



LOCAL GOVERNANCE PROJECT

A Framework for a Devolved Local Government System in Zimbabwe

A DISCUSSION PAPER

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Local Governance Project

1.0 Introduction

Zimbabwe is a unitary state that has devolved power to its ten provinces. Devolution of power was inserted as a compromise into the new Zimbabwe constitution by popular demand, especially through relentless advocacy of civil society organizations and residents' associations. Of course, two of the three political parties that negotiated the new constitution had adopted devolution as one of their cornerstone to local governance.

While the constitutional provision for devolution of power to the provinces is salutary and a major victory for all progressive democratic forces advocating for equal access and distribution of national resources, transparency and sustainable people-centered development; the victory could turn out to be pyrrhic. Why and how could this be so? It is because the actual provisions of devolution of power remain undefined and subject to an Act of Parliament yet to be crafted and passed. The Act will either grant effective power to the provinces thus enabling the success of devolution or curtail it hence consigning devolution of power to a stillbirth in Zimbabwe. The latter possibility may be avoided because the political structures of the provincial councils are already in place and would be instrumental in framing legislative and executive powers to be bestowed on them by the Act of Parliament.

The reality that currently elected legislators shall define the nature, scope and extent of devolution of power to the provinces offers very real opportunities for participatory and stakeholder input in crafting the Act of Parliament on Devolution of Power. It is against this backdrop that this framework on devolution is drafted in order to be the reference and guide towards a participative crafting of real devolution of power in Zimbabwe. This framework highlights and raises major concerns for debate by stakeholders in all the ten provinces; the concerns that legislators would not be unwise to overlook when debating the Bill on devolution of power.

KEY CONCERNS

- i. Ensuring effective, efficient and corruption-free local government administrative

responsive local governance system that
decision-making

- iii. Ensuring adequate legal safeguards for sufficient resourcing for provincial governance systems

1.2 Objectives

- i. To initiate a participatory, citizens and stakeholders driven process of framing the form and content of devolution
- ii. To ensure that devolution of power embodies principles of active citizens participation, transparency and accountability

1.3 The architecture and design of devolution shall include:

- i. The levels of Government
- ii. The geographic units of governance
- iii. The distribution of functions and responsibilities of provincial councils
- iv. The allocation of resources
- v. The institutions of governance
- vi. Relationships between central government and provincial councils

2.0 STRUCTURE OF PROVINCIAL COUNCILS

It is imperative to observe that the devolved provincial structure is not a new structure or additional tier in local government in Zimbabwe. The defining feature of the devolved provincial councils should therefore be more and effective power at their disposal to ensure sustainable development and efficient service delivery system. Since the local governance system in the country has been managed through several Acts, it is crucial to note how these Acts add value or subtract it in the envisaged Act of Parliament on Devolution of power to provinces.

ACTS ADMINISTERING LOCAL GOVERNMENT

- I. Provincial Councils and Administration Act
- II. The Regional Town and Country Planning Act
- III. The Urban Council Act

2.1.1 The Provincial Council [excluding metropolitans] consists of:

- i. Provincial Chairperson
- ii. All MPs and Senators from the province
- iii. Two senator chiefs from the province
- iv. All mayors and chairpersons from urban and rural local authorities in the province
- v. Ten persons elected through proportional representation

2.1.2 The Metropolitan Councils [Bulawayo & Harare] consist of:

- i. City Mayor becomes the Metropolitan Chairperson
- ii. For Harare, deputy chairperson is mayor of second largest urban local authority
- iii. All MPs and Senators from the province
- iv. All mayors and deputy mayors and all chairpersons and deputy chairpersons from local authorities within the metropolitan province.

2.1.3 Powers of the Provincial / Metropolitan Councils

- i. The provincial council constitutes a provincial parliament and therefore should have legislative powers
- ii. The Provincial council should have an executive arm answerable to the provincial council

2.1.4 Composition of the Provincial Executive Committee

The provincial executive committee shall be the executive arm of the provincial council and shall consist of the following;

- i. Provincial Chairperson or Metropolitan Mayor as head of executive arm
- ii. A minimum of five executive portfolio holders selected by the head from amongst members of the provincial council.
- iii. Gender balance should be considered in selection of portfolios holders

2.1.5 Provincial Council Employees

provincial council work shall be done by the secretariat administrator.

- ii. The provincial administrator shall be a senior civil servant appointed by the public service commission from names presented by the provincial chairperson or metropolitan mayor.
- iii. Terms of contract shall be the same as that of permanent secretaries
- iv. The provincial administrator shall chair the provincial development committee and presents its findings to the provincial executive committee.

2.1.6 Composition of provincial development committee

- i. Provincial administrator as chairperson
- ii. Heads of line ministries in the province
- iii. District administrators in the province
- iv. Heads of civil society organizations in the province
- v. Town clerks, town secretaries, local board secretaries in the province
- vi. Captains of industry and commerce in the province
- vii. Heads of public institutions in the province

3.0 POWERS OF PROVINCIAL AND CENTRAL GOVERNMENT

CURRENT POWERS OF CENTRAL GOVERNMENT

1. Establish, abolish or alter local government status
 2. Fix area of local authorities [eg. Number of wards and thus councilors]
 3. Approve the taking over of land by the local authority
 4. Carry out planning and estate development
 5. Appoint the Local Government Board
 6. Appoint a Valuation Board
 7. Appoint Auditors
 8. Appoint investigating team when an enquiry is needed
 9. Suspend or dismiss councilors who have committed serious offences
 10. Appoint a commissioner to run the affairs of a council when there are no councilors
 11. Give general direction on policy
 12. Authorize anything not covered by the Act
 13. Publish model by-laws, direct councils to adopt specific by-laws and
 14. Suspend a council resolution when it goes against the interests of residents
 15. Correct any omissions
 16. Establish bus stops
-

h councils should seek tenders

19. Approve income generating projects and cooperatives
20. Direct councils to pay their debts and reduce deficits
21. State what types of local charges can be raised without approval

PROPOSED POWERS OF DEVOLVED PROVINCIAL COUNCILS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

4.0 FUNDING FOR PROVINCIAL COUNCILS

4.1. Background information

Inadequate funding for local governments has remained the greatest challenge to their service delivery role in Zimbabwe. Unless properly addressed in the devolved system, the provincial councils could easily succumb to the same malaise and thus render the devolution concept unworkable. It is ironic that local authorities are supposed to get revenue from their social service delivery activities like the provision of water, refuse removal and provision of basic health services as examples; the very social service delivery that are grossly underfunded.

In theory, local authorities, especially urban councils are empowered to engage in commercial, industrial and agricultural activities to raise funds. This is in addition to revenue from rates from property and land, penalties and fines, license fees, supplementary charges and fees charged from various users of council amenities like schools, flea markets or bus termini. Due to undercharging rates that are below commercial ones, local authorities have continually failed to recoup actual costs incurred in service provision. This is partly explained by failure to make appropriate and periodic valuations on the one hand while on the other it is the central government's interference through approving council budgets and fixing certain charges and fees payable by the users. Of course there is always the reality of the low income by ratepayers themselves that has to be borne in mind when considering affordability.

The net effect is that local governments have continually been underfunded and thus impacting negatively on social services delivery. Fundraising projects like farming or liquor manufacturing and marketing have often been poorly run and yielding losses

money from councils instead of bringing in revenue. These out these industrial and commercial activities. Revenue from social service delivery has been inadequate and unreliable since uneconomic rates are charged and ratepayers are most often in arrears and defaulting payment. Funding from central government remains the main hope for survival of local authorities.

In reality, central government support for local governments has been dismal for the last decade or so. The main support from central government has been in the form of loans under the Public Sector Investment Programme [PSIP] and grants for public health. But these disbursements have largely been unpredictable and inconsistent not to mention delays. Because transfers came late as re-imbursements of costs already incurred when the disbursements were inadequate it therefore meant that local authorities were in essence subsidizing central government. This has been prevalent in the health services where councils should recoup 50 % from central government and most often they do not. What this means in effect is that central government's failure to own up to its mandates is transferred to be the burden of local authorities who already have their own mandates choked by underfunding and charging of uneconomic rates. Social service delivery suffers and development programs stall and stagnant.

4.2 Streamlining Responsibilities and Resource Allocation

Since the call for devolution of power to the provinces was motivated by among other things the desire for equitable distribution of opportunities and resources and the need for sustainable people-oriented development; it is imperative that resource allocation mechanisms be addressed. Resource allocation should be in line with responsibilities accorded to central government or provincial council or local authority, as the case may be. Devolution by its nature transfers power to lower tiers of governance and in this case to provincial councils and urban or rural district councils. In essence it means giving more power hitherto enjoyed by central government through especially ministry of local government to provincial councils and local authorities. The transferred powers and responsibilities should by constitutional right go with appropriate control of financial resources.

Central government should play only supervisory role in those areas it would have devolved power to provincial councils and local authorities. A few examples here are necessary. On health services delivery, normally the Ministry of Health reimburses 50% of costs met by local authorities. That means the other 50% is borne by local authorities from their other sources therefore distorting revenue utilization. The control of and distribution and charging for water use by ZINWA for instance compels local authorities to be customers to the Ministry of water and lose control of such a crucial

ministries for education should not shoulder the responsibility of schools to local authorities while ministries monopolize policy and decision-making on educational matters.

Areas like water resources, health, education and housing are very crucial for provincial and local governments as citizens expect the best services from these immediate and lower tiers of government. It is imperative that in streamlining responsibilities and powers the provinces get full control of these key social service delivery areas.

Powers to be wholly devolved to provinces should include:

- I. Water management
- II. Health services
- III. Education
- IV. Housing

4.3. Revenue from Natural Resources

In principle, Zimbabweans are agreed that natural resources should benefit the whole nation in general and in particular the local community where such resource is found. The sorry state of underdevelopment in resource-rich communities became the rallying point for devolution in Zimbabwe. It was expected and logically so, that exploitation of locally found resources should bear tangible fruits to locals before such fruits are enjoyed elsewhere. This does not only make sense politically but morally as well.

Mineral resources are perhaps the main concern by most communities in Zimbabwe. Apart from mineral resources like gold, platinum, diamonds, iron ore, coal or asbestos to mention just a few, communities are also endowed with wildlife, woodlands, water, sand etc. Huge profits are realized for instance from hunting concessions and timber logging as examples. The control and benefits from exploitation of such resources should be enjoyed at local level, provincial level and nationally by creating a predetermined ratio of sharing whatever revenue in taxes is received from such activities.

The sharing of benefits among central government, provincial council and respective local authorities should not be in monetary terms only. It should be borne in mind that the issue of employment of locals has remained a burning issue and one of the motivating factors for the call for devolution. The three tiers of government should also agree on investment and job opportunities as well as corporate responsibilities deriving from natural resources exploitation. What this implies is that contracts

mining can no longer be the monopoly of central government. In any case, transparency in contracts agreed with mining companies for example ensures increased revenue for the nation for exploitation of its natural resources and holding mining companies accountable for impact on the environment and hence livelihoods of surrounding communities.

4.3 Revenue from Central Government

Since devolution does not absolve central government from its responsibilities to citizens, financial support from treasury should actually increase to the provinces. Devolution is not an end in itself but a means to an end which is sustainable and equitable development of Zimbabwe. Through provincial councils, the state of Zimbabwe is bringing development decision-making closer to the people and to make that development meaningful to all citizens. More financial allocations should go to provinces to ensure that needs of provincial councils are met from the national budget.

For instance, certain revenue from taxation should be divided between the provincial council and central government without first having everything getting to treasury then distributed very late to the needy areas. Beitbridge as a port brings sizeable revenue to the country yet the local authority in Beitbridge has very little to show from such revenue flows. Therefore, it is not only how much treasury disburses to provinces but the administration of those disbursement. Development projects have in the past been stalled due to bureaucratic niceties from ministry of finance and respective line ministries.

Lastly, central government should cease to control directly or indirectly local authorities' activities that could be supervised by provincial councils. For example, approval for councils to borrow or enter into similar transactions should not necessarily be approved by the minister of local government if such transactions are acceptable to the ministry of finance. The excessive executive interference in local governance should be removed because of its stifling of development initiatives. Regulatory powers over urban councils and rural district councils should now reside with provincial councils which should be answerable to the Parliament of Zimbabwe.

5. RELATIONSHIPS BETWEEN CENTRAL GOVERNMENT AND PROVINCIAL COUNCILS

The relationship between central government and provincial councils is of interest and would demonstrate Zimbabwe's maturity in constitutionalism and the rule of law or the lack of them thereof. Why is this so? The very inclusion of devolution of power in the new Zimbabwe Constitution [Chapter 14] itself speaks volumes about public perceptions of central government strong grip on local government. Perhaps the devolution issue is

ent in the constitution that can radically change the
ice in the country. It is a direct means of bringing
government closer to the people and hence improving accountability and transparency.

Since devolution is not an ideology that any political party or group of people can claim as theirs, the inclusion of devolution however came about after protracted advocacy and negotiations before and during the constitution-making. Its inclusion is of course credited to the two parties out of three that led the writing of the new constitution but in essence it was people-powered choice. As if to mark permanently the importance of devolution, it is mentioned in the preamble of the constitution and Chapter 14 on provincial and local government has a preamble too. It is perhaps the only chapter with a preamble. The preamble emphasizes national unity, democratic participation and equitable allocation of resources. Most notable is *the participation of local communities in the determination of development priorities within their areas.*

5.2 Objectives of devolving power to provinces

According to Chapter 14, Part 1, 264 (2), the objectives of devolution of governmental powers and responsibilities include;

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

This background substantiated from the constitution itself is crucial in determining the relationship between central government and provincial/metropolitan councils. The traditional hierarchical relationship between central and local governments which allowed for constant interference on the affairs of latter by the former has fundamentally changed. Previously local authorities were appendages of the Ministry of Local Government if not the Minister and performed their responsibilities on behalf of the

responsibilities have to be transferred and not delegated to provincial or metropolitan councils.

Central government through its ministry responsible for local government should adjust to the new constitutional dispensation that certain sizeable powers and responsibilities are exercised elsewhere. For example, supervision of local government becomes largely a duty of provincial or metropolitan councils where a three tier level of government operates. The ministerial approval of council budgets, or imposition of by-laws or varying council decisions should be scrapped altogether in the Act of Parliament.

The very composition of provincial councils by elected legislators who also seat at the National Assembly and Upper House demonstrate that the provincial councils are not lesser than but parts of the legislature at local levels. It confirms the transfer of powers and responsibilities as opposed to delegation of duties by ministry to its local functionaries.

Central government should have specified roles that must co-exist and be in harmony with roles of provincial councils. However, ministerial directives should not directly go to local authorities by-passing provincial councils.

Central Government Should Not Interfere in:

- i. Water and sewerage management
- ii. Education at provincial level
- iii. Health
- iv. Housing
- v. Tourism

5.3 Resolution of Disputes

In the likely event of disputes between central government and provincial councils and local authorities, the Act of Parliament must provide for resolution through the constitutional court. In disputes that threaten to alter the powers and responsibilities of any level of government, it would be advisable that there be a clause allowing for a referendum within the affected province to decide the matter.

6. CONCLUSION

The key highlights are the powers and responsibilities transferred to the provincial and metropolitan councils, the structure of the provincial or metropolitan councils in relation to the structure and powers of the provincial civil service and its terms of reference, funding of provincial and local government as well as resolution of disputes with central

ould be borne in mind against the background of the devolving power to provinces and local government.

In essence the spirit behind devolution is democratic participation by the citizens in governance and development initiatives that affect their communities. It is to ensure equitable and just distribution and sharing of opportunities and resources to all. It is to ensure accountability and transparency in political, economic and governance issues. Above all it aims to enhance national unity and promotion of patriotism amongst all Zimbabwean citizens.

Since the objectives and rationale for devolving power to provinces is no longer in dispute or an issue for debate, the concern and general preoccupation by the public and all stakeholders should be on how these lofty and progressive ideals are realized through setting up workable and transparent legislative and administrative structures. It is paramount that since democracy and devolution are people-driven programs for inclusive and sustainable development the citizens' views are taken into account at all stages. This document therefore serves as a guide to the debates and deliberations on various aspects that would exercise the minds of many as Chapter 14 of the new Constitution is operationalized through the necessary pieces of legislation.

APPENDIX: A

QUESTIONS TO GUIDE STAKEHOLDER CONSULTATIONS IN PROVINCES

On Democratic Governance

1. What must be done to ensure citizens' participation in local governance?
2. Should there be public budget consultations by Provincial and local councils?
3. If Yes, how should budget consultations be done?
4. What mechanisms should be put in place to ensure citizens' views are incorporated in the budget process?
5. How can councils be made more accountable to ratepayers?
6. What should be the role of residents' association and civic organizations in local governance?
7. Should NGOs perform duties that should be done by provincial and local councils?
8. What must be done to ensure the following interest groups are heard by Provincial Authorities
 - (i) Women voices?
 - (ii) Youths voices
 - (iii) People living with disabilities?
9. What mechanisms should be put in place for citizens to have recourse to in the event unpopular and unprogressive laws and policies are passed by provincial and or local councils.
10. Other than the two senator chiefs which other unelected representatives should be included in the provincial councils and why?

Re-Alignment of Legislation

11. What aspects of Urban Councils Act do you think needs adjustment in light of new constitutional dispensation? Or
12. What aspects of the Rural Districts Councils Act do you think needs adjustment in light of the new constitutional dispensation? Or
13. What aspects of the Traditional Leaders Act do you think needs adjustment in light of the new constitutional dispensation?

should be changed to enhance effective devolution of provincial and local government.

Powers of Provincial/Metropolitan Councils

15. With reference to powers traditionally enjoyed by central government over local government which ones do you think should be transferred to provincial/metropolitan councils? [refer to #3 for the list]
16. Which other additional powers should provincial councils have?
17. How should disagreements between central and provincial or local governments be addressed? [eg. Through ministerial dismissal of councils and appointment of unelected commissioners?]

Administration of Provincial/Metropolitan Councils

18. Who should head the provincial or metropolitan administration?
19. How should the senior executives of provincial/metropolitan councils be recruited?
20. How should the senior executives be remunerated? [eg. council executives have bought luxury cars when services are declining]
21. Which committees should provincial councils have?
22. What mechanisms should be put in place to ensure that the provincial development plans are funded and implemented?
23. Should there be a provincial development committee?
24. If Yes, who should be part of the provincial development committee?

Resource Allocation and Funding

25. What percentage of revenue generated in the province should be retained for development in that particular province?
26. What should be treasury's allocation to provinces? And why?
27. Who should pay for the provincial councilors? And why?
28. Which sources of revenue and taxes should be for central government? Provincial Councils? And local authorities?
29. How much financial autonomy should provincial councils have?

General Issues

30. Should provinces be allowed special taxes peculiar to that province?
31. Should there be salary and benefits differentiation amongst provinces?

have on civil service within their jurisdiction? NB
ed of underemployment of their citizens.

33. Should educational and language policies be determined by provinces? Why?
34. Should a province be allowed to hold a referendum on an issue affecting it?
35. How should provincial geographic adjustments be done and by whom? Eg. Metropolitan wishes to annex an adjacent town or simply needs more land for settlement?
36. Should provincial chairpersons and metropolitan mayors be elected directly by the citizens or indirectly through political parties? Advantages and Disadvantages of each?
37. Which powers [portfolios] should be devolved to provinces?
38. Should provinces have some judicial powers?
39. Should provinces have limited control over the police?
40. Should teacher training and deployment be shared between central government and provincial councils?
41. Which other services provided by central government that provinces should have a say?