

Guide to Understanding Devolution



W/O 3/93
Campaigners for Human Rights



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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1. WHY DO WE NEED DEVOLUTION?	4
2.MODELS OF DEVOLUTION	6
3.WHAT WILL A DEVOLVED GOVERNMENT LOOK LIKE?	12
4.DEVELOPMENTS ON THE GROUND	17
5.WHAT ARE ZIMRIGHTS' KEY ASKS?	20

EXECUTIVE SUMMARY

The issue of devolution is topical and the government has indicated its commitment in implementing it. In his address during the Opening of the 9th Parliament, President Mnangagwa set out a legal agenda and one of the positive components of the agenda is the enactment and operationalization of the Devolution provisions. This move creates an opportunity for the citizens to engage with legislators as well as Provincial Councils who will be key in the making and operationalization of the Devolution Act. In the process of enactment of the Devolution Act, legislators shall have direct interaction with citizens during public hearings before the bill is passed into law. Once the Bill has been passed into law, the citizens will have an opportunity to interact with the implementers of the Act who are Provincial Councils.

However there is a disquieting delay in crafting legislation to guide devolution. What the government has done instead is that on 19 January 2020 and before there was any meaningful progress with the enactment and operationalization of the devolution agenda, it gazetted Constitution of Zimbabwe Amendment Bill (No. 2) which seeks to make 12 amendments to the 2013 Constitution in one go, the provisions on devolution being among the twelve. While these amendments are for the most part retrogressive and ZimRights is for good reason in principle opposed to the amendment of the Constitution, ZimRights generally considers the amendment on the devolution provisions to be somewhat progressive and thus deserving some attention. Further and at any rate the amendment notwithstanding, efforts must be made to ensure that implementation of the constitution is continued. This of necessity calls for the unpacking of the devolution principles as well as the civil society shadow law on devolution and hence the purpose of this hand book aptly titled "GUIDE TO DEVOLUTION" (the Guide).

The Guide is designed to educate our members on devolution principles, models of devolution, what the current framework provided by the Constitution for devolution of governmental powers and responsibilities is and how the amendment will alter same as well as what developments, if any there are on the ground. It attempts answers to questions of why we need devolution and what will a devolved Government look like. It concludes by addressing what ZimRights' key tasks are and how it plans to contribute to the discussion and implementation of devolution in Zimbabwe.

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1. WHY DO WE NEED DEVOLUTION?

Devolution has been an evolving process that has responded to public demands and should ultimately transform Zimbabwe's political and economic landscape.

i. Devolution should bring a *democratic shift by bringing decision-making* closer to people across the Zimbabwe. The people across the country, can have an increasingly greater say in the policies that affect them. The principle of local democracy requires that local decisions should be made by elected local representatives who are closest to the electorate.

ii. Devolution should result in *more effective and tailored policy-making*. Policies can be produced and delivered that better account for the needs and priorities of the individual parts of Zimbabwe. For instance, the people in the Eastern Highlands can develop and deliver policies that reflects the unique importance of plantation farming of high altitude crops and diamond mining to their economy, while those in Matabeleland South can also develop policies responsive to the socio-economic landscape of their region.

iii. Devolution will encourage *innovation in policy-making*. Having a larger budget and greater say in what happens at local level can encourage administrations to innovate as well as learn from policies launched elsewhere which they can replicate them if they think they will be effective in their own jurisdiction.



2. MODELS OF DEVOLUTION

2.1. In the United Kingdom

The central distinction within the devolution space is between devolved and reserved powers. Devolved powers are those which have been passed from the UK Parliament to one of the devolved legislatures. Reserved powers are those that remain at a UK Parliament level.¹

Moreover, there are concurrent powers which have a shared responsibility between the UK Government and a devolved administration, meaning they can both pass secondary legislation in a certain policy area. For instance, health and social services are devolved in the UK, which means that legislatures in Wales, Northern Ireland and Scotland are able to make their own decisions on justice and policing, without reverting to the UK Parliament.

However, they revert to the main parliament on issues of social security which are centralised. Thus, the main areas reserved for the UK Government are, defence and national security, foreign policy and immigration and citizenship.

Additionally, the various governments work together through **Memorandum of Understanding (MoU)** and **Joint Ministerial Committees (JMC)**. These set out the principles which support relations between the UK Government and the devolved administrations. The MoU puts emphasis on the principles of good communication, consultation and cooperation.

1. See, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770300/IntroductionToDevolution.pdf accessed 12 March 2020

2.2. In East Africa

While Uganda is also a unitary country, it has a two-tier level of government.² Decentralization in Uganda began in 1986 with the aim to promote people's participation in the democratic process of the State of Uganda, and to improve service delivery and proximity with citizens. Thus over time Uganda has witnessed a gradual but comprehensive transfer of power, responsibilities and resources from the centre to local governments under Uganda's 1995 constitution and 1997 Local Government Act which give effect to the devolution of functions, specifying five levels of local government – district, county, sub-county, parish and village, among which the districts and local government unites (sub-counties) have political authority and financial autonomy.³ Thus, the higher-tier of government is made of 111 districts and 1 City Council, under which there are 174 lower Local Governments Councils and 22 municipalities.

Local government councils have directly elected representatives that are accountable to the citizens, and have legislative and executive powers. Administrative Units Councils are political advisory bodies on planning and implementation of services, to assist local governments' councils.

Local governments, in particular districts, play a key role in public service provision. They are responsible for major functions and services previously carried out by the central government.⁴ Major functional responsibilities such as primary education, health, water and sanitation, and rural feeder roads have devolved from

2. https://www.jica.go.jp/jica-ri/IFIC_and_JBICI-Studies/english/publications/reports/study/topical/africa/pdf/003.pdf accessed 12 March 2020

3. <https://researchspace.ukzn.ac.za/handle/10413/1810> accessed 13 March 2020

4. See <https://www.oecd.org/regional/regional-policy/profile-Uganda.pdf> accessed 13 March 2020

the central to local governments.

2.3. In Kenya

The 2010 Constitution is a turning point in country's history as it reconfigured balance of power by devolving power and responsibilities from the national government to 47 elected county governments. It also recalibrated the powers between executive, legislative and judicial branches.⁵ As is the case in Zimbabwe, the adoption of devolved system of government in Kenya was the outcome of a desire by citizens to access to public services closer to them. Devolution was seen as the key to unlocking Kenya's economic potential through distribution of responsibilities.⁶ Thus, Kenya created a decentralized system of government wherein two of the three arms of government; namely the Legislature and the Executive are devolved to the 47 Political and Administrative Counties.

The forty seven County governments came into operation in 2013. This marked a complete departure from the national government system that has been in operation since the independence of Kenya. Institutions as well as policies and regulation were established to enhance the functioning of devolved system of government. This has institutionally strengthened democracy in Kenya by cementing the principle of separation of powers through adding a new layer of governance at the county level and a set of powerful new actors in the governors. However, it has had adverse effects on the politics of identity by strengthening ethnic identification and tying it to homelands, and this is a lesson to be learnt as devolution is rolled out in Zimbabwe.

5. <https://www.usaid.gov/documents/1860/devolution-kenya> accessed 13 March 2020

6. Devolution in Kenya: The Good, the Bad and the Ugly accessed 13 March 2020

2.4. In South Africa

Local government including municipalities are a creation of the Constitution. A municipality has the right to govern, on its own initiative, the local government of its community, subject to national and provincial legislation, as provided for in the Constitution; and the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions. Thus, municipal councils in South Africa have more flexibility in legislation and governance than their equivalent institutions in Kenya or Uganda. The crucial difference in the systems is the frequency of central government interference.⁷

2.5. In Zimbabwe

The Constitution provides that the 3 tiers of government in Zimbabwe are, the national Government, provincial and metropolitan councils; and local authorities, which are urban and rural councils. Further, devolution is one of the founding values of the constitution. Thus, whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively in terms of Section 264 of the Constitution of Zimbabwe.

The purpose and objectives of the devolution of governmental powers and responsibilities include increasing popular participation in decision making, and establishing a sound financial base for each provincial and metropolitan council and local authority.⁸ Thus, Zimbabwe is divided into 10 provinces which

7. See https://repository.up.ac.za/bitstream/handle/2263/58089/Ababio_Decentralisation_2013.pdf?sequence=1&isAllowed=y accessed 14 March 2020

8. See Section 264 (2)

are, Bulawayo Metropolitan Province, Harare Metropolitan Province, Manicaland Province, Mashonaland Central Province, Mashonaland East Province, Mashonaland West Province, Masvingo Province, Matabeleland North Province, Matabeleland South Province and Midlands Province. The country is further divided into districts which are fixed by Parliament in consultation with the Zimbabwe Electoral Commission. Currently there are 59 districts and 1200 wards.

Devolution is not a new concept in Zimbabwe. As early as 1988, the Government set up a Committee of Ministers on Decentralisation and Cabinet adopted Thirteen Principles to Guide the Decentralisation process.⁹ However, the principles were void of substance, and because they were policy and not law they were not implemented, which is why Chapter 14 of the Constitution is so important.

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the constitution.*

9. See, Chigwata, 2018



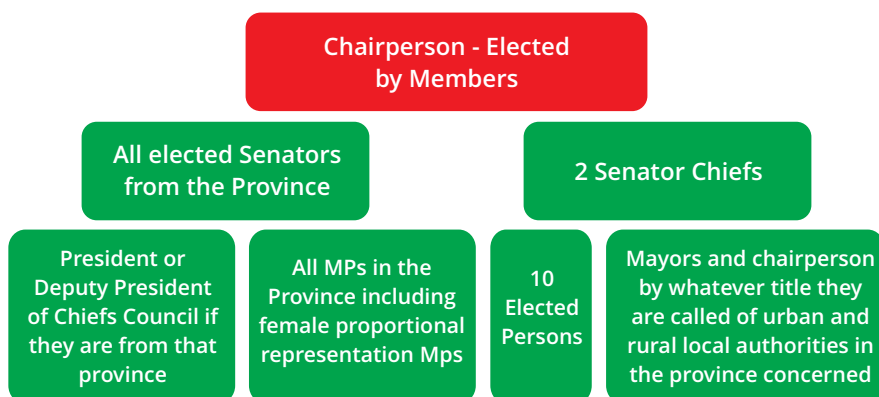
3. WHAT WILL A DEVOLVED GOVERNMENT LOOK LIKE?

Apart from local authorities which have always been there, devolved government will see governmental power and responsibilities in section 264 decentralized to provincial and metropolitan councils structured as follows;

3.1. Provincial Councils

These will consist of an elected chairperson, the senators elected from that province concerned, the two senator chiefs, the president and deputy president of the National Council of Chiefs, where their areas fall within the province concerned; all the Members of the National Assembly whose constituencies fall within the province concerned, the women Members of the National Assembly, the mayors and chairpersons, of all urban and rural local authorities in the province concerned; and ten persons elected by a system of proportional representation into the provincial council.

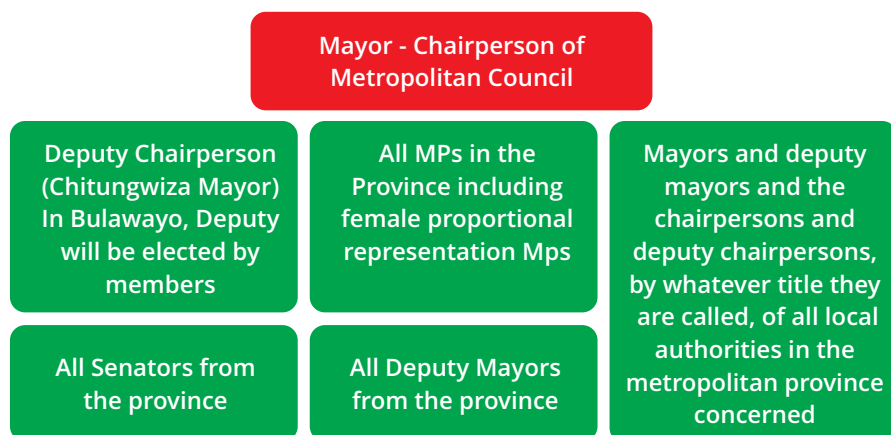
Fig 1. Structure of Provincial Councils



3.2. Metropolitan Councils

Metropolitan Councils for Harare and Bulawayo consist of the Mayors of both cities who are the Chairpersons of the Councils, and the mayor or chairperson of the second-largest urban local authority within the province, who is the deputy chairperson of the Harare Metropolitan Council, all the Members of the National Assembly whose constituencies fall within the metropolitan province concerned, the women Members of the National Assembly from the metropolitan province concerned, the Senators elected from the metropolitan province concerned; and the mayors and deputy mayors and the chairpersons and deputy chairpersons, by whatever title they are called, of all local authorities in the metropolitan province concerned.

Fig 2. Structure of Metropolitan Council



Please note that due to the proposed amendment to the constitution, *the structure of provincial and metropolitan councils may change through removing members of Parliament from the membership of provincial councils, merging the provisions relating to provincial and metropolitan councils by removing the special provisions relating to the metropolitan councils which will no longer be chaired by mayors, but by someone elected to that position as well as provide for the election of 10 of the members of Metropolitan Councils by a system of party-list proportional representation.* As these amendments are not yet law, we will proceed on the basis of the structure in the Constitution and make the necessary changes if the amendments are enacted. However, below is an analysis of the proposed constitutional amendment in order to inform members adequately.

The proposed constitutional amendments will repeal sections 268 and 269 of Constitution which set out separate frameworks for provincial and metropolitan councils. The amendments will consolidate the separate provisions discussed above, and provincial and metropolitan councils will have an identical structure.

Additionally

- Mayors will no longer be automatic chairpersons of the councils who will now be elected by members.
 - Senators elected from the province concerned, senator chiefs elected from the province, the president and deputy president of the National Council of Chiefs, and all the Members of the National Assembly whose constituencies fall within the province concerned will no longer be members of the provincial and metropolitan councils.
-

Effect of the Amendments

While ZIMRIGHTS is generally opposed to amending the Constitution on principle, and more specifically the rest of the amendments included in Constitution Bill no 2, the particular proposed devolution amendments are a step in the right direction. This is because they will:

- *Promote efficiencies* and minimise bureaucracy by decreasing the size of provincial and metropolitan councils since there will be no representation from the legislature;
- *Localise governance* - The inclusion of Chiefs and legislators was a misnomer as they represent central government. Limiting membership of provincial and metropolitan councils to is in accordance with the spirit and purpose of devolution;
- *Remove inconsistencies* - Currently the Constitution is at odds with itself as Members of the National Assembly are required to be part of provincial and metropolitan councils [(s268 (e) and (f) and s269 (e) and (f))] while at the same time, s129 (g) provides that if the Member of Parliament accepts public office or office as a member provincial or metropolitan council they will lose their seat. Thus, the amendment will deal with this issue.

Increasing popular participation in decision making, and establishing a sound financial base for each provincial and metropolitan council and local authority.

Purpose and objectives of the devolution of governmental powers and responsibilities



4. DEVELOPMENTS ON THE GROUND

Despite the stipulations in the Constitution, between 2013 and 2018 the Government of Zimbabwe did not meaningfully devote any resources towards the devolution agenda. Thus, there provincial and metropolitan councils described above have not been functional.

However, on 5 October 2018, the government adopted its new economic blueprint, the *Transitional Stabilisation Programme and Reforms Agenda, (TSP)* which directly addresses the issue of devolution of governmental powers, responsibilities and resources with a key focus on provinces championing economic development.¹⁰ This resulted in a budget allocation of US\$310 million to provincial councils in the 2019 financial year as part of the five per cent subnational and local governments are entitled to in each financial year, and this was carried over to the 2020 budget, where provinces are required to plan for economic growth and development, factoring in their provincial resources, with the national government providing financial support for implementation.

Additionally, the Cabinet Committee on Legislation approved the principles on the Provincial Councils and Administration (Amendment) Bill which will align that Act to the Constitution and set out the mechanism for devolution in greater detail, while Midlands State University (MSU) has established an institute to enhance research around devolution as part of government efforts to spearhead the decentralisation agenda.¹¹

10. See <https://zimlil.org/content/devolution-demystified-emerging-debates-and-prospects-devolution-zimbabwe-discussion-paper>

11. <https://www.newsday.co.zw/2019/08/msu-to-establish-devolution-institute/>

Thus, it is clear that there is now a good measure of political will to roll out devolution, which is why it is important for citizens to understand and engage with the process,

Measuring Effectiveness of Devolution

In all these examples, and particularly in Zimbabwe, four indices should be used as to assess whether or not the devolution is working. These are:

i. Effectiveness: Have services becoming more effective because of

ii. Efficiency: Are services becoming more efficient?

iii. Accountability: Is there greater transparency, and are the authorities fulfilling their constitutional responsibility to provide information?

iv. Equity: Are services becoming fairer and clearer?



5. WHAT ARE ZIMRIGHTS' KEY TASKS?

i. Participatory Approaches

Lessons learnt from Uganda show that the abundance of goodwill at national level on its own is insufficient to create a sustainable devolution model. ZIMRIGHTS opposes top down approaches which do not harness local level thinking and approaches which are people driven. Centralised government has resulted in challenges such as marginalization, mismanagement of resources and exclusion of communities from the decisions process and these should not be replicated under devolution.

ii. Allocation of Adequate Resources

Lack of both financial and human resources has minimised the impact of devolution in Uganda and Kenya. Local governments have consistently lacked sufficient financial resources to run decentralised functions effectively. ZIMRIGHTS would prefer a model where, councils do not depend heavily tax and grants from the Central Government, but are able to engage in their own budgeting.

iii. Harmonisation of Legislation

In order for devolution to be successful in Zimbabwe, there is a need for a comprehensive review of all laws to identify those which retain residual powers in central government to the detriment of the local government. These include the Procurement Act and the Public Finance Management Act, among others. Where necessary ancillary legislation should be drafted to give true meaning and effect to the spirit of devolution. For instance in Kenya, the Commission on Revenue Allocation (CRA), was created and mandated to recommend the basis for equitable sharing of

revenues raised nationally between the national and the county governments and this could be replicated in Zimbabwe.

iv. Capacity Building of Officials

Given that this is unchartered territory in Zimbabwe members of the metropolitan and provincial councils require training in order to ground them in the principles of devolved government to ensure their effectiveness. It is equally important to ensure that professional staff have the experience and competence and for the task.

v. Accountability to the Electorate

Devolved governance should result in greater interaction and accountability to citizens who are both stakeholders and beneficiaries in this process.

vi. Equitable Sharing of Revenue

Devolution should result in more equitable growth, through fairer allocation of resources which should take into account factors such economic disparities within the country and the need to remedy them.

vii. Dealing with Corruption

The delivery of social goods and services at local level has been marred by allegations of corruption. ZIMRIGHTS expects persons elected to provincial and metropolitan councils to be of high moral character, and that swift and effective action will be taken against those engaging in acts of corruption.

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