



The Zimbabwe Devolution and Decentralisation Policy: An Appreciative Analysis

Kudzai Chatiza, kudzai@mweb.co.zw, and Morgen Zivhave
Harare, November 2020

Table of Contents

Introduction.....	2
Good Policy Content	2
Key Policy Commitment	2
Guaranteed Powers of the 102 Subnational Governments	2
Expanded and Substantive Framing of Citizen Participation	3
Integrated Fiscal Capacity and Prudence	4
Relevant Framing of Law Reforms	5
Proactive in Anticipating Staff Transitions	5
Spatial Planning Powers	6
Arranging Policy Delivery Institutions to Fail.....	6
Conclusion: Expediting Law Reforms	8

Introduction

Weeks after Independence Day number 33, Zimbabwe adopted a new constitution in May 2013. It has clear provisions on devolution of governmental power. 95% of voters supported the Draft Constitution in a referendum of 16th March 2013. Seven years on devolution implementation lags the aspirations behind the constitutional provisions. Guidelines in 2019¹ and a Policy in 2020² as well as disbursement of s301 funding. Unfortunately the guidelines and policy have not been drawn following appropriate citizen consultations continuing a tradition of tokenism that is effortlessly used to resist change. This paper is an analysis of the August 2020 Devolution and Decentralisation Policy. The Policy presents a framework that will guide implementing provisions on devolution especially in Chapters 14, 15 and 17.

The analysis draws on a review of the policy document and engagement with selected practitioners with an interest in the matter. It adopts an 'appreciative inquiry approach', which focuses on strengths, explores powerful and positive questions, applies positive images of the future to motivate positive action and allows movement from problems to desired futures drawing on past successes (Acosta and Douthwaite 2005³; ICMA 2011⁴; Macpherson 2015⁵). At the same time it notes the considerable frustrations with delayed implementation of devolution. The delays are a critical source of the mistrust that government has to content with as it leads Zimbabwe in emplacing a devolved governance system.

Good Policy Content

Key Policy Commitment

The policy approved by Cabinet on 21st July 2020 focuses on promoting inclusive socio-economic development and national unity. It also states the objective as one of promoting sustainable, representative, accountable, participatory, inclusive governance and socio-economic development. The citing of the constitutional objectives of giving political and fiscal powers of local governance to the people is important for purposes of focusing implementation on this principal reason for devolution. This is worded clearly in the Foreword as follows:

'...launch of the Devolution and Decentralisation Policy is a sign of a deep commitment by my government to implement devolution...The objective for devolving power to subnational structures of a reconfigured Zimbabwean State is to enable a faster, efficient and effective response to challenges of the delivery of public services, development, democracy', (Government of Zimbabwe 2020:vi)

Guaranteed Powers of the 102 Subnational Governments

The Foreword articulates the position that the policy underpins recognition and guaranteeing continued existence of the powers of lower tiers of government to make policy, laws and govern their fiscal affairs. The last Foreword paragraph presents a positive rationalisation of devolution as 'one of the pillars which will sustain the unitary architecture of the Zimbabwean State... [enabling it] to respond better and faster' (ibid: viii). This addresses previous skepticism that devolving power amounted to incentivising secession. A further recognition that some powers will be devolved from the Ministry responsible for local government (paragraphs 27, 19, 59-61 and 106) particularly enhances local authority autonomy within the context of subsidiarity (paragraph 40).

In the Preface the policy highlights 'the need for greater capacitation of the lower tiers of Government' (ibid ix). This national government responsibility to build subnational capacity is elaborated on in

¹ Government of Zimbabwe (2019) Presidential Policy Guidelines on the Zimbabwe Devolution and Decentralisation of Governance and Economic Development to Provincial Councils and Local Authorities;

² Government of Zimbabwe (2020) Devolution and Decentralisation Policy

³ Acosta A and Douthwaite B (2005) Appreciative Inquiry: An Approach for learning and change based on our own best practices, ResearchGate

⁴ ICMA (2011) Positive Problem Solving: How Appreciative Inquiry Works, InFocus Vol. 43, No. 3

⁵ Macpherson A (2015) Introduction to Appreciative Inquiry, ResearchGate

paragraphs 7, 8, 15, 19, 21 and 24, among others. A list is provided of some of the capacity gaps in service delivery and how these will be plugged (paragraphs 117-121). Paragraph 3 of the policy communicates an expansive framework for defining the powers that will be devolved by locating them in administration, politics, finance and economic development. Considered with paragraph 2 which cites relatively appropriate exclusive national government competences (defense and security, trunk roads and civil aviation) a framework for negotiating powers to be transferred has been set.

Paragraphs 9 and 10 of the policy acknowledge that urban and rural local authorities exercise devolved powers. Primary legislation that guides the exercise of the powers is cited. In exercising these and additional powers into the future, paragraphs 19 and 20 provide that 'local authorities will be empowered to make decisions which previously required authorization by officials at provincial and Ministry head offices...[adding that] some responsibilities which used to be undertaken by State agencies will be devolved...to local authorities' (ibid: 5). This clarifies the commitment to reconfigure the State. National government roles in relation to local authorities are defined in paragraph 21 as relating to regulation, monitoring and capacitation based on national policies, laws and standards. There is a commitment to review the local government architecture. This gives clarity on how far-reaching reforms are anticipated.

It is however important to highlight that some of the powers that need to be transferred to the provincial and metropolitan as well as local authority tier are currently exercised by state-owned enterprises. Mentioning these in the Policy even just as examples would have added to the clarity needed. This is particularly important in the case of parastatals like the National Parks and Wildlife Management Authority (ZimParks), the Zimbabwe Tourism Authority (ZTA) and Ministries responsible for tourism, wildlife management and other natural resource conservation activities. These functions are provided for as the responsibility of Provincial and Metropolitan Councils in s270 of the Constitution. It is therefore important for these to be taken into consideration alongside development planning, monitoring and evaluation functions (critical for coordination), which are currently performed by officials of the Ministry responsible for local government i.e. Provincial and District Development Coordinators.

Expanded and Substantive Framing of Citizen Participation

Policy proposals number 23 and 25 as well as 48, 49 and 65 directly speak to ward and lower level structures for participation in a broad-based devolution process where organised civil society and ordinary citizens can play a part in bottom-up processes. These policy proposals are strategic as they frame operationalisation of the constitutional provisions that 'give powers of local governance to the people' and provide for the transparency of government operations. The role of these structures in development planning will critically need to be fully integrated into the local fiscal regime as discussed below for there to be meaningful participation in development.

A combination of legislated spaces, elected officials, organised civil society performing a watchdog role and capacity building targeting citizens provide 360° scope for citizens to hold officials to account. Mentioning of Ratepayers Associations in paragraph 65 with respect to local fiscal policy matters particularly long-term funding instruments for service delivery and infrastructure development across local authorities is very refreshing. The policy also mentions disadvantaged groups like youths and women as well as gender participation in paragraph 72. What becomes critical is that civil society organisations focus on ensuring that the law reform process materialises the policy by for instance sponsoring quotas and ex-officio roles for women, youth and other representatives of civil society in tier two and three⁶ structures and processes. Government should be helped to deliver on this based on good practices of both representative and participatory or deliberative democracy.

The bottom-up process of selecting economic activities at local authority and provincial/metropolitan levels and converting them into development plans that get government support furthers mechanisms for meaningful participatory development. What is also important is the repeated reference to building

⁶ Provincial and Metropolitan Councils (tier 2) and Local Authorities (tier 3)

the capacity of 'communities on participation in civic matters' (paragraphs 69-72) so that they 'demand quality services from elected Councilors, including legal recall powers' (paragraph 71).

As observed above gaps and challenges experienced during the decades when the Prime Minister's Directive of 1984 was in vogue up to and since adoption of the 13 Principles of Decentralisation in 1996 need to be reflected upon. Such reflection will help with closing the gaps that others noted as the limits to decentralisation where bottom-up processes generated wish lists that were not supported leading to the structures that prepared them becoming irrelevant. Zimbabwe's civil society organisations has developed alternative forums for active citizenship since the Prime Minister's Directive. Some of these have positively transformed state-society relations, built local governance capacities and delivered in terms of services. Relevant cases need to be adapted for codification into law.

Integrated Fiscal Capacity and Prudence

Zimbabwe's Devolution and Decentralisation Policy provides scope for local authorities 'to develop their own revenue streams, including leveraging of local natural resource endowments which would target funding of specific purposes' (Government of Zimbabwe 2020: 13). Section 301(3) fiscal transfers of not less than 5% are 'towards funding local authority budgets' and Councils 'directly submit their estimates of expenditure as approved by their Councils to Treasury' (ibid: 13-14). These proposals provide considerable fiscal autonomy and are further anchored by the definition of sources of revenue for subnational governments (paragraphs 146-149). Proposal 149.k reiterates sub-national governments' entitlement to directly use or authorize use by others of natural resources occurring in their areas with the royalty income streams being aggregated into Community Development Trusts.

An integrated national fiscal management framework is elaborated in paragraphs 61 to 66 as well as 149 and 153. These proposals provide real scope for enhanced financial probity, addressing issues unfunded mandates (these have particularly been critical in health, We Pay You Deliver 2018⁷), blended financing of development and local fiscal democracy. In a sense this conceptualisation of fiscal devolution places responsibility on sub-national tiers of government to adhere to basic financial management rules including accountability to citizens for public resources mobilised and utilised. Paragraph 153 provides that the 'policy requires prudential expenditures of all Council revenues and income given that the ultimate financial burden was borne by the public'.

Obligations placed on public entities frown upon a public finance management culture of waste and corruption. Read together with paragraph 66 which proposes a role for local financial institutions in terms of financing local capital projects and provision of devolved services it is clear that the policy anticipates considerable transformation in this area. In this regard paragraph 167 addresses current borrowing inequalities between urban and rural local authorities by proposing law changes to grant the latter powers to borrow. Paragraph 66 also obligates national government to develop appropriate long-term instruments completing a robust and blended service delivery financing architecture.

The policy provides for fiscal equalisation. This is defined in relation to the constitution (s264.2) and policy amplifies the need to 'ensure equitable sharing of the country's national and local resources (paragraph 92) and an openness to learn from 'fiscal models...used by other countries' (paragraph 94) with seven parameters (a-g) listed. Proposed reliance on 'evidence-based fiscal equalisation models [that] allocate more resources to deserving provinces and local tiers, whose expenditure needs exceed their revenue flows' (paragraph 115) somewhat insulates fiscal decentralisation from 'raw' political bickering. It is fair to acknowledge the framing of these options as well as the preparedness to learn that is embedded in the policy on this critical dimension of devolution. The benefits of devolution are cited as relating to 'provision of effective local development...local governance decision making...allocation of resources towards priority development activities' (paragraph 110).

⁷ Cities in Distress: Municipal Budgeting and Financial Management Survey Report, Danish Church Aid. The Report noted that Harare had a deficit of USD24 million while Bulawayo had USD16 million

Remodelling the fiscal frameworks for subnational governments is a critical area for devolution in Zimbabwe and other jurisdictions. This is at a time the fiscal frameworks have undergone serious stress due to socio-economic challenges and reconfigurations including centralisation of streams that used to be available to subnational governments. Initiatives around sharing of natural resource wealth like Community Share Ownership Trusts have had mixed success. The laws governing available models have traditionally not been aligned with those for local governance resulting in citizens feeling cheated. Considered with need for a clear intergovernmental fiscal transfer framework (yet to be emplaced) and a dispute resolution framework not unduly controlled by national government, a lot of work is needed to convert the positive policy provisions into appropriate legislation. Civil society's watchdog, model or good practice adaptation and capacity development roles in these areas will be very critical. These will help ensure relevant devolution principles are applied and that national government does not impose inappropriate conditions and unnecessary approvals for transfers that are constitutionally mandated.

Relevant Framing of Law Reforms

In crafting the policy government was clearly alive to the need to draft new and re-aligning existing legislation consistent with the Constitution (paragraph 67) as part of guiding 'the transition in the architecture of the Zimbabwean State, from a centralised to a devolved State...to put subnational government tiers on a sound, sustainable, legal, administrative and political basis...enriched by an active and structured stakeholders' consultative exercises' (ibid: 15). Policy has proposals for stronger institutions in terms of 'Councilors with capacity to respond to devolved local community development agendas' (paragraph 73), '...elected Mayors/Chairpersons and Councilors [that] competently assume and exercise newly acquired constitutional mandates' (paragraph 69).

These require new laws and amendments to existing ones. Clearly these laudable expectations of competent governing institutions suggest the need for political leaders with clear mandates. The model of Executive⁸ Mayors and Chairpersons of Councils become a strategic option in this respect. This will aid competent intergovernmental relations where inter-tier interference is limited.

Proactive in Anticipating Staff Transitions

At the same time the fate of national government staff involved in delivery of services and performance of governance functions due for transfer to empowered local authorities and provincial/metropolitan institutions is clearly noted (paragraphs 77ff). The current status is restated in paragraph 77 with issues of employment status of national government officials, salary payments and other conditions of service, employee career pathways and the financial capacities of new (subnational government) employers considered. Clearly the policy anticipates significant staff restructuring and movements across tiers.

The preference for pragmatic considerations suggests a level of flexibility where subnational governments 'accorded devolved powers are required to gradually absorb existing civil servants, over and above employment of new staff members as necessary' (paragraph 82). A transition is thus anticipated by the policy where capacities of subnational governments 'to exercise authority over an existing and experienced but transitional bureaucracy' are built (ibid). The transition is justified on the need for continuity regarding delivery of services previously the responsibility of national government.

The law and administrative reforms that these policy provisions trigger need critical amplification. Two transitions materialising state reconfiguration are thus anticipated. One regards movement of staff from national to subnational governments as appropriate. The other relates to salary budgets also moving from national to subnational governments. National governments often require to be clearly held to account on this and be repeatedly reminded. What this implies is that Parliament will need to ensure that national treasury drafts more than the stipulated 5% to subnational governments. It is possible within the context of intergovernmental negotiations on devolution for a higher percentage to be fixed

⁸ Directly elected by citizens not by their peers as Ceremonial Mayors and Chairpersons

and 'ratified' by Parliament. Active citizenship is thus required to articulate this reality and ensure the laws arising from the Policy contain the necessary clauses.

Spatial Planning Powers

On spatial planning, the policy appropriately justifies its retention as a local government power and makes recommendations for an adjusted Regional, Town and Country Planning Act to provide appropriate legislative, monitoring and some land administration roles for the provincial/metropolitan tier of government. The concern is not only with state land administration given the recorded cases of unprocedural as well as illegal allocations but also direct participation in spatial planning cycles. Paragraph 175 states that '...to maintain planning integrity there will also be need for some plan approvals to be done at national level'.

Substantive spatial planning powers will be devolved to subnational governments. This is positive compared to the current situation where the spatial planning mandate is largely performed by a nationally controlled spatial planning institution⁹. Such a policy proposal is therefore consistent with giving local governance power to the people and the anticipated law reforms ought to expand the decision-making space available to subnational tiers to break down top-down planning practices.

Reforms of the principal planning law (the Regional, Town and Country Planning Act) will need to necessarily define the exclusive and concurrent spatial planning powers of the three tiers. This suggests the need to significantly transform the Department of Spatial Planning and Development¹⁰ including through staff transitions that the policy anticipates. At the same time the transformation will resize the Ministry responsible for local government's spatial planning powers. In terms of the law itself the different Planning Authorities at local, provincial/metropolitan, regional¹¹ and national will need to be defined as well as their powers with regards to specific spatial planning services.

Arranging Policy Delivery Institutions to Fail

Despite the relatively appropriate policy proposals that have been drawn and utilised to frame a justifiably positive argument regarding policy content the process is contestable. Further, the implementation arrangements are unlikely to deliver and on time. This section pulls some positive and strategic questions to ask about the Devolution and Decentralisation Policy to paint a picture regarding implementation prospects. A key one relates to whether the institutional arrangements are appropriate and whether they will be effective and sustainable for devolution negotiations.

There are about three main contradictions. The first relates to the national structure set up to plan, deliver and monitor devolution. The second is about the subnational reach of the Office of the President and Cabinet, which has a potentially disarranging effect with respect to the Ministers of State for Provincial Affairs and the Minister responsible for policy monitoring at OPC. The third regards the ambiguities associated with the role of the Ministry responsible for local government as well as the proposal that other Ministries will retain local authority oversight role including building capacities of subnational governments. Policy provisions communicating these contradictions are cited below after which a summary discussion is presented. In essence the question is whether devolution design and implementation can be based on expecting that:

'Ministers of State for Provincial Affairs...to champion development programs in their respective provinces [with] the discharge of that mandate...closely monitored the Office of the President and Cabinet [and that] through their leadership...decongested central government officials should operate in an efficient and coherent manner' (Government of Zimbabwe, 2020:vii);

⁹ The Department of Spatial Planning and Development in the Ministry responsible for local government

¹⁰ Formerly the Department of Physical Planning

¹¹ A planning area for which a Regional Planning Council can be created may be the smaller than (i.e. within a province), the same as a province or straddle provinces.

'Provincial Ministers have a mandate to ensure that programs initiated by [national] government in their provinces are effectively coordinated and monitored. Their monthly reports to the OPC will include this imperative...[they] will have a consultative relationship with all relevant Ministers through the Minister responsible for policy implementation [at OPC]...who will direct consolidated reports to the Cabinet Committee on devolution', (paragraph 53);

'...that national government has **the right** to retain some functions' (paragraph 2) '...Policy delegates defined central government powers down to lower tiers and levels of government' (paragraph 17);

'Decentralisation...[to] be founded on Regional Investment and Development Plans **derived from** a broad National Investment and Development Master Plan' (paragraph 13);

'His Excellency the President will coordinate the Cabinet Committee on Devolution and Development of Local Authorities..., which would have oversight on the implementation of the country's devolution policy [and that the Committee] will submit reports to Cabinet [chaired by the President] on the progress made' (paragraphs 38 and 41). Further the Committee 'will review and evaluate the absorptive capacities of all sub-national tiers' yet there is 'a Monitoring Committee made of experts [that] will benchmark all services so that funds can be applied equitably across provinces while ensuring that communities are not left behind' (paragraph 15);

'the Minister of Local Government...will remain seized with day to day oversight on the functioning of local authorities [and that]...Coordinators will remain subordinate to their parent Ministry [of local government] and will also advise the Provincial Ministers...on the operations of various government Ministries in various local government domains' (paragraph 43) and will 'retain power and authority over local governments as [per] statutes and central government policies';

While 'the...policy does not obviate the principle of subsidiarity in the practice...of power devolved by central government [to subnational tiers]...many of the statutes which enable central government to exercise oversight over local authorities will remain' (paragraph 52); and

'It will be the responsibility of every mandated Ministry to cascade training...in areas of their responsibility and to budget for such training. Civil society organisations and other international cooperating partners can also augment local capacity building resources' (paragraph 120).

Provincial Ministers have multiple and contradictory roles, liaison and reporting streams all of which are with national government. They include the Office of the President and Cabinet generally, the Minister responsible for policy monitoring in the Presidency and a liaison relationship with the Minister responsible for local government whose provincial staff advise the Provincial Minister. These reporting, liaison and programming tasks circumvent accountability to the second tier of government. Considered in relation to subnational plans being 'derived from' national ones and also the brief that they coordinate national government programs in their provinces they therefore have a role to sustain national government's subnational presence if not interference.

That the President coordinates (Chairs) the Cabinet Committee on Devolution, which reports to Cabinet (chaired by the President) on devolution matters with Provincial Ministers overseeing implementation and then reporting to the Presidency it is fair to conclude that the Present and his/her men/women do and will do devolution reporting to themselves after designing it. The Monitoring Committee of experts has no specific relationship with the Presidential structures and processes. This is inconsistent with basic corporate governance tenets like separation of powers.

In other jurisdictions a standalone Ministry responsible for devolution have been created while in others the devolution implementation function has been assigned to a Secretariat overseen by the Ministry responsible for local government. The essence of these structures established outside the Presidency is to ensure separation of powers and to free the Presidency (or other structure of the Head of State) from directly overseeing the administration of devolution. Further, it is clearly desirable for the Office of the Minister of State that is not in any way accountable to tier 2 to be abolished in interest of creating a single government for this tier and saving public funds.

The idea that national government has the right to retain some powers and to delegate certain powers (paragraphs 2 and 17) appears to be an arrogant framing of a national policy that potentially affronts the constitution. Further, the devolution of state power is provided for in the constitution and as such cannot be at the whims of an administration. Given Zimbabwe's avowed interest in rebuilding and promoting constitutionalism into the future this conceptualisation of intergovernmental relations, law making and thus governance is clearly inappropriate.

Regarding the Ministry responsible for local government, the roles are contradictory and vague. Some proposals take what others suggest will remain. As such, on one hand the Ministry will have some of its powers devolved while on the other it will retain comparable powers and reach including core staff at subnational level. When read in context of paragraph 52 whereby other national government Ministries will also retain oversight over local authorities the whole devolution process could potentially be undone. The Ministry's reach needs to be materially constrained. Key measures include abolishing the offices of the Provincial and District Development Coordinators (PDC and DDC) so that the governments of these two tiers (2 and 3) are not overshadowed by any forms of deconcentrated national government. The Offices of PDC and DDC, a colonial relic stymie intergovernmental relations and contradict devolution as they perpetuate structures of and for national interference in local affairs.

Lastly, assigning capacity building of subnational governments to individual Ministries which will budget for, deliver and monitor it provides for a weak if not offhand approach to something very strategic. It is unreasonable to expect Ministries to prioritise resources to train staff of subnational governments that would take over their mandates. Additionally, the expectation that civil society organisations and international partners would support an uncoordinated capacity development program is also unrealistic. As occurred under Urban I and II as well as the Rural District Council Capacity Building Programs of the mid 1990s a Capacity Development Framework that clear and fit-for-devolution is needed. A Secretariat, Office or Ministry established to oversee devolution design and implementation (separate from OPC, the Presidency and individual Ministries) can deliver the Framework

Conclusion: Having a Timed Plan and Expediting Law Reforms

The Policy has a number of good proposals. Most are consistent with relevant constitutional provisions. It is thus fair to observe national government's relatively clear commitment to deliver on devolution. However, critical contradictions relating to institutional arrangements for designing and implementing devolution and agency roles suggest an unfortunate and perhaps deliberate disarraying of the implementation process. There is also no timeline suggested to ensure that subsequent initiatives are held accountable. These issues may be part of a design to make law-making complicated and extended.

Fortunately, the law-making process can also be used to undo the contradictions. Clearly, the next struggle is about getting the right laws that will define and guide development and resourcing of appropriate devolved structures as well as their vertical and horizontal relations. The most critical laws relate to local government (the Urban and Rural District Councils Act), intergovernmental relations, ingovernmental fiscal transfers, spatial planning, natural resource management or conservation and other economic development management legislation. Civil society organisations will do well to initiate processes of reviewing existing laws to identify gaps and consider preparing or drafting bills for use in discussing with government, parliament and other stakeholders.