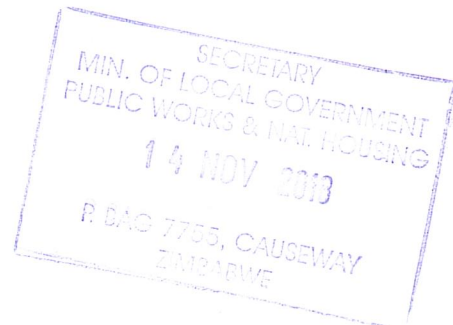


**POLICY BRIEF ON THE IMPLEMENTATION
OF DEVOLUTION IN ZIMBABWE:**

**Recommendations on the
Structure/Composition, Functions and
Funding of Provincial and Metropolitan
Councils (PMCs)**



SUBMITTED TO:



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1.0 INTRODUCTION

This Policy brief was developed by the Centre for Community Development in Zimbabwe (CCDZ) and Harare Residents Trust (HRT) in consultation with key local government stakeholders¹. The paper provides an outline of key **concerns** and **issues** regarding devolution and **proffers recommendations** for consideration by government and parliament in crafting the new legislation to guide the implementation of devolution in Zimbabwe. The issue of devolution is topical and government has indicated its commitment to implementing it. However, the delay in the crafting of legislation to guide devolution is a serious cause for concern for citizens and other local government stakeholders.

The Zimbabwean Constitution Amendment (No. 20) Act 2013 provides the framework for devolution of governmental powers and responsibilities in Section 264. Also in Section 5 of the Constitution, the tiers of government provided are the national government, provincial and metropolitan councils as well as local authorities. Since the adoption of the new Constitution in 2013, the government has not yet crafted legislation to devolve power to provincial and metropolitan councils. Rather there have been reversals and an attempt to completely do away with Provincial and Metropolitan Councils to scuttle devolution.² In 2016, the government of Zimbabwe passed the Local Government Amendment Act despite protestations from civil society and other key stakeholders. This Act is ultra-vires the constitutional provisions on devolution as it gives central government wide powers to interfere with the operations of local authorities and dismiss democratically-elected Chairpersons and Mayors.

The establishment of Provincial and Metropolitan Councils (PMCs) as spelled out in Chapter 14 of the Constitution is long overdue. It is against this background that CCDZ and HRT continue to engage government and parliament on the need for comprehensive local government reforms including crafting legislation to allow devolution of power to Provincial and Metropolitan Councils as opposed to the piecemeal approach of the old dispensation.

The devolution of power to local and provincial councils helps to achieve fair and balanced development through Provincial and Metropolitan Councils, which are allowed by the Constitution to set local development priorities. Governmental powers must be devolved to the local people so that there is increased transparency and accountability in governance and decision-making as well as management of public affairs and resources by local authorities. Provincial governments must be fully in control of their local authorities whilst central government plays an oversight role to ensure that public resources are used in a transparent manner.

2.0 STRUCTURE OF PROVINCIAL AND METROPOLITAN COUNCILS

¹ Policy dialogue meeting held on 20th September 2018 on the theme 'Devolution of Governmental Powers and Responsibilities' and attended by CSOs, Officials from Ministry of Local Government, Public Works and National Housing including the Permanent Secretary as well as members of CCDZ and HRT community structures; brainstorm session held by CCDZ and HRT in Harare on the 17th October under the theme "Devolution of Governmental Powers and Responsibilities"

² The former Finance Minister Patrick Chinamasa was widely quoted in the local mainstream media arguing that Provincial and Metropolitan Councils provided in Chapter 14 of the Constitution are a burden to Treasury and the constitution must be repealed to do away with these governance institutions

The Constitution of Zimbabwe Sections 268 and 269 establish Provincial Councils and Metropolitan Councils respectively. The Provincial and Metropolitan Councils are a middle and critical link between government and citizens. The Provincial Councils consist of all Members of Parliament for the Province concerned. The Mayors and Chairpersons of all local authorities in the concerned provinces are also members of the Provincial Council. Section 268 also stipulates that ten members elected under the proportional representation will also become members of the Provincial Councils. The Mayors for Bulawayo and Harare are the chairpersons of the Metropolitan Councils whilst Provincial Councils elect their chairpersons at their first meeting. There is therefore need for the authorities to take great care in establishing these important government structures and ensure that they are transparent, accountable and effective. **There is need to ensure that PMCs are designed in such a way that their structure and composition allows them to work professionally and independently to effectively deliver on their mandate.**

To start with, CCDZ and HRT suggest that Members of Parliament and Senators as well as women MPs elected under the quota system should not be part of Provincial and Metropolitan Councils as they belong to the Legislative branch of government that plays an oversight role over structures. There is need to separate the functions of the legislative branch of government from the work of Provincial and Metropolitan Councils in line with the principle of separation of powers.

Secondly, PMCs must be allowed to recruit their own staff including competent Clerks or Chief Executive Officers with a track record in public service. Section 266(2) of the Constitution on the conduct of employees of Provincial and Metropolitan Councils states that:

- They should not act in partisan manner,
- Should not further the interests of any political party or cause,
- Should not prejudice the lawful interests of any political party or cause, or
- Should not violate the fundamental rights or freedoms of any person.

Section 266(3) of the Constitution further states that employees of Provincial and Metropolitan Councils must not be office bearers of any political party. To create effective and independent PMCs true to the spirit of devolution, CCDZ and HRT recommend that these councils must recruit their own secretariat and run their affairs independent from the Provincial Administrator's office, the Minister of Provincial Affairs and Ministry of Local Government, Public Works and National Housing. As the parent Ministry, local government can come up with capacity building programmes for the Councillors as well as the regulatory framework and Code of Conduct for Provincial and Metropolitan Councillors.

It is further suggested/recommended that the Provincial and Metropolitan Councils (PMCs) must be allowed to set up their own Committees in keeping with i) their development aspirations, ii) synergy with the National Assembly iii) to allow better co-ordination with other tiers of government and the parent Ministry. The suggested committees or clusters for PMCs are: **i) The Planning and Governance Cluster, ii) Economic Development & Investment Cluster, iii) Roads and Infrastructure Cluster, and iii) Basic Social Services Cluster.** The remit of their responsibilities and relations with local authority and national government will be consistent with the transferred powers and functions. Suffice to suggest that the core functions of the **Planning and Governance Cluster** may include: i) capacity development of governance institutions, ii) stakeholder and citizen engagement, and iii) spatial and development planning management.

3.0 FUNDING OF PROVINCIAL AND METROPOLITAN COUNCILS

Section 301(3) of the Constitution of Zimbabwe states that not less than 5% of the national revenues raised in any financial year must be allocated to the province and local authorities as their share in that year. CCDZ and HRT suggest that the devolution act being crafted by the Ministry of Local Government, Public Works and National Housing must provide for the establishment of a Revenue Distribution Committee /Commission with members appointed either on a proportional representation of Parliamentarians or mixture of central government, Provincial and Metropolitan Councils and local authorities. This Commission would consider annual revenue projections and determine the percentage allocations to provincial and local authorities based on such factors as the development needs and priorities, population size, national development goals and priorities etc.

We further recommend that the formulae or criteria in the allocation of funding and percentages to the provinces (PMCs) must be clearly spelled out in the devolution legislation being crafted by the Ministry of Local Government, Public Works and National Housing instead of leaving it to the whims of the Executive or other arms of government. This recommendation is made against the background of concerns regarding political and marginalisation of some regions in Zimbabwe. The other imperative for devolution is to share the national cake equally amongst Zimbabwean citizens. The new devolution policy being crafted by government must spell out the formulae for the allocation of funding to the provinces so that all the regions equally benefit from state/national resources.

4.0 FUNCTIONS OF PROVINCIAL AND METROPOLITAN COUNCILS

Section 270 of the Constitution provides for functions of PMCs as follows: **i) conducting socio-economic development, coordinating implementation of government programmes, ii) promoting tourism, monitoring and evaluating the utilisation of resources in the province, and iii) implementing measures to manage and conserve natural resources found in the provinces among others.** These functions are vague and ambiguous. They are a mere framework and understandably so because the crafters of the Constitution would not have expected to specify the functions of PMCs in the Constitution for purposes of brevity. Therefore there is need for the legislation to specify the functions of PMCs in the legislation and strike a balance economic and political devolution and not just to emphasize on the economic imperatives of devolving governmental power and responsibilities to the lower tiers. There is need to specify how central government functions such as education, health, roads, electricity provision, landuse management, licensing, transport, registry etc are to be shared between central government and PMCs.

CCDZ and HRT are aware of the challenges of competency and lack of capacity for the newly established PMCs to carry out these constitutional duties. We therefore suggest that central government must provide induction and capacity building sessions, develop Code of Conduct for Councillors and monitor performance to ensure effectiveness and efficiency. Central government must put in place mechanisms to ensure that the allocated resources are used for development instead of going towards perks and other luxuries for the politicians at the local-level as we have seen with Local Councils.

5.0 RELATIONSHIPS BETWEEN PMCS AND LOCAL AUTHORITIES AND CENTRAL GOVERNMENT

The functions of PMCs and local authorities overlap to some extent. For instance, PMCs according to Section 270 of the Constitution are responsible for conserving and improving natural resources, power to exercise legislative function as well as planning and implementing social and economic development activities in areas of jurisdiction. In return, urban councils also have those responsibilities according to Section 276 of the Constitution. There is need to state whose rules or regulations will prevail. CCDZ and HRT suggest that local authorities, since they are located closer to residents should have more power with the PMCs having an oversight function. Local authorities through councillors are responsible for the day to day interaction with residents, addressing their day to day service delivery and other developmental challenges. Since they work hand in glove with residents, they must have an upper-hand than PMCs. The role of PMCs will be to ensure that local authorities deliver and that their objectives are in line with the objectives of the province.

President ED Mnangagwa appointed Ministers of State in all provinces after the July 2018 elections. To avoid a power struggle and duplication of roles between PMCs and these Ministers, we suggest that the Provincial Affairs Ministers, as representatives of the Executive can be part of the Provincial or Metropolitan Council but as ex-officio members. The Constitution clearly states that Metropolitan Councils (MCs) in Bulawayo and Harare will be chaired by Mayors whilst the Provincial Councils (PCs) in Mashonaland East, Mashonaland West, Mashonaland Central, Matabeleland North, Matabeleland South Midlands, Masvingo and Manicaland Provinces will have Chairpersons elected at the first sitting of the Provincial Councils. This structure as stipulated in the Constitution must be maintained. PMCs are elected by citizens so that they serve their developmental interests. For the sake of accountability to the electorate, we suggest that PMCs must be chaired by the elected officials rather Provincial Affairs Ministers who are political appointees.

6.0 SUMMARY OF OUR KEY RECOMMENDATIONS

Structure of Provincial and Metropolitan Councils:

- The House of Assembly members and Senators must not be members of Provincial and Metropolitan Councils (PMCs) as this will compromise the oversight role that Parliament is supposed to play over these institutions. Parliament is urged to repeal the relevant Sections of the Constitution (Sections 268 & 269) to ensure that Members of Parliament, Senators & women MPs elected under the quota system are not part of PMCs in line with the doctrine of separation of powers.
- The president and deputy president of National Council of Chiefs as well as Senator Chiefs (according to Section 268 of the Constitution) must remain part of the PCs as they play a key role in communities for instance in the administration of communal land and dispute resolution.
- Metropolitan Councils must be chaired by the Mayors of Bulawayo and Harare as stated in Section 269 of the Constitution and not Provincial Affairs Ministers who are representatives of the Executive. The Mayors are elected officials and directly accountable to the electorate unlike Provincial Affairs Ministers who are political appointees.

- In the same vein, Provincial Councils must be chaired by elected Provincial Councillors at their first sitting after every general election as recommended in Section 272(1) of the Constitution.
- We emphasize that Provincial Affairs Ministers must not be the Chairpersons of Provincial or Metropolitan Councils because they are representing the Executive and this will further entrench centralisation of power as opposed to devolution. There is need to separate the functions of the Provincial Affairs Ministers and Provincial Administrators from those of the Provincial Councils to avert power struggles which will stall development in the provinces.
- The Provincial and Metropolitan Councils must be made up of the following clusters/committees: **Planning and Governance Cluster, Economic Development & Investment Cluster, Roads and Infrastructure Cluster as well as Basic Social Services Cluster** to enhance their transparency, effectiveness and accountability. The governance cluster/committees must allow for meaningful citizen participation and other stakeholders in decision-making processes at provincial level.

Staffing/ Secretariat of PMCs:

- To enhance their efficiency and effectiveness, the PMCs must be allowed to recruit competent Clerks and other members of secretariat with track record of public administration. The Provincial Administrators office, which directly reports to central government through the Ministry of Local government, must not provide secretariat services to PMCs to avoid centralisation of power and political interference in the operations of PMCs.

Devolution Legislation

- The process of crafting devolution legislation (Act of Parliament) must be participatory and time-bound. The Ministry of Local Government, Public Works and National Housing tasked with the responsibility of originating the devolution bill must allow other stakeholders to give their views for inclusion in this important piece of legislation. The Parliamentary Portfolio Committee on Local Government, Public Works and National Housing must ensure that when the Bill is introduced in Parliament it conforms to the principles of participatory, democratic, inclusive, transparent and accountable local governance. It is our expectation that the Portfolio Committee will convene public hearings at provincial and district level to allow members of the public to comment and give input into the Provincial and Metropolitan Councils bill.
- The crafting of the Provincial and Metropolitan Councils bill and its adoption by Parliament and presidential assent must be done expeditiously no later than 31th January 2019 to allow elected Provincial & Metro Councillors to take oath of office by 1st March 2019.
- The new legislation being crafted by government must provide a framework for the recall of non-performing Provincial Councillors and disciplining those that are found guilty of abusing public resources.

Funding of Provincial and Metropolitan Councils:

- We suggest that the legislation on devolution being crafted by the Ministry of Local Government, Public Works and National Housing must provide for the establishment of a

Revenue Distribution Committee /Commission with members appointed either on a proportional representation of Parliamentarians and representatives of central government, Provincial and Metropolitan Councils and local authorities. This Commission would consider annual revenue projections and determine the percentage allocations to provincial and local authorities based on such factors as the development needs and priorities, population size, national development goals and priorities etc.

- The formulae or criteria in the allocation of funding and percentages to the provinces (PMCs) must be clearly spelled out in the legislation instead of leaving it to the whims of the Executive or other arms of government. This recommendation is made against the background of concerns regarding political and marginalisation of some regions in Zimbabwe. The other imperative for devolution is to share the national cake equally amongst all Zimbabwean citizens.

This briefing paper was produced by the Centre for Community Development in Zimbabwe (CCDZ) and Harare Residents Trust (HRT). We would like to express our gratitude to our members and partners who attended the "Policy Dialogue on Devolution" and "Brainstorm Session on Devolution" all hosted by our two organisations to allow local government stakeholders to deliberate on the subject of devolution and produce this paper for submission to the Ministry of Local Government, Public Works and National Housing and the Parliament of Zimbabwe. For feedback contact the following Dr. Phillip Pasirayi, **Centre for Community Development in Zimbabwe (CCDZ)**, E-mail address: centrefordevelopment@gmail.com and Mr Precious Shumba, **Harare Residents Trust (HRT)**, E-mail address: shumbap@yahoo.co.uk

Thank You.