two Commissions of inquiry were appointed in 1980 but their recommendations never saw the light of day as these conflicted with the interests of the white minority. The first of these was a commission of legal experts led by Augustus Arnold, the Town Clerk of Windhoek (the Arnold Commission). The Arnold Commission was tasked with a duty to draft legislation for a new system of local government. The second was headed by F. J van Eeden (the Van Eeden Commission) and was tasked with investigating the fiscal relationship between the central government, RAs and local authorities. In its report, the Arnold Commission made three key recommendations that promised to substantially transform the state of local government. First, it proposed the creation of a single general municipality for the small towns, and three separate municipalities for each of the big cities (one for the white community, a second for the coloured community, and a third for the black community).⁸⁵ Since racial segregation laws had been repealed in 1979, the Commission further suggested that the delimitation of the three separate municipalities should be based on geographical rather than racial grounds. This recommendation allowed residents to move freely from one area to another without being deprived of service delivery, a significant improvement in terms of

⁸² See Simon (1985) 510.

⁸³ Simon (1985) 510.

⁸⁴ Simon (1985)

⁸⁵ Simon (1985) 520.

decentralisation. Second, it proposed that all residents of a municipality should be entitled to vote in local government elections, thus expanding the franchise to non-white residents.⁸⁶ A third proposal was the redistribution of the city's rate revenue across all three municipalities through a formula that would ensure cross-subsidisation of non-white communities, to make up for their lack of an effective tax base.⁸⁷ The Arnold Commission's report was received with outrage by the white community in the country. The government did not publish it for years, concealing it until 1983. The white municipalities rejected its proposals, and especially concerning rate-sharing, on the grounds that the white municipalities alone would carry the cost of establishing and servicing the new proposal.⁸⁸

The Van Eeden Commission's report agreed with the Arnold Commission on the sharing of revenue amongst the three municipalities, but also added further proposals. It recommended that municipalities be empowered to raise more revenue through provision for a sales tax, with the transfer of capital grants from central government to fund infrastructure development.⁸⁹ Although most of the recommendations of the two Commissions were progressive in terms of furthering decentralisation, the division of the cities into three municipalities was unpopular with the non-white population as this would effectively continue racial segregation. A survey by Simon indicated that the majority of township residents were in favour of a single municipality.⁹⁰ With some of the most critical recommendations of the Commissions being contested by the white community, local government reforms were abandoned, and the status quo remained in place. Indeed, resistance to such proposals was so flagrant that when racial segregation was abolished in 1979, the white municipalities suspended local government elections for years. The municipality of Windhoek, for instance, conducted its last local government elections in 1978 and since then it has suffered postponement upon postponement.⁹¹

From the foregoing, it is observable that since the Turnhalle Conference, the SA government shifted its objective from annexing SWA as its fifth province to a compromise in which it

⁸⁶ Simon (1985) 520.

⁸⁷ Simon (1985) 521.

⁸⁸ Simon (1985) 521.

⁸⁹ Simon (1985) 522.

⁹⁰ See Simon (1985) 523.

⁹¹ See Simon (1985) 521.

sought to manage the transition to independence to its own benefit. In other words, with all the signs pointing towards the inevitability of independence, the SA government was now making all the efforts to shape the structure of government and minimise the loss of white interests in an independent Namibia. However, the effort failed to meet the legitimacy test since it excluded SWAPO, which had already been recognised by the UN as the legitimate voice of the people of Namibia.

Whilst the SA government was busy with its internal transitional process, the UN and other western countries that did not support this flawed process were working on alternatives. In 1977, five Western countries with trade links to SA (Canada, France, the United Kingdom, the United States of America and West Germany) formed the Western Contact Group (WCG) to negotiate a transition from SA rule to independence for Namibia.⁹² In 1978, the WCG negotiated with both SA and SWAPO to accept a plan that would provide for UN supervision of the transition to independence. This plan was adopted by the UN Security Council when it passed Resolution 435. This stated that SA's illegal administration of Namibia must come to an end, and power had to be transferred to the people of Namibia by means of a free and fair election supervised by the UN.⁹³

In 1982, the WCG drafted a document titled 'Principles concerning the Constituent Assembly and the Constitution for an independent Namibia'. This was approved by the UN and annexed to Resolution 435. The document was divided into two sections, the first concerning the composition of a body that would adopt a constitution for an independent Namibia, and the second laying out the principles guiding the contents of the independence constitution. The first section stated that the constitution for an independent Namibia was to be adopted by a Constituent Assembly (CA) composed of members freely elected through a system of proportional representation in a UN-supervised election.⁹⁴ On the content of the constitution, the document contained eight principles. These provided for, among other things, a unitary sovereign and democratic state, an electoral system based on universal adult franchise, and

⁹² Saunders (2017) 102; Horn N 'The Forerunners of the Namibian Constitution' in Bösl A Horn N & Du Pisani A (eds) *Constitutional Democracy in Namibia: A Critical Analysis After Two Decades* (2010) 64.

⁹³ Security Council of the United Nations Resolution 435 (1978) of 29 September 1978.

⁹⁴ See Security Council of the United Nations 'S/15287 Annex: Principles Concerning the Constituent Assembly and the Constitution for an Independent Namibia *Resolution 435 (1978)*

proportional representation in and for elected local and/or regional councils.⁹⁵ The provision for the system of elected local and/or regional council was a democratic breakthrough, setting the country on a path towards decentralisation. It also meant that possibilities for the CA to draft a constitution with local and regional authorities that promoted deconcentration were curtailed. The Principles also provided that the constitution should be adopted by a two-thirds majority of the CA.⁹⁶ This provision was important in that it limited the dominance of a single party with a simple majority in determining the content of the constitution, making the process more accommodating to the minority political parties.

Contrary to the SA government's transitional plan for undermining SWAPO, it appears that the UN's strategy was to rather seek to condition the constitution-making process in such a way that it balanced the divergent preferences of both SA and SWAPO. As Nico Horn concluded, the main aim of the UN was to bring peace and stability to the conflict-ridden nation.⁹⁷ Accordingly, principles such as the provision for a unitary sovereign and democratic state resonated with SWAPO's centralist preferences, while the provision for systems of proportional representation and elected local and/or regional administration, and the adoption of the constitution based on a two-thirds majority, appeared to protect minority political parties, in accord with SA's preference. In response, the SA government and some small political parties in SWA immediately accepted the principles. SWAPO initially rejected them, but then accepted a compromise.⁹⁸ However, the implementation of Resolution 435 was delayed by SA's insistence that it would only vacate SWA if the UN removed Cuban troops from Angola. This led to the 1988 agreement between the WCG, SA, Angola and Cuba for the withdrawal of Cuban forces from Angola and the implementation of Resolution 435 then commenced.⁹⁹ It is therefore important to note that the eventual negotiation of an independent constitution (discussed below) was partly framed and limited by the UN contribution to the process of conflict resolution in the country. Also observable is the fact that the UN set in motion a wave of decentralisation that SWAPO did not fully support, but had no choice about as the wave was

⁹⁵ Security Council of the United Nations S/15287 Annex: Principles Concerning the Constituent Assembly and the Constitution for an Independent.

⁹⁶ Security Council of the United Nations S/15287 Annex: Principles Concerning the Constituent Assembly and the Constitution for an Independent.

⁹⁷ Horn (2010) 63.

⁹⁸ Horn (2010) 65.

⁹⁹ Wiechers (2010) 84.

part of the larger negotiation process. As shall be seen below, this background helps to explain SWAPO's backtracking on decentralisation once it came to power.

In 1989, the first democratic national election was conducted under UN supervision. Although the election was declared free and fair, the atmosphere was full of ethnic tension and mistrust. The white community feared black domination through SWAPO, while in the black population, other native groups feared Ovambo domination through SWAPO.¹⁰⁰ According to Mudge, the DTA was afraid that if SWAPO were to win an absolute majority, then it (the DTA) would have no influence over the provisions of the independence constitution.¹⁰¹ It therefore sought to ensure that SWAPO did not obtain the two-thirds majority required by the UN principles to pass the constitution into law. When the results of the election were announced, that is exactly what happened. Out of the 72 seats, SWAPO won 41, the DTA 21 and 10 were shared by some five small political parties.¹⁰² The fact that SWAPO did not get a two-thirds majority in the CA had significant implications on the content of the independence constitution in general and local government provisions in particular. Thus, apart from the UN Principles of 1982, another factor was added to the drivers of decentralisation under the independence constitution: the significant role played by the DTA and other minority political parties in the constitutional negotiations. The results of the 1989 election had ensured that the system of local government to be provided in the constitution would necessarily reflect compromises, mainly by SWAPO and the DTA.

This composition of the CA and its effect on constitutional provisions on local government shares similarities with the South African and Zimbabwean case studies. With both SWAPO and the ANC failing to obtain a two-thirds majority of the CA in 1989 and 1994 respectively, and ZANU-PF bound by a government of national unity between 2008 and 2013, opposition parties in the three countries were able to ensure constitutional provisions that promoted decentralisation. A common observation that runs across the three cases is that decentralisation stands a better chance of being promoted if the constitution-making body is structured in such

¹⁰⁰ Wiechers (2010) 85.

¹⁰¹ Mudge (2010) 130.

¹⁰² Geingob H G 'Drafting of Namibia's Constitution' in Bösl et al (eds) *Constitutional Democracy in Namibia: A Critical Analysis After Two Decades* (2010) 87.

a way that the ruling party cannot pass the constitution into law without support from opposition political parties.

5. Decentralisation under the Independence Constitution (1990-1996)

On 29 November 1989, the CA commenced the process of drafting Namibia's constitution based on the UN Principles.¹⁰³ As explained earlier, one of these principles already provided for a system of local government made up of elected local authorities and/or regional councils. The constitution-making process lasted four months, with members of the CA unanimously agreeing on a final draft on 9 February 1990. Under the 1990 Constitution for an independent Namibia, decentralisation was extolled as local government autonomy was expanded to all racial groups and ethnic communities across the country. Local government was provided for in the constitution, and democracy was extended to all local and regional authorities. The substantive and fiscal powers of local government were constitutionally guaranteed, though operational details were left to determination by national legislation. On 21 March 1990, SWA officially gained independence from SA and changed its name to Namibia. SWAPO leader, Sam Nujoma, was appointed first President of Namibia with Hage Geingob as Prime Minister. Accordingly, two Acts of parliament governing two local government institutions (local authorities and regional councils) were passed in 1992, facilitating the implementation of the new Constitutional vision in favour of decentralisation. These were the Regional Councils Act, 1992 and the Local Authorities Act, 1992. In terms of the law, it can, therefore, be concluded that there was a significant improvement to the process of decentralisation. The new system of local government was implemented in 1992 when the first Local Authorities (LAs) and Regional Councils (RCs) election (provided for under the 1990 Constitution and the 1992 local government laws) was held. Overall, the first six years of independence signified a promising episode of decentralisation, but whose transformation was stalled by delays in transferring powers and functions to the new LAs and RCs.

¹⁰³ Mudge (2010) 132: The Principles were nicknamed 'the holy cow', meaning that no proposal made by any member of the CA was allowed to contradict them lest 'the holy cow' would be offended.

5.1. Constitutional Protection

A 21-member committee composed of representatives of all parties to the CA was tasked with the duty to negotiate a draft constitution.¹⁰⁴ The Committee agreed to use SWAPO's proposed constitution as a working document with the possibility for amendments on areas of material difference.¹⁰⁵ Hage Geingob, the current President of Namibia who chaired both the CA and the drafting Committee pointed out 'local government and/ or regional councils' as one of the areas of material difference where debates and compromises were made.¹⁰⁶ SWAPO's document proposed a system of local authorities and administrative regions, signifying a reluctance to share political power.¹⁰⁷

To the contrary, the DTA proposed a decentralised system of government to be made up of municipal councils, regional councils and a senate of regional representatives in parliament.¹⁰⁸ The other two predominantly 'white' political parties, the NP and the Action Christian National, proposed regional governments that were specifically organised on racial and ethnic lines.¹⁰⁹ These proposals suggest that both SWAPO and the opposition political parties had maintained the substance of the previous proposals they had submitted at the Turnhalle Conference. Observably, a material dispute arise over the question as to whether the constitution should provide for strong or weak regional structures of government. SWAPO was clearly in favour of weak regional structures, with opposition parties in favour of strong regional structures. Thus, the decentralisation debate centred more on regions than local authorities. However, it is important to note that the autonomy of local government was not the nub of the issue. The mainstay of the negotiations, to which regions became incidental, concerned the power of the central government, and particularly the checks and balances necessary to avoid dictatorship.

SWAPO had argued for the position of a president with extensive executive powers, emphasising that the 'executive power of the Republic of Namibia shall vest in the President' who, unless otherwise provided by law, 'shall in the exercise of his functions be obliged to act

¹⁰⁴ Mudge (2010) 132.

¹⁰⁵ Geingob (2010) 89.

¹⁰⁶ Geingob (2010) 91.

¹⁰⁷ Geingob (2010) 96.

¹⁰⁸ Mudge (2010) 133.

¹⁰⁹ Wiechers (2010) 87.

in consultation with the Council of Ministers, but he shall not be obliged to follow the advice tendered by the Council of Ministers'.¹¹⁰ According to Geingob, SWAPO believed a strong executive President 'was essential for building a unified state – Namibia needed a leadership structure that would promote cohesiveness by bringing together various ethnic and racial groups that had been divided under apartheid rule.'¹¹¹ Graham Hopwood added another dimension to SWAPO's motivation, arguing that the strong executive Presidency appears to have been designed to honour the party's founding father, Sam Nujoma.¹¹² To the contrary, the DTA had argued for a ceremonial President (a much weaker position), a cabinet of ministers and a Prime Minister.¹¹³ The matter was debated for several weeks with both parties refusing to yield. Whilst SWAPO saw a strong executive President as the driving force behind the envisaged unified state, opposition parties saw this as a means to ensuring SWAPO dominance and dictatorship. Geingob quotes DTA's Dirk Mudge, who, during the debate stated that:

'We know that you also agree with a democratic society. So, it is just a matter of finding a solution to a problem which has been worrying us for a long time, the fear of dictatorship, the fear of concentrating power in one person, our fear that we might end up with an undemocratic society, the fact that things can get out of hand and it is now for us to discuss this problem. You must explain to us now how you see that there could be some restrictions, some restraints placed on the state president so that he cannot do things on his own.'¹¹⁴

In the end, the compromise was reached to maintain a strong central government led by an executive President as proposed by SWAPO (with some amendments), but also providing for appropriate constitutional checks and balances.¹¹⁵ It is within this context of compromise that SWAPO 'reluctantly conceded' to the opposition parties' proposal for elected regional councils with representation in the second chamber of parliament serving as a House of Review.¹¹⁶ This proposal from the opposition parties was not only informed by the simple need for checks and balances, but also gave the opportunity for a non-SWAPO-dominated second house of parliament. As Geingob explained it was a well-calculated move, one based in the regional

¹¹⁰ Mudge (2010) 135.

¹¹¹ Geingob (2010) 93.

¹¹² Hopwood G *Guide to Namibian politics: Including A to Z of political personalities* (2007) 15.

¹¹³ Mudge (2010) 135.

¹¹⁴ Geingob (2010) 92.

¹¹⁵ Geingob (2010) 92.

¹¹⁶ Mudge (2010) 136.

distribution of political support within the country.¹¹⁷ It should be noted that the place of local authorities in the constitution had already been secured under the UN Principles, and these same Principles made regional authorities an option.¹¹⁸ Therefore, their inclusion in the constitution should be credited to the DTA and other small parties who saw them as a way of limiting the dominance of a central government controlled by a powerful SWAPO President. On 9 February 1990, the Committee's draft constitution was unanimously adopted by the CA. This marked the end of SA's administration, and the beginning of an independent Namibia.

From the foregoing, it is observable that the UN principles for a constitution leading to Namibia's independence provided for a system of local and/or regional authorities. When the constitution was finally adopted by the CA in 1990 it had provisions for a system of 'Regional and Local Government', confirming the compromises made by SWAPO and opposition parties in the CA.¹¹⁹ Within this system of regional and local government, the Constitution provided for, and protected the existence of, Regional Councils (RCs) and Local Authorities (LAs).¹²⁰ However, the Constitution was silent on the relationship between these two structures, and also on the relationship between the two structures and central government itself. This was an indication that the DTA's proposal for a three-tier government (with RCs as second-tier authorities overseeing LAs) did not proceed according to plan. Instead, as later clarified under the 1997 Decentralisation Policy, RCs have a vague place in the government structure where they exist and operate more or less at the same level as the LAs, with the latter responsible for urban areas, and the former for non-urban areas.¹²¹

5.2. Local Democracy

In line with the UN principle that provision should be made for the establishment of elected councils for local and/or regional administration, the Constitution did provide that 'Every organ

¹¹⁷ Geingob (2010) 96: SWAPO's dominance was in Ovamboland whilst the DTA and other small parties had regional support. Therefore, if regional council elections were to be held, SWAPO would probably control one region (Ovamboland) and if the second house of parliament is to be made up of two members per region, then SWAPO was more likely to be in the minority.

¹¹⁸ The Principles provided for the establishment of elected councils for local and/or regional administration.

¹¹⁹ Chapter 12 Constitution of the Republic of Namibia, 1990.

¹²⁰ Art 102 Constitution, 1990.

¹²¹ Ministry of Regional, Local Government and Housing *A Decentralisation Policy for the Republic of Namibia: Decentralisation, Development and Democracy* (1997) 31.

of regional and local government shall have a council as the principal governing body, freely elected in accordance with this Constitution and the Act of Parliament...'¹²² The number of Regions and their names was not specified in the Constitution. Rather, their establishment and the delineation of their boundaries were left to determination by a Delimitation Commission to be appointed by the President with the approval of Parliament.¹²³ In the discharge of its responsibilities, the Delimitation Commission was not awarded unfettered autonomy. The Constitution mandated it to ensure that the Regions and LAs would have boundaries of a geographical nature only, indicating a departure from the racial and ethnic boundaries of the colonial period.¹²⁴ The Constitution also expressly provided for the election of members of the RC on a first-past-the-post (FPTP) system in which the winner takes all.¹²⁵ However, the same detail was not provided on the method of electing members to the LAs. This was left for determination by an Act of Parliament.¹²⁶

The SWAPO government that took over power in 1990 started implementing the constitutional provisions on local government through a fresh delimitation exercise. A Delimitation Commission was set up in 1991 to draw new boundaries for the RCs and LAs. In its report, which was accepted by the government in 1992, the Commission recommended the creation of 13 regions. These are Erongo, Hardap, Karas, Kavango, Khomasi, Kunene, Ohangwena, Omaheke, Omusati, Oshana, Oshikoto, Otjozondjupa and Caprivi.¹²⁷ SWAPO was the biggest winner in this non-ethnic demarcation, especially when considering that the majority of its support came from one region, crowded Ovamboland. During the demarcation process, Ovamboland was subdivided into four separate regions: Ohangwena, Omusati, Oshana and Oshikoto (the four Os). At the same time, the 48 LAs were demarcated and subdivided into three categories (municipalities, towns and villages). The most important LAs are the three cities categorised as 'Part 1 municipalities': the capital city, Windhoek, Swakopmund and Walvis Bay.¹²⁸

¹²² Art 102 (3) Constitution, 1990.

¹²³ Arts 103-4 Constitution, 1990.

¹²⁴ Art 102 (2) Constitution, 1990.

¹²⁵ Art 106 (3) Constitution, 1990.

¹²⁶ Art 111 (2) Constitution, 1990.

¹²⁷ Töttemeyer G *Strengthening the Interaction between Civil Society and Regional and Local Government in Namibia: Study on the Status, Role and Performance of Regional and Local Government Development Committees in selected Regions in Namibia* (2014) 16.

¹²⁸ Walvis Bay was added to the list in 1994 after its reintegration into Namibia.

Details of the composition of the LAs and RCs and their operating procedures were further provided when the two local government laws were passed in 1992. The Regional Councils Act and the Local Authorities Act went further to detail that the elected councillors must elect from amongst themselves (for the RCS) one member as a chairperson who shall be called the Governor of the region; and in the case of the LAs, a mayor or chairperson.¹²⁹ The Governor is the political head of the region responsible for the formulation, monitoring and implementation of development policies whilst the Mayor or chairperson is the principal head of the LA responsible for initiating the formulation and supervising the implementation of planning and development policies.¹³⁰

The fact that the first local government election was conducted in 1992 meant that the RC and LA elections were separated from the national election, thus enabling the electorate to separate national from local government issues. Another difference from national elections is that, up until 2010, councils were elected for a period of six years whilst at the national level, members of parliament and the president held office for a five-year term. From a local democracy perspective, this was a sign of commitment to decentralisation by the new SWAPO-led government.

A number of political parties participated in the 1992 election, signifying the existence of multiparty democracy at the local government level. They include SWAPO, the DTA and some small political parties with either a minority ethnic support or regional popularity. One of them was the United Democratic Front (UDF), which emerged from the Damara Council of SWA that governed the Damara homeland under SA rule.¹³¹ A huge interest in public participation was expressed as both the RC and LA elections recorded a high voter turnout of 81 and 82 per cent respectively.¹³² SWAPO was dominant in both RC and LA elections, dispelling the earlier calculations of the DTA and other smaller political parties that they stood a better chance of taking power at the regional level. In the RC election, SWAPO won control of 10 out of the 13

¹²⁹ S 18 (1) Regional Councils Act, 1992 & S 11 (1) Local Authorities Act, 1991.

¹³⁰ S 18A Regional Councils Act, 1992 (as inserted by s. 2 of Act No.17 of 1997) & S 11 (5) Local Authorities Act, 1992.

¹³¹ Sasman C 'UDF at crossroads' *The Namibian* 11 January 2013 available at <https://www.namibian.com.na/104084/archive-read/UDF-at-crossroad> (accessed 26 July 2019).

¹³² Institute for Public Policy Research (IPPR) 'An Overview of Regional Council and Local Authority Elections' *Election Watch Issue No.1 2015* 3.

councils, with the remaining three controlled by the DTA.¹³³ In the LA election, SWAPO had outright majorities in 32 out of the 48 councils, the DTA in 11 and the UDF in two.¹³⁴ The remainder had no outright winner.

5.3. Substantive Powers

The Constitutional provisions on substantive powers of RCs and LAs reflect the art of negotiation and compromise that went into the constitution-making process. In general, very few powers were specifically awarded to the RCs and LAs by the Constitution whilst the rest were subjected to determination by an Act of Parliament. One of the functions expressly provided by the Constitution was the power of RCs to elect members of the National Council (NC).¹³⁵ This was principally because the DTA and other small parties had insisted that the second chamber of parliament be made up of representatives of RCs. As alluded to earlier, the proposition was made under the false belief that since SWAPO's support was mainly from one overpopulated region (Ovamboland), it would become a minority in the NC, enabling opposition parties to check its dominance in the National Assembly. The specific functions of RCs and LAs were not listed in the Constitution but were left to determination by an Act of Parliament (a common pattern in all the case studies except SA).¹³⁶ Observably, RCs were not conferred with the power to control LAs, placing the two at par, with both directly under the control of central government. This outcome was a testament to SWAPO's opposition to the establishment of RCs as a devolved level of government, and the reluctant compromise it eventually made in accepting their recognition. Furthermore, the division of functions between the two councils was not explained by the Constitution, leaving them in an ambiguous relationship. Besides, both RCs and LAs were conferred with the power to make by-laws, but subject to the provisions of an Act of Parliament.¹³⁷ The legislative powers of LAs were specifically limited by a provision that required their by-laws to be tabled before the National Assembly for approval.¹³⁸ Similar to their functions, the personnel administration powers of

¹³³ Electoral Institute for Sustainable Democracy in Africa (EISA) 'Namibia: Regional Council and Local Authority Elections in 1992 Extracted from: "Namibia" IN Compendium of Elections in Southern Africa (2002), edited by Tom Lodge, Denis Kadima and David Pottie, EISA, 260-262' available at <https://www.eisa.org.za/wep/nam1992background.htm> (accessed 26 July 2019).

¹³⁴ EISA (2002).

¹³⁵ Art 108 (a) Constitution, 1990.

¹³⁶ See Art 108 (b) & Art 111 (d) Constitution, 1990.

¹³⁷ Art s 108 (d) & 111 (d) Constitution, 1990.

¹³⁸ Art 111 (d) Constitution, 1990.

both RCs and LAs were not outlined in the Constitution but left to determination by an Act of Parliament.¹³⁹

When the Regional Councils Act and the Local Authorities Act were eventually passed in 1992, the functions of the two institutions were elaborated. RCs were not conferred with meaningful functions capable of promoting autonomy. They were provided only with vague and general functions. Most of these either subordinated RCs to central government authorities or carried an inconsequential role. They include regional development planning ‘within the framework of the National Development Plan’; any functions ‘delegated’ to them by the President; management of ‘settlement areas outside LAs to prepare them for eventual takeover by LAs’; making ‘recommendations’ to the Minister with regards to the exercise of his or her power over LAs; ‘advising’ the President or Minister on matters brought to their attention; ‘assisting’ LAs in the exercise of their powers, duties and functions; and making estimates of expenditure ‘recommendations’ to the Minister of Finance.¹⁴⁰

These delegated, recommendatory, advisory and supportive functions suggest that, in practice, RCs would play a very limited governance role. In fact, short of being entirely redundant, they were designed to be a mere administrative extension of the central government. This position resonates with SWAPO's suggestion during the constitutional negotiations, and indicate more continuities than discontinuities in the ruling party's quest for a strong centre. Statements made by the ruling party's elites corroborate this analysis. For instance, addressing parliament in 1992, the then Minister of Regional and Local Government and Housing, Libertina Amathila openly expressed that ‘half of these councils will have nothing to do... maybe after five years, we will scrap the whole Regional Council story.’¹⁴¹

Contrary to the generalised functions conferred to RCs, LAs were provided with very specific, but less substantial, functions. These included water supply, refuse collection, public transport services, market stalls, fire services, dipping tanks, cemeteries and street maintenance.¹⁴² Whilst LAs were given specific functions, these did not include the more important functions

¹³⁹ Arts 110 & 111 (2) Constitution, 1990.

¹⁴⁰ S 28 (1) Regional Councils Act, 1992.

¹⁴¹ Hopwood G ‘Regional Councils and Decentralisation at the Crossroads’ (2005) *Namibia: Analysis and Views* 7.

¹⁴² S 30 (1) Local Authorities Act, 1992.

such as education, health, housing (only decentralised in 2000), electricity reticulation (decentralised in 2002) and road construction. Put together, the limited power of RCs and LAs in this regard suggests the prevalence of a strong central government.

The implementation of regional council decisions and general administration of the council's business was entrusted into the Chief Regional Officer (CRO) who is the Chief Executive Officer (CEO) of the RC.¹⁴³ The appointment of the CRO is centrally controlled as it has to be done by the RC subject to any regulations and directives of the Minister responsible for regional and local government, and only after consultation him or her.¹⁴⁴ Thus, the autonomy of RCs in terms of key personnel administration is equally limited. According to Graham Hopwood, an expert in Namibian media, governance and democracy, the limited autonomy is a product of SWAPO's fear that RCs were too close to a full federal system and the Bantustan policy of the SA government.¹⁴⁵ However, similar requirements on personnel administration apply to LAs. They can only appoint Town Clerks after consultation with the Minister responsible for regional and local government. The requirement to consult the Minister before senior employees are appointed gives central government control over both RC and LA personnel decisions. This parallel casts doubts on the validity of Hopwood's explanation that the SWAPO government's tight control is driven by the experience from the Bantustan policy and its links to federalism. The fact that tight central government control is visible in both RCs and LAs makes the whole process appear more like a self-serving struggle by the SWAPO government to preserve its power. Furthermore, the modest substantive powers conferred on the RCs and LAs exposes the weakness of constitutional provisions that do not specify the powers and functions of local government and shows how easily these can be undermined through national legislation.

5.4. Financial Autonomy

The financial powers of RCs and LAs were not specified in the Constitution. Rather, the Constitution simply provided that they be determined by national legislation, a provision that gave the SWAPO-controlled central government a free hand.¹⁴⁶ When the two local

¹⁴³ S 23 (1) (a) Regional Councils Act, 1992.

¹⁴⁴ S 23 (1) & S 23 (1) (a) Regional Councils Act, 1992.

¹⁴⁵ Hopwood (2005) 8

¹⁴⁶ Arts 108 (c) & 111 (2) Constitution, 1990.

government laws were enacted in 1992, the RCs and LAs were awarded similar powers with regards to their sources of revenue and expenditure decisions. Similar to the position on the old white municipalities, both were empowered to raise revenue from four main sources: central government transfers; internally levied rates, user charges, fees and fines; borrowings and donations.¹⁴⁷ However, in both cases, borrowings and donations would require Ministerial approval, yielding autonomy only in so far as they can raise revenue from their own internal sources.¹⁴⁸ In terms of expenditure decisions, both RCs and LAs do not require Ministerial approval for the use of internally-generated funds but must obtain Ministerial authorisation to spend funds received from central government.¹⁴⁹ Given the narrow scope of functions allocated to RCs and LAs, it follows that most of these cannot avoid dependence on central government transfers, consequently attracting central government control. A gap in the two pieces of legislation governing RCs and LAs is to be found in the criteria used to determine the amount of funds to be transferred to RCs and LAs, a situation that creates uncertainty and a crisis in planning. In keeping with the modest scope of their functions, financial autonomy is equally limited in both RCs and LAs.

From the foregoing, it can be concluded that based on the 1982 Constitutional Principles, the 1990 Constitution made a significant advance in decentralisation. However, due to the vagueness of the principles and the compromises of the constitution-making process, decentralisation was not fully entrenched in the 1990 Constitution. When it came to implementing the provisions of the constitution, SWAPO gave decentralisation a very restricted space, particularly with regard to the RCs whose constitutional entrenchment and autonomy it had opposed from the beginning. The wave of decentralisation that swept through Namibia on independence has striking similarities to that of Zimbabwe in 2013. In both countries, decentralisation was mainly driven by opposition parties in pursuit of non-conventional objectives. Their fight for decentralisation was not mainly driven by the need to promote development, deepen democracy and promote peace, as so often claimed in the literature. Their main focus was to limit the centralisation of power. Thus, while debates around decentralisation debates can be viewed through the attractive lens of promoting democracy,

¹⁴⁷ S 33 (1) Regional Councils Act, 1992; S 80 (1) Local Authorities Act, 1992.

¹⁴⁸ S 28 (1) (j) (ii) & S 28 (1) (m) Regional Councils Act, 1992; S 30 (1) (v) (i) & S 30 (1) (z) (i) Local Authorities Act, 1992.

¹⁴⁹ S 37 (2) Regional Councils Act, 1992; S 84 (2) Local Authorities Act, 1992.

etc., there is a need to at least acknowledge that decentralisation is increasingly seen as playing a critical role in promoting the existence of a limited central government.

6. The Shift to Gradualism in Decentralisation (1997-2009)

Most of the provisions in the 1992 local government laws were left in abeyance for years as central government continued to provide the services which RCs and LAs were supposed to have assumed. In 1997, the government adopted a decentralisation policy to map the process of transferring central government powers and functions to RCs and LAs. The policy provided for the gradual transfer of central government powers and functions in stages ranging from deconcentration to devolution, and short term to long term. However, the policy was not a decisive guide as it contained no specific timelines for implementation. A Decentralisation Enabling Act was passed in 2000 to effect the implementation of the Policy. The power to decide when and how which functions would be decentralised was placed under the discretion of the Minister responsible for regional and local government. These policy and legislative initiatives signify a drive towards more decentralisation. However, in practice, a strong resistance from central government ministries, and some SWAPO elites, made the new wave a false start, at once signifying divisions within the SWAPO government itself as well as the resilience of a strong centralist ethos.

6.1. Local Democracy

The constitutional negotiations that gave birth to a new wave of decentralisation in 1990 were premised on the assumption that opposition parties would be successful in RC and LA elections though SWAPO would continue to retain national control. Whilst these calculations contributed to SWAPO's reluctance to implement decentralisation in the early 1990s, this reluctance was gradually relaxed as the ruling party's increasing dominance in regional and local authority elections became clear. In 1998, RC and LA elections were conducted in line with the six-year interval required by law. SWAPO increased its dominance, whilst support for opposition parties declined. Out of the 102 RC constituencies, SWAPO won 82, the DTA 16, and the UDF

four.¹⁵⁰ SWAPO's dominance and the apparent lack of meaningful competition from opposition parties were further exposed by the fact that the ruling party was unopposed in 26 constituencies. All in all, SWAPO controlled 10 out of the 13 RCs whilst three went to the DTA and the UDF. A similar pattern of SWAPO dominance and decline of the opposition was also visible in the outcome of the 1998 local government election. Out of a total of 330 wards, SWAPO won 187 seats, the DTA 99, UDF 26 and the rest were shared amongst small political parties and residents' associations.¹⁵¹ A notable shift in the quality of local democracy in Namibia since independence has been the massive drop in voter turnout. Whilst in 1992, voter turnout stood at 81 per cent in the RC election and 82 per cent in the LA election, by 1998, turnout had shrunk to 40 per cent in RCs and 34 per cent in LAs.¹⁵² This decline has been attributed to several factors, including poor limited voter education; voter feeling that results are predictable; lacklustre campaigns by political parties; and a general sentiment that all key decisions are made 'in Windhoek' by the central government.¹⁵³ In summation, voter apathy is a clear indication that the process of decentralisation in Namibia has failed to produce functioning local government structures that the people can take seriously.

Closely related to the public disaffection with local democracy was the attempt by the Caprivi Region to secede from Namibia in 1998 - 1999. The former DTA leader, Mishake Muyongo, Governor of the Caprivi RC, John Mabuku and Mafwe Chief led the secessionist movement and were backed by a rebel army, the Caprivi Liberation Army (CLA).¹⁵⁴ In August 1999, the CLA attacked government buildings and took over the Katima Mulilo, the capital of Caprivi Region. The secession was violently crushed by the Namibian defence forces. Thousands of Caprivi residents fled into Botswana to seek refuge.¹⁵⁵ The main argument of the secessionist movement centred on the perceived neglect of the Region by the SWAPO government which

¹⁵⁰ Government of Namibia 'December 1998 Regional Councils Elections' available at https://gov.na/documents/10181/13120/December_1998_Regional_Councils_Elections.pdf/b0949987-5d30-4dc8-9c03-ebd7cc956b5f (accessed 29 July 2019).

¹⁵¹ Government of Namibia (2019).

¹⁵² IPPR (2015) 3.

¹⁵³ IPPR (2015) 3.

¹⁵⁴ Youngblood-Coleman D 'Namibia Country Review 2019' available at <http://www.countrywatch.com/Content/pdfs/reviews/B3Z38989.01c.pdf> (accessed 29 July 2019) 14.

¹⁵⁵ *Attorney General & Others vs Tyson Mujela & 708 Others 2019* Court of Appeal Civil Appeal No. CACGB-154-18 at para 5 & 34: In 2015, a Tripartite Commission was set up composed of representatives of the Government of Botswana, Government of Namibia and the United Nations High Commission for Refugees to facilitate a process of repatriating the refugees on the basis that reasons for seeking refuge no longer exist. After continued resistance from the refugees fearing political retribution in Namibia and a prolonged legal battle, in July 2019, the Botswana Court of Appeal ruled in favour of the repatriation exercise.

they accused of prioritising its stronghold Ovambo regions.¹⁵⁶ This conflict exposed the limitations of SWAPO's nation-building argument around the need to defend the unitary state in Namibia. Since the colonial period, SWAPO's famous slogan has been the quest for 'One Namibia, One Nation'. The Caprivi secession attempt suggests the reality of divisions against the rhetoric of unity.

Another notable development in 1998 was an attempt by the SWAPO government to amend the law and subject Regional Governors to direct appointment by the President, a proposal that Nujoma had unsuccessfully advanced during the 1990 CA constitutional negotiations. The proposal was put forward by the then Minister responsible for regional and local government, Nicky Iyambo who later withdrew it, citing lack of adequate time for debate.¹⁵⁷ Although it was later withdrawn, the proposal indicated the general lack of commitment to decentralisation to local democracy in particular by the SWAPO government.

The reason why parliament had limited time to discuss the amendment was because the party was at that time preoccupied with seeking to pass through a constitutional amendment to allow President Nujoma to seek a third term in power. The constitutional amendment even caused divisions within the ruling party. Ben Ulenga, a former Deputy Minister in President Nujoma's cabinet, and then Namibian High Commissioner to Britain, was expelled from SWAPO for dissenting from Nujoma's third-term bid. He formed a new political party in 1999, the Congress of Democrats (CoD). Although this increased competition in the country's multiparty democracy, the party could not meaningfully challenge SWAPO's dominance. It was a small political party that was not well-grounded in terms either of ideology or policy positions. Driven by bitterness and opportunism, its impact was marginal.

In 2004, the third round of RC and LA elections was held. SWAPO continued its rise whilst opposition parties further declined. SWAPO won 97 out of the 107 constituencies, the UDF retained its four, while the DTA slipped further down to a paltry two, and the CoD failed to

¹⁵⁶ The New Humanitarian 'The Caprivi Secessionist Crisis' *The New Humanitarian* 09 August 1999 available at <https://www.thenewhumanitarian.org/report/8468/namibia-caprivi-secessionist-crisis> (accessed 29 July 2019).

¹⁵⁷ Hopwood (2005) 08.

win a single constituency.¹⁵⁸ The number of RCs under SWAPO control increased to 12 out of 13, leaving only the UDF-controlled Kunene Region outside the ruling party's control. One of the factors driving the DTA's dismal performance in the 2004 election was the breakaway of one of its alliance members, NUDO. NUDO was formed in 1965 by the Herero Chiefs, but operated as a member of the DTA after the Turnhalle Conference. Its break from the DTA was attributed to its disappointment with the DTA's failure to effectively represent Herero interests.¹⁵⁹ Similar to SWANU and the UDF, this background shows that NUDO was not a state-wide political party that could match the clout and national presence of SWAPO. It was effectively an ethnic Herero party, visible only in the Herero-speaking regions of Omaheke and Otjozondjupa. In the 2004 RC elections, NUDO secured a paltry three constituencies.

Results of the 2004 LA election followed a similar trend of increasing SWAPO dominance. Out of the 290 wards, SWAPO won 173, CoD trailed with 34, the DTA 32, UDF 26, NUDO 9 and the rest were shared by some small parties and residents' associations.¹⁶⁰ In 2007, another small political party, the Rally for Democracy and Progress (RDP) was formed by former SWAPO Ministers Hidipo Hamutenya and Jesaya Nyamu. Similar to CoD, the RDP formation was a product of divisions within SWAPO. Hamutenya left SWAPO after his bitter struggle to succeed Nujoma ended with his defeat, followed by summary dismissal from cabinet. Thus, the RDP was once again another small party of so-called 'SWAPO dissidents' whose electoral impact was minimal.

6.2. Substantive Powers

The 1998 Decentralisation Policy was meant to provide direction on the practical transfer of powers and functions from central government ministries to RCs and LAs. When the policy document was officially adopted by the government, two outcomes with a common direction were visible. First, the relationship between RCs and LAs was clarified, affirming the limited role and place of RCs in government (SWAPO's original preference). Giving a brief overview

¹⁵⁸ Government of Namibia '2004 National (LA, RC, P, NA) Elections Result Summary' available at https://gov.na/documents/10181/13120/2004_presidential_and_national_assembly_election.pdf/5c40cfab-03b4-4563-998e-73450a6140fb (accessed 31 July 2019).

¹⁵⁹ Sarkin J *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908* (2009) 52.

¹⁶⁰ Government of Namibia (2019).

of the key elements of the policy, the then Minister of Regional, Local Government and Housing, Dr Nicky Iyambo explained:

‘The relationship between Regional Councils and Local Authorities will continue to be one of mutual autonomy within the requirements of the law. However, the key functional relationship will be that of collaboration and cooperation, with the regional council having coordinative and residual functional responsibilities of an agent in lieu of central government.’¹⁶¹

Secondly, the process of transferring central government powers and functions to the now impatient RCs and LAs was gradually but ambiguously stretched over an unclear period of time. This process allowed the government to delay the implementation of decentralisation as long as possible. The decentralisation policy classified the central government functions earmarked for decentralisation into three categories: immediate-term, medium-term and long-term.¹⁶² However, the policy did nothing to define the terms ‘immediate, medium-term and long-term.’ Thus, it is not clear how many years would constitute an immediate term, medium-term or long term. Are ten years in the immediate, medium-term or long-term? Although some functions could be transferred in the immediate term, they still had to follow a gradual process based on the type of decentralisation. The policy distinguished between deconcentration, delegation and devolution as forms of decentralisation, with deconcentration as the weakest and devolution the strongest. The policy position was that eventually central government functions must be ‘devolved’ to the RCs and LAs, but the process must start with ‘deconcentration’ where central government ministries organise themselves and operate at a regional and local level. This deconcentration is to be followed by a process of delegating some of the functions on the Ministries’ terms.¹⁶³ Because both deconcentration and delegation promote central control, this phasing implies that the SWAPO-led central government was trying to hold on to its powers and functions for an indefinitely prolonged period. This is further compounded by the fact that the Policy did not specify how long deconcentration and delegation would take before devolution is implemented.

¹⁶¹ Ministry of Regional, Local Government and Housing (1997) 10.

¹⁶² Ministry of Regional, Local Government and Housing (1997) 30-1.

¹⁶³ Ministry of Regional, Local Government and Housing (1997) 15.

The Decentralisation Enabling Act further clarified that the decision to make the actual transfer of functions listed in the Decentralisation Policy lay firmly under the control of the Minister responsible for local government.¹⁶⁴ The Minister further applies his or her discretion to delegate or devolve functions, as well as to withdraw or expand them.¹⁶⁵ The problem with this discretion has emerged on implementation which has been reported to be proceeding at a slow pace, further affirming the SWAPO government's determination to strengthen central government at the expense of local government autonomy.¹⁶⁶

6.3. Financial Autonomy

In 1998, the Ministry responsible for regional and local government revealed that the technical details and arrangements for implementing the fiscal provisions of the two 1992 Acts were not yet in place. However, 'in principle' an agreement had been reached that the Ministry of Finance work out 'modalities' on financial transfers where 'funds shall have to follow functions devolved or delegated to RCs and Las'.¹⁶⁷ Ten years later, a study conducted by Hoze Riruako revealed that said 'modalities' were still not in place, and, as a result of this, local government was experiencing a crisis in planning.¹⁶⁸ The very fact that a clear system of financing RCs and LAs has not been designed even though the central government was aware of a need for it, suggests that strengthening subnational entities does not rank highly on the SWAPO government's list of priorities.

The ministry responsible for regional and local government, which authored the policy document, cited five key factors as drivers for this decentralisation initiative. First, there was consensus in the country, acknowledged by the central government, that decentralisation was not taking place.¹⁶⁹ Second, government ministries were suffering from both inertia and lack of policy clarity on how to proceed with the decentralisation of their powers and functions.¹⁷⁰

¹⁶⁴ S 2 (1) Decentralisation Enabling Act, 2000.

¹⁶⁵ S 2-6 Decentralisation Enabling Act, 2000.

¹⁶⁶ Municipal Council of Windhoek *Municipal Council of Windhoek Submission to the Local Authorities Amendment Bill 12 of 2015, 22 January 2016* 3.

¹⁶⁷ Ministry of Regional, Local Government and Housing (1998) 20.

¹⁶⁸ Riruako H *The Paradox of Decentralisation in Namibia* (unpublished DPhil thesis, University of the Western Cape, 2007) 175-6.

¹⁶⁹ Ministry of Regional, Local Government and Housing (1997) 20.

¹⁷⁰ Ministry of Regional, Local Government and Housing (1997) 20.

Third, bottom-up pressure from RCs and LAs was becoming ‘louder and strident’.¹⁷¹ Fourth, some groups (unnamed) were equating lack of progress on decentralisation with the negation of democracy although the government was seriously committed to democracy.¹⁷² Fifth, pressure from public sector reforms made it necessary for RCs and LAs to take over some of the functions that the central government was shedding.¹⁷³

Besides the Ministry’s explanations, there were clearly other factors behind this episode of decentralisation. These include SWAPO’s dominance in the RC and LA elections, which relaxed the party’s fears of transferring power to an opposition-controlled local government. Apart from the fact that decentralisation offered an opportunity to grow the party, the wave for decentralisation was also driven by SWAPO leaders who genuinely believed in decentralisation, including a figure like the then Deputy Minister of Regional and Local Government and Housing, Gerhard Töttemeyer.¹⁷⁴ The systematic delay in implementing decentralisation indicates that the pursuit of decentralisation through the Policy and the Enabling Act discussed above was not a united SWAPO position. Thus, although the 1990 constitutional negotiations had forced SWAPO to climb down from its centralist position *de jure*, in practice, a strong central government remained a sustained commitment for some SWAPO party elites. As explained by Töttemeyer, there was ‘resistance among some SWAPO Party politicians, fearing that Regional Councils could become a competitor to central government and undermine the principle of a unitary state...’¹⁷⁵ The former Deputy Minister has further recalled his own experience in President Nujoma’s cabinet, stating that:

‘During my tenure as Deputy Minister of Regional and Local Government and Housing, I made it my task to strengthen the role of regional councils as decentralised entities. This was not welcomed by some SWAPO politicians who accused me of undermining the authority of the central government and pursuing a camouflaged Bantustan policy.’¹⁷⁶

¹⁷¹ Ministry of Regional, Local Government and Housing (1997) 20.

¹⁷² Ministry of Regional, Local Government and Housing (1997) 21.

¹⁷³ Ministry of Regional, Local Government and Housing (1997) 23.

¹⁷⁴ See Töttemeyer (2014) 15.

¹⁷⁵ Töttemeyer (2014) 15.

¹⁷⁶ Interview with former Namibia Deputy Minister of Regional, Local Government and Housing, Prof Gerhard Töttemeyer, Cape Town, 14 October 2016.

With the help of hindsight, the reluctance by the SWAPO government to decentralise power is neither a new development nor a result of unfolding political and social developments which threatened central government power. Rather, it is a manifestation of the long-held centralist ethos of SWAPO, articulated in the transition to an independent Namibia, but where it was resisted by forces such as the UN and by opposition political parties in the CA. This view is supported by Mudge's account that, during the constitutional negotiations, SWAPO stood firm on its preference for a strong central government.¹⁷⁷ Clearly, the 1990 constitutional dispensation did very little to weaken SWAPO's determined quest for a strong central government.

Töttemeyer's account brings to the fore an important perspective on the practical workings of decentralisation in Southern Africa. No matter how attractively packaged decentralisation is, and no matter how successful its advocates are in negotiating for its constitutional recognition, ruling elites treat it as a threat to their power. Therefore, they should always be expected to try to undermine it even after they have agreed to enshrine it in the supreme law of the land. Bill Lindeke, a democracy and governance analyst, recalled that President Nujoma's first term was characterised by a reconciliatory tone and a strong adherence to the 'script' of democratic values and a viable economic agenda.¹⁷⁸ However, as he further observes, in Nujoma's second term 'a decisive shift occurred in the governance of the country...reconciliation took a back seat, and a certain authoritarian tone emerged.'¹⁷⁹ A comparative analysis shows that South Africa's ANC and Zimbabwe's ZANU-PF have, on different occasions and in different territories, pursued more or less the same path that SWAPO is treading. As already explained, both the ANC and ZANU-PF were under pressure to provide constitutionally for decentralisation. But, once in power, the ANC made several attempts to recentralise several local government powers and functions, whilst ZANU-PF simply ignored the 2013 Constitutional provisions entirely.

Since SWAPO was not supportive of the idea of a decentralised system with strong RCs and LAs during the constitutional negotiations, it has in practice neglected these institutions. As a

¹⁷⁷ See Mudge (2010) 135-6

¹⁷⁸ Lindeke B 'Presidential Power and Performance in Namibia: The First Quarter Century' *Celebrating 25 Years of Democratic Elections 1989-2014* 19.

¹⁷⁹ Lindeke (2014) 19.

result, virtually all RCs suffer from a lack of both qualified personnel and adequate financial resources.¹⁸⁰ The same applies to most LAs, except for the major cities of Windhoek, Swakopmund and Walvis Bay. According to Töttemeyer, most LAs ‘are [either] in disarray or have, at least partially, become dysfunctional.’¹⁸¹ The lack of capacity within RCs and LAs has eroded their value in the eyes of society (especially RCs). As Riruako revealed, some members of the public have consequently developed the view that these institutions are ‘doing nothing.’¹⁸² Observably, almost 15 years later, public opinion on RCs is now resonating with former Minister Amathila’s 1992 argument that ‘half of these councils will have nothing to do.’ Therefore, the lack of progress with decentralisation in Namibia suggests political manoeuvring by the SWAPO government in pursuit of its long-held objective of retaining a strong central government whose power is barely limited by subnational institutions. The SWAPO government’s quest for a strong centre did not end with renegeing on the 1990s constitutional and policy reforms. A wave of reforms strengthening central government control of RCs and LAs came in the period between 2010 and 2015.

7. Recentralisation in Regional Councils (2010-2015)

The period between 2010 and 2015 symbolises the beginning of a new wave of recentralisation. It saw the introduction of two legislative amendments that strengthened central government control over RCs and also limited their autonomy. First came the 2010 amendment of the Regional Councils Act, the 2010 amendment of the Special Advisors and Regional Governors Appointment Act and the 2014 Third Amendment of the Constitution of Namibia. These three amendments were done specifically to provide for the appointment of Regional Governors (RGs) by the President as political heads of regions, moving away from the previous more democratic position in which RGs were elected by their respective RCs. Second came the 2015 amendment of the Regional Councils Act. This made the appointment of Chief Regional Officers (administrative heads of regions) conditional on the approval of the Minister responsible for regional and local government. This requirement for central government approval of regional appointments reduced the autonomy of RCs to administer their own personnel, and moved away from the vision of the 1992 Act.

¹⁸⁰ Swilling (1996) 26.

¹⁸¹ Töttemeyer G ‘Regional and Local Government Reform in Namibia’ *Expose Presented to ARC Congress, held in Otjiwarongo, 28-31 October 2008* (2008) 7.

¹⁸² Riruako (2007) 181.

7.1. Local Democracy

In 2010 the government introduced the position of a Regional Governor (RG) to be appointed by the President (as opposed to the one elected from amongst the regional councillors). This was achieved through the Special Advisors and Regional Governors Appointment Amendment Act, 2010. Provisions of the Act with regards to the appointment and functions of the RGs implied that they would act as agents of the central government in general, and the President in particular. The Act provides that ‘The President must in respect of every region appoint a governor who shall hold office at the pleasure of the President.’¹⁸³ It further provides for functions of the RG to include acting as the representative of central government in the region, keeping himself or herself informed of all matters relating to the region concerned, and bringing these to the attention of the President or relevant Minister and so generally acting as a link between central government and the regional council or any local or traditional authority in the region concerned.¹⁸⁴

The introduction of centrally-appointed RGs discussed above naturally came into conflict with the Regional Councils Act which provided for regional chairpersons as Governors of the region. Consequently, the Regional Councils Act was amended to provide for the separation of the office of Chairperson of Regional Council and that of the RG.¹⁸⁵ Whilst the RG no longer chairs council business, the amendment provides that he or she must be kept informed of every meeting of the RC of the region and that he or she has a right to attend every meeting of the RC and its management committee, and to take part in their deliberations.¹⁸⁶ In 2014, the Constitution was amended to provide for the position of RG.¹⁸⁷ The Constitutional amendment extolled the powers of RGs, confirming them as the political heads of regions with the power to request RCs to ‘convene urgent special sessions and address any matter.’¹⁸⁸

The introduction of RGs was justified by SWAPO leaders through their common argument for national unity. As clearly spelt out by then-Vice President and current President Hage Geingob,

¹⁸³ S 2 (1) Special Advisors and Regional Governors Appointment Amendment Act, 2010.

¹⁸⁴ S 4 Special Advisors and Regional Governors Appointment Amendment Act, 2010.

¹⁸⁵ The preamble of the Second Regional Councils Amendment Act, 2010.

¹⁸⁶ Ss 2 & 5 Second Regional Councils Amendment Act, 2010.

¹⁸⁷ Art 34 Namibian Constitution Third Amendment Act, 2014.

¹⁸⁸ Art 34 Namibian Constitution Third Amendment Act, 2014.

‘The motion in front of this House, is for two reasons: One, to strengthen the unitary nature of the state, and, two, to remove the possibility of any antagonistic, divisive or tribal tendencies creating unrest.’¹⁸⁹ That said, it is difficult to see the weight of Geingob’s argument aside from it being a convenient excuse for entrenching central control. This is mainly because by the time the Bill was tabled before Parliament, more than 10 years had already lapsed since the Caprivi uprising had been violently crushed. Also, by that time, SWAPO had control of 13 out of 15 RCs including the Caprivi Region. Then Minister of Regional and Local Government and Housing, Jerry Ekandjo weighed in with the argument that ‘The appointment of Governors enables such Governors to act as representatives of central Government in the regions concerned and serve as a link between central Government, regional council and local and traditional authority.’¹⁹⁰ Similarly, then Prime Minister Nahas Angula argued that the reform was necessary to improve the interaction between the Head of State and the people, providing a ‘direct line’ to the people in regions and so enable them to bring their problems to the attention of the President.¹⁹¹ Resonating sentiments were echoed by the Presidential Affairs Minister, Albert Kawana who, whilst motivating for the 2014 Constitutional amendment, argued that ‘Namibia is a unitary state. Regions are administrative, not executive in nature. Hence, all that is being done is that the President is appointing his or her representative in the regions.’¹⁹²

The problem with these unity-centred justifications is that there was no need for them at that time, as there was hardly any threat that opposition parties could frustrate the implementation of SWAPO’s unitary policies. For instance, in the 2010 RC elections, SWAPO retained control of 12 out of the 13 RCs. With only the UDF controlling the Kunene RC, most opposition parties performed so dismally that, across the whole country, the RDP won only one constituency, the DTA two and NUDO three. In 2015, opposition parties became almost non-existent as SWAPO won control of all RCs in the country including Kunene.

There is, therefore, no doubt that these legislative amendments were driven by SWAPO elites in their long-held bid to strengthen the central government and allow regions only an

¹⁸⁹ Shejavali N ‘Regional Governors: The Good, The Bad and the Ugly- Do the Benefits of Appointment by the President Outweigh the Loss of Democratic Representation’ *Election Watch Briefing Paper No. 2* (2015) 7.

¹⁹⁰ Shejavali (2015) 7.

¹⁹¹ Shejavali (2015) 8.

¹⁹² Haufiku M ‘Presidential appointment of governors questioned’ *New Era* 11 August 2014 available at <https://www.newera.com.na/2014/08/11/presidential-appointment-of-governors-questioned/> (accessed 11 January 2018).

administrative nature. The SWAPO government's drift towards recentralisation in this regard was equally observed by Töttemeyer, who clarified that

Accepting the policy of decentralisation but not applying it in its full consequence when appointing the Governor causes doubts whether the government is fully committed to decentralisation. The appointment of a Governor to a region is not an act of decentralisation, but of deconcentration.¹⁹³

Academics similarly interpreted the reforms as a manoeuvring act to recentralise power. Professors Joseph Diescho and Bill Lindeke argued that there was no difference between the RGs and the Bantustan Commissioners. Thus, in spite of its decentralisation rhetoric, the SWAPO government was in practice devoted to reproducing the colonial state albeit in 'new clothes.'¹⁹⁴

Although the amendments signal a shift from the negotiated position in 1990, they no doubt indicate consistency on the part of SWAPO leadership. During the 1990 constitutional negotiations, SWAPO President Sam Nujoma openly criticised the proposed composition of the RCs that sought to limit upward accountability. He argued that 'there is a need for a governor to be appointed from Windhoek to the region or we can have a Regional Commissioner who will interpret the laws as they are passed here in parliament to the regions.'¹⁹⁵ The SWAPO leader's concern suggests that the party was not in agreement with the idea that RCs' should have autonomy from central direction and control. Although Nujoma's proposal was rejected by the opposition parties, SWAPO never wavered from this position regardless of its actual growing dominance in the RC and LA elections. As discussed earlier, Nujoma's 1990 proposal was brought back to the negotiating table in 1998 by the then Minister of Regional and Local Government and Housing, Nickey Iyambo but was withdrawn from parliament to pave the way for debates on Nujoma's third term. In 2010, the long-held proposal was finally executed, undoing the progress with decentralisation envisaged in 1990.

7.2. Substantive Powers

In 2015, another proposal was made to amend the Regional Councils Act specifically with regard to the position of the administrative head of the region. The administrative head of the

¹⁹³ Shejvali (2015) 11.

¹⁹⁴ Shejvali (2015) 8.

¹⁹⁵ Hopwood (2005) 6.

region is the Chief Regional Officer (CRO), the C.E.O. of the region. The 1992 Regional Councils Act provided for the appointment of CROs by the RC ‘after consultation’ with the Minister of Regional and Local Government and Housing. The proposed version now reads that the RCs appoint CROs ‘with the prior written approval’ of the Minister, a change that allots central government veto power over council appointments.¹⁹⁶ Put together, the amendments to the Constitution and legislation discussed above serve to strengthen central government control over RCs and work to erode local government autonomy, a departure from the 1990s constitutional and policy reforms. However, the recentralisation reforms did not end with RCs but proceeded to LAs in 2015.

8. Attempts at Recentralisation in Local Authorities – The fight back (2015 -2018)

Continuing the wave of recentralisation that commenced in 2010, the government initiated a process to amend the Local Authorities Act in 2015. A Bill was published with a cocktail of provisions that sought to reform local government with little decentralisation and several recentralisation effects. In terms of decentralisation, the Bill contained a provision that sought to confer some inconsequential functions to LAs. This provision empowered LAs to regulate and control the sinking of boreholes in their jurisdictions.¹⁹⁷ In addition, it carried some provisions that sought to improve the efficient performance of councils by enabling sanctions to be taken against councillors who violate their code of conduct. Towards recentralisation, the Bill had several provisions that sought to subject the exercise of many local government powers and functions to central government approval. The provisions, clearly seeking to entrench central control, include the appointment of Town Clerks, the Ministerial approval of budget estimates, the acquisition and disposal of immovable property, the zoning of land and the central regulation of acquisition, among others. These reforms were being introduced at a time when SWAPO’s dominance in LA elections was at its peak, clearly indicating that the quest for central control had nothing to do with opposition parties, but everything to do with a self-serving power grab. However, contrary to the successful RC reforms of the previous period, the proposed LA reforms of 2015 were met with surprising resistance by RCs and LAs. Being the first of its kind, this fight back signified the opening of a new chapter for the defenders of decentralisation, and their checks on the SWAPO elites’ continued quest for central control.

¹⁹⁶ S 4 Regional Councils Amendment Bill, 2015.

¹⁹⁷ S 12 Local Authorities Amendment Bill, 2015.

8.1. Local Democracy

Two provisions of the 2015 Bill sought to improve the quality of local democracy by empowering the Minister to forfeit salaries, allowances and benefits of any council members who are serving a suspension for violating the code of conduct and issue directives to town and village councils failing to perform their functions.¹⁹⁸ These provisions were not only meant to force members of the council to be responsible representatives of the people but also to improve council performance by authorising the Minister to intervene for a good cause – rescuing the LAs from collapsing. As discussed earlier, this newly-found interest in effective LA performance came at a time when most LAs were either struggling or dysfunctional. Coincidentally, by the time the proposal was initiated, SWAPO's dominance in LA elections was so staggering that Namibia nearly resembled a *de facto* one-party state. In the 2015 LA elections, SWAPO won 280 out of the 377 seats, the DTA 41, UDF 22, RDP 11, NUDO 11, CoD 1 and SWANU did not win a single seat.¹⁹⁹ The number of councils controlled by SWAPO also increased to 55 out of 57.²⁰⁰ This clearly shows that, contrary to other countries such as Botswana, Malawi, South Africa and Zimbabwe, local democracy is not a threat to the ruling party in Namibia.

8.2. Substantive Powers

In terms of substantive powers of LAs, the 2015 Bill sought to limit the autonomy of LAs in the appointment and discharge of Town Clerks. This was expressed in a provision that subjected the hiring and firing of the LAs' head of administration to the Minister's approval.²⁰¹ This provision meant that LAs can only be administered by a Town Clerk who is preferred by the central government, and not necessarily the elected local council. The effect of this provision goes to the core of local democracy as it shifts the accountability of Town Clerks upwards to the Minister rather than downwards to the people they serve through the elected councillors. In comparison, this provision would align the personnel administration powers of

¹⁹⁸ Ss 4 & 30 Local Authorities Amendment Bill, 2015.

¹⁹⁹ Institute for Public Policy Research (IPPR) 'Regional & Local Elections 2015 Results' *Election Watch Issue No. 8 2015* 7.

²⁰⁰ IPPR (2015) 7-12.

²⁰¹ Ss 8 & 10 Local Authorities Amendment Bill, 2015.

local government in Namibia to those existing in Malawi and Zimbabwe where the central government is the one to make the final decision.

8.3. Financial Autonomy

Since the Bill sought to subject most revenue and expenditure decisions to central government control, the financial autonomy of the LAs was affected the most. Six important changes were proposed in this regard. First, the acquisition or hire of immovable property by LAs must be approved by the Minister.²⁰² Secondly, the selling, letting or disposal of immovable property must be approved by the Minister.²⁰³ Third, the declaration of a general valuation of the rateable property must be approved by the Minister.²⁰⁴ Fourth, the purchase of immovable property shall be done in zones reserved for people falling in specific categories of income that are prescribed by the Minister.²⁰⁵ Fifth, estimates of income and expenditure and supplementary statements of income and expenditure to be adopted by the council must be approved by the Minister.²⁰⁶ Sixth, the payment of remuneration and benefits and allowances to council members shall be done to a maximum amount determined by the Minister.²⁰⁷ With these changes, LAs risked being reduced to administrative extensions of the central government as they would cease to make any significant decisions without seeking the Minister's nod.

When it was tabled before parliament, the Bill was passed by the National Assembly (NA), but faced strong resistance in the National Council (NC). Most members of the NC, who, under the Constitutional provisions discussed earlier, are representative of RCs, criticised the Bill for undermining decentralisation. In particular, the Deputy Minister of Veterans Affairs, Hilma Nikanor, argued that 'the power local authorities are entitled to cannot be taken to the central government, as this will render them toothless and in the end result in them being ineffective in their service delivery.'²⁰⁸ Similar objections were raised by LAs when they were invited by the NC to make their contributions. The Municipal Council of Windhoek opposed most of the

²⁰² S 9 Local Authorities Amendment Bill, 2015.

²⁰³ S 19 Local Authorities Amendment Bill, 2015.

²⁰⁴ S 22 Local Authorities Amendment Bill, 2015.

²⁰⁵ S 11 Local Authorities Amendment Bill, 2015.

²⁰⁶ S 27 Local Authorities Amendment Bill, 2015.

²⁰⁷ S 6 Local Authorities Amendment Bill, 2015.

²⁰⁸ The Namibian (2016).

Bill's provisions on the basis that they sought to take away power from LAs and 'garnish' the Minister with more control over elected councils.²⁰⁹

In January 2016, the NC referred the Bill back to the NA for reconsideration. The second house's justification was that the 'National Council members found the amendments of the Bill to centralise powers and create a system of bureaucracy, while the Namibian Government has a goal to decentralise powers and accelerate development.'²¹⁰ Since then, the Bill has been shelved. Considering that all three institutions (National Assembly, National Council and the Municipal Council of Windhoek) are controlled by SWAPO, the discord on the Bill suggests that the penchant to centralise power is not necessarily a SWAPO party position, but an impulse from party leadership in central government.

A strong role was played by both the parliament and local authorities in standing up to these executive proposals. Interviews conducted with senior LA and non-governmental organisation officials provide more detail. The LA official revealed that a substantial demand for more autonomy was picking up in LAs, with the Association of Local Authorities in Namibia (ALAN) playing an active role in engaging central government.²¹¹ Another explanatory factor is the role played by the media and civil society in lobbying members of parliament to limit the powers of the executive. Explaining why the NC rejected the 2013 Local Authorities Amendment Bill when it had supported previous Bills that strengthened central control of RCs, a civil society official indicated that the NC had bowed to pressure from the media and civil society organisations that were accusing it of being a puppet and rubber-stamper of NA decisions.²¹² The official added that another explanatory factor arose from personalities. For instance, the then Chairperson of the NC was a very outspoken woman with a reputation for speaking truth to power.²¹³ It is therefore important to note that in dominant party democracies

²⁰⁹ Municipal Council of Windhoek (2016) 3-7.

²¹⁰ The Namibian 'National Council rejects Local Authority Amendment Bill' *The Namibian* 27 January 2016 available at <https://www.namibian.com.na/index.php?page=archive-read&id=146656> (accessed 30 November 2017).

²¹¹ Interview with a Council Mayor, Namibia, 07 October 2016: At the time of the interview, ALAN was working on a comprehensive document to be sent to the central government with concerns of local authorities in Namibia.

²¹² Interview with an official from the Institute for Public Policy Research (IPPR), Windhoek, 04 October 2016.

²¹³ Interview with an official from the Institute for Public Policy Research (IPPR), Windhoek, 04 October 2016.

such as Namibia, limits to central government's quest for centralisation of power also depends on the number of ruling party members able to break the whipping system.

9. Conclusion

Since the UN intervention in Namibia's transition to independence in the 1980s, the country has undergone five phases of local government reform, all embodying competing waves of decentralisation and recentralisation. The phases start with a wave of decentralisation that swept across the country in the 1980s when the UN commenced the process of transition to independence. This was followed by another wave of decentralisation under the independence constitution (between 1990 and 1996). It is concluded that this wave was driven mainly by the horse-trading and compromises that accompanied the negotiations towards an independence constitution for Namibia. Observably, two main factors were key to these negotiations: the WCG-designed and UN-adopted Principles Concerning the Constituent Assembly, and the Constitution for an Independent Namibia and opposition parties' political calculations. It is discernible that within the context of the principle supporting the adoption of elected LAs and/or RCs, both SWAPO and opposition parties lobbied for the allocation of more power to the level of government in which they believed they stood a chance of ruling. Thus, as the biggest political party and former liberation movement, SWAPO preferred a system of government where regional and local authorities had limited autonomy. It especially disliked the provision for autonomous RCs because of their apparent proximity to the apartheid model of racist Bantustans. The other small parties with a regional and/or ethnic appeal preferred strong regional and local authorities. In the process, compromises were made by all parties, leading to the adoption of a strong system of regional and local authorities, grounded in the constitution. SWAPO reluctantly agreed to the provisions, though it never fully embraced them.

Although the system of government was decentralised in terms of the law, its realisation in terms of practice soon became problematic as the SWAPO government started backtracking on the negotiated settlement. In its 1992 local government laws, it subjected the constitutional provisions on decentralisation to a very restricted interpretation. The more time moved on from independence, the more the wave of decentralisation waned. This was largely due to the non-implementation of decentralisation measures, against the spirit of the 1990 Constitution, in a

pattern similar to developments in Malawi following the adoption of the 1994 Constitution, and in Zimbabwe, after the adoption of the 2013 Constitutions. This inaction by the SWAPO government showed that it had not moved away from the centralist position it asserted in the 1990 negotiations and continued in its determination to deprive opposition parties of any meaningful powers to govern at the local government level.

A renewed wave of decentralisation commenced with the adoption of a Decentralisation Policy in 1998 and a Decentralisation Enabling Act in 2000. These were ostensibly intended to facilitate the gradual transfer of central government powers and functions to RCs and LAs. The driving factors behind this new wave were different from those prevailing in the early 1990s. This was mainly driven by bottom-up demand from RCs and LAs, but also by some SWAPO elites who genuinely supported decentralisation. Again, SWAPO reluctantly adopted the reforms, partly because local government elections indicated the ruling party's increasing dominance and the wilting of competition from the opposition parties. However, the new wave of decentralisation never really took off as implementation of the new reforms was resisted by government ministries. The resistance reflected the existence of divisions within SWAPO leadership, with only a few pushing for decentralisation, while a majority rejected it. In the end, the centralist interests of some SWAPO leaders continued to prevail.

The period between 2010 and 2015 saw the country veering towards recentralisation with the placing of RCs under tighter central government control. Both local democracy and the personnel administration powers of the RCs were weakened through legislative and Constitutional amendments which empowered the President to appoint RGs whilst conferring the Minister with powers to approve appointment of CROs. Considering that this shift towards increased central control occurred at a time when SWAPO had established a hegemony over RC and LA elections, it is apparent that the wave was driven by the long-held centralist ethos of SWAPO. The ease with which SWAPO managed to amend the Constitution to revert back to its position on RGs during the 1990 negotiations shows the limitations of constitutional protection in a democracy governed by a single dominant party. The period between 2015 and 2018 saw a continuation of the wave of recentralisation, this time extending to LAs. However, contrary to the previous reforms of RCs, the wave came to a halt with regard to LAs as significant resistance from RCs and LAs emerged in the NC, and this was supported by a resurgence of lobbying by civil society groups. Similar to attempts at recentralising local

government powers and functions by the ANC in SA, the Namibian case study also shows the resilience of centralist ethos by ruling parties which emerge from liberation movements.

As seen in other case studies such as those of Malawi, SA and Zimbabwe, recentralisation could be spurred by several factors including an increase in the competition for power by the opposition; the regional polarisation of political support; and the waning fortunes of a ruling party. In the case of Namibia, all these factors were 'held constant'. SWAPO's ever-rising electoral support is unparalleled while opposition competition is almost non-existent, making it the only political party of choice at both the national and sub-national levels and across both regional and ethnic fault lines. Namibia's opposition political parties can be placed into three categories, all which diminish their chances of being treated as a serious alternative to the ruling party. One is that of 'colonial collaborators': those parties which had participated in the abhorred SA-sponsored transitional government, such as the DTA; the second one is that of the small regional political parties which lack both a nation-wide agenda and a meaningful ideology, and are driven only by the quest to promote the narrow interests of their ethnic group. These include the Damara-dominated UDF, the Herero-anchored SWANU and NUDO. The third type of opposition party is made up of the 'SWAPO dissidents' - disgruntled or expelled SWAPO members with neither a clear ideological position nor a national appeal. These parties include both the CoD and the RDP. This case therefore neatly captures the main factor at work in producing waves of recentralisation. It is simply a power grab, a self-serving quest for total control and absolute domination by ruling elites. The other factors such as opposition competition only serve to amplify, fast-track or make the process more visible.

As with the South African case study, the Namibian case also suggests that there is a rising wave of decentralisation. The failure of recentralisation attempts in LAs in 2015 indicates that there are limits to the process of recentralisation. However, comparative evidence suggests that this only happens when certain powerful fundamentals are in place. These include a ruling party membership with the courage and space to break ranks with executive proposals that seek to centralise power; a strong parliament capable of sustaining the separation of powers between the executive and the legislature; a significant demand for, and defence of, local government powers by subnational authorities; and an active civil society that is able to lobby for decentralisation.

CHAPTER SEVEN

Botswana: A Steady Decline in Decentralisation

1. Introduction

As is the case with the other countries already discussed, Botswana's system of local government sees a pattern of alternating waves of decentralisation and recentralisation which follow one another over decades. From a background of largely traditional local authorities and centrally-controlled district administration, a wave of decentralisation commenced during the period of transition to independence in the 1960s. An elected system of local government was introduced in both rural and urban areas, deepening multiparty democracy. More substantive powers and financial autonomy were extended to the newly established District Councils (DCs) and Town Councils (TCs) after independence in 1966. However, as was the case with all countries that attained independence from Britain in the 1960s, the independence constitution did not provide specifically for local government, leaving room for future retrenchment.

Barely five years into independence, the unravelling followed as recentralisation commenced and steadily progressed. The DCs were subjected to central government supervision that severely undermined their autonomy. The personnel administration and revenue-generating powers of local government were similarly withdrawn. In the 2000 millennium, the process of recentralisation was accelerated as decentralisation continued to decline. Central government took over some local government functions such as primary education, primary health and water supply. Furthermore, central government's control over personnel administration was strengthened as local government personnel were declared civil servants. Besides, financial autonomy of local government deteriorated further as sources of revenue such as water reticulation and tourism royalties were withdrawn by the central government. The deterioration of local government autonomy has been so gross that some scholars have described Botswana's decentralisation process as a reflection of *de facto* delegation or deconcentration.¹

Between these waves of decentralisation and recentralisation, some attempts were made to promote decentralisation through the recommendations of two Presidential Local Government

¹ See Poteete Mothusi & Molaodi (2014) 27; Sharma (2010) 137-8.

Service Commissions of 1978 and 2001. However, both faltered on implementation as almost all the recommendations that sought to strengthen DCs and TCs were rejected.² In and through this process, strong central government control has been sustained. This outcome shows that the pattern of waves of decentralisation and recentralisation observable in Botswana does not completely align with the other case studies. A unique feature of Botswana is that whilst other countries such as Malawi and Zimbabwe have demonstrated several ruptures, in Botswana, little has changed over time. Since the 1970s, the country's local government system has been characterised by a long and enduring process of recentralisation all the way through to 2018.

It is argued that the wave of decentralisation that swept through the country at independence was being driven by the wave of democratisation accompanying the British government's handover of power to a new majority government. On the other hand, the recentralisation of local government powers has been spurred by the high level of competition for power at the local government level between the ruling party and opposition political parties. This level of political competition stems from three sources: radical urban voters; minority non-Tswana ethnic groups in the North East and North West Districts; and from a number of disaffected Tswana chiefs in the southern districts. It is further argued that the faltering implementation of decentralisation reforms and the putting up with recentralisation is explained by the lack of crises, since crises can put the ruling party under pressure to compromise on its drive to consolidate its power.

Since independence from Britain in 1966, Botswana has been governed by one ruling party, the Botswana Democratic Party (BDP) and therefore has never experienced a change of government. The government has always practiced multiparty democracy and has not succumbed to the pursuit of one-party states and authoritarianism as has been the case with most African states during the Cold War period.³ Economically, Botswana's background is aptly one of 'rags to riches.' During the colonial period, the country was similar to Malawi, a financial liability to the British government because of its lack of identified mineral wealth. It

² See Picard L A *The Politics of Development in Botswana: A Model for Success?* (1987) 181; Tordoff W 'Local Administration in Botswana' (1988) 8 *Public Administration and Development* 183; Poteete A Mothusi B & Molaodi D 'Comparative Assessment of Decentralisation in Africa: Botswana In-Country Assessment Report' *Report Prepared for the United States Agency for International Development, USAID September 2010* 7.

³ Lewin M 'Botswana's Success: Good Governance, Good Policies, and Good Luck' in Chuhan-Pole P & Angwafo M (eds) *Yes Africa Can: Success Stories From a Dynamic Continent* (2011) 84.

was often referred to as a ‘barren desert’ where the only economic drivers were livestock production and migrant labour.⁴ When it was granted independence in 1966, like Malawi, Botswana was one of the poorest countries in the world. It had a per capita income of \$70 a year, with only 12 kilometres of paved roads and a current budget 60 per cent funded by donors.⁵ However, the country shifted towards rapid economic growth when diamonds were discovered in the 1970s. By 2007, Botswana’s per capita income had risen to about \$6,100, making it an upper-middle-income country.⁶ Poverty levels sharply declined, with the national poverty and extreme poverty rates shrinking to 19.4 per cent and 14 per cent respectively by 2010.⁷ Observably, since the discovery of minerals, Botswana has avoided plunging into an economic crisis such as the one experienced by Malawi and Zimbabwe in the 1990s and 2000s. This has been attributed to the exceptional exercise of good governance and the implementation of sound economic policies by the country’s highly disciplined government.⁸ Botswana is an exception to the ruinous economic policies and corrupt practices engaged by governments of most African countries that attained independence in the 1960s.

Previously known as Bechuanaland, Botswana is a large country with a surface area of 581 730 square kilometres and a comparatively small population of 2 250 000 people (as at 2018).⁹ This territorial and population size means that, unlike Malawi, the country is sparsely populated. However, similar to Namibia, the greater part of the country (more than 70 per cent) is desert, the Kalahari Desert. This means that most inhabitants are concentrated in the eastern part of the territory. Close to 80 per cent of the population belongs to a single ethnic group, the Tswanas.¹⁰ The remainder is made up of the minority populations: the Basarwa¹¹, Bakalanga, Bayei, Ovaherero and the white populations. The country shares borders with South Africa, Namibia and Zimbabwe, making it susceptible to the influence of events taking place in these neighbouring countries.

⁴ Somolekae G ‘Political Parties in Botswana’ (2005) *EISA Research Report Number 27* 4.

⁵ Lewin (2011) 81.

⁶ Lewin (2011) 81.

⁷ World Bank Group ‘Botswana: Systematic Country Diagnostic’ (2015) available at <https://openknowledge.worldbank.org/handle/10986/23103> (accessed 09 August 2019) vi.

⁸ Lewin (2011) 82-5.

⁹ The World Bank ‘Country Profile: Botswana’ available at https://databank.worldbank.org/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=BWA (accessed 09 August 2019).

¹⁰ Bauer G & Taylor S D *Politics in Southern Africa: Transition and Transformation* (2011) 92.

¹¹ Local name for the Khoisan.

2. Decentralisation through Traditional Authorities under British Rule (1885-1960)

Similar to the four countries discussed above, Botswana's process of decentralisation is embedded in the country's history. Before colonial rule, the territory was made up of tribal states in which traditional authorities governed according to custom (*merafe*).¹² The whole territory was made up of eight self-governing Tswana *merafe*: BaNgwato, BaNgwaketse, BaKwena, BaKgatla, BaRolong, BaTlokwa, BaLete and BaTawana.¹³ These polities varied in size and power. The largest *merafe* was that of the centrally-located BaNgwato which, by virtue of its sheer size, enjoyed some political dominance in the territory.¹⁴ Other influential polities were the three chiefdoms in the southern part of the territory - the BaNgwaketse, BaKwena and BaKgatla.¹⁵ The dominance of these Tswana chiefdoms was so obvious that when discussions around British colonialism began, the territory was represented by Khama III of the BaNgwato, Gaseitsiwe I of the BaNgwaketse and Sechele I of the BaKwena.¹⁶ Some smaller tribal groupings, especially the non-Tswana groups, had little autonomy. They were subordinated to the big Tswana states, whose chiefs had some suzerainty over them. For instance, the Bakalanga who occupy present-day North East District and Francistown were subordinated to the BaNgwato. The Bayei and Ovaherero, occupying present-day North West District (Ngamiland) were subordinated to the BaTawana. For the rest of the pre-colonial period, the Balete, occupying present-day Lobatse, were subordinated to the BaNgwaketse. The BaTlokwa, occupying present-day Gaborone were subordinated to the BaKwena. This practice of subordination was so hated by the weak tribal communities that once independence was conferred to Botswana under a system of multiparty democracy, almost all their areas became sources of opposition to the Botswana-controlled ruling party. This background is very important as it played a significant role in shaping both the independence transitional political developments and the post-colonial politics of local government and multiparty democracy in Botswana.

¹² Poteete R Mothusi B & Molaodi D 'Botswana: Political and Economic Obstacles to Decentralisation' in Dickovick J T & Wunsch J S (eds) *Decentralisation in Africa: The Paradox of State Strength* (2014) 24

¹³ Bauer & Taylor (2011) 94.

¹⁴ Barei G 'The Decline in the Role of Chieftainship in Elections' (2000) 14 (1) *Pula: Botswana Journal of African Studies* 68.

¹⁵ Bauer & Taylor (2011) 94.

¹⁶ Ramsay (1998) 62.

In 1885, the territory was declared a British protectorate and named Bechuanaland.¹⁷ The protectorate was divided into seven self-administering tribal reserves; five fragmented peripheral freehold white farmlands, with the remaining pieces of land classified as crown land.¹⁸ Bechuanaland was governed through the Order-in-Council of 1891 which authorised the British High Commissioner based in the Cape (Cape Town) to issue proclamations and appoint administrative and judicial staff for the administration of the protectorate.¹⁹ The High Commissioner's proclamations were not to undermine the customs of chiefs and their native laws, unless the latter was incompatible with the Queen's power, the need to preserve order or British interests.²⁰ Therefore, the legal status of the Bechuanaland Protectorate was designed to allow more autonomy to the traditional system of tribal governance. Accordingly, this became the only system of local government in which governing power was decentralised. In June 1891, the High Commissioner issued a proclamation which appointed a Resident Commissioner (RC) supported by District Commissioners (DCRs). Their main task was to maintain good order and peace in the territory.²¹ The Resident Commissioner heading the protectorate government operated from the protectorate headquarters in Mafikeng, South Africa, while less than 100 white officials administered the territory from within.²² A Native Advisory Council (NAC) and a European Advisory Council (EAC) were created in 1920 and 1921 respectively. Both of these had very limited powers outside their advisory obligations. The role of the NAC, for instance, was 'to enable Chiefs and councillors to consult together and to advise government on native affairs generally.'²³ It was a powerless body whose members met only once in a year and could not pass or abolish any laws. The system of local government adopted depended heavily on the nature of the community. As alluded to earlier, there were tribal reserves, non-tribal territories and later urban areas.

¹⁷ Jeppe W J O 'Local Government in Botswana' in Vosloo W B Kotze D A & Jeppe W J O *Local Government in Southern Africa* (1974) 134.

¹⁸ See Parsons N 'A Brief History of Botswana' *Botswana History Pages by Neil Parsons* (1999) available at <http://www.thuto.org/ubh/bw/bhp1.htm> (accessed 16 October 2017); Jeppe (1974) 140.

¹⁹ Jeppe (1974) 134.

²⁰ Jeppe (1974) 134.

²¹ Jeppe (1974) 134.

²² Morton F 'Introduction: Seeing Botswana as a Whole' in Morton F & Ramsay J (eds) *The Birth of Botswana: A history of the Bechuanaland Protectorate from 1910 to 1966* (1987) 2.

²³ Gabasiane O & Molokorame A 'The Legislative Council' in Morton F & Ramsay J (eds) *The Birth of Botswana: A history of the Bechuanaland Protectorate from 1910 to 1966* (1987) 162.

2.1. Tribal Reserves

Most of the land in Bechuanaland was confined to the Tswana tribes who were already occupying it before the protectorate was declared. The protectorate government did not create new boundaries but simply declared each Tswana *morafe* a native reserve. Their physical location was not disrupted by conquest as was the case in Namibia, South Africa and Zimbabwe. The governance system in each *morafe* was decentralised in accordance with tribal structures and tradition. Power was centred in the *kgosi* (chief) who commanded legitimacy by custom and through links with ancestors.²⁴ The *kgosi* ruled the polity with the aid of councillors (advisors working together like a mini-cabinet), the *kgotla* (traditional assembly of male adults) and headmen (heads of wards or groups of remote villages).²⁵

In terms of local democracy, the system of tribal governance had both strengths and weakness. On one hand, it promoted democracy in the sense that the tribal community, not the protectorate government, would select their *kgosi* according to custom. However, once in power, there were very few ways available to hold them to account outside resistance at the *kgotla*. At the same time, some *diKgosi* (chiefs) became more accountable to the protectorate government that tried to control them through DCrs resident in the capital of each reserve. Another weakness of the system was its exclusive politics. Almost every reserve had subordinate groups that were regarded as inferior or foreign to the *kgosi* and his or her dominant tribal group.²⁶ These groups such as the BaKalanga and the BaYei were not afforded fair representation and equal voice in their BamaNgwato and BaTawana reserves. The protectorate government tried to reform this traditional system of local government through attempts to impose partially elected councils (made up of headmen and some notable commoners) but faced resistance from *diKgosi*.²⁷ Their successful resistance makes the Botswana case an exception, as most traditional authorities in Malawi, Zimbabwe and Namibia succumbed to reform by the colonial government.

The substantive powers of *diKgosi* were not affected by the protectorate declaration. They were allowed to maintain, change and abolish their tribes' customary laws and practices and

²⁴ Mgadla P T 'The *kgosi* in a Traditional Tswana Setting' in Edge W A & Lekorwe M H (eds) *Botswana: Politics and Society* (1998) 3.

²⁵ Mgadla (1998) 3.

²⁶ Morton (1987) 6.

²⁷ Morton (1987) 5.

maintain their police force for enforcement.²⁸ In addition to the legislative powers, *diKgosi* continued to appoint and manage their own administrative staff. They also had powers to conscript labour for the implementation of community projects.²⁹ The Native Administration Proclamation of 1934 formally declared *diKgosi* as local authorities and expanded their functions to the preservation of law and order and charged them with the provision of local services.³⁰ In addition, a broad function of implementing the changes initiated by the central government was delegated on an agency basis.³¹ What the 1934 Proclamation did was to effectively introduce a form of indirect rule in which the central government controlled the natives through their chiefs. This also meant that although substantial, the autonomy of traditional leaders was on the decline.

Although awarded extensive substantive powers, *diKgosi* had limited financial autonomy. They did not have powers to raise taxes, but accepted delegated responsibility for the collection of tax on behalf of the central government for a commission equivalent to 10 per cent of all hut tax receipts.³² When allotted a service delivery function in 1934, the *diKgosi* were also allowed to levy fees for the provision of these services.³³ However, the underlying problem was that most people were extremely impoverished, depending only on a modest income from agriculture and migrant labour for survival.

In 1943, a Native Courts Proclamation was issued. This recognised and advanced the power of *diKgosi* to administer justice in their *kogtla*. The Proclamation expanded the *diKgosi*'s jurisdiction to cover the hearing of both criminal and civil cases and deliver judgements according to both customary law and also to any other Proclamations or laws made by the protectorate government.³⁴ The effect of the Proclamation was to improve the substantive powers of tribal local government.

In the 1950s, several complaints about the autocratic and corrupt activities of some *diKgosi* were raised by subordinate tribal groups, some outspoken commoners, and members of the

²⁸ Morton (1987) 3.

²⁹ Morton (1987) 3.

³⁰ Jeppe (1974) 137.

³¹ Morton (1987) 3.

³² Morton (1987) 3.

³³ Jeppe (1974) 137.

³⁴ Aguda J K 'Legal Development in Botswana from 1885 to 1966' (1973) 5 *Botswana Notes and Records* 60.

royal family.³⁵ This prompted the protectorate government to put forward the idea of Tribal Councils. The Councils would be composed of the *kgosi* as the permanent chairman, a majority made up of members of the royal family, and a number of individuals popularly elected at the *kgotla*.³⁶ The new councils were provided for under the 1956 African Administration Proclamation but most *diKgosi* resisted this until the beginning of the transition to independence. Thus, for the greater part of the colonial period, traditional authorities remained an undiluted system of local government over most of the native population in Bechuanaland. This was partly because the protectorate government depended heavily on the traditional leaders for the effective execution of their limited roles in maintaining order, collecting revenue and implementing small-scale projects.³⁷

2.2. Non-Tribal Territories

Areas outside the tribal reserves were made up of freehold farms and open land, defined as crown lands. There was no traditional system of tribal governance in these areas. Neither was there a British-type system of elected local government. Consequently, they were administered by the central government through DCrs.³⁸ DCrs operated as civil servants of the central government and exercised both administrative and political power in the non-tribal areas.³⁹ This system which could best be described as District Administration (DA) reflected deconcentration instead of decentralisation. In other words, the system of DA was an extension of the central government and not an establishment of semi-autonomous subnational institutions like *bogosi* (chieftaincy). Therefore, rather than strengthening local government, it strengthened central control.

2.3. Urban Areas

Contrary to most colonies in the region, there were no urban councils in Bechuanaland for the greater part of the colonial era. It was only in 1955 that a Township Proclamation was made to provide for the establishment and administration of towns councils (TCs). The implementation

³⁵ Gabasiane & Molokorame (1987) 166.

³⁶ Gabasiane & Molokorame (1987) 166.

³⁷ Gabasiane & Molokorame (1987) 166.

³⁸ Jeppe (1974) 140.

³⁹ Mfundisi A 'The Formation and Structure of Central Government and its Institutional Relationship with Local Government in Botswana' in Edge W A & Lekorwe M H (eds) *Botswana: Politics and Society* (1998) 162.

of the Proclamation was left in abeyance until the period of transition to independence. At that point, the first regulations establishing TCs were issued. A few small towns emerged from Bechuanaland's three freehold farmlands (the Tati, Lobatse and Gaberones blocks). The Tati block consisted of large tracts of land bought by the Tati Company following prospects of gold mining near the Tati River.⁴⁰ When the mining prospects proved empty, the land was parcelled out for sale to white farmers. A trading centre was established in Francistown, which also became a collection point for migrant labour to South African mines. The Lobatse and Gaberones blocks were owned by the British South Africa Company (BSAC). Unlike the cases of Southern Rhodesia and South Africa, the BSAC did not use the land for mining ventures. Rather, it divided the blocks into farms and sold them to whites who in turn used these mainly for beef production. Similar to Francistown, the town of Lobatse grew out of the railway station that had become a collection point for agricultural produce intended for the South African market.⁴¹

Observably, the towns of Bechuanaland were very different from the growing colonial towns and cities that were established in Malawi, Namibia, South Africa and Zimbabwe. Francistown and Lobatse were merely trading centres with no industrial activity, hence they attracted only a few black people. The towns were administered by the respective companies that owned the blocks with no system of local government in place. Some black people who worked in the towns settled in the squatter camps found on the edge of the central business district and white residential areas. Here services such as clean water, proper drainage, clinics, schools, recreational facilities and stores were unknown.⁴² Although racial discrimination was also present, Bechuanaland towns did not experience the levels witnessed in South Africa, Zimbabwe and Namibia. Influx control and pass laws were unheard of, mainly due to the small-scale nature of the towns and the insignificant level of business activity.

The overall explanation for the country's unique colonial system of local government lay in the model of colonialism that had been applied to Bechuanaland. The country's constitutional status was similar to that of the protectorates of Basutoland and Swaziland, both under the

⁴⁰ Mgadla T 'The North East and South East' in Morton F & Ramsay J (eds) *The Birth of Botswana: A history of the Bechuanaland Protectorate from 1910 to 1966* (1987) 137.

⁴¹ Mgadla (1987) 143.

⁴² Mgadla (1987) 144.

authority of British High Commissioner to South Africa. Being a protectorate, it meant that British involvement in the territory's administration was applied on a very limited scale. In other colonies, the British government or its representatives (such as the BSAC) were heavily involved, seizing land from natives and allocating or selling it to Europeans, crushing rebellions and maintaining order. To the contrary, in Bechuanaland, most of the land was declared tribal reserves (which were not to be interfered with) whilst the remainder became freehold and crown lands which could be bought and sold.⁴³ Various explanations have been put forward by scholars for the unique treatment of Bechuanaland. According to Motswana political scientist, Gloria Somolekae, the territory was a 'barren desert' with no known mineral wealth (though diamonds were later to be discovered) and arid conditions which made agriculture less productive and profitable.⁴⁴ According to Jeff Ramsay, a historian and senior Botswana government official, to the British, the territory was only important as a labour reserve for the South African mines and as a 'road to the north' - a passageway to access rich territories like Northern and Southern Rhodesia (Zambia and Zimbabwe respectively).⁴⁵

3. Local Government Reforms during Transition to Independence (1960 – 1965)

By 1960, the British government had already decided to prepare the Bechuanaland protectorate for independence. Contrary to what transpired in Malawi, Namibia and Zimbabwe, this transition was not inspired by conflict. There was no liberation struggle from rebellious chiefs or political movements; neither were there black township revolts spurred on by a militant population of native workers. The transition was born out of the wave of independence which swept across most British colonies in the 1960s. Four major reforms which shifted the country towards more decentralisation emerged in the transitional process. These related to the constitutional negotiations, the implementation of tribal councils, TC regulations and the setting up of a Local Government Committee.

⁴³ Jeppe (1974) 144.

⁴⁴ Somolekae (2005) 4.

⁴⁵ Ramsay J 'The Establishment and Consolidation of the Bechuanaland Protectorate, 1870-1910' in Edge W A & Lekorwe M H (eds) Botswana: Politics and Society (1998) 69, 76 & 77.

3.1. Constitutional Protection

The first step towards independence was born out of the constitutional negotiations between the protectorate government, *diKgosi* and representatives of the white inhabitants. A constitutional committee was established in 1958, composed of the RC as chairman, four government officials, four African non-officials and four European non-officials.⁴⁶ *DiKgosi* Bathoeni, Tshekedi Khama and Seretse Khama and a Dr Silus Molema represented the Africans. The Committee's recommendations were adopted by the British government and culminated in to the Order in Council of December 1960. The Order provided for a restructured government with the RC as President and a Legislative Council (LC) made up of a maximum of 35 members. The LC was composed of elected, *ex officio*, and nominated members who represented the protectorate government, Africans, Europeans and Asians.⁴⁷ This was a major breakthrough and replaced the weak advisory councils (NAC and EAC) with a law-making body. Local government was not provided for in the 1960 Order but was separately discussed by a Local Government Committee (LGC) that was set up in 1963. The LGC recommendations culminated in the enactment of the Local Government (District Councils) Act of 1965 and the amendment of the Townships Act of 1955.

The independence constitution adopted by the British government in 1965 did not provide for local government, a practice common to the African states that attained independence from Britain in the 1960s. This meant that local government in an independent Botswana was to be a product of statute, a situation that opens the process of decentralisation to easy amendments and manipulation by the central government.

3.2. Local Democracy

In the early 1960s, reforms democratising local government were gradually introduced in the native reserves, towns and eventually throughout the country. One of the reasons why the introduction of Tribal Councils in the native reserves was slow was the *diKgosi*'s' argument that Batswana already had a system of local government hence all that was left was to proceed with the introduction of the LC at the national level.⁴⁸ A parallel process of introducing both

⁴⁶ Gabasiane & Molokorame (1987) 167.

⁴⁷ See Gabasiane & Molokorame (1987) 168.

⁴⁸ See Gabasiane & Molokorame (1987) 165.

the LC and implementing Tribal Councils was eventually followed with the former adopted in 1960. By 1961, Tribal Councils were implemented in all native reserves, blending traditional leaders with elected members. In the towns, the first regulations were made in 1962 to establish a system of elected local government for the only three towns of Gaborone, Francistown and Lobatse.⁴⁹ This signified a shift from the central administration of urban areas to a democratic system of urban local governance. However, although the regulations were in place, only Francistown implemented them whilst the other two towns continued to be governed by appointed DCrs until independence. The implementation of township regulations in Francistown did not result in the realisation of full local democracy since voters were required to own immovable property. This meant a systematic disenfranchisement of the urban black people who could not purchase land from the Companies.⁵⁰

In 1963, fresh consultations were held to seek for a new governance structure for an independent Botswana. Two Committees were set up to consult and recommend on the national and local level government structures. The first one was made up of the RC, Peter Fawcus, and two other government officials, the Attorney General and the Chief Secretary (Fawcus Committee) and intended to address national government structures. The Fawcus Committee held meetings with three representatives from each political party in the protectorate, three *diKgosi*, three Europeans and one Asian.⁵¹ In its recommendations, the Committee suggested replacing the LC with an elected Legislative Assembly, and replacing the RC with a Prime Minister elected by members of the Assembly.⁵² A special provision for *diKgosi* was made in the form of the *Ntlo ya Dikgosi* (House of Chiefs), a powerless body representing chiefs' interests lacking oversight over any laws passed in the Legislative Assembly. According to scholars, the main purpose of the *Ntlo ya Dikgosi* was to compensate for the *diKgosi*'s loss of power to the new democratic system of government and to get them to support it.⁵³ As shall be seen later, this House became the fault line that divided the new government (which included some southern chiefs) and fuelled competition with the opposition at the local government level.

⁴⁹ Jeppe (1974) 154.

⁵⁰ See Nengwekhulu R *An Evaluation of the Nature and Role of Local Government in Post-Colonial Botswana* (Unpublished Doctoral Thesis, University of Pretoria, 2008) 70.

⁵¹ Gabasiane & Molokorame (1987) 170.

⁵² Gabasiane & Molokorame (1987) 170.

⁵³ Gabasiane & Molokorame (1987) 170.

Driving this wave of democracy, there emerged broad support for multiparty rule due to fatigue with governance through chieftaincy. This was shared by both members of the public and the protectorate government. Although widely respected even to date, Nengwekhulu argues that, when consultations were made by the Fawcus Committee, most people were already of the view that continued rule through chieftaincy would be inappropriate after independence.⁵⁴ Similar sentiments were shared by Maundeni who observed that the common men had begun to associate chiefs with tyranny, tribal supremacy and inequality.⁵⁵ Indeed, the formation of political parties in the early 1960s corroborates these arguments, demonstrating that indeed Batswana were already conscious of, and preferred the adoption of, multiparty democracy in addition to traditional authority. The Fawcus Committee recommendations were adopted by the 1965 Constitution that granted independence to Botswana.

The second Committee - Local Government Committee (LGC) - focused specifically on the system of local government. The LGC was set up by the RC to assess the current system of local government and recommend an appropriate form for an independent Botswana. The Committee was composed of a mixture of representatives from the native people and representatives from the colonial government. Its members included the Chief Secretary, as chairman; three members elected by *diKgosi*; three members elected by the African Council⁵⁶ from amongst its members; three members appointed by the High Commissioner, and three colonial officials.⁵⁷

In its report, the Committee made some recommendations that elevated the democratic status of rural local authorities to that of urban areas. This was done in three ways. First, it recommended that District Councils (DCs) should replace the *diKgosi*-controlled Tribal Councils as the main local government authority. Secondly, it recommended the demarcation of the whole country into nine DCs - Central, Ghanzi, Kgalagadi, Kgatleng, Ngwaketse (now Southern), Northeast, North-west (now Ngamiland), Kweneng and Southeast.⁵⁸ Observably,

⁵⁴ Nengwekhulu (2008) 66.

⁵⁵ Maundeni Z 'The Struggle for Political Freedom and Independence' in Edge W A & Lekorwe M H (eds) *Botswana: Politics and Society* (1998) 124.

⁵⁶ A body that succeeded the Native Council.

⁵⁷ Nengwekhulu (2008) 67.

⁵⁸ Nengwekhulu (2008) 67.

most of the DCs' boundaries coincided with those of the tribal native reserves. For instance, the Central District was effectively made up of the BamaNgwato Reserve, Kgatleng DC was formerly the BaKgatla Reserve and Ngwaketse was formerly the BaNgwaketse Reserve. This demarcation had serious implications for the kind of political competition that would prevail in the country's multiparty democracy. These implications stemmed from the fact that *diKgosi* continued to command a great deal of legitimacy in their tribal territories.⁵⁹ Therefore, it was certain that *they* will have a lot of influence in voting behaviour, spurring opposition competition at the local government level. Third, the Committee proposed that DCs be made up by a majority of elected councillors, a few councillors specially nominated by the Minister responsible for local government, with the chiefs as *ex officio* members.⁶⁰

The *ex officio* membership position of *diKgosi* in the DC meant that although their membership was guaranteed, they had no voting rights. Coupled by their national level relegation to the *Ntlo yaDikgosi* that equally lacked legislative powers, the chiefs were left with a very limited role to play in the new government structure. Naturally, not everyone was happy with the proposed system, with some chiefs arguing that it was a conspiracy by the British regime and the BDP to disempower them.⁶¹ *DiKgosi* Bathoeni of the BaNgwaketse and Linchwe of the BaKgatla were particularly incensed by a reform exercise which they considered to have excluded them from real power.⁶² Therefore, by the time independence was conferred to Botswana under the BDP government, the stage was already set for some serious political opposition in the southern districts of Ngwaketse and Kgatleng.

The commencement of the transition to independence in the 1960s saw the formation of political parties and deepening of multiparty democracy. A unique feature of Botswana's transitional period was the absence of conflict. There was no liberation struggle and no widespread protests as had been the case in Malawi, Namibia, South Africa and Zimbabwe. As a result, by the time Britain decided to grant independence to Bechuanaland, no liberation movements such as the ANC, SWAPO, MCP and ZANU-PF were in place, and the formation

⁵⁹ Ka-Mbuya T & Morton F 'The South: The BaKwena, BaNgwaketse & BaKgatla Reserves' in Morton F & Ramsay J (eds) *The Birth of Botswana: A history of the Bechuanaland Protectorate from 1910 to 1966* (1987) 150.

⁶⁰ Nengwekhulu (2008) 67.

⁶¹ Picard (1987) 178.

⁶² Gabasiane & Molokorame (1987) 170.

of political parties was part of the transitional process of independence. Four political parties were established in the period between 1960 and 1965. The first political party to be formed was the Bechuanaland People's Party (BPP), founded in 1960 by a group of radical ordinary citizens. The BPP disassociated itself from both the chiefs and the country's white minority in a development that earned it the tags of 'anti-chieftaincy', 'anti-whiteism' and 'organised disobedience'.⁶³ Several chiefs, white groups in the territory and the outgoing British regime naturally felt threatened by the BPP's radical stance. This led to the formation of a second political party, the Bechuanaland Democratic Party (BDP). The BDP was led by Seretse Khama, the former chief of the BaNgwato. Unlike the BPP, it was made up of an elite leadership which comprised several chiefs, a number of white people, and some professionals.⁶⁴ The BDP based its campaign on the need for multiracialism and democracy while building on the traditions of chieftainship.⁶⁵ Support shifted dramatically to this new party of moderates.⁶⁶ Divisions later rocked the BPP, and these resulted in the formation of the Botswana Independence Party (BIP) in 1964.⁶⁷ After the split, the BPP's stronghold shifted to the north-eastern part of the country (North East District and Francistown) the home of its leader, Philip Matante. The BIP's support was similarly restricted to the North West District, the home to its leader, Motsamai Mpho.⁶⁸

The first multiparty elections leading to independence were held in 1965. The 1965 elections were dominated by the BDP which won 28 of the 31 seats, while the BPP won 3 and the BIP none.⁶⁹ Immediately after the 1965 election a new opposition party, the Botswana National Front (BNF), was formed by the Soviet-trained intellectual, Kenneth Koma.⁷⁰ The BNF criticised the BDP for allowing private enterprise and for disenfranchising local Batswana, a stance earned it support from radical urban voters.⁷¹ To counter the BDP's support base of traditional leaders, it incorporated into its leadership some disaffected Tswana chiefs from the

⁶³ Maundeni (1998) 125.

⁶⁴ Ramsay J & Parsons N 'The Emergency of Political Parties in Botswana' in Edge W A & Lekorwe M H (eds) *Botswana: Politics and Society* (1998) 138.

⁶⁵ Somolekae (2005) 9.

⁶⁶ Somolekae (2005) 9.

⁶⁷ Ramsay & Parsons (1998) 139.

⁶⁸ Murray A 'The North West' in Morton F & Ramsay J (eds) *The Birth of Botswana: A history of the Bechuanaland Protectorate from 1910 to 1966* (1987) 120.

⁶⁹ Ramsay & Parsons (1998) 147.

⁷⁰ Somolekae (2005) 9.

⁷¹ Somolekae (2005) 9.

southern parts of the country.⁷² As a result, the BNF's support base was concentrated in the Southern, Kweneng and South East Districts. Considering that the other political parties, BDP, BPP and BIP had consolidated support in the Central, North East and North West Districts respectively, the formation of the BNF made the polity even more polarised at the local government level.⁷³

3.3. Substantive Powers

In terms of the DCs' substantive powers, the LGC made recommendations that brought them somewhat to a level of those enjoyed by the TCs. Their functions were expanded to include the provision of primary education, primary health, secondary roads, rural water supply, trade licenses and collection of *matimela* (stray cattle).⁷⁴ In terms of personnel administration, the introduction of a common system of local government service for senior personnel was recommended.⁷⁵ This meant that autonomy was limited when it came to the individual DCs' power to hire and fire their employees. Driving this integration of local government personnel administration under one body was the poor human resources capacity of the country at the time. At independence, the whole country had only three secondary schools, and only 1.5 per cent of its population had completed primary education.⁷⁶

3.4. Financial Autonomy

The LGC did not provide details on the revenue and expenditure powers of local government but made an effort to guarantee, in general terms, the financial autonomy of both DCs and TCs'. The Committee recommended that both DCs and TCs should be afforded adequate revenue to support their responsibilities.⁷⁷ It, therefore, follows that the LGC had in mind a local government system that had good financial capacity, but the determination of specific sources of revenue was left to the new government to decide.

⁷² Somolekae (2005) 9.

⁷³ Otlhogile B 'Constitutional Development in Botswana' in Edge W A & Lekorwe M H (eds) Botswana: Politics and Society (1998) 155.

⁷⁴ Nengwekhulu (2008) 67-8.

⁷⁵ Nengwekhulu (2008) 68.

⁷⁶ World Bank Group (2015) 1.

⁷⁷ Nengwekhulu (2008) 68.

The recommendations of the LGC were adopted by the colonial government and culminated in the enactment of the Local Government (District Councils) Act, 1965 and the amendment of the Township Act, 1955. Therefore, it can be concluded that the democratic system of local government adopted by the BDP-led government at independence was a product of the outgoing British-controlled protectorate government. Observably, the greatest change that emerged from the local government reforms during the period of transition was that although chiefs would continue to be part of local government in an independent Botswana, they would no longer lead from the front. The battle lines between the government and the southern chiefs had been drawn. *Kgosi* Linchwe openly despised the DCs, describing them as ‘alien to Botswana traditions and an example of late colonialism.’⁷⁸

The southern chiefs were not only upset with local government reforms taking place in the transitional period, but were also unhappy with the constitutional reforms that led to the provision of a weak *Ntlo ya diKgosi*. During discussions with the Fawcus Committee, the southern chiefs had recommended that the *Ntlo ya diKgosi* should be awarded legislative powers equal to those of the national assembly.⁷⁹ As explained previously, the Committee made precisely the opposite recommendation. It did not take long before the chiefs were up in arms with the government regarding the powers of their house. On the very first meeting the members nominated *Kgosi* Bathoeni to chair the House on the basis that he was the most senior and most experienced candidate, but he declined.⁸⁰ Following Bathoeni’s decline to chair what he viewed as a weak house, *Kgosi* Linchwe was nominated. He also refused for the same reason.⁸¹ On their second meeting, the chiefs unanimously passed a resolution that the house should be dissolved and reconstituted with legislative powers, but the government refused this.⁸² This antagonism between the chiefs and the government was a harbinger of the political conflicts that were to follow in the post-colonial period. As shall be discussed below, Bathoeni, Linchwe and the minority sub-chiefs in the Northeast and Northwest Districts later supported opposition political parties. However, the fact that these four were in the minority meant that their dissent would hardly influence national politics though it would definitely affect subnational politics.

⁷⁸ Picard (1987) 178.

⁷⁹ Barei (2000) 72.

⁸⁰ Barei (2000) 72.

⁸¹ Barei (2000) 72.

⁸² Barei (2000) 72.

Contrary to the southern chiefs' discontent with the constitutional and local government reforms, their colleague, Seretse Khama, a former chief of the largest tribal grouping (BaNgwato) in the country sang a different tune. As the leader of the BDP, a modern political party of moderates and professionals that commanded a significant following, Khama made campaign promises that favoured the dominance of an elected system of government. For instance, in the runup to the 1965 election, the BDP's manifesto contained a pledge to uphold democratic institutions, run a democratic form of government, maintain a multiparty state and gradually ensure that chieftaincy take a secondary place in governance.⁸³ It was therefore clear that in a new government led by the BDP, local government would be reformed in favour of elected institutions.

4. Decentralisation immediately after Independence (1966 - 1969)

On 30 September 1966, Botswana officially became independent from Britain and a new government led by the BDP took over. Seretse Khama became the country's first Prime Minister and expressed his government's commitment to an elected system of local government. In his first speech in parliament, the Prime Minister said:

‘My government is dedicated to the democratic tradition and will not tolerate autocracy of any kind in Botswana. When I refer to the democratic tradition, I am thinking not only of central government institutions but also of local government bodies. We now have in Botswana a system of elected local councils with executive powers and these embody a non-racial, representative and responsible form of local government which reflects the nature of central government. My government will not tolerate any improper activity which is directed towards frustrating the efficient and legitimate functioning of these bodies...’⁸⁴

His government adopted the protectorate administration's Constitution of 1965, the Local Government (District Councils) Act of 1965 and the Townships Act of 1955 with minor

⁸³ Charlton R “The Politics of Elections in Botswana’ (1993) 63 (3) *Africa: Journal of the International African Institute* 337-8.

⁸⁴ Government of Botswana ‘Excerpts from a speech by His Excellency the first President of Botswana, Sir Seretse Khama addressing the national assembly on Thursday 6th October 1966’ *Evolution of Contemporary Local Government in Botswana* available at <http://www.gov.bw/globalassets/mlg/evolutionmlg.pdf>. (accessed 08 February 2017).

adjustments. The result was a promising system of local government, dominated by elected non-racial councils, and with a wide scope of substantive powers and fiscal autonomy.

4.1. Constitutional Protection

As an order of government, the provision of local government can emerge from two possible sources: from the constitution or from national legislation. The provision for local government in the constitution confers it with some degree of protection (because constitutional amendments are not as easy to execute as legislative amendments). The 1965 constitution of Botswana did not provide for local government, leaving it to determination by national legislation. Consequently, the elected system of local government in Botswana derived its powers from the two pieces of legislation adopted from the protectorate government: the Local Government (District Councils) Act of 1965 and the Townships Act of 1955. What this means is that the DCs and TCs' existence, structure, powers and functions were not secured. They could be abolished, altered and reconfigured by way of any simple legislative amendment or statutory instrument. As we have seen with the cases of Malawi and Zimbabwe, this 'Achilles heel' of British-sponsored constitutions was exploited at the very first sight of any regional competition for power.

4.2. Local Democracy

Both the Local Government (District Councils) Act and the Townships Act provided for the establishment of DCs and TCs as recommended by the LGC. However, a serious weakness in both laws is that they left the democratic composition of councils exposed to determination by the central government. The District Councils Act provided that 'The President may by order published in the Gazette establish District Councils in respect of such areas as he may think fit.'⁸⁵ It is in such a gazette, which the President has powers to vary from DC to DC, that the composition of the council is determined. As the Act expressly provided, 'A council shall be constituted in such manner and shall consist of such number of members as may be provided by the order establishing it.'⁸⁶ A similar discretion was awarded to the Minister responsible for local government by the Townships Act to establish TCs and determine their composition

⁸⁵ S 4 Local Government (District Councils) Act, 1965.

⁸⁶ S 6 (1) Local Government (District Councils) Act, 1965.

through a statutory instrument.⁸⁷ Through the published Gazettes for each council, the government of Botswana has always followed the recommendations of the LGC, providing for an elected majority together with a few nominated members. The standard practice has been for the Minister to nominate 19 per cent of councillors, with the ostensible aim of addressing the skills gaps in every election.⁸⁸

The first round of local government elections was conducted in 1966, a year after the national election of 1965. This separation of local government elections from those of central government signifies the deepening of decentralisation as this allows voters to select candidates based purely on local matters. In the 1966 local government elections, 165 DC and TC seats were available for contest. In a display of its status as a state-wide party, the BDP nominated candidates for 164 seats, while the BPP put forward candidates for 49 seats, the BIP only 20 seats and the BNF just seven seats.⁸⁹ As a result, more than half (84) of BDP candidates stood unopposed in the election.⁹⁰ The total number of councils was 12 (nine DCs and three TCs), nine of which were won by the BDP. The BPP won control of the remaining three councils - Kgatleng DC and the Bakalanga-dominated Northeast DC and Francistown TC.⁹¹ The BIP narrowly lost control of the Northwest DC to the BDP by just one seat (with six out of 13).⁹² The BPP's success in Kgatleng was a testament of the power and influence that chiefs still commanded at a local level. As explained earlier, local government and constitutional reforms adopted during the transition to independence had frustrated two Tswana *diKgosi*, Linchwe of the BaKgatleng (Kgatlang District) and Bathoeni of the BaNgwaketse (Ngwaketse/Southern District).

When the 1966 local government elections were held, Linchwe openly criticised the BDP policies and supported the BPP whilst Bathoeni initially supported the BDP, but later took a neutral position after developing doubts about the ruling party's commitment to chieftaincy.⁹³

⁸⁷ Ss 2-4 Townships Act 1955.

⁸⁸ Commonwealth Local Government Forum 'Country Profile 2017-18: The Local Government System in Botswana' available at http://www.clgf.org.uk/default/assets/File/Country_profiles/Botswana.pdf (accessed 17 August 2019).

⁸⁹ Gossett C W & Lotshwao K 'Report on the 1965 General Election and the 1966 Local Government Election' (2009) 41 *Botswana Notes & Records* 51.

⁹⁰ Gossett & Lotshwao (2009) 51.

⁹¹ Gossett & Lotshwao (2009) 56-62.

⁹² Gossett & Lotshwao (2009) 56.

⁹³ Barei (2000) 69-72.

The BDP quickly realised the political influence that chiefs had on their communities and co-opted Linchwe by offering him the prestigious position of Botswana's ambassador to the United States of America in 1968.⁹⁴ The cooption of Linchwe by the BDP did not extinguish the party's headache with disgruntled Tswana chiefs as Bathoeni remained disaffected.

In addition to the two southern Tswana chiefs, the Bakalanga in the Northeast District and Francistown continued to show their disaffection with the Batswana-controlled BDP by voting for the opposition BPP. The BaKalanga's disaffection stems from their differences with their traditional rivals, the BaNgwato in the Central District.⁹⁵ The rivalry is a product of a long history of the subordination of the BaKalanga to the *kgosi* of the BaNgwato. One of the founders of the BPP, Philip Matante, was a Francistown resident who became popular with the BaKalanga due to his articulate expression of their interests. He became the Member of Parliament for Francistown in the 1965 election and forced the BDP government to annul the Tati Company's concession over Francistown and the North East District.⁹⁶ The GammaNgwato (Central District) is a BDP stronghold and home of the ruling party's founder, Seretse Khama. Accordingly, the BaNgwato considered the BDP as their party and the Botswana government as 'their government led by their chief.'⁹⁷ A very important factor in the politics of tribalism in Botswana is that the Central District is the largest District in the country, and accounts for about 20 per cent of the country's council seats.⁹⁸ What this background shows is that, although the BDP commanded a strong national appeal, it was highly unlikely it could take power in the Francistown TC and North East DC where its leadership was despised and the BPP was exalted.

4.3. Substantive Powers

Local government legislation adopted by the BDP government at independence conferred DCs and TCs with a set of standard local government functions as recommended by the 1963 LGC. The functions included the provision of primary education, primary health, low-cost housing, water supply, public roads, abattoirs and beer depots.⁹⁹ Of these functions, education was the

⁹⁴ Barei (2000) 70.

⁹⁵ Picard (1984) 153.

⁹⁶ Mgadla (1987) 140.

⁹⁷ Barei (2000) 68.

⁹⁸ See Gossett & Lotshwao (2009) 58-60.

⁹⁹ First, Second and Third Schedules Local Government (District Councils) Act 1965 & Townships Act 1955.

most significant, accounting for over 70 per cent of council budgets in 1969.¹⁰⁰ However, there was no guarantee that local authorities will continue to discharge these functions as local government laws conferred central government with sweeping powers over the schedule of functions. The Minister responsible for local government was empowered to amend the schedules by way of a statutory instrument whilst the President was conferred with powers to revoke, vary or amend the schedules by way of an order published in the *Gazette*.¹⁰¹ As shall be discussed in detail below, these powers have gradually been exercised by the BDP government to take away certain functions (including education) and transfer these to the central government.

In the discharge of their functions, local authorities were conferred with legislative powers to make by-laws and to enforce them.¹⁰² However, the autonomy of local government in the exercise of these legislative powers was limited by the overriding powers of the central government. As the two local government laws conveniently provide, ‘All bye-laws made by a council shall be submitted to the Minister for his or her approval, and no bye-laws shall be of any force or effect until the Minister has approved and caused them to be published in the *Gazette*.’¹⁰³ It follows that at independence the elected system of local government had weak legislative powers which in turn translated into a limited degree of autonomy. In addition to legislative powers, DCs and TCs were conferred with the powers to appoint and administer their employees as they see fit.¹⁰⁴ As was the case with legislative powers, autonomy in personnel administration was limited by a provision that empowered the Minister to approve or disapprove council decisions on the appointment and remuneration of employees.¹⁰⁵

4.4. Financial Autonomy

At independence, local government was conferred with revenue-raising and expenditure powers with varying degrees of autonomy. Revenue raising powers of DCs and TCs included the collection of centrally-determined taxes in their jurisdictions, and the fixing of centrally-

¹⁰⁰ Picard (1987) 199.

¹⁰¹ Ss 63A & 65 Local Government (District Councils) Act 1965; S 7B Townships Act 1955.

¹⁰² S 33 Local Government (District Councils) Act 1965; S 6 Townships Act 1955.

¹⁰³ S 34 Local Government (District Councils) Act 1965; S 6A Townships Act 1955.

¹⁰⁴ S 30 (1-2) Local Government (District Councils) Act 1965.

¹⁰⁵ S 30 (3) Local Government (District Councils) Act 1965.

approved rates, fees and rentals and interests on investments.¹⁰⁶ In addition to these internal sources of revenue, local authorities could also raise revenue from donations, borrowings and ‘such grants as the Government may make’.¹⁰⁷ In line with the taxation powers conferred on local government, the BDP Government established a Local Government Tax, an income tax that could be used by DCs and TCs to raise revenue.¹⁰⁸ The tax became the main source of revenue for DCs and was instrumental in financing recurrent expenses.¹⁰⁹

Overall, the system of local government adopted at independence was a breakthrough, democratising local government and awarding it a measure of substantive powers and financial autonomy. Observably, this shift was a product of the transitional arrangements put in place by the outgoing protectorate government in preparation for self-rule under multiparty democracy. The BDP government’s buy-in to the new system of local government is likely attributable to its search to establish legitimacy as a new government. Seretse Khama’s parliamentary speech (cited earlier in this section) attests to the BDP’s democratic ethos and the party’s conviction that democracy and decentralisation are inseparable. As shall be seen in the next section, this commitment was easier said than done. Once the new system was put to the test through the 1966 election, the BDP started backtracking on the process of decentralisation.

5. Slow Process of Recentralisation (1969 - 1977)

In the early 1970s, local government autonomy began to shrink as the central government tightened supervision of DCs, took over control of personnel administration and withdrew some taxation powers from local government. These changes signified that the BDP-led government was renegeing on its commitment to decentralisation and gradually moving towards recentralisation.

5.1. Local Democracy

When the LGC recommended the Minister nominate of additional councillors, the aim was to complement any skills gaps that would emerge from the local government election. Whilst this

¹⁰⁶ S 44 Local Government (District Councils) Act 1965; S 7 Townships Act 1955.

¹⁰⁷ Ss 44 & 47 Local Government (District Councils) Act 1965.

¹⁰⁸ Picard (1987) 179.

¹⁰⁹ Tordoff (1988) 195.

was the intention, the practice quickly transformed the nomination process into a vehicle for rewarding ruling party supporters and for shifting majorities in opposition-controlled councils. A case in point is the 1969 local government elections in which the BDP lost control of Southern District to the BNF but regained it through the addition of BDP-aligned nominated councillors.¹¹⁰ This transformation of intention behind the nomination process was tersely captured by Zibani Maundeni, a Motswana political scientist when he explained that ‘what started as a genuine concern for the representation of racial minorities then tapping into rare skills, now acquired an altogether unacceptable meaning to the opposition.’¹¹¹

The 1966 local government election was the only one to be conducted separately from national elections. In 1969, local government elections were held concurrently with national elections, in a practice that reduces voters' ability to make their choices based on local issues of concern. Accordingly, the next round of joint national and local government elections were held in 1969 and 1974. In both cases, the elections revealed two things: the BDP's dominant appeal at the national level and the opposition's capturing of some regional spaces of power. The regional dominance of opposition political parties was rooted in the support obtained from some of the frustrated chiefs in the south and from disaffected non-Tswana tribes in Francistown, Northeast and parts of the Northwest District.

The cooption of Linchwe by the BDP did not extinguish the party's problems with disgruntled Tswana chiefs from the southern part of the country. A new centre of opposition emerged in 1969 when Bathoeni resigned from his chieftaincy and began to play an active role in opposition politics. Quett Masire, then Vice President of the BDP downplayed Bathoeni's threat saying that ‘while the chiefs may tell their people who[m] to vote, they can't go with them to polling booths.’¹¹² It did not take long for the BDP to come to terms with Masire's mistaken statement. In the 1969 election, Bathoeni (as a BNF candidate) faced off with Masire (BDP) in the Kanye (Capital of Southern District) parliamentary seat where the later suffered a humiliating defeat of 505 to 1245 votes.¹¹³ The BDP similarly lost control of the Southern DC in Bathoeni's BaNgwaketse territory.¹¹⁴ As Picard aptly puts it, ‘The BDP became painfully

¹¹⁰ Picard (1987) 152.

¹¹¹ Maundeni (1998) 128.

¹¹² Barei (2000) 73.

¹¹³ Barei (2000) 73.

¹¹⁴ Picard (1984) 158.

aware of the influence that traditional leaders still held over a major Setswana-speaking group.¹¹⁵ When Linchwe returned from America in 1972, he had completely shifted his allegiance to the ruling party. Consequently, in the 1974 local government election, the BPP lost control of Kgatleng DC to the BDP, winning just one from 14 seats.¹¹⁶

In addition to the two southern Tswana chiefs, the Bakalanga in the Northeast District and Francistown continued to show their disaffection with the Batswana-controlled BDP, voting for the opposition BPP and BNF. The Bakalanga's disaffection ostensibly stems from their differences with the BaNgwato in the Central District whom they considered their traditional rivals.¹¹⁷ The Central District is a BDP stronghold and home of the ruling party's founder, Seretse Khama. Accordingly, the BaNgwato consider the BDP as their party and the Botswana government as 'their government led by their chief.'¹¹⁸ A very important factor in the politics of tribalism in Botswana is that Central District is the largest District in the country, accounting for about 20 per cent of the country's council seats.¹¹⁹ This partly explains the BDP's dominance of Botswana's national politics and its challenges with local government control. Put together the dissent of southern Tswana chiefs and the disaffected non-Tswana tribes in the Northeast and Francistown explains the BDP's subsequent drift towards strengthening the centre and weakening local government autonomy.

Local government's dependency on central government (discussed below) brought with it significant supervision from two central government Ministries: the Ministry of Finance and Development Planning (MFDP) and the Ministry of Local Government. This supervision is practised through monitoring, support and intervention. As alluded to in the preceding paragraphs all local authority by-laws and budgets must be approved by the Ministry responsible for local government. Since local authorities are wholly dependent on the central government for capital financing, and almost always rely on it for financing recurrent budget deficits, the MFDP equally plays a significant role in the monitoring and control of local government finance. It determines how much funding is available for local government and retains final authority to approve or reject proposed projects and requests for deficit

¹¹⁵ Picard (1984) 158.

¹¹⁶ Barei (2000) 70.

¹¹⁷ Picard (1984) 153.

¹¹⁸ Barei (2000) 68.

¹¹⁹ See Gossett & Lotshwao (2009) 58-60.

financing.¹²⁰ The effect of central government's significant supervisory powers is the erosion of local autonomy.

The Ministry responsible for local government also exercised regular monitoring and control of local authorities through the colonial-type prefectural system of District Commissioners (DCrs). It should be noted that the very premise of local government supervision through DCrs started as an informal and mutually necessary oversight function. The important point, though, is that it gradually escalated to a political instrument for central government control. It was made necessary because the DCrs were experienced expatriates whilst the DCs were dominated by elected members who lacked the requisite skills in and expertise for local governance. Between 1966 and 1970, the DCrs inherited from the British regime had no legal standing in the new local government system. They operated as chief executives and legal officers of the central government who could be informally invited by DCs and TCs to render operational and administrative advice as and when required.¹²¹ In 1970 President Seretse Khama announced the need for DCrs to take a more formal and active role in supervising local government.¹²² The President's call was supported by the Ministry responsible for local government which argued for DCrs to inspect the work and finances of Councils as a way of combating corruption and inefficiency.¹²³ It is against this background that DCrs formally found their way back into local government under the Ministry responsible for local government.

According to Picard, the return of DCrs was driven by the BDP government's struggle to contain pockets of political opposition which were emerging at the local government level (disaffected Tswana chiefs and some non-Tswana tribes).¹²⁴ However, the struggle did not end with the appointment of DCrs as watchdogs of DCs, but rather it intensified. In the three political hotbeds of southern Tswana chiefdoms, Northeast and Northwest Districts, the DCrs had a hard time performing their duties as they were viewed as intruders.¹²⁵ For instance, in the Southern District, the relationship between the DCr and the council deteriorated to verbal and near-violent confrontations.¹²⁶ This practice of rejuvenating colonial-period institutions is not

¹²⁰ Wunsch (1998) 36.

¹²¹ Jeppe (1974) 155.

¹²² Jeppe (1974) 156.

¹²³ Jeppe (1974) 156.

¹²⁴ Picard (1987) 159.

¹²⁵ See Picard (1984) 152-9.

¹²⁶ Picard (1984) 159.

unique to Botswana. It has proved a common practice in Malawi, Namibia, and Zimbabwe since, from a historical perspective, DCs are a well-established as a tried and tested means of political control. Resistance to political containment at the local level in Botswana was a harbinger for more local government reforms in the second decade of independence.

5.2. Substantive Powers

Shortly after independence, the new government made some sweeping personnel administration changes that further weakened the substantive powers of the elected system of local government. In 1974, the central government created a department under the Ministry responsible for local government named the Unified Local Government Service Commission (ULGS). This department took over responsibility for appointing and administering all non-industrial personnel employed by local authorities in Botswana.¹²⁷ The motivation for centralising personnel administration was the need to address the varying treatment of local authority employees and to contain parochial and nepotistic appointments.¹²⁸ In addition to its stripping of DCs and TCs' autonomy, the system was criticised for being bureaucratic and disruptive, especially with the arbitrary transfer of employees from one local authority to the other.¹²⁹ As mentioned above, the provision of primary education was the most significant local government function, accounting for over 70 per cent of council expenditure. In 1976 administration of primary teachers was taken over by central government through the creation of a Unified Teaching Service (UTS), solidifying central government control over local personnel.¹³⁰ What does this signify? That the new government was strengthening the power of central government by placing local authorities increasingly under its control.

As mentioned earlier, the BDP-led government faced local opposition to its policies from the disgruntled southern Tswana chiefs and non-Tswana tribes in Francistown, Northeast and Northwest Districts. By placing DC and TC employees under its authority, the BDP retained control over policy implementation regardless of whether it controlled the council or not. Besides, centralisation of personnel administration proved to be a sound vehicle for patronising and neutralising dissenting voices at the local level. The case of Northeast DC attests to this

¹²⁷ Wunsch 1998 (34).

¹²⁸ Tordoff (1988) 198.

¹²⁹ Wunsch (1998) 34; Tordoff (1988) 198.

¹³⁰ Picard (1987) 180.

argument. Shortly after independence, tensions between the BDP-led government and the Bakalanga in the Northeast District escalated to an extent that in 1969 Parliament had to discuss allegations that the Bakalanga were plotting to overthrow the government.¹³¹ One of the mobilising forces behind the Bakalanga people was former BNF President, Daniel Kwele.¹³² To contain the political threat of the Bakalanga in the Northeast District, the BDP-led government later appointed Kwele as the Northeast DC secretary (Chief executive officer).¹³³ As Picard puts it, 'Despite Kwele's tremendous influence in the Northeast, as long as he continued to be the council secretary, he was neutralized because he could not participate openly in electoral politics.'¹³⁴

5.3. Financial Autonomy

In the early 1970s, the power of local government to levy tax was rescinded during the 1970s boom in diamond mining.¹³⁵ The withdrawal of control over income tax left local authorities with fees and rates as their main internal sources of revenue. The main problem here is that the mandates of local authorities remained intact, creating a disproportionate relationship between funds and mandates. Accordingly, James Wunsch cited failure to levy service fees comparable to service costs as a serious problem facing local government in Botswana.¹³⁶ With internal sources of revenue limited, local authorities naturally became dependant on central government grants for the funding of both their capital and recurrent expenditure. The dependency has been so complete that central government transfers actually funded DCs and TCs' entire capital expenditure, and about 97 per cent and 80 per cent of recurrent expenditure respectively.¹³⁷ Central government grants for these two types of expenditure are specific, hence, local government's expenditure autonomy is severely curtailed. This was succinctly captured by Wunsch when he explained that:

Ministry of Finance and Development Planning (MFDP) plays a major role in local government. Because of local governments' overwhelming dependence on the central level for subventions to cover recurrent budgets, MFDP's role in determining

¹³¹ Picard (1987) 153.

¹³² Picard (1987) 153.

¹³³ Picard (1987) 154.

¹³⁴ Picard (1987) 154.

¹³⁵ Wunsch J 'Decentralisation, Local Governance and the Democratic Transition in Southern Africa: A Comparative Analysis' (1998) 2 (1) *African Studies Quarterly* 33.

¹³⁶ Wunsch (1998) 33.

¹³⁷ Kathyola & Job (2011) 31; Sharma (2010) 138.

the amount to be allocated to these grants (subventions) is extremely important. MFDP, of course, determines the amount of the capital development budget. While MLGLH allocates the shares to go to each local government, MFDP retains final authority to approve or deny any specific project (through the project memorandum requirement) and controls disbursement of revenues for each invoice as projects are implemented. In virtually every respect, local governments are subject to decisions made at the central level...¹³⁸

The financial autonomy of local government was not only limited by reliance on central government grants. Expenditure decisions on internally-generated revenue were also limited by central government oversight. For instance, local government legislation conferred local authorities with powers to prepare and approve their budgets by way of a council resolution.¹³⁹ However, the law goes further to provide for the power of the Minister to either 'approve the estimates as submitted, or disallow such estimates in whole or in part, or refer such estimates back to the council for further consideration.'¹⁴⁰ The same process applies to supplementary budgets which are often necessary due to limited internal revenue. Accordingly, local authorities were left unable to respond to their priorities unless these matched the agenda of the Ministry as the chief financier. Wunsch concluded that the resultant erosion of local government autonomy represented a political strategy as well as a means of expenditure control.¹⁴¹ Thus, it places the central government firmly in control of decision-making at the local government level as something which stands precariously as a source of opposition to the BDP. Put together with the manipulation of nominated councillors and centralisation of personnel administration, these fiscal reforms indicate that in the first decade of independence, the BDP responded to local political opposition through a menu of political, administrative and fiscal strategies.

The re-introduction of DCs to represent the central government at the local government level in 1970 was followed by the introduction of another centrally-controlled structure – the Land Board (LB). Its purpose was to take over the allocation of tribal land from traditional authorities

¹³⁸ Wunsch (1998) 36.

¹³⁹ S 52 (1) Local Government (District Councils) Act 1965.

¹⁴⁰ S 52 (1) Local Government (District Councils) Act 1965.

¹⁴¹ Wunsch (1998) 39.

and settle land disputes as the agents of the Ministry responsible for local government.¹⁴² Although, most of their functions were taken over by DCs and LBs, traditional authorities continued to play a parallel role in the country's local government system. Consequently, the strengthening of the system of DA, the introduction of LBs and the retention of traditional authorities have meant increased competition for scarce financial resources at the local government level.¹⁴³ Similar to the case of Malawi under President Hastings Banda, the existence of parallel structures at the local government level has been sustained at the expense of DCs. The failure by the central government to address the capacity constraints facing DCs and TCs whilst strengthening the centrally-controlled systems of DA and LBs has led scholars to conclude that the BDP government has an interest in keeping councils dependent and subordinate.¹⁴⁴ Louis Picard interpreted the practice as a style of politics (symbolic politics) in which DCs serve as a symbol of democracy, but one that is devoid of meaningful power or the real capacity to influence central government policy.¹⁴⁵ As shall be explained below, instead of strengthening the capacity of DCs and TCs and increasing their autonomy, the BDP government chose to tighten central government supervision, a strategy that dovetailed with the ruling party's bid to contain local level opposition.

The BDP's drift towards a weaker system of elected local government was a response to two emerging subnational centres of opposition. These were the two frustrated Tswana chiefs - Bathoen of the BaNgwaketse and Linchwe of the BaKgatla - and the disaffected non-Tswana tribes in Francistown, Northwest and Northeast Districts. A strong and autonomous system of elected local government would naturally benefit opposition parties in these communities and work to limit the political influence of the BDP. Consequently, the implementation of BDP policies was a bumpy process at the local government level. As Louis Picard puts it, the BDP itself identified the Gangwaketse area in the Southern District, the Bakalanga-dominated Northeast District and the non-Tswana areas in the Northwest District as 'three centres of hardcore opposition to the government.'¹⁴⁶ The dominance of opposition political parties in local and national elections in the three communities supports this view. It also explains the BDP's gradual recourse to a stronger system of centrally-controlled local administration and a

¹⁴² Tordoff (1988) 193.

¹⁴³ Tordoff (1988) 184-5.

¹⁴⁴ Poteete et al (2014) 40.

¹⁴⁵ Picard (1987) 192.

¹⁴⁶ Picard (1984) 152.

weaker elected system of local government. In the process, the elected system of local government was gradually shorn of power from various fronts. By the late 1970s, the fading of local government autonomy had become so apparent that the government's direction on decentralisation became a subject of debate.

5. Faltering Local Government Reforms (1978-2000)

From the above section, it is observable that local government, in the first decade of independence, was characterised by the opposition's control of disaffected local centres of power, and the BDP government's struggle to contain this dissent. The power struggle resulted in a polarised local government system that became at once both competitive and inefficient. By the end of the first decade of independence, there were no less than four systems of local government running in parallel with each other. In addition to the elected system of DCs and TCs and the traditional authorities, the government had created two centrally-controlled institutions - District Development Committees (DDCs) and Land Boards (LBs). LBs took over the function of land allocation and land-use planning from traditional leaders whilst DDCs, under the DCr's leadership, became the centre of development planning and administration at the local level.¹⁴⁷ In summation, local government reforms that took place between 1969 and 1977 pointed towards the government's loss of faith in the electoral system and DCs and TCs.

Opinion was divided on the future of local government. Some DC members suggested that local government should be integrated around the elected system with power being concentrated in the DC.¹⁴⁸ In hindsight, this suggestion was in line with the spirit of local government reforms during the transition to independence, a spirit that the BDP itself upheld during the same period, but which now appeared spent. To the contrary, the MFDP and the President's office campaigned for the total dismantling of DCs.¹⁴⁹ The epitome of this campaign was a report by two MFDP officials, C Baur and J Licke. Their report concluded that councils were so far beyond repair that they must be suspended, and their functions be transferred to an upgraded centrally-controlled system of DA.¹⁵⁰ However, these proposals of

¹⁴⁷ Serema B C 'Community Information Structures in Botswana: A Challenge for Librarians' (2002) *68th IFLA Council and General Conference August 18-24, 2002* 3; Picard (1987) 185.

¹⁴⁸ Tordoff (1988) 184.

¹⁴⁹ Picard (1984) 181.

¹⁵⁰ Picard (1987) 181.

the MFDP were not shared by the Ministry responsible for local government which preferred that the system of elected councils be sustained and strengthened.¹⁵¹ It was, therefore, becoming increasingly clear that the system of local government needed reform. Equally clear was the fact that the very existence of the elected system of DCs and TCs was under threat. It should be noted that this threat was not unique to Botswana. It was a common practice in countries that attained independence in the 1960s. As with Malawi, the government introduced a centralised system of DDCs in 1966 as the prioritised vehicle for local development whilst the elected system of DCs was made redundant. The difference was that Malawi practised one-party rule whilst Botswana maintained multiparty democracy.

In 1978, a Presidential Commission on Local Government Structure (PCLGS) was appointed to ‘test the suitability of the existing structure and to advise on the relationship between the four main institutions at the district level – the District Administration, the District Council [and TC], the Land Board and the Tribal Administration.’¹⁵² The Commission was chaired by the Minister of Local Government and Lands, Lenyeletse Seretse, and composed of members who represented central government, local government and the interests of the private sector.¹⁵³ The establishment of the Commission was a testament to government concern with the state of local government in the country, and suggested a commitment to improving decentralisation. The Commission completed its investigations in 1979, but its report was not released until 1981, a sign that some of its content and conclusions did not enjoy government approval.¹⁵⁴ When the report was eventually released, the BDP government’s response indicated parallels with other independent Southern African countries in the determination to strengthen the centre at the expense of elected councils.

5.1. Local Democracy

Part of the PCLGS’ terms of reference was to advise on the future of the four local government structures at the district level. As mentioned earlier, the continued existence of the elected system of local government was at stake. The Commission recommended that the existing four structures (DCs, DA, TAs and LBs) should maintain their separate status rather than be

¹⁵¹ Wunsch (1998) 33.

¹⁵² Tordoff (1988) 183.

¹⁵³ Tordoff (1988) 184.

¹⁵⁴ Picard (1984) 189.

integrated.¹⁵⁵ Of the three main actors that had voiced their concerns about the future of the elected system of local government (MFDP, DCs and Ministry responsible for local government), the Commission took the position of the Ministry responsible for local government that DCs and TCs be sustained and strengthened instead of being annihilated as proposed by the MFDP. It, however, acknowledged that the elected system's capacity was already overstretched and would, therefore, struggle to cope with increased responsibilities.¹⁵⁶ In addition to the capacity challenges, the Commission rejected the call for consolidating local government around DCs on the basis that 'further devolution was out of question at that time.'¹⁵⁷ This argument suggests that the general direction of the state was towards centrally-planned and driven development, an approach that places deconcentration ahead of decentralisation.

The response of the BDP government to the recommendation that sustained the existence of the elected system of DCs and TCs was similar to that of the MCP government in Malawi. It simply maintained the elected councils whilst placing its weight behind the DA as the centre for development at the local government level. This was done through the introduction of two District Officer positions (District Officer-Development and District Officer-Lands) to support the DCr in steering the system of DA.¹⁵⁸ As Picard asserted, the continued existence of DCs now served to support the government's strategy of symbolic politics in presenting an image of local democracy while keeping it practically devoid of power and autonomy.¹⁵⁹ In other words, DCs were simply being maintained to give a democratic impression that the people were practising self-government despite the fact that central government agents were increasingly taking over local development.

The politics of local governance in the first decade of independence demonstrated beyond doubt that traditional leaders played a significant role as representatives and leaders of the rural population. In its findings, the Commission rightly acknowledged that traditional leaders wielded enormous power and influence in rural areas, and were fully capable of impeding

¹⁵⁵ Tordoff (1988) 184.

¹⁵⁶ Tordoff (1988) 184.

¹⁵⁷ Tordoff (1988) 185.

¹⁵⁸ Tordoff (1988) 188.

¹⁵⁹ Picard (1987) 192.

development activities by non-tribal entities.¹⁶⁰ Consequently, it recommended that *diKgosi* should be uplifted from the lowly-valued status of *ex-officio* members of council to respectable positions as ceremonial Presidents of the DC.¹⁶¹ The government's response to this recommendation was adverse. Its defence was that 'their role as ceremonial heads of districts would be likely to confuse their relationships with the councils and would be misunderstood.'¹⁶² The government's explanation as to why chiefs cannot be promoted to become ceremonial Presidents of the council was not in sync with the situation obtaining in DCs at that time. In most Districts, councils already had great respect for their chiefs. They consulted with them and took seriously their suggestions on the simple understanding that successful implementation of their programmes dependent on the support of the chief.¹⁶³ The decision of the BDP government in this regard gives credence to the argument that the government continued to view chiefs as real or potential drivers of local opposition who had, as such, to be politically neutralised.

In the 1974, 1979 and 1984 elections, the Southern District (Ngwaketse) became a BNF stronghold similar to the Central District's dominance by the BDP.¹⁶⁴ Meanwhile, the BDP had made inroads in Kgatleng following the neutralisation of Linchwe, but the BPP remained dominant in the Northeast District.¹⁶⁵ In the context of continuing subnational competition and the BDP's struggle to contain it, the discovery of diamonds in the 1970s saw the state actively take over the financing and direction of developmental programmes.¹⁶⁶ This approach indicates growing central government dominance and the shrinking role of the elected local government system. In other words, it strengthened the BDP government's drift towards the increased of central control in ways that cast doubts over its commitment to local autonomy.

By the end of the first decade of independence, DCs had seemingly assumed a colonial-style role of political agents for the centre. As instruments of political control, they played a critical role in containing pockets of local opposition to the central government, but in ways that could

¹⁶⁰ Tordoff (1988) 191.

¹⁶¹ Tordoff (1988) 191.

¹⁶² Nengwekhulu (2008) 105.

¹⁶³ See Nengwekhulu (2008) 105.

¹⁶⁴ See Barei (2000) 74.

¹⁶⁵ Barei (2000) 70

¹⁶⁶ Tsie B 'The Political Context of Botswana's Development Performance' (1996) 22 (4) *Journal of Southern African Studies* 601.

not happen without squeezing out local autonomy. In its report, the Commission recommended that the colonial-style office of the DCr should be abolished and be replaced by a non-political position of District Development Director.¹⁶⁷ This recommendation indicates the Commission's indictment of the residual aspects of colonialism.¹⁶⁸ The problem with this recommendation was that its implementation would weaken the central government's political grip on the elected system of local government. Naturally, the government viewed it as an attempt to neutralise its control and rejected the recommendation, arguing that what mattered was to appoint DCrs of the right calibre.¹⁶⁹ In defiance, the government swiftly moved to strengthen the DCrs' capacity. It appointed graduates from the University of Botswana to fill in newly created positions of District Officers (District Officer-Development and District Officer-Lands).¹⁷⁰ To a certain extent, Botswana was now in tune with other regional states caught up in the global wave of centralisation. However, it should be noted that contrary to the tragic consequences of this model in countries such as Malawi and Zimbabwe, Botswana succeeded in growing the economy.¹⁷¹ Michael Lewin, a former World Bank economist attributed the success to a combination of good governance, good policies and good luck.¹⁷²

5.2. Substantive Powers

The Commission made two recommendations that sought to strengthen the substantive powers of DCs and TCs. First, it recommended an expansion of DC functions to include trade and liquor licensing.¹⁷³ This would, in turn, increase their internal revenue. The central government did not object to this recommendation but, as Tordoff explained, lack of adequate capacity made it difficult for the councils to take up the additional function.¹⁷⁴ Secondly, the Commission observed that the ULGS concentrated personnel administration power in central government and recommended that it should be restructured to give local authorities more control over their personnel.¹⁷⁵ In other words, the Commission recommended the creation of an independent ULGS, one that is not housed in the Ministry responsible for local government.

¹⁶⁷ Picard (1987) 188.

¹⁶⁸ Picard (1987) 188.

¹⁶⁹ Tordoff (1988) 187.

¹⁷⁰ Tordoff (1988) 188.

¹⁷¹ Tsie (1996) 600.

¹⁷² Lewin (2011) 81

¹⁷³ Tordoff (1988) 198.

¹⁷⁴ Tordoff (1988) 198.

¹⁷⁵ Picard (1987) 188.

This recommendation was a response to the strong criticism of the Ministry's role in the ULGS by local authorities.¹⁷⁶ The Commission's recommendation indicated an attempt to halt the BDP government's rising penchant for increased central control. Naturally, the government's response to this attempt at reversing the flow of personnel administration power was to ignore it and nothing was done about it.¹⁷⁷ This meant that the central government's stranglehold over local government personnel remained intact.

From the foregoing discussion, some similarities and differences between the BDP-appointed Presidential Commission on Local Government Structure and the protectorate government-appointed Local Government Committee are notable. Both sought to find ways of improving decentralisation and submitted recommendations on this to the government of the day. However, while the recommendations of the LGC were adopted by the protectorate government, most of the PCLGS' recommendations were rejected by the BDP government. The only difference between the two is the context and the setting. The LGC recommendations were made during the period of transition from the colonial era to independence, and these were adopted by the outgoing government. To the contrary, the PCLGS recommendations were made during a period of political and economic stability to an incumbent government led by a dominant ruling party. Whilst the protectorate government adopted reforms that increased local government autonomy, the BDP government preferred a local government that is centrally-controlled and therefore wanting in autonomy. In the main, the BDP government simply showed that it was willing to implement reforms that allocated more power to the centre where it governed rather than to the DCs and TCs which where it faced competition from opposition political parties.

6. More Faltering Local Government Reforms in the New Millennium (2001-2018)

Attempts to reform the system of local government in the period before 2000 yielded limited results, though these were all skewed towards central government control. As Poteete et al alluded to, 'there was no real change, however, in funding for local authorities or coordination across the various local institutions.'¹⁷⁸ The government continued to worry about the

¹⁷⁶ Tordoff (1988) 198.

¹⁷⁷ Tordoff (1988) 198.

¹⁷⁸ Poteete Mothusi & Molaodi (2014) 38.

unsatisfactory performance of local authorities.¹⁷⁹ Consequently, the second round of local government reforms was commenced in the new millennium, indicating another attempt to revive decentralisation. The reform process can be traced to the year 2001 when the President appointed another Commission to review the country's local government structure. The Commission was led by the then Minister of Works, Transport and Communications, Pelonomi Venson-Moitoi (Venson-Moitoi Commission). Its main task: to establish ways of improving service delivery by local government.¹⁸⁰

The Commission was convinced that the elected system of local government lacked both the autonomy and the adequate financial resources necessary to discharging its mandate.¹⁸¹ Accordingly, it proposed awarding local government some constitutional protection, deepening local democracy, increasing substantive powers and enhancing its financial autonomy. As shall be discussed in detail below, these recommendations signified gravitation towards decentralisation and an attempt to disentangle the elected councils from the stranglehold of the central government. Accordingly, this signified a break with the previous trend towards the centralisation of power. It also signified an attempt to align the country with the global wave of multiparty democracy and decentralisation that had taken off in the early 1990s. The Commission's recommendations also paralleled the trend in other countries such as Malawi, Namibia and South Africa which all initiated some local government reforms which promoted decentralisation in the 1990s. To the contrary, the Botswana government resisted most of the recommendations that sought to promote local government autonomy.

6.1. Constitutional Protection

The wave of democratisation and decentralisation that swept across Africa in the 1990s saw some Southern African countries such as Malawi entrenching local government in the constitution, thus giving it some measure of protection. Countries that had just attained majority rule (such as Namibia and South Africa) also had entrenched local government in the constitution. In a bid to strengthen the subnational level of government, the Commission recommended that local government be entrenched in the constitution.¹⁸² This recommendation

¹⁷⁹ Nengwekhulu (2008) 147; Sharma (2010) 137.

¹⁸⁰ Poteete Mothusi & Molaodi (2010) 7.

¹⁸¹ Poteete Mothusi & Molaodi (2014) 38.

¹⁸² Poteete Mothusi & Molaodi (2010) 7.

signified a break with the old system of local authorities created by statutes. Under unclear circumstances, the government rejected the recommendation, an indication that a strong system of local government was not on its agenda.¹⁸³ The government's position affirms the argument that the BDP was feeling the pressure of subnational competition from opposition parties. Therefore, awarding constitutional protection to local government meant limiting the central government's ability to easily vary local government powers. The government's rejection of the Commission's recommendation meant that, until 2013, only Botswana and Zimbabwe had a system of local government which derived its existence from central government legislation. Since Zimbabwe adopted a new constitution with local government provisions in 2013, Botswana has remained the odd one out with a local government that is not recognised and protected by the constitution.

Similarities with and differences from the Zimbabwean case help to explain Botswana's exceptional status in this regard. First, both countries have been governed by one ruling party since independence - the BDP and ZANU-PF. Secondly, both ruling parties have a strong national appeal, but face serious competition from opposition political parties at the local level. The difference here is that Botswana has not experienced a political crisis that demanded constitutional negotiations with opposition parties as Zimbabwe did following the disputed presidential election of 2008. It therefore follows that local government reforms that promote decentralisation through the constitutional protection of local government stand a higher chance of being implemented during a process of resolving political conflicts than under a stable political environment.

6.2. Local Democracy

Amid the post-Cold War wave of democratisation, the Venson-Moitoi Commission sought to address what it saw as democratic gaps in the system of local government. This was done in two ways. First, the Commission proposed that the Minister's powers to appoint nominated councillors should be revoked.¹⁸⁴ This proposal followed widespread criticism of the system of nominated councillors which members of the public felt was undemocratic.¹⁸⁵ Observably,

¹⁸³ Poteete Mothusi & Molaodi (2010) 7.

¹⁸⁴ Poteete Mothusi & Molaodi (2014) 38.

¹⁸⁵ See Nengwekhulu (2008) 101.

the Commission's recommendation indicated an attempt to promote the downward accountability of councillors to the people who alone would have the power to elect or vote them out. In response, the government maintained that this system was necessary for tapping into rare skills and rejected the Commission's recommendation.¹⁸⁶ Secondly, the Commission proposed that mayors in TCs should be conferred with executive powers to enable them to implement council resolutions.¹⁸⁷ The proposed introduction of executive mayors signified an attempt to limit central government control over council business by shifting decision-making power from a centrally-appointed bureaucrat to the elected mayor. The government's response was again negative, indicating a strong commitment to central control.¹⁸⁸

The explanation for the government's defiance lay in the continuity of competition from the opposition at the local government level. By the late 1980s, the BDP government had made some progress in neutralising the influence of the radical chiefs from the south. In 1989, the former *kgosi* of the BaNgwaketse, Bathoeni was offered the position of President of Botswana's Customary Court of Appeal. He accepted this and retired from party politics.¹⁸⁹ However, this did not mean an end to opposition competition at the local government level. Since the 1980s, opposition parties gained significant ground in urban areas where they won control of most TCs. For instance, in the 1984 local government election, the BDP lost control of the capital city, Gaborone to the BNF.¹⁹⁰ The relationship between the BDP and the urban population reached a tipping point in 1994 when opposition parties won control of all major towns (Gaborone, Francistown, Lobatse, Jwaneng and Selebi Phikwe).¹⁹¹ Buoyed by the urban support, opposition parties increased their number of councils controlled by them to seven out of 14 in 1994, though declining to five out of 14 in 1999.¹⁹² Internal power struggles and splits inside opposition parties in the new millennium opened up opportunities for the BDP to regain control of some urban local authorities such as Francistown and Selebi Phikwe. However, instability within the BDP itself culminated in the formation of the Botswana Movement for Democracy (BMD) in 2009 and sustained the perennial local level competition for power.¹⁹³

¹⁸⁶ Poteete Mothusi & Molaodi (2010) 7.

¹⁸⁷ Poteete Mothusi & Molaodi (2014) 38.

¹⁸⁸ Poteete Mothusi & Molaodi (2014) 38.

¹⁸⁹ Charlton (1993) 335.

¹⁹⁰ Maundeni (1998) 130.

¹⁹¹ Kathyola & Job (2011) 27.

¹⁹² Kathyola & Job (2011) 27.

¹⁹³ Poteete Mothusi & Molaodi (2014) 25.

These interparty and intraparty dynamics have contributed to the BDP government's continued ambivalence towards decentralisation. As shall be demonstrated below, similar to ZANU-PF's response to the MDC dominance of urban local authorities in Zimbabwe, the BDP has not only resisted democratic reforms but has recentralised some substantive local government powers.

6.3. Substantive Powers

Similar to the first PLGSC, the Venson-Moitoi Commission recommended that in order for the elected system of local government to improve service delivery, there was a need for central government to decentralise some of its powers. However, in the heat of a global financial crisis and political uncertainty (heightened by declining urban support for the BDP), the government flagrantly ignored the Commission's proposals. Instead, it gradually recentralised several local government functions whilst maintaining a firm grip on its legislative and personnel administration powers. The outcome of these reforms has been a considerable undermining of the components of local democracy. This was corroborated at a press conference addressed by the Mayor of Gaborone in 2011. Here he lamented that, due to the erosion of most of their substantive powers, councillors have nothing much to account to the people for.¹⁹⁴

6.3.1. Scope of Functions

6.3.1.1. Water Supply

The Venson-Moitoi Commission recommended the strengthening of councils by improving their processes of revenue-generation, and particularly the water billing system and debt management.¹⁹⁵ In 2009, the government responded by initiating reforms that sought to reverse both the letter and the spirit of the Commission's report. Water supply was transferred from local councils to a central government body, the Water Utilities Corporation (WUC). The takeover was designed to be gradually implemented in such a way that the WUC would take over the function in profitable areas, whilst councils would remain responsible in areas where billing systems are undeveloped, or water is provided as a non-profit making service.¹⁹⁶ For example, the North West DC was considered as one of the areas where water supply was less

¹⁹⁴ Keoreng E 'New Gaborone Mayor seeks Power to Hire and Fire' *mmegionline* 5 October 2011 available at <http://www.mmegi.bw/index.php?sid=1&aid=494&dir=2011/October/Wednesday5> (accessed 31 July 2016).

¹⁹⁵ Poteete Mothusi & Molaodi (2010) 7.

¹⁹⁶ Poteete Mothusi & Molaodi (2010) 8.

profitable. As soon as a pre-paid water system was introduced in the District's capital, Maun, the WUC took over water supply.¹⁹⁷ This strategy suggests that the central government has an interest in ensuring that councils remain insignificant players in the process of local governance. Thus, since the recentralisation of water supply would lead to loss of revenue from water bills, councils would remain both financially weak and operationally less active.

6.3.1.2. Primary Health

The provision of primary health services was a function of councils since independence. In 2009, the government transferred the function to the Ministry of Health, resulting in a restricted scope of functions to DCs and TCs.¹⁹⁸ The withdrawal of primary health services meant loss of control over clinics and the fees charged to members of the public for accessing them. Due to the tie-in between functions and revenue, this change also meant the shrinking of local government finances. This prompted the then Mayor of Gaborone to argue that developmental projects and social services in local authority jurisdictions were being run by the central government, in contradiction with the essence of decentralisation.¹⁹⁹ The same view was shared by Poteete et al, who suggested that councils in Botswana should better be characterised as delegated and not decentralised bodies of government.²⁰⁰

6.3.1.3. Primary Education

In 2010, the government announced that responsibility for primary education would be transferred from local councils to the Ministry of Education and Skills Development.²⁰¹ As explained earlier, primary education played a significant role in Botswana's local authorities, accounting for over 70 per cent of council expenditure.²⁰² As a result, apart from the loss of revenue through education fees, councils also lost a substantive function and a meaningful standing in local government.

¹⁹⁷ Poteete Mothusi & Molaodi (2010) 8.

¹⁹⁸ Poteete Mothusi & Molaodi (2014) 27.

¹⁹⁹ Keoreng (2011).

²⁰⁰ Poteete Mothusi & Molaodi (2014) 27.

²⁰¹ Poteete Mothusi & Molaodi (2010) 9.

²⁰² Picard (1987) 199.

All in all, the effect of these recentralisation reforms has been to strengthen central government whilst weakening elected local authorities. Accordingly, this suggests the continuity of longstanding government disinterest in decentralisation and its preference for a strong centrally-controlled state. According to Poteete et al, this is due to the increasingly uncertain political situation at the local government level.²⁰³ Thus, the government sees the provision of more local government autonomy as resulting in the strengthening of opposition political parties. This is particularly true when viewed from the perspective provided by case studies of countries with a similar level of competition in local government. Malawi and Zimbabwe corroborate this explanation of a situation in which ruling parties uncertain of the possibility of controlling local authorities in either urban areas or ethnically polarised regions.

6.3.2. Personnel Administration

Prior to 2008, employees of central and local government were managed by separate bodies. The Department of Public Sector Management (DPSM) administered central government's civil servants whilst the Unified Local Government Service Commission (later renamed Department of Local Government Service Management (DLGSM)) administered the employees of local authorities. In 2008, the Public Service Act was amended to provide for a single public service for both central and local government personnel under the DPSM.²⁰⁴ Although already under central government control through the DLGSM, the 2008 amendment Act effectively made all local government employees civil servants and halted the DCs and TCs' quest for personnel administration power. It should be noted that human resources capacity has gradually improved over time, with most of the staff in management and supervisory positions now equipped with degrees.²⁰⁵ From a comparative perspective, this is exactly what the South African government tried to achieve through the Single Public Service Bill in 2008, but failed due to limitations imposed by the Constitution. Accordingly, the centralisation of personnel administration under the DPSM in Botswana shows the ease with which some powers can be recentralised when local government is not constitutionally protected.

²⁰³ Poteete Mothusi & Molaodi (2010) 9.

²⁰⁴ Poteete Mothusi & Molaodi (2010) 9.

²⁰⁵ See Poteete Mothusi & Molaodi (2014) 28.

6.3.3. Legislative Powers

Local government legislation adopted by the BDP government at independence conferred the Minister responsible for local government with powers to approve and amend by-laws as discussed earlier. In its report, the Venson-Moitoi Commission recommended that the Minister's powers to veto council by-laws should be repealed in order to increase efficiency.²⁰⁶ Apart from efficiency, this recommendation would also increase the autonomy of councils and deepen decentralisation. The government rejected this proposal, arguing that it was absolutely necessary for the Minister to approve by-laws, synchronising local and central government activities.²⁰⁷ This resistance appears to dovetail with the BDP's struggle to contain the opposition parties who had taken control over urban local authorities.

6.4. Financial Autonomy

Since independence, the financial capacity of local authorities in Botswana has been in a state of distress. Accordingly, to improve service delivery, the Venson-Moitoi Commission made several revenue-generation and expenditure management recommendations. Its view was that councils required efficient mechanisms for raising finances and the autonomy necessary to make spending decisions. In its response, the government approved recommendations that sought to improve financial efficiency, but rejected those that sought to extend expenditure autonomy, a sure sign that it intended to maintain central control over spending. In terms of expenditure autonomy, the Commission recommended that the system of Ministerial approval of budgets and capping of expenditure should be discontinued because it reduces councillors to beggars who go 'cap in hand' to central government officials pleading for deficit funding.²⁰⁸ Similar to its response to proposed legislative autonomy, the government was averse to expenditure autonomy for the same reason of centre-local synchronisation.²⁰⁹ Nengwekhulu argued that the very essence of political accountability was being threatened by the continuity of this practice since councillors were being held accountable for decisions that were outside their control.²¹⁰ The reluctance of the BDP government to yield to these calls exemplifies how keen regimes are to strengthen central control in times of political decline.

²⁰⁶ Kathyola & Job (2011) 29.

²⁰⁷ Kathyola & Job (2011) 29.

²⁰⁸ Nengwekhulu (2008) 174.

²⁰⁹ Nengwekhulu (2008) 174.

²¹⁰ Nengwekhulu (2008) 174.

In terms of financial efficiency, the Commission recommended extending property rates to DCs; the improvement of debt collection, billing and revenue collection systems, particularly on water reticulation; the implementation of cost-recovery measures; and the introduction of the cross-billing system.²¹¹ Contrary to the government's position on expenditure autonomy, all these recommendations were approved, indicating some levels of ambivalence toward decentralisation. Five years later, the government appeared to be renegeing on its commitment to strengthening the internal revenue of local authorities, ostensibly affirming the argument that it had an interest in keeping them constantly dependent on the central government. In 2008, the central government transferred the power to raise wildlife and tourism resource royalties from local councils to the Ministry of Environment, Wildlife and Tourism.²¹² The transfer of this revenue source further depleted local authorities' already meagre internal revenue, and firmly entrenching their dependency on central government transfers. The importance of this revenue source was revealed by Poteete et al's study of the top three revenue sources in Chobe and North West DCs. The study revealed that, in the period between 2006 and 2008, wildlife and tourism resource royalties were the third and top revenue source for Chobe and North West respectively.²¹³ Accordingly, it is observable that the central government has not just been taking over simple revenue sources but has been specifically targeting the lucrative ones.

7. Conclusion

The case of Botswana is characterised by limited activity in terms of the recurrence of decentralisation and recentralisation waves. The country only experienced a single wave of decentralisation during the period of transition to independence in the 1960s. The wave was being driven by the outgoing protectorate government's effort to prepare the country for self-government under a multiparty democracy. The transitional reforms on local government that promoted decentralisation were implemented in earnest by the new majority government led by the BDP, a pro-democracy and conservative political party. They opened local government structures to multiparty democracy, awarded the elected local authorities with a wide scope of functions that included primary education, primary health, water supply, low-cost housing,

²¹¹ Poteete Mothusi & Molaodi (2010) 7.

²¹² Poteete Mothusi & Molaodi (2010) 9.

²¹³ Poteete Mothusi & Molaodi (2010) 17.

road construction and maintenance and provision of abattoir facilities. Legislative powers with central government oversight and unfettered personnel administration powers were equally conferred to the new local authorities. Financial autonomy was also guaranteed as local authorities were awarded generous taxing powers, with some limits on expenditure autonomy. The only aspect of local government autonomy that was not guaranteed was constitutional protection, a common feature of the British-sponsored constitutions that were adopted by most African countries at independence.

Soon after the first round of local government elections in an independent Botswana, the force driving decentralisation appeared spent as recentralisation settled in. A steady decline in the process of decentralisation took root as the government gradually recentralised some local government powers and functions. In particular, local democracy regressed due to the appointment of ruling party members as specially-nominated councillors, and DCrs as central government representatives who played a key gate-keeping role in local government. Personnel administration was centralised whilst several functions including water supply, primary education and primary health were also taken over by the central government. Internally-generated revenue for local government dwindled as the central government withdrew the local government tax, wildlife and tourism royalties and other fees that were associated with recentralised functions.

The recentralisation process extended over a long period from the late 1960s to 2018. During this period, pressure for local government autonomy was always alive. However, without constitutional protection, the government easily ignore this pressure, just as Zimbabwe had done before the enactment of the 2013 Constitution. Local government reforms which promoted decentralisation were proposed twice (by the first and second PLGSC of 1978 and 2001 respectively). These included the provision of local government in the constitution; the discontinuation of the system of nominated councillors; the depoliticisation of DCrs' role; independence of the LGSC as well as the rescinding of the Minister's powers to appoint specially-nominated councillors, approve by-laws and council budgets. The two Commissions also made recommendations for strengthening central government control, such as the appointment of DOs to assist the DCr. Furthermore, some recommendations were made by the Commissions to improve efficiency in local authorities. They include politically inconsequential changes in the water billing system and debt management processes. In all

circumstances, the government repeatedly rejected nearly all proposals seeking to promote local government autonomy and embraced ones that either sought to strengthen central government control, or were politically inconsequential. As a result, the process of recentralisation has been steadily proceeding since the late 1960s with limited resistance.

It can, therefore, be concluded that the wave of decentralisation witnessed in the 1960s was a product of the government transition from British rule to majority rule. In other words, it was being driven by the 1960s democratisation process that accompanied the handover of power to the new native government at independence. The case of Malawi corroborates this argument as the country went through a similar process at independence in 1964, leading to what has been termed the 'heydays' of local government. On the other hand, the process of recentralisation in Botswana was mainly driven by the BDP government's reluctance to share power in the face of rising competition from the opposition at the local government level.

CHAPTER EIGHT

Conclusion

1. Introduction

In the first chapter of this study, an observation was made that power seldom stays either centralised or decentralised. Rather, it ebbs and flows, creating waves of decentralisation and recentralisation over time. A question was raised – what explains this process? Put differently, what is driving these shifts? A survey of literature in the second chapter indicated that, theoretically at least, there is a global preference for a governing model in which power is decentralised from central government to elected subnational entities.¹ In this model central government allows subnational entities to exercise political, fiscal and administrative powers and functions with a measure of supervision.² The process of decentralisation is preferred to its antithesis, centralisation. In centralisation, central government dominates or withholds the political, fiscal and administrative governing powers from local entities.³ Closely linked to centralisation is the process of recentralisation, a reverse wave that seeks to return power to the centre as a response to major decentralisation reform.⁴ If decentralisation is theoretically more popular than centralisation and recentralisation, why is it that, in practice, it moves in fits and starts? It is against this backdrop that evidence was collected from five case studies, tracing the process of decentralisation and recentralisation in Botswana, Malawi, Namibia, South Africa and Zimbabwe.

It is easy to imagine an even process of decentralisation that follows a linear progression over time, yet, with the help of the five case studies what we see is an unsteady process that sometimes flows evenly and at times unevenly, both within and across states. This makes it difficult to predict which direction states will take between decentralisation and centralisation and at what point they make the shift. Naturally, in the process of figuring out how and when

¹ Manor J *The Political Economy of Democratic Decentralisation* (1999) 1; Erk J 'Federalism and Decentralisation in Sub-Saharan Africa: Five Patterns of Evolution' (2014) 24 (5) *Regional and Federal Studies* 535-6; Faguet J P 'Decentralisation and Governance' (2013) 53 *World Development* 3.

² Riedl R B & Dickovick J T 'Party Systems and Decentralisation in Africa' (2014) 49 (3) *Studies in Comparative International Development* 323.

³ Dickovick J T *Decentralisation and Recentralisation in the Developing World: Comparative Studies from Africa and Latin America* (2011) 193.

⁴ Dickovick (2011) 2.

states make their moves, a methodological challenge arises. A single country case study seems inadequate. Cross-sectional studies that examine time-specific events may miss the bigger picture. A legal or constitutional analysis on its own can be disconnected from practice whilst a purely political science approach could miss the symbiotic relationship between the law and politics. An observation from this study is that untying the intricacies, formalities and informalities, continuities and discontinuities, legal and political decisions of those in power is a complex process that takes time, requires broad comparative perspectives involving the historical tracing of many countries' experiences with local government over long periods of time and across successive governments. It involves an analysis of constitutions, legislation, policies and political practices, mapping out how, when and why these change and what similarities and differences exist in terms of both internal and external forces and how these many forces shape the path towards either decentralisation or centralisation of power.

This chapter presents several theoretical conclusions which emerge from the five case studies, and reflects on their implications for the future of decentralisation in Southern Africa. First, ruling elites in Anglophone Southern Africa are rational actors who are primarily concerned with power politics: how to get power, how to increase it and how to keep it. Secondly, and consequently, decentralisation is allowed to the extent that it does not threaten central government control. Thirdly, in the most likely event that the implementation of decentralisation reforms becomes a potential or real threat to central control, power is tactically recentralised. In the process, states teeter between decentralisation and centralisation of power. The case of Anglophone Southern Africa attests to this argument through the uneven pattern of reforms that span from the colonial period to the 2019. Against this backdrop, decentralisation appears as a complex process, one in which ruling elites engage rationally, picking and choosing, twisting and turning, expanding or reversing in response to both internal and external factors. Fourth, the political calculations of governing regimes are a product of a menu of external and internal, top-down and bottom-up factors that present either opportunities or threats to their governing power. Fifth, although both internal and external factors play a role in driving decentralisation and centralisation of power, it is the internal factors that matter the most. When external factors put pressure on governments to shift the balance of power, the factors tend to receive only superficial accommodation, expressed through reform rhetoric and the granting of harmless concessions that lack substance. Lastly, within this context, decentralisation will continue to be an elusive process unless there is a culture of

constitutionalism strong enough to counter governments' almost predictable penchant to monopolise power.

2. Overarching Argument

The overall argument of this study is that, despite the many differences between these countries, time periods and governing regimes, with remarkable consistence, (re)centralisation, or the effort to (re)centralise, follows immediately upon decentralisation reforms. This is because ruling elites seek to consolidate power and would cling to it unless they are forced to decentralise by emerging forces. Even if they concede to the demands for decentralisation, they will eventually succumb to the appeal of power. They may start as democrats, willing to exercise power within the limits set by the law, and to surrender some of their powers and functions to local government. But once settled in power, they start showing their true colours. They begin to want more and more power, and gradually they take back control of decentralised powers and functions. This is done in various ways that include simply renegeing on or delaying the implementation of constitutional and legislative provisions, amending the constitutional or legislative provisions to withdraw certain powers of local government, or finding ways to assert central control.

Ruling elites may even publicly commit to decentralisation through policy pronouncements while in practice they remain averse to local government autonomy. This is because local government naturally creates formal pockets of political competition and organising space for opposition to elites at the central government level. Local government galvanises, organises and sustains new or losing opposition political parties; minority ethnic or tribal groupings; disgruntled majority ethnic, racial or linguistic groupings; disaffected traditional leaders; regional ruling party elites and radical urban voters by reintegrating and institutionalising them into the governing structures of the state. Naturally, local government limits the exercise of power and influence by governing regimes at the centre. As a consequence, the stronger the local government is, the stronger the opposition, and the more checks and balances on governments can be observed and put into practice.

Ruling elites are clearly aware of the local government-induced vertical separation of powers. Accordingly, in their political calculations and power schemes, they try to neutralise local

government's power and autonomy so as to weaken local opposition, entrench their own control and preserve their power. However, colonial era experiences, the memories of centralised and authoritarian majority rule between the 1960s and late 1980s, the resurgence of post-Cold-War authoritarian governments in countries like Zimbabwe, and the triumphant story of western democracies makes it imperative for the exercise of power to be held in check by a strong local government. The result has been that decentralisation of power to strong local government has emerged as a powerful example of what commitment to good governance can mean in practice. Aware of this potential, the donor community, alongside international institutions, opposition political parties, minority ethnic groups, regional ruling party elites and civil society organisations exert pressure on governments to decentralise power. Consequently, regimes are caught between a rock and a hard place: to impress and lose power, or to cling to power and lose popularity. An overall observation is that left to their own means, ruling elites will always choose the latter.

Regardless of the default impulse to centralise power, time and again decentralisation waves continue to emerge across all countries. What differs is the depth and frequency of these waves. In some countries, the waves are repeated more often, whilst in others, they emerge only once in decades. This variation brings the discussion on drivers of decentralisation to the conclusion that waves of decentralisation are the product of crisis situations. The crises range across political and economic crises and take various dimensions and degrees ranging from civil war to protests, electoral disputes, legitimacy questions and economic meltdowns. In more specific terms, regimes negotiating for peace following internal conflict; new regimes that come to power through a democratic process and are in search of legitimacy; and regimes in economic instability desperate for donor support all find themselves vulnerable to negotiations with pro-decentralisation actors. The actors vary from opposition political parties, disgruntled ethnic groups, civic groups and donors to regional and international bodies. The negotiations could be centred on the development of a new constitution, formation of a new government or formulation of a new policy. The parties to the negotiations consider several factors that in their calculations necessitate decentralisation and 'horse trading' with the ruling party commences. These factors include the need to align with the democratisation process; to meet donor requirements; realise peace and find stability; the fear of dictatorship in entrenching ruling party power; and the creation of local footholds of power.

While none of these factors are likely to trigger a wave of decentralisation on their own, they come into play in times of crisis and moments either intense political or economic instability. This crisis could be in the form of a war, widespread protest action, a change of government or economic collapse. But in the absence of a crisis, all calls for decentralisation from various actors will come to nothing. The case of Botswana discussed in Chapter Six is a very good example. The country experienced a wave of decentralisation during the transition to independence in 1966 (more or less at the same time as Malawi but in advance of Zimbabwe, Namibia and SA). The other four countries proceeded to experience new waves of decentralisation, with some like Malawi and Zimbabwe going through them more than once. The Botswana Democratic Party (BDP) – led government (which has been in power since independence) has been subjected to similar pressures for decentralisation, but the results have been negative. Instead of acceding to them, it has proceeded with a steady process of recentralisation. What makes Botswana different is the fact that it has been very stable both politically and economically since independence. It has neither experienced a change of government, nor serious economic instability. To the contrary, Malawi and Zimbabwe, two of the poorest countries in Southern Africa, with Malawi having an unprecedented level of leadership change, has had more cycles of decentralisation waves alternating with recentralisation.

Decentralisation waves experienced in the other four countries under study corroborate the centrality of the crisis situation. SA's wave of decentralisation emanated from two crisis situations that emerged between the 1980s and early 1990s. First, there was the instability created by the nationwide wave of anti-apartheid township uprisings coordinated by the United Democratic Front (UDF) in the 1980s. The apartheid government responded by establishing fully fledged municipalities in black townships, Coloured and Indian communities. This decentralisation initiative did not work as the uprisings escalated and townships became ungovernable, creating a second crisis. This second crisis eventually led to the 1990s formal negotiations for a democratic SA. The negotiations led to the adoption of the interim Constitution and Local Government Transition Act (both in 1993) and the final Constitution in 1996. It is within this context that negotiations between the outgoing ruling National Party (NP), the incoming governing party, the African National Congress (ANC), together with civic groups and other small political parties ended with the codification of a strong decentralisation system in 1996.

Similarly, the case of Namibia (discussed in Chapter Six) shows that the process of decentralisation enshrined in the 1990 Constitution also emerged from a crisis situation. The crisis centred on the liberation struggle that engulfed the country after SA's refusal to leave Namibia. It was in the process of addressing this crisis that some western countries (Western Contact Group) and the United Nations (UN) drafted the principles which guided the drafting of Namibia's independence constitution, which included decentralisation measures. This intervention set up the foundation for a more comprehensive constitutional negotiation in which several opposition parties managed to lobby successfully for decentralisation.

As discernible from Chapter Five, Malawi experienced two waves of decentralisation, the first in the early 1960s and a second in 1994. Remarkably, both of these emerged from a crisis situation involving change of governments and negotiations for a new constitution. In the first, it was the end of British colonial rule and the need to prepare the country for a democratic government under majority rule between 1960 and 1964 that powered the movement. In this case, the outgoing British government had an opportunity to set up a decentralised government structure that conferred autonomy to local government. In the second, it was the collapse of Hastings Banda's one-party state in at the end of the Cold War in the early 1990s, and the consequent need to draft a new constitution that would return the country to multiparty democracy. In this case, an opportunity was opened for the participation of opposition parties in the drafting a new constitution, one which enshrined local government. Accompanying the end of the Cold War came the discontinuity of financial support by Western countries that no longer required Africans as allies in the fight against the Soviet Bloc. The resultant financial crisis opened opportunities for donors to put pressure on the Banda government to adopt economic and governance reforms that promoted decentralisation. Outside these crisis situations, the pro-decentralisation parties discussed proved unable to influence local government reforms that promote decentralisation.

As discussed in Chapter Four, the case of Zimbabwe fits squarely in the pattern of crisis-induced decentralisation reforms. Akin to Malawi, Zimbabwe's two waves of decentralisation were pushed by a combination of economic and political crises. First, the economic crisis forced the government to adopt the Economic Structural Adjustment Programme (ESAP) in 1992. This programme enabled donors to influence the adoption of governance and economic

reforms that promoted decentralisation and the rolling back of the frontiers of the state. Thereafter, the process of decentralisation regressed as ESAP was abandoned and a long-lasting process of recentralisation settled in. The second wave of decentralisation that peaked with the adoption of the 2013 Constitution was equally a product of a (political) crisis: the disputed presidential election of 2008. The electoral dispute led to a peace pact brokered by the Southern African Development Community (SADC) between the ruling ZANU-PF and the two opposition Movement for Democratic Change parties (MDC-T and MDC-M). The negotiated pact, dubbed the Global Political Agreement (GPA), had provisions which mandated the three parties to form a Government of National Unity (GNU) and to write a people-driven constitution which respected the principles of mutual agreement. It is within this context that the two opposition political parties were able to negotiate for constitutional provisions that promoted a comprehensive decentralisation process.

As stated at the beginning, ruling elites are always trapped in a default mode of power consolidation, one that makes them naturally inclined to centralisation. What this means is that even though governments are forced by crisis situations to adopt decentralisation, they will always consistently and inevitably try to undermine it, once the crisis is over. Thus, they can be expected to renege on the decentralisation commitment, or start recentralising power, commencing with fiscal, administrative and substantive powers. Bolstered by tightened supervisory measures, these recentralisation reforms have a paralysing effect that undermine both the capacity and the autonomy of local government. Not a single one of the five cases provides an exception to this trend. In Botswana, a local government tax adopted at independence was the first to be withdrawn, and this was followed by the recentralisation of personnel administration powers, and the transfer of water reticulation, primary education and primary health functions all back to central government. In Namibia, central government held on to its functions and tightened its grip on revenue sources in defiance of both the constitutional and the legislative provisions intended to promote decentralisation. It even strengthened its control over local government through constitutional and legislative amendments that brought back the colonial style prefects in the form of Regional Governors, though it failed in its determination to recentralise personnel administration and local budgetary and legislative powers. Similarly, in South Africa, the ANC-led central government attempted to reform local government functions (such as electricity reticulation and municipal policing) and recentralise personnel administration through the proposal to introduce a single public

service. Meantime, the ZANU-PF government in Zimbabwe withdrew revenue-generating local government functions like electricity reticulation, water reticulation and motor vehicle licencing, stripped mayors of executive functions, and tightly supervised local government through harmful Ministerial directives and the intolerant purging of opposition councillors. Depending on the level of competition or the seriousness of the threat posed, political powers may also be eventually recentralised, depleting the little that may be left of local government autonomy. The case of Malawi is one such example of such extreme measures, which saw local government elections were postponed for several years.

The result of this recentralisation wave is that once local government is disempowered, power remains or is increasingly centralised until a new crisis emerges which favours decentralisation. Negotiations and compromises put the country back on the decentralisation agenda but not for long. Unless there are stronger forces that can hold back ruling elites from recentralising power after decentralisation reforms, the cycle continues with incredible consistency. Accordingly, Malawi and Zimbabwe (as the only two countries from the five to have experienced government changes and international intervention in internal conflicts) have seen the alternation of the cycles more frequently than the more stable countries of Botswana, Namibia and South Africa. Also discernible is the fact that although all governments seek to recentralise power after a major decentralisation wave, the success or failure rate in this attempt varies. For instance, whilst governments in Botswana, Malawi and Zimbabwe succeeded in their recentralisation process with ease, attempts to remove functions and reduce autonomy in Namibia and South Africa were stopped in their tracks by a combination of an alert civil society, strong parliaments and the existence of an independent judiciary. It can therefore be concluded that decentralisation in Southern Africa is a complex process whose practical workings are driven more by the specific internal dynamics of power and less by the general theoretical norms underpinning the model.

3. The Complexities of Decentralisation

All governments in the five case studies pervasively speak the language of ‘decentralisation’. In Malawi and Namibia the governing regimes have crafted ‘decentralisation policies’ as

guiding blueprints for national development.⁵ In Namibia, South Africa and Zimbabwe decentralisation is enshrined in the national constitution.⁶ In Botswana, decentralisation features regularly in the country's National Development Plans and local government legislation. That said, the first lesson from the five countries is that the actual practice of local government gives the process of decentralisation diverse meanings and dimensions from which regimes pick and choose in response to external and internal factors. In short, the practical workings of decentralisation mirror a complex process that should never be taken for granted. Its form, depth, strength or sustainability is hardly a product of blueprints but often always a product of shocks, threats and opportunities as these confront ruling regimes from one moment to another..

3.1. *De jure* vs *De facto* Decentralisation

One of the concluding insights generated by this study is that governments are never keen on pursuing reforms that diminish their own power. This observation cuts across all the case studies, and leaves a strong impression that regimes only embark on decentralisation reforms when in pursuit of more power, or under pressure from other actors. It is therefore imperative that the decentralisation of power to local government be codified in law (and especially in the constitution) so as to enable its legal enforcement. However, it is important to note that even the codification of decentralisation into law is not equal to the task of ensuring decentralisation. This study demonstrates this reality in two ways. First, the case of South Africa (examined in Chapter Three) shows comprehensive constitutional provisions for decentralising a variety of political, fiscal and administrative powers down to the level of local government. These provisions have been accompanied by a practice of decentralisation as provided for in the constitution, and the failure of a number of attempts by the central government to recentralise power. At face value, one could be tempted to conclude that decentralisation thrives once there is constitutional recognition of provision for local government. However, the comparative analysis of decentralisation in Malawi, Namibia and Zimbabwe shows just how simplistic the constitutional recognition argument is. In these three countries, constitutional provisions that

⁵ Ministry of Local Government and Rural Development The Malawi National Decentralisation Policy (1998); Ministry of Regional, Local Government and Housing A Decentralisation Policy for the Republic of Namibia: Decentralisation Development and Democracy (1997).

⁶ Ch 3 Constitution of South Africa 1996; Ch 12 Constitution of the Republic of Namibia 1990; Ch 14 Constitution of Zimbabwe Amendment (No 20) Act 2013; Ch XIV Constitution of the Republic of Malawi 1994.

decentralise power have simply been ignored (Malawi and Zimbabwe) or suffered from slow and reluctant implementation, or quite simply reversed, as in the case of Namibia. This brings the discussion to another observation: a country may be decentralised *de jure*, but centralisation remain entrenched in practice.

3.2. Deconcentration vs Decentralisation

The second chapter of this study clarifies that although some scholars treat deconcentration as part of decentralisation, the two are fundamentally different when it comes to understanding local government autonomy. Accordingly, the adoption of either of the two (or both) by governments systematically shapes the system of local government in that country. Deconcentration expands the reach, representation and control of central government into local communities without them ceding their autonomy. To the contrary, decentralisation limits the reach, influence and control of central government by creating semi-autonomous local authorities with a share of political, fiscal and administrative governing powers.

In Anglophone Southern Africa, colonial governments operated a parallel system of deconcentration at the central government level, alongside decentralisation at the local level. Deconcentration was implemented through a prefectural system of district commissioners (DCrs). The DCrs played a critical gatekeeping role which made them unpopular with the masses. However, faced with the competitive reality of multiparty democracy, most governments in the post-colonial era have reverted to the deconcentrated system of DCrs. In countries like Botswana, Malawi, Namibia and Zimbabwe the system was briefly abolished, but it was re-established in different versions and under different names, signifying the reality of path-dependence. In South Africa, it was permanently obliterated. On the other hand, decentralisation was implemented through a system of elected municipalities that were reserved as a privilege for the white population. The post-colonial period saw the expansion of decentralisation to the majority black population, but evidence from the five countries under study indicates that regimes are often ambivalent about, and sometimes renege on this system. In the main, what is observable is the co-existence of both deconcentration and decentralisation in most of the countries, with the single exception of South Africa. However, in this dual system what is equally clear is that ruling elites always seek to govern at the local level through the appointed DCrs whilst doing everything possible to neutralise the power and influence of the

decentralised structures. The ultimate effect of this bias is that although local government structures are put in place, central government remains firmly in control.

3.3. Political Decentralisation vs Fiscal and Administrative Centralisation

The above discussion indicates regimes' desire to sustain centralisation by undermining the decentralisation of power. Evidence from the five case studies suggest that whilst the decentralised system of local government was in most cases annihilated during the rise of authoritarianism in the 1960s and 70s, post-Cold-War regimes have become more tactical and more sophisticated. In most cases, regimes show willing to concede a modicum of power, just enough to give an impression that decentralisation is at work, whilst retaining core powers at the centre. This is made possible because the decentralisation of power itself has various dimensions. These are: a political dimension, in which communities can elect their own local government and hold it to account; a fiscal dimension, in which they are empowered to raise sufficient revenue to finance their mandates; and an administrative dimension where they have the power to appoint and manage their own employees. What has emerged from comparison between the five countries is that in their quest to claim democratic credentials, regimes often decentralise political power while at the same time retaining or recentralising fiscal and administrative powers. Some try and fail in this bid (as was the case with South Africa and Namibia (in 2015)) while others succeed, as in the cases of Botswana, Malawi, Namibia (before 2015) and Zimbabwe. As aptly argued by Louis Picard, the outcome is a 'symbolic' process of decentralisation, but one which is devoid of critical fiscal and administrative powers.⁷

3.4. Decentralisation vs Recentralisation

In the second chapter of this study, it was noted that there are two ways of studying decentralisation across country case studies. One is static (examining the state of decentralisation at a particular point in time), whilst the other is continuous (tracing the process of decentralisation as it undergoes shifts over time).⁸ This study opted for the latter, tracing the process of decentralisation in five countries from the pre-colonial period all the way up to 2016. In the end a pattern has emerged in which decentralisation is seldom experienced as a constant and smooth process. Rather, from time to time, states shift between decentralisation and

⁷ Picard L A *The Politics of Development in Botswana: A Model for Success?* (1987) 192.

⁸ Torris G Pike A Tomaney J & Tselios V 'Defining and Measuring Decentralisation: A Critical Review' (2011) *Munich Personal RePEc Archive Paper No. 51441* 4.

recentralisation in response to external and internal economic pressures and political shocks. All the five countries under study have gone through these waves, sometimes at more or less the same time and in response to external factors, and sometimes at different times in response to specific internal dynamics. In the main, it can be concluded that these internal factors vary amongst countries and over time across regimes, but what remains constant is their almost predictable influence on regimes' skewed shift towards more decentralisation or recentralisation of power. When analysed together over time, these shifts of power within and across states create a pattern that is ostensibly uneven but useful for some prediction of the circumstances within which decentralisation is likely to thrive, and those within which it is likely to be reversed.

4. The Pattern of Decentralisation in Anglophone Southern Africa

A common feature of states in Anglophone Southern Africa is the pervasive presence of a system of local government as a shared practice. A historical approach that traces local government practice from the precolonial era to the 2000 millennium reveals an unstable pattern, one that signals transformation in the system of local government and significant shifts in the distribution of power. In addition, a comparative analysis across the individual country case studies shows that sometimes the shifts occur concurrently and in the same direction whilst at others, these shifts take place at different times and in different directions. The resultant similarities and differences are indicative of the wide range of factors and interests which actually drive the process of decentralisation and its reversal. Similarities indicate the influence of the significant global dynamics that make decentralisation or centralisation fashionable at one moment, whilst differences show the dominance of contextual factors which are specific to each country.

4.1. Precolonial Period: Traditional System of Tribal Governance

Prior to the advent of colonialism, Southern African states practiced a traditional system of tribal local governance in which tribesmen would appoint their own local leadership based on tradition and custom. Throughout the region, chiefs, headmen and village heads governed their tribal territories with a great deal of autonomy and legitimacy as powerful local authorities. Community courts or meetings presided over by traditional leaders formed the platform for

some degree of consensus democracy in which key decisions were exclusively made by adult males of the community. Across the five countries, this system of local government was driven by traditional practices and religious beliefs. The system was diluted as colonial regimes introduced modern approaches, but it has nonetheless continued to remain resilient.⁹

4.2. Colonial Era: Strategic Introduction of Elected Local Government

All of the five countries under study, experienced some degree of British colonialism and the consequent exposure to a similar British system of local government. The British were in South Africa as early as 1795 when they took over the Cape of Good Hope (Cape Town) from the Dutch. They solidified their control of the territory when the two British colonies (the Cape and Natal) and two Boer republics (Orange Free State and Transvaal) were placed under the British crown in 1910. In 1885 Botswana was declared a British protectorate and, five years later, Zimbabwe became a British colony, one initially administered by the BSAC. In 1891, Malawi was also declared a British protectorate. Whilst Namibia was initially colonised by Germany in 1884, SA, itself then a British colony, took it over in 1915.¹⁰ As colonialism engulfed these territories in Southern Africa, the tribal states which had exercised traditional local government were integrated into modern systems of statehood that had an alien way of operating. A major shift in local government ensued through the introduction of a modern British system of elected local government. The shift was not an across the board radical intervention. It was rather a gradual process of modernising states around a British model, one that was first adopted in the Cape in 1836, and then gradually adopted by the new colonies, though initially restricted in practice to the areas inhabited by the white communities.

In all the colonies, the black population were initially confined to forms of indirect rule in which they maintained their traditional systems of tribal local government. The slow process of reforming the system of local government began, with both the traditional system of tribal governance and the British model of elected local government running parallel to each other. Informing the maintenance of the two systems was the grand policy of racism, working to

⁹ See Chigwata C T 'Decentralization in Africa and the Resilience of Traditional Authorities: Evaluating Zimbabwe's Track Record' (2015) 25 (5) *Regional and Federal Studies*; Erk J 'Constitutionalisation of Traditional Authorities and the Decentralisation of Governance: Anglophone and Francophone Africa Compared' *Paper Presented at the Stellenbosch Annual Conference on Constitutionalism in Africa 2016*.

¹⁰ Then SA itself was a British dominion.

segregate the majority black population from the white communities, with their privileges and services. This process was carefully managed in such a way that local government in black areas were allowed little autonomy. It was shorn of political, administrative and fiscal powers; and allowed to exercise only a modicum of substantive functions with very limited capacity whilst being heavily supervised through a system of district administration. Under the system of district administration, central government agents like District/Native Commissioners exercised wide checks that limited scope of self-government and entrenched central government control. In quite deliberate fashion, the development of local government into a powerful modern system was undermined in black communities.

To the contrary, the system of elected local authorities was established in areas settled by white people with the aim of affording them a better service. It was governed by a set of councillors, directly and regularly elected by the white residents. Its scope of functions was wide, covering most of the basic services such as water supply, electricity reticulation, refuse collection, road rehabilitation, primary health, parks and gardens. Because the white population tended to settle in affluent suburbs adjoining central business districts (CBDs), their local authorities had a rich tax base that conferred them with substantial amounts of internal revenue. Consequently, the local government system enjoyed much more autonomy than the one available to black residential areas.

At the centre of the factors driving the racial separation of local government systems was the fear that, once integrated into the politics and governance of the state, the majority black population would naturally overthrow white governments. In hindsight, the scheme of local government that prevailed during the colonial period was mainly a product of the struggle to preserve the national power of the white settler regimes, which, in turn, was intricately linked to the maintenance of racial (white) socio-economic privilege and political dominance. Simply put, the skewed system of local government during the colonial era was deliberately engineered by the ruling settler regimes to inhibit political opposition. It was a rational response to power calculations that predicted a zero-sum game between an unpopular minority white regime that had socio-economic privileges to lose, and the majority black population which resisted domination. In this larger process, a local government system that limited autonomy in areas inhabited by black people whilst widening it in areas inhabited by the white community

emerged as the most popular strategy of weakening any potential footholds of political power for the opposing black population.

4.3. Transition to Majority Rule: Extending Elected Local Government to Blacks

From the 1960s to the 1990s, states in Anglophone Southern Africa gradually achieved majority rule. In the transition from white minority rule to black majority rule, swift changes were made to the system of local government, pointing towards the broad decentralisation of power. The transition took place at different times (Botswana and Malawi in the 1960s, Zimbabwe in the late 1970s, Namibia and South Africa in the 1990s) yet, in all cases, a similar reform - entailing the extension of the modern British system of elected local government to the previously marginalised black population - is observable. It therefore affirms the conclusion that the discriminatory system of local government that prevailed during the colonial period was deliberately put in place by the minority regimes in an attempt to keep the majority black opposition at bay also at local level. Implied in this argument is that in Botswana, Malawi and Zimbabwe, the outgoing British government deliberately extended the system of elected local government to the black population on its exit simply because it was then no longer important to shield white minority dominance. However, differences are noticeable in terms of the system of local government between the states that made the transition to majority rule in the 1960s and 1970s (Botswana, Malawi and Zimbabwe), and those that realised this transition in the 1990s (Namibia and South Africa).

Countries that achieved majority rule in the 1960s and 1980s adopted the system of elected local government that had operated in white communities: multiparty local government elections, the provision of a wide scope of functions, with fiscal and administrative autonomy, but generally unprotected by the constitution. This reform resulted in only marginal changes being made to the already existing system of white local authorities with regard to non-racialism.

To the contrary, transition to majority rule in Namibia and South Africa produced a similar system of elected local government, but one which went further to guarantee security of existence through its constitutional entrenchment. The constitutional recognition of local government in Namibia and South Africa, in a system alien to British practice, indicates the

influence of negotiating internal players, including the outgoing white minority settler regime, the small political parties, the minority ethnic groups and, of course the incoming black majority political parties. In both Namibia and South Africa, the stronger system of local government was, to a greater extent, a product of calculations between minority and majority parties in their attempts to weaken each other's future power bases. In Namibia, for instance, small political parties with minority ethnic support canvassed strongly for a stronger system of local government so as to weaken SWAPO/Ovambo ethnic domination. Similarly, in South Africa, the ANC later advocated for a stronger system of local government. This was a calculated move to neutralise the provincial sphere of government, which it feared would preserve minority interests and undermine majority rule. This background explains the governments' attempts at recentralising certain powers and functions once in power.

However, it is important to note that in both transitional periods, adoption of the modern system of elected local government was not entirely an elite affair. The majority of citizens in all the five countries were largely in support of the extension of elected local government to the black population. There was a conscious realisation amongst both citizens and black politicians that global politics has shifted away from traditional leadership to modern multiparty democracy.

4.4. Majority Rule (1960s - late 1980s): Faith in the Centralised State

The period of transition to majority rule set Anglophone states on a trajectory for expanded decentralisation. In the transitional cases discussed above, incoming black governments simply continued to operate the elected system of local government, but now on a non-racial basis. Once in power, though, they all worked to reverse the momentum of decentralisation, using different strategies to take back certain powers, and to limit local government autonomy. The reverse wave of decentralisation was implemented with more vigour and success in countries that achieved majority rule in the period between 1960 and 1980 than their counterparts which achieved it in the 1990s. Scholarly literature indicates that the period between 1960 and the late 1980s was associated with development models that emphasised central government planning and direction.¹¹ This model appealed to the new African regimes, instilling faith in a strong central government and encouraging the pursuit of national unity at the expense of local

¹¹ Wunsch J S 'Foundations of Centralisation: The Colonial experience and the African Context' in Wunsch J S & Olowu D (eds) *The Failure of the Centralised State: Institutions and Self-Governance in Africa* (1990a)44.

government autonomy. A close look at the countries under study brings to the fore the inadequacies of interpreting this shift as simply a fashion of the time.

In Botswana, Malawi and Zimbabwe, local government was quickly stripped of personnel administration power, powers of taxation and several other important functions. The supervisory prefectural role of the colonial-type District Commissioners was reintroduced as an instrument of control. In Malawi, the Hastings Banda regime went further and to the point of outlawing multiparty competition. Meanwhile, in Zimbabwe, the Robert Mugabe regime continuously threatened to establish one-party rule. Whether multiparty competition was allowed or not, a common feature of local government in the three countries was its resemblance to deconcentration rather than decentralisation of power, one that reduced local government to an administrative extension of central government. Apart from the pursuit of a centrally-directed development model that had been borrowed from other countries, the new direction of local government was ostensibly a response to an internal competition for power that had a mixture of regional, tribal and ethnic dimensions.

In Botswana, local government provided the opposition with footholds of power for the disgruntled Tswana chiefs in the southern part of the country, the disaffected non-Tswana tribes and radical urban voters. In Malawi, opposition to Hastings Banda's rule (both within and outside the party) assumed an ethno-regional dimension. In Zimbabwe, political support was sharply divided between the *mashona* and *matabele* leaders in the north-eastern and south-western parts of the country respectively. With political opposition located and sustained at the subnational level, most postcolonial regimes reverted to the tried and tested means of political containment¹² – recentralising local government powers and functions and entrenching tight supervision. It can therefore be concluded that the shift to a more centralised state with a weaker local government was a calculated move by the new ruling regimes to neutralise political opposition rather than simply the application of a developmental model. This argument is further corroborated by the outcome of centralisation after the end of the Cold-War in the late 1980s. None of these countries succeeded in achieving the much-touted national unity, save for Botswana, and the development outcome was crippling and retrogressive.¹³ To the contrary,

¹² Wunsch (1990a) 29.

¹³ Contrary to Malawi and Zimbabwe whose national development policies were dominated by socialism, Botswana's national development policies were driven by strong capitalist values.

regimes in all the three countries did succeed in neutralising and containing their political opponents.

4.5. Post-Cold-War Decentralisation Reforms (1990s)

By the end of the Cold War between the Western and Eastern Blocs and their proxy allies in Africa in the early 1990s, most authoritarian and socialist-oriented states had suffered economic collapses. Malawi and Zimbabwe are good examples. Desperate for the donor support necessary to stabilise their economies and sustain livelihoods, regimes found themselves under pressure to democratise, and therefore to decentralise, government power. Accordingly, Malawi had to reintroduce multiparty democracy whilst Zimbabwe's ZANU-PF had to abandon its drive for a 'one-party state'. On the coat tails of the wave of democratisation was the requirement to abandon failed centralisation models and decentralise power. At the behest of external donors, both Malawi and Zimbabwean governments introduced several decentralisation programmes in the 1990s. It soon became clear that the governments were only desperate for the economic handout, and were not at all committed to the decentralisation agenda they signed up for. In both Malawi and Zimbabwe, donors were left disappointed as the process of decentralisation was clouded in deceit. In Malawi, the new UDF government stressed the rhetoric of decentralisation, expressed in its constitution and policy documents, but not realised in practice. In Zimbabwe, local government reforms made some changes to political structures, but left intact the previous structures of centralised fiscal, substantive and administrative powers. Botswana did not engage in any major reforms during this period, an indication of how economic stability kept donor pressure at bay. Namibia and South Africa (which had achieved majority rule in 1990 and 1994 respectively) also had some cross-cutting decentralisation reforms that strengthened local government. However, unlike reforms in Malawi and Zimbabwe, these were not driven by the international donor community. Their reforms were a product of post-conflict internal negotiations and the political calculations made by internal players. It is therefore observable that the international influence of the donor community in the 1990s was not cross-cutting.

4.6. Millennium 2000: Constitutions and Constitutionalism

The above discussion shows that in the early 1990s most Anglophone states were engaged in decentralisation reforms that shifted, or sought to shift, more governing powers away from central government, and grant more autonomy to local government. Events that followed in the 2000 millennium indicate an across the board attempt to recentralise governing powers. In Botswana, a large number of local government functions were transferred back to central government, the centrally-controlled system of district administration was strengthened, and personnel administration powers were consolidated in the national public service. Reforms to concede fiscal powers to local government and constitutionally entrench it as an order of government were firmly rejected by the BDP regime. In Malawi, local government elections were deferred for almost two decades, councils were stripped of their policy-making powers and centrally-appointed district commissioners were reintroduced as the chief executive officers of local authorities. In Namibia, the decentralisation of functions from central government was delayed while regional governors appointed by the President were introduced to supervise regional councils and local authorities. In 2015, a Bill to amend the Local Authorities Act with a view to centralise personnel administration, fiscal and legislative powers was introduced. In South Africa, attempts were made to take away electricity reticulation, land-use planning, municipal policing and personnel administration powers. In Zimbabwe, water supply and motor vehicle licencing functions were recentralised; autonomy in expenditure was curtailed; ministerial interventions were invoked to replace elected mayors and councillors with centrally-appointed commissions; and harmful Ministerial directives were given to assert control over all decision-making.

Although the pursuit of recentralisation followed immediately upon decentralisation in almost all the five countries, the process was far from even across them. Some regimes succeeded while others failed. Of those that succeeded, some continued to retain aspects of central control whilst others lost it again to a new decentralisation reform. Botswana, Malawi, Namibia (before 2015) and Zimbabwe succeeded with ease whilst in Namibia (2015) and South Africa the governing regime suspended their proposals midway after failing to raise enough support for constitutional and legislative amendments. These results indicate the importance of both the constitutional recognition of local government and the active practice of constitutionalism – in both countries the executive was stopped in its tracks by a combination of pressure from the legislature, civil society and judicial independence. In Malawi and Zimbabwe, changes in

governing regimes saw a renewed pursuit of decentralisation. In Malawi, local government elections were finally conducted by the new PP government in 2014. In Zimbabwe, a Government of National Unity (GNU) that had ruled the country between 2008 and 2013 introduced a new constitution with comprehensive provisions that sought to strengthen local government. However, the end of the GNU in Zimbabwe and the retention of power by ZANU-PF in 2013 saw most of the constitutional provisions that sought to devolve fiscal and administrative powers to local government being ignored for years, in much the same manner as the constitutional provisions for local government were also ignored in Malawi.

Here Botswana is the exception. With one ruling party in power since 1966, the weak constitution it had adopted at independence had made no provisions for local government. Naturally, the process of recentralising power met with little or no resistance at all. The chequered picture of events in the 2000 millennium shows the decisive importance of constitutionalism in the maintenance and development of decentralisation. In other words, without a culture of constitutionalism, constitutionally-entrenched local government can be as weak as local government created by national legislation.

5. The Political Calculus

Central to this study has been a quest to explain the factors driving decentralisation and centralisation shifts in Southern Africa. Put differently, the study has been seized with the question, what makes regimes keen to decentralise or centralise power? Evidence from the five countries suggest that there is no single answer to this question. Rather, regimes take calculated steps depending on the opportunities, threats and pressures of their time and place. Accordingly, they decentralise power when opportunities arise to expand their influence without opening space up for opposition parties to grow; when they are in search of legitimacy; or when they are at risk of losing donor funding. However, they swiftly or gradually centralise power when opposition parties come to dominate certain regional political spaces; when battling to contain economic decline; when power struggles threaten to divide the ruling party; or simply when authoritarianism or the neopatrimonial state is on the rise.

5.1. Why Decentralisation?

5.1.1. Pursuit of Democratisation

The survey of relevant literature conducted in Chapter Two revealed that most African states experienced a wave of decentralisation reforms in the 1990s, and that these were externally driven by the post-Cold-War wave of democratisation.¹⁴ As democracies outshone autocracies, and centralised states failed, democratisation became associated with good governance. Consequently, democracy became a source of legitimacy for governments. On the coattails of the wave of democratisation was a principle that ‘democrats’ are ‘decentralisers.’¹⁵ This meant that governments that are pro-democratisation must use decentralisation to deepen democracy, enhance development and limit the centralisation of power. As democracy and decentralisation become theoretically inseparable, regimes naturally calculate that decentralisation confers them with much-needed legitimacy. The result is a wave of reforms that practically or ostensibly promote the decentralisation of power to elected local authorities. This argument is corroborated by evidence from the five countries under study, with some minor variations between them.

Chapter Five shows indicates that during the wave of democratisation that saw the fall of Kamuzu Banda and his one-party state in Malawi, a new constitution was adopted in 1994 with a whole chapter providing for decentralisation. This was simultaneously followed by a new local government Act and a decentralisation policy in 1998. In Zimbabwe, where a ‘one party state’ had been established *de facto* in the late 1980s, a battery of decentralisation reforms were introduced in the early 1990s intending to strengthen local government. Elsewhere, in Namibia and South Africa, the attainment of independence and majority rule in 1990 and 1994 respectively coincided with the constitutional recognition of local government and the advancement of decentralisation. The exception to all this was Botswana, which had maintained multiparty democracy since independence in 1966, and did not experience further decentralisation reforms. This overall picture reflects James Manor’s argument that since the 1990s, decentralisation has become ‘a fashion of our time.’¹⁶

¹⁴ Dickovick (2011) 7; Erk (2014) 533; Wunsch J S ‘Decentralisation: Theoretical, Conceptual, and Analytical Issues’ in Dickovick J T & Wunsch J S *Decentralisation in Africa: The Paradox of State Strength* (2014) 4; Manor (1999) 37.

¹⁵ Dickovick (2011) 7.

¹⁶ Manor (1999) 1.

Evidence suggests that the ubiquitous appetite for decentralisation could have been, in part at least, a case of ‘getting on the bandwagon’ with popular external practices. For, a decade later, not a single one of the five countries maintained any steady commitment to decentralisation. Malawi gradually reneged on its obligation to strengthen local authorities before it abandoned local government elections entirely (and unconstitutionally) in 2005. Though Botswana established a commission to review and recommend ways of strengthening local government in 2001, the government rejected almost all the recommendations that sought to strengthen decentralisation, and opted instead to strengthen deconcentration. In Zimbabwe, the defeat of ZANU-PF in almost all urban councils in the 2000 and 2002 elections saw central government dismiss opposition mayors and replace them with ZANU-PF supporters, strip mayors of their executive powers and recentralise important local government functions. In 2000, the Namibian government passed a Decentralisation Enabling Act. This ostensibly empowered it to delay the decentralisation of power to regional and local authorities. It then proceeded to consolidate its stranglehold on power through legislative and constitutional amendments that introduced Regional Governors, appointed by the President alone, in 2010 and 2014. In South Africa, the ruling party and cabinet have put forward several proposals to recentralise certain powers since the end of the Mandela administration in 1999, though without success. This evidence suggests that external pressures for decentralisation are normally met with pretence by governing regimes as they canvass for legitimacy. However, once their power is threatened by internal factors, the pretence is dropped.

5.1.2. Donor Pressure

Closely related to democratisation is pressure from international donors. Most donors (such as the World Bank, the United Nations Development Programme (UNDP) and USAID) fund decentralisation programmes as a way of seeking to promote good governance, deepen democracy and enhance development. Since most developing countries rely heavily on donor support they are left with no choice but to embark on the recommended decentralisation reforms. Botswana in the 1960s, Malawi in the 1990s and Zimbabwe in the 1990s are clear cases of donor-aided decentralisation programmes. However, like the wave of democratisation, donor pressure does not exhibit sustainability. Botswana became ambivalent about it in the 1970s, and steadily recentralised some personnel administration and fiscal powers. Malawi and Zimbabwe are perhaps the most glaring examples. In both countries, donors funded various processes including local government elections, structures and budget deficits in the 1990s. It

did not take long for the donors to realise their insignificance. By the early 2000s, most donors had withdrawn their support, citing lack of commitment to the agreed on goals from the regimes in power.

5.1.3. Ruling Party Dominance

Decentralisation is not always a product of external pressure. Sometimes interest in it is internally driven by the calculations made by regimes that decentralisation will expand their power and broaden their influence. However, this is only the case where the ruling party is nationally dominant and subnational opposition to it is weak. In this case, regimes calculate that they will be able to capture most of the newly created or strengthened subnational footholds of power. This argument resonates with the opinion of scholars such as James Manor and Riedl and Dickovick that the main motivation for decentralisation is here a narrow search for partisan advantage. Decentralisation becomes a useful instrument for cultivating political support and co-opting powerful actors at the local level.¹⁷ Since the ruling party would be nationally dominant, power remains centralised through a centralist party ethos and the existence of patron-client structures. The cases of Botswana in the 1960s and Zimbabwe in the early 1990s aptly reflect this argument. Although the time periods are different, circumstances were similar - both were de facto one-party dominant states, and both were generous with decentralisation reforms. The importance of party dominance as a driving factor and the central importance of ruling party calculations were reaffirmed in the recentralisation reforms that both states initiated a decade or so later. In Botswana, opposition parties were beginning to frustrate the ruling party in urban areas and some rural districts. Similarly, in Zimbabwe a vibrant opposition had emerged with enormous support from the urban population and some ethnic minority areas.

5.1.4. Search for Popularity

Factors discussed above indicate that by the 2000 millennium, all five countries under study had started retreating from their earlier pursuit of decentralisation. This trajectory in the decline of decentralisation has proceeded unevenly. In Botswana, this has steadily proceeded without interruption. In Namibia and South Africa, it was stopped in its tracks by other intervening variables which will be discussed in the next section. In Malawi, the opposite ensued, as the wilting process of decentralisation was radically rejuvenated in 2014. Local government

¹⁷ Manor (1999) 38-9; Riedl & Dickovick (2014) 327.

elections that were last conducted in 2000 were finally resumed in 2014. As observable from Chapter Five, the explanation lay in the dramatic change of government that saw Joyce Banda assume the Presidency without being directly elected to the post. This followed the death of then President Bingu wa Mutharika in 2012. By that time, Joyce Banda had been expelled from the ruling party but remained the *de jure* Vice President of Malawi. She therefore faced a legitimacy crisis, one she sought to address before the 2014 general election where her popularity would be put to the test. Accordingly, she worked hard to brand herself as a reformer and as a leader different from her predecessors. One of the changes she implemented was the return to local democracy when she gazetted that local government elections be held at the same time as the 2014 national election.

5.1.5. Post-Conflict Negotiations and the Fear of a Dominant Centre

A very critical factor that has been covertly driving decentralisation in Southern Africa is the minority fear of majority dominance. This is evidently the case in conflict management and peace-making arrangements such as the ones experienced in Namibia (1989-1990), South Africa (1990-1994) and Zimbabwe (2008-2013). In all these cases, it is evident that parties to the peace-making arrangement seek to calculate their chances of retaining or gaining power in the post-conflict period. These calculations suggest likely winners and losers. In the process, two conflicting objectives are pursued. Those tipped to win power almost always seek to create a strong central government. To the contrary, those with slim or no chances of getting power fear the likelihood that a strong central government would lead to majority dominance. Accordingly, likely lacking the opportunity to be in power, the likely losers use the peace-making arrangements as a platform to demand and secure the decentralisation of power necessary to the formation of strong subnational units.

In Namibia, the DTA openly expressed that strong regional councils would allay their fears of majority dominance under the clearly imminent post-independence SWAPO government. Similarly, in South Africa, the two largely white-controlled parties, the National Party and the Democratic Party, canvassed strongly on this demand during the multiparty negotiations which led to the adoption of the interim constitution of 1993. Zimbabwe presents a slightly different scenario, but one with essentially the same outcome. After the 2008 violent election that led to the formation of a government of national unity between ZANU-PF and the two MDC formations, an agreement was reached that the three parties share power between 2008 and

2013. It was also agreed that they use the period to draft a new constitution by consensus. Naturally, the two MDC formations seized the opportunity to demand that the constitution provides for the devolution of power to provincial councils and local authorities. This demand suggested an attempt to neutralise ZANU-PF's record of authoritarian rule and President Mugabe's dictatorial powers. Predictably, ZANU-PF went to great lengths to oppose the proposal, only to be subdued by the consensus spirit of the Global Political Agreement.¹⁸

The three case studies bring the discussion to a conclusion similar to that made by Lovise Aalen and Ragnhild Muriaas: the actual implementation of decentralisation depends on whether the conflict ends with the incumbent regime staying in power, or the insurgent group (or opposition party) taking over power.¹⁹ In both South Africa and Namibia the incumbent regime was defeated in the multiparty elections that followed the conflict resolution. Although implemented to varying degrees there was a measure of success (at least initially) with implementation of decentralisation in the two countries. The opposite happened in Zimbabwe where the incumbent ZANU-PF emerged victorious in the 2013 elections. Predictably, most decentralisation provisions of the 2013 constitution were not implemented after this decisive victory.

5.2. Why Recentralisation?

5.2.1. Local/Regional Opposition Dominance

A common observation running across the cases analysed is that decentralisation creates competing centres of power which can limit the influence of central government elites. In this sense, the very existence of local governments in a multiparty democracy means that political parties have to compete for power at two different though related levels: the national and the local. Whilst there can be but one winner at the national level (and especially in countries where a first-past-the-post electoral system is in use), a variety of winners can emerge at the local government level. The case of Anglophone Southern Africa is replete with evidence supporting this argument. All the countries under study have experienced this reality to varying degrees. In some highly competitive polities like Malawi and Zimbabwe, opposition parties have won

¹⁸ The Global Political Agreement was the pact that established the government of national unity in 2008.

¹⁹ Aalen L & Muriaas R L 'Power Calculations and Political Decentralisation in African Post-Conflict States' (2017) 38 (1) *International Political Science Review* 57.

control of politically, economically and ethnically powerful areas. This has conferred opposition parties with a new lease of life and stable footholds seen to be enough to threaten the ruling party's national dominance in subsequent elections.

In dominant-party democracies such as those of Botswana, Namibia and South Africa, the ruling parties (BDP, SWAPO and ANC respectively) have consistently won all national elections since the introduction of majority rule. However, when it comes to the local government level, the ruling parties are not so secure. They have gradually lost control of major cities and some ethnically radical polities in the rural areas such as the Northeast District in Botswana, at some point the Kunene Region in Namibia and parts of KwaZulu-Natal Province in South Africa. In Botswana, the BDP has, on several times, lost control of the capital city Gaborone and the second largest city of Francistown to opposition political parties. Similarly, in SA, the ANC has lost control of Cape Town since the introduction of democratic local government elections in 2000 and has also, in 2016, lost control of some other big cities such as Johannesburg, Tswana and Nelson Mandela Bay.

In theory, this almost certain reality should be acceptable as a manifestation of deep democracy. However, evidence from the countries under study suggest that, in practice, ruling parties often view opposition-controlled local authorities as competition for their power. Consequently, in their bid to stay in control, local government is shorn of autonomy and several powers are recentralised. A corresponding pattern is equally observable where the level of centralisation tends to increase with the increase in the opposition's control of important local authorities. This is very evident in the cases of Botswana, Malawi, South Africa and Zimbabwe. In Malawi, the subnational strength of opposition parties reached a stage where the ruling party was in the minority. Unsurprisingly, centralisation of power was seen to be so necessary that local government elections were postponed for almost ten years between 2005 and 2014. In Zimbabwe, decentralisation was pursued with vigour during a time when the country was a *de facto* one-party state (1992-1999). The trend shifted dramatically towards increased centralisation when the new opposition took over control of all the urban councils in the 2000 and 2002 elections. In 2008, as the opposition grew, the national power of ZANU-PF and Robert Mugabe national hung in the balance. Botswana has experienced a relatively lower level of competition at local government level, and hence the pursuit of centralisation has been less aggressive. In SA, the ANC has been (like Botswana's BDP) losing control over small pockets

of local government power, but a major change occurred in 2016 when it lost control of larger metropolitan areas. In consequence, the ANC government has made some mild attempts to recentralise some local government powers, but failed in these attempts because of constitutional protection, and resistance from both municipalities and opposition political parties.

Of all the five country cases, Namibia appears to be the exception when it comes to local multiparty competition. It is the only country where the ruling party (SWAPO) has been dominant in both national and local government elections. SWAPO has controlled the capital city Windhoek since independence in 1990 and has increased the number of local authorities under its control with every election. In the 2015 local government elections, it controlled all the 14 Regional Councils and 154 out of 157 local authorities. Yet, when one analyses its decentralisation process, a similar reluctance to devolve power is conspicuous. This gives reason to be cautious with reliance on a single explanatory variable. Clearly, subnational opposition competition is not a factor in this country. Something else explains recentralisation manoeuvres in Namibia. This brings the discussion to consider another factor: the intraparty competition for power.

5.2.3. Intraparty Struggle for Power

The above discussion indicates that regimes tend to pursue recentralisation even when they are not threatened by subnational opposition competition. Further analysis of the five cases shows that another factor driving recentralisation is the competition for power between national and local elites within the same party. This argument is observable in Namibia where SWAPO's network of elites at the regional and local levels have disagreed with the ruling party's central elites. This was noticeable during the 1999 uprising in the Caprivi Region and the 2015 rejection of amendments to the Local Authorities Act by National Council members representing regional councils and local authorities.

5.2.4. Rise of the Neopatrimonial State

The practice of neopatrimonialism makes it imperative that ruling elites have control over the country's economic opportunities. Recentralisation is pursued because even the limited opportunities for economic development at the local government level need to be usurped by the centre. In Chapter Two, a review of Michael Bratton and Nicolas Van De Walle's work

revealed that neopatrimonialism was increasingly becoming a core feature of African politics.²⁰ The authors warned that in neopatrimonial states the ruling party and the state become conflated as elites at the centre carefully consolidate power through the patronage distribution of state positions, resources and opportunities to a network of supporters who return the favour by mobilising political support and referring all decisions upward to the ‘big man’.²¹ Two of the countries under study exhibit traits of this neopatrimonialism: Malawi and Zimbabwe. Due to the competitive nature of politics in these two countries, the ruling parties have manipulated local government in such a way that it resembles less of a medium for the development of democracy and more of a patronage instrument for the consolidation of power and wealth. Key local government positions are used to reward loyal cadres of the party; local government service is sacrificed at the altar of populist politics; and resources are distributed on partisan lines. Accordingly, when opposition parties won control of the important urban local authorities, central government in both countries swiftly resorted to recentralisation of power.

In Zimbabwe, the MDC’s victory in most urban councils in 2000 and 2002 was followed by a recentralisation of motor vehicle licencing (2001) and water reticulation (2004), the dismissal of executive mayors and their replacement by ruling party sycophants. In Malawi, Kamuzu Banda introduced a parallel deconcentrated system of local government whilst side-lining the decentralised system of ‘elected’ councils for decades (from the 1960s to 1993). Subsequent regimes have exhibited some marked path dependence that culminated in the suspension of local government elections for years (2005-2014). In the absence of elected councillors, the three governments that successively took over power (UDF, DPP and PP) used an informal network of *ex officio* members and non-members of council, both lacking voting rights and with no legal mandate to make or enforce by-laws (District Consultative Committees).²² Botswana, Namibia and South Africa display less of the features of neopatrimonialism in comparison to Malawi and Zimbabwe. Naturally, they are relatively more decentralised than their two neighbours. It can therefore be concluded that neopatrimonial politics is the antithesis of decentralisation. Its practice always drives states towards centralisation rather than decentralisation.

²⁰ Bratton M & Van De Walle N ‘Neopatrimonial Regimes and Political Transitions in Africa’ (1994) 46 (4) *World Politics* 459.

²¹ Bratton & Van De Walle (1994) 458-9.

²² The District Consultative Committees were made up of a pool of members of parliament, traditional leaders, religious leaders and some respected members of society like business men.

5.2.5. State Failure in Local Government

One of the emerging discoveries in this study is that not all recentralisation initiatives are driven by central government's fear of losing political power or the existence of economic opportunities at the local level, or merely the greed for increasing power. Sometimes recentralisation is spurred by the failure of the local authorities themselves to take up their mandates or to effectively and responsibly discharge their duties. The case of SA discussed in Chapter Three offers useful nuances to this discussion. Rampant cases of corruption, mismanagement and a general decay in good governance practices all contributed to the local government reform initiatives, some of which promote recentralisation. However, comparisons with Malawi, Namibia and Zimbabwe indicate that the local state's failure is not simply a matter of incompetent or irresponsible local authorities but is sometimes deliberately set up by central government. A common trend observable in the three countries mentioned above is the tendency by central government to transfer functions and responsibilities to the local government level, but to hold on to financial resources at the centre. In the process, local authorities become paralysed, and the central government takeover of powers and functions or the dissolution of council becomes possible.

6. The Quest for Decentralisation: Policy Implications

Chapter Two presented a strong scholarly case for decentralisation. Yet an analysis of political practice in the five case studies suggest that governments have a strong and pervasive penchant to centralise power. It equally shows that there is very little incentive for decentralisation amongst ruling elites, who, in their calculations, continue to view decentralisation from a zero-sum game perspective. That is why persuasions and pressures from the donor community are mostly met with rhetoric and deception. However, the case studies of South Africa and Namibia demonstrate that the pursuit of decentralisation is not entirely a lost cause. However, to maintain decentralisation, states must be able to break the cycle of a wave of recentralisation following immediately after decentralisation reforms. This requires the existence of four main factors: the constitutional protection of local government; respect for the rule of law and independent courts; good governance at local government level; and an active local government enjoying the support of political parties.

6.1. Constitutional Protection

There are two main instruments used in the creation of levels of local government: ordinary legislation and the constitution. A local government that is a creature of ordinary legislation is vulnerable to regular reforms and recentralisation because it requires only a simple majority in parliament to amend its provisions. The cases of Botswana and Zimbabwe (before 2013) are examples of local government created by ordinary legislation. Observably, in both countries, local government laws have easily been amended, and functions such as electricity reticulation, water supply, motor vehicle licensing and primary health returned to central control. Some taxing powers and personnel administration powers have also been withdrawn in both cases. To the contrary, local government that is entrenched in the constitution is much more difficult to reform since constitutional amendments require support from a two-thirds majority to be passed. Accordingly, the constitution can act as a protective shield against the political impulses to recentralise power.

The case of South Africa clearly supports this view. As highlighted in Chapter Three, SA has an outstanding record of a successful decentralisation process that has remained intact since its adoption in the 1996 Constitution. This does not mean that the ANC has behaved in a very different way from the ruling parties of Botswana, Malawi, Namibia and Zimbabwe. In fact, it too has also tried to reform local government, wanting to withdraw local government powers and functions such as personnel administration and municipal policing. The only difference is that the South African constitution contains comprehensive provisions on local government powers and a clear schedule of functions that each sphere of government has a mandate to discharge. Consequently, most attempts to recentralise local government powers would need a constitutional amendment, a process that demands support from a two-thirds majority of parliament. Because the government failed to obtain sufficient support for a constitutional amendment, Bills containing electricity sector reforms, introduction of a single public service and introduction of integration of national with municipal policy services have been shelved.

6.2. Rule of Law and Independent Judiciary

The availability of the constitutional protection discussed above is important, but insufficient to stop recentralisation on its own. The cases of Malawi, Namibia and Zimbabwe attest to the limits of constitutional protection. As indicated in the Malawian case study, the 1994

Constitution enshrined local government and its powers, but elections were nonetheless postponed for close to a decade. In Namibia, constitutional provisions that subjected a regional governor to a popular election were amended to allow the President to make the appointments for each region. In Zimbabwe, the 2013 constitutional provisions on local government were left in abeyance for several years whilst the old legal regime of ordinary legislation continued unaligned to the new constitution. This brings to light the importance of rule of law - the principle that power must be exercised within legal limits.²³ In other words, recentralisation can be stopped if those in power respect the constitutional provisions and religiously abide by their letter and spirit. In the absence of the rule of law, constitutional protection remains a hollow juridical achievement that has no effect on practice. As alluded to earlier, Malawi and Zimbabwe have local government powers codified in their constitutions, but because respect for the rule of law is questionable, these have been largely ignored with impunity.

It is not always the case that when regimes do not like certain provisions, they go through the legal process of amending them. In some cases, there is a blatant disregard of the law by central government, leaving local government with no choice but to seek legal recourse. This was the case in South Africa where the ANC government was taken to court by the City of Cape Town over its proposed electricity sector reforms. It was equally the case in Zimbabwe where the Minister responsible for local government continued to suspend and dismiss opposition mayors in contravention of the constitution. It took the high court to rule that the Minister no longer wield those powers under the 2013 Constitution. Clearly, had it not been for the role played by the judiciary as an independent arbiter and last line of defence, both regimes could have succeeded with their actions.

6.3. Good Governance at Local Level

Since recentralisation can be triggered by state failure at the local government level, it is important that local authorities practice good governance. This includes respect for the rule of law, the appropriate management of financial resources and the efficient delivery of services. Realising these is essential to receiving public support and demonstrating that they are of value to their communities and are not corrupt and inefficient. The case of SA is an example where

²³ Barnett H *Constitutional and Administrative Law* (2002) 5.

the failure of several municipalities to exercise good governance has led to executive intervention by provincial governments. Thus, in other words, the respect for the rule of law and good governance practices is not only a requirement for central government. It is a two-way process that equally requires local government to effectively manage its affairs, attaining clean audits and channelling resources towards service delivery.

6.4. Organised Local Government and Supportive Political Parties

Even with the presence of constitutional protection and an independent judiciary, recentralisation can still occur if governments decide to either amend the constitutional provisions or feel free to disregard them with impunity. It is therefore important that local authorities themselves are active, not only in good governance, but also in defending their powers, lobbying parliament to support or oppose certain Bills, and taking central government to court when necessary. To do this effectively, local authorities need to be organised so that they speak with one voice and cause an impact. This is evident in the cases of Namibia and South Africa where recentralisation has been resisted. For instance, when the National Council (NC) rejected a proposed amendment of the Local Authorities Act in Namibia in 2015, the City of Windhoek and the Association for Local Authorities in Namibia (ALAN) were active in lobbying the NC not to support the Bill. Similarly, in South Africa, several proposed amendments to remove some local government powers were abandoned because the South African Local Government Association (SALGA) and a number of individual municipalities resisted. SALGA was, for instance, instrumental in resisting the integration of local government elections with national and provincial elections. Similarly, the City of Cape Town was active in the resistance to government proposals made to bundle electricity reticulation under the Regional Electricity Distributors (REDs) and the integration of the Metropolitan Police Service (MPS) into the South African Police Service (SAPS).

In addition to organised local government, it is equally important that opposition political parties and the second chambers of parliament play active roles in checking and balancing any recentralisation proposals from the executive. In Namibia, a Bill seeking to amend the Local Authorities Act in 2015 has been shelved after the second house of parliament (the National Council representing Regional Councils (RCs)) refused to support it. Similarly, in South Africa proposed amendments to the constitution seeking to recentralise some local government

powers and functions are dead in the water after the ANC government failed to obtain a two - thirds majority of support in parliament. This was mainly because opposition parties, and especially the Democratic Alliance (DA), control several important metropolitan municipalities. Accordingly, they have opposed all Bills in parliament that sought to reform local government in ways that would reduce local autonomy.

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