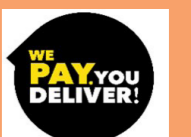


# POSITION PAPER ON GENDER AND DEVOLUTION

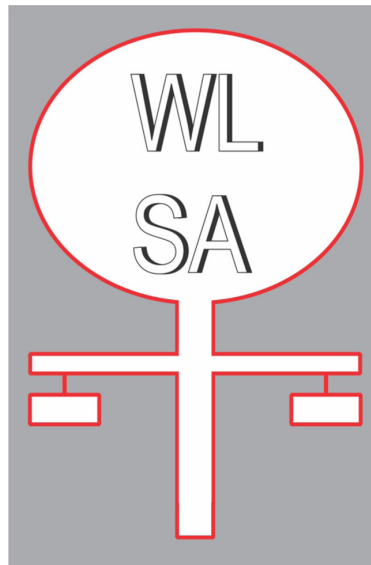


16 Lawson Avenue  
Milton Park  
Harare, Zimbabwe  
Phone: +263242 253001/2/3 or 2928337  
WhatsApp: 0775708476  
Tollfree Number: 08080479  
Twitter: @wlsazim  
Email: admin@wlsazim.co.zw  
Website: www.wlsazim.co.zw  
Facebook: Women and Law in Southern Africa – Zimbabwe



# POSITION PAPER ON GENDER AND DEVOLUTION

*Prepared by:*



**September 2020**

# ABOUT WOMEN AND LAW IN SOUTHERN AFRICA (WLSA)

The organisation was formed in 1989, Women Law in Southern African Research and Education Trust (WLSA) Zimbabwe is the local chapter of the sub-regional network. Member countries comprise of Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe. WLSA seeks to contribute to the sustained well-being of women and girls in Southern Africa through action oriented-oriented research in the socio-legal field and advocating for women's rights. Here action oriented research is intended to and influence actions being taken to improve the socio-legal situations of women and girls. WLSA's work incorporates action into research by questioning and challenging the law, instigating campaigns for changes in law and policies, educating women about their rights providing legal advice and sensitising communities and their leadership on issues of gender.

The vision of WLSA Zimbabwe is to have a society where justice is equitably accessed, claimed and enjoyed by women and girls in all spheres of life. The mission of WLSA Zimbabwe is to organise, coordinate and support evidence based interventions that promote and protect women and girls rights through legal and policy reform and changes to discriminatory socio-cultural.

## ABSTRACT

The devolution of power to the three tiers of government as articulated in Chapter 14 of the Constitution has been outstanding since the promulgation of the current Constitution in 2013. The implementation of the devolution provisions should now be expedited with the establishment of provincial and metropolitan Councils. Devolution, if properly implemented in letter and spirit carries enormous potential for improvement of government in Zimbabwe. It does this by expanding the democratic space, enhancing opportunities for participation in decision making by local communities including by women and other marginalised groups, creating localised mechanisms for public transparency and accountability. Devolution also improves service delivery.

While devolution carries advantages for communities in general, it has special significance for women due to the potential for their increased participation in decision making and shaping policies on matters affecting them.

Effective devolution should be preceded by an exercise to align the legislative framework to the Constitution. Careful note must be paid to the legislative provisions relating to service delivery and resource allocation to ensure a fully devolved state when it comes to the delivery of key services essential for the welfare of women and other marginalised groups.

## ACKNOWLEDGEMENTS

WLSA would like to thank the We Pay You Deliver (WPYD) consortium partners, which refined the guide through incisive comments, suggestions and inputs.

# TABLE OF CONTENTS

ABSTRACT .....	i
ACKNOWLEDGEMENTS .....	ii
1. INTRODUCTION .....	2
2. CONSTITUTIONAL AMENDMENT BILL NO.2 OF 2019 .....	3
3. SUMMARY OF THE DEVOLUTION PROVISIONS IN THE CONSTITUTION .....	4
4. DEVOLUTION AS A TOOL FOR ACHIEVING GENDER EQUALITY .....	5
5. LEGISLATIVE ALIGNMENT OF LAWS TO IMPLEMENT DEVOLUTION.....	8
6. RECOMMENDATIONS. ....	11
BIBLIOGRAPHY .....	11

# 1. INTRODUCTION

Devolution is defined as the transfer of power from the central to the local level. Devolution has been a topical issue in Zimbabwean politics for a long time but the topic gained greater prominence and the demand for devolution has increased in the last decade. Several factors in the historical context are seen as having inferred the desire for devotion. These factors include a perception of marginalization of some groups in the country on tribal basis and the perception of mismanagement of resources by central government. The emergence of strong opposition politics in the late 1990s provided a platform for the further articulation of the call for devolution. The Constitution making exercise of the GNU era provided the opportunity to Constitutionalise devolution.

During the Constitution making process, devolution was one of the difficult topics the negotiations around which were characterized by tension and unease. Despite this, the negotiators finally agreed on the form of devolution that was provided for in chapter 14 of the Constitution. The devolution system in Zimbabwe as provided for in the Constitution identifies three tiers of government in Zimbabwe namely, Central government, provincial government and local government.

To date, the provisions of chapter 14 of the Constitution have not been implemented. In particular, the provincial and metropolitan councils have not been established. The legislation to implement devolution has not been enacted.

The present government signalled that it would implement devolution during the 2018-2022 government term. The nature of the devolution to be implemented however remains unclear. At the same time, the government has introduced a bill to amend the Constitution in several significant respects. That bill seeks to introduce changes to the composition of provincial and metropolitan councils.

The Women and Law in Southern Africa (WLSA) Zimbabwe is the local chapter of a regional organization that works in the area of women's rights. WLSA's work focuses on exploring and implementing the various strategies that use the law to enhance the status, wellbeing and rights of women. WLSA is therefore a key player in the coalition of civil society organisations and stakeholders that seek to influence the implementation of devolution in Zimbabwe, with a view to achieving a system that best delivers on the demands of women for gender equality, recognition, participation and effective government.

This paper sets out WLSA's views on how Zimbabwe should implement devolution in a manner that best needs the needs of women as articulated above.

There is no doubt that the 2013 Constitution positions devolution as one of the potential solutions to the challenges of development, democracy and peace in Zimbabwe. This recognition is based on the fact that devolution has great promise on several fronts. The potential of devolution to promote development, democracy, national integration and peace is widely documented<sup>1</sup>. Given this potential, and against the background of the challenges being experienced, it is WLSA's position that it is paramount for Zimbabwe to implement devolution without delay.

## **2. CONSTITUTIONAL AMENDMENT BILL NO.2 OF 2019**

As stated above, this position paper is being developed at time when the devolution provisions of the 2013 Constitution have not been implemented but also at a time when the government has introduced a bill in parliament which seeks to significantly amend the Constitutional framework on devolution. It is therefore important at this early stage to state WLSA's position on the proposed amendments.

The current provisions of the Constitution include members of the parliament on the membership of provincial and metropolitan councils. Clauses 20, 21, 22 and 25 of the Constitutional amendment bill seek to remove the members of Parliament from membership of provincial councils and metropolitan councils to merge the provincial and metropolitan councils where metropolitan councils will no longer be chaired by mayors, but by elected members. Instead of the members of parliament, the provincial councils and metropolitan councils will be made up of 10 members elected by a system of party-list proportional representation.

The thinking behind the current provisions of the Constitution with regard to the composition of provincial councils was that constituting provincial councils with members of the national legislature would ensure that there is always a clear link with and coherence between policies at central government and at provincial levels of government. In theory there appears to be some wisdom behind this thinking but it is difficult to assess the efficacy of this model since it has never been put to the test.

The amendment bill's proposal for the composition of provincial councils, if successful, will introduce elected members in place of the members of parliament

---

<sup>1</sup> See Fombad C 'Constitutional Entrenchment of Decentralization in Africa: An Overview of Trends and Tendencies' (2018) 176, 184; Moyo P and Ncube C 'Devolution of power in Zimbabwe's new Constitutional order: Opportunities and potential constraints' (2014) 297, Bockenforde M 'Decentralised forms of government' in Bockenforde M, Hedling N and Wahin W (eds) *A practical guide to Constitution building* (2011)



currently provided for. The idea of electing members is favourable as there might be a proportional representation of political members. There is also a chance that power will be separated amongst members in metropolitan councils as the Mayor will not have the sole mandate to chair the councils.

WLSA takes note that the proposed amendments will preserve the representation of women in that councillors will be elected on the basis of a party-list system of proportional representation in which male and female candidates are listed alternately, every list being headed by a female candidate.

### 3. SUMMARY OF THE DEVOLUTION PROVISIONS IN THE CONSTITUTION

Chapter 14 of the Constitution provides for a three-tier system of government: central government, provincial government and local authorities. Central and local government structures predate the Constitution. The greatest innovations are with regard to the provincial tier. The provincial tier of government is to be constituted by eight provincial councils and two metropolitan councils whereas, the local tier of government – local government – consists of urban and rural local authorities. Another addition brought about by the 2013 Constitution is that devolution is recognised as one of the Founding Values and Principles to the Constitution.<sup>2</sup> This recognition of an extensive form of decentralisation signifies the value which the Constitutional drafters attached to devolution relative to other form of decentralisation, such as, decongestion and delegation.

#### Objectives of devolution

Section 264 of the Constitution provides

*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.*

The objectives of devolution are set out in section 264(2) of the Constitution as follows:

- (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;*

---

<sup>2</sup> section 3(2)(1) of the Constitution

- (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 recognise 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.*

## 4. DEVOLUTION AS A TOOL FOR ACHIEVING GENDER EQUALITY

The question which this paper will seek to answer is to what extent will the achievement of the objectives of devolution advance the rights and welfare of women. This section explores the various respects in which devolution can meet the needs of women in Zimbabwe.

### ***Devolution enhances opportunities for women to participate in the formulation of decisions that affect them***

The first objective of devolution stated in section 264 speaks to the transfer of power of local governance to the people and enhancing their participation in decision making. The term ‘the people’ includes women and other marginalised groups like the youths, the elderly, people with disabilities and ethnic groups.

Every human being has the right to participate in decisions that define her or his life. This right is the foundation of the ideal of equal participation in decision-making among women and men. This right argues that since women know their situation best, they should participate equally with men to have their perspective effectively incorporated at all levels of decision-making, from the private to the public spheres of their lives, from the local to the global.

Inherent in this objective of devolution that speaks to transfer of power to the local level is the admission of the truism that centralised platforms of decision making by nature tend to exclude women. This exclusion is a function of patriarchy and gender roles and stereotypes that confine women to the domestic sphere and excludes them from public platforms. The experience of civil society organisations

has however demonstrated that women are more likely to participate in decision making platforms that are localised. The closer to the community a decision making platform is, the greater the likelihood that women will participate meaningfully. The experiences of VIDCOs and WADCOs have shown this to be the case.

devolution enhances the likelihood for women's participation because Local governance defines the framework for citizen to citizen and citizen to state interactions, collective decision making and most importantly service delivery to the public. Good local governance brings government closer to the grassroots communities and affords these communities opportunities to participate in political processes that affect their daily lives. Local governance therefore should play a critical role in promoting democracy and mass participation in decision making processes. When devolution is conceived and implemented properly, it promotes democratic local governance.

### ***Devolution enhances service delivery***

Enhanced service delivery is a key objective of devolution. Service delivery is key to the fulfilment of the socio economic rights that are protected under Chapter 4 of the Constitution (the Declaration of Rights). These rights include the right to food and clean water<sup>3</sup>, the right to health care<sup>4</sup>, the right to education<sup>5</sup>; and the right to a safe environment<sup>6</sup>.

Experience in Zimbabwe as in most developing countries shows that women, as a group, are disproportionately negatively affected by failures and inefficiencies in service delivery. This is due to the societal division of labour between men and women on the basis of gender. Under this division, women are primarily responsible for household chores and the chores that involve nurturing and personal care giving at household and community level.

For example, the chronic and well documented failure by urban local authorities to ensure adequate water supply to households has the effect of increasing the burden on women to alternative sources of water. This has seen women and girls having to travel long distances and spend inordinate amounts of time just to access water from water wells, and other communal water sources. Similarly, the failure to provide adequate electricity leaves women with the burden of looking for firewood and other forms of not so readily available forms of fuel. The breakdown in the

---

3 Section 77 of the Constitution

4 Section 76 of the Constitution

5 Section 75 of the Constitution

6 Section 73 of the Constitution

public health system also negatively affects women disproportionately since it is women who require more SRHR services due to their reproductive role. They are also the primary care givers should a child or other family member fall sick.

To the extent that devolution will be used as tool for enhanced and more efficient service delivery, it is a form of government that is desirable for the promotion of the rights and welfare of women.

### ***Devolution improves government accountability***

The demands for service delivery and participation are only meaningful to the extent that governments can be held accountable for delivery or lack of delivery.

Through devolution, both the local governments and the residents that they govern will gain authority, resources and skills to make the right choices and to be accountable. While advanced local governance promotes the desire and capacity of individual citizens and groups to take responsibility for their communities and actively participate in goal setting, implementation and monitoring; and advancement in these activities by local citizens promotes more effective democratic local governance (Neil Levine, 1998).

Two objectives of devolution stated in section 264 of the Constitution are *to ensure the equitable sharing of local and national resources; and 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.*

In order to achieve these objectives, devolution provisions will have to make significant changes related to natural resource exploitation and utilisation for the benefit of the local population because decisions will be taken at the provincial and local level. Proceeds from the ventures in these resources should be utilised within the province and should be directed for the development of the residents in areas of their preference. As decisions are made locally and closer to the grassroots the proceeds from these resources are more likely to be directed towards meeting the felt and expressed needs of the local people. It is easier for provincial and local councils to appreciate the needs of people in their districts and deploy the proceeds accordingly. Development conceived at central level is more likely to lead to economic development which may not be equitable across the geographical regions of the country whereas when it is driven by the different local authorities across the country; more equitable human development has a better chance to succeed.

Once devolution is implemented in letter and spirit, the provincial councils and

local authorities should provide platforms for local communities to participate in governance of their affairs thus promoting local democracy and ensuring that the local people have a say in decisions that affect their daily lives and promote easier access to resources. Local democracy engenders the sharing of power decisions and resources in a way that is perceived as fair.

## 5. LEGISLATIVE ALIGNMENT OF LAWS TO IMPLEMENT DEVOLUTION

Implementation of the devolved system of government envisaged in chapter 14 of the Constitution entails creating the necessary legal and institutional framework giving effect to the letter and spirit of the Constitutional provisions. The alignment exercise provides an opportunity to review current legislation and address the gaps not only in terms of achieving the provisions that enable devolution but also in terms of strengthening and promoting the framework for gender equality.

Below is a discussion on the key pieces of legislation that will have to be reviewed in order to achieve legislative alignment with the Constitution to implement the devolution provisions. It must be noted that alignment might entail not only reviewing the current legislation but also enacting new laws to create new norms and provisions that cannot be comfortably accommodated in the current frameworks.

### **The Provincial Councils and Administration Act [Chapter 29:11]**

The current, provincial councils and administration Act would have to be repealed and replaced with the Provincial and Metropolitan Councils Act. This Act should operationalise the devolution provisions of the Constitution by not only establishing the councils as provided for in the Constitution but also by providing for the principles and the framework governing cooperation, collaboration and coordination of efforts amongst the different tiers of government.

The act should also clearly demarcate the roles of each tier of government and provide the framework for implementation of each tier's decisions. The provisions of the Act must be carefully thought out with an eye to achieving clarity and avoiding confusion, conflict, competition, fragmentation and duplication, leading to wastage.

The Act could also contain provisions that mandate the provincial and metropolitan

councils to ensure gender mainstreaming in their policies and operations and make them accountable to the central government for outcomes related to gender mainstreaming.

### **The Public Finance Management Act (PFMA) [Chapter 22:19]**

Effective devolution requires decentralisation of resources to the local level. To achieve this decentralisation of resources the Public Finance Management Act will have to be amended to facilitate the allocation of sufficient resources for basic social services and economic development at the local level.

The amendment of the PFMA also provides an opportunity to include provisions that will incorporate gender budgeting at the local level.

### **The Urban Councils Act [Chapter 29:15] and The Rural District Councils Act [Chapter 29:13]**

The urban Councils Act and the Rural District Councils Act will have to be amended to reflect the new ethos on devolution articulated in the Constitution. In particular, the general principles on provincial and local government articulated in section 265 of the Constitution have to be incorporated. In addition the instruments and policies that govern human resources management in local authorities ( as well as provincial councils ) must be aligned to the mandate relating to the conduct of employees articulated under section 266 of the Constitution.

### **The Electoral Act [Chapter 2:13]**

An area of concern for women in local government is the composition of councils for local authorities. Under the current system. Councillors are elected on a first past the post electoral system. It is well documented that this system tends to yield male dominated decision making platforms. The observation of this phenomenon is what motivated the introduction of women's quota of 60 seats provided for under section 124 of the Constitution and also the introduction of a system based of proportional representation in the senate and provincial councils.

It is well documented that local government councils across the country are male dominated. The lack of women's voices at the lowest tier of government militates against key provisions of the Constitution including section 17, 56 and 80. It also goes against the objectives of devolution that speak to participation and accountability articulated in section 264 of the Constitution.

The electoral act should therefore be amended to introduce a system of election of councillors on the basis of proportional representation. This will ensure meaningful participation by women. The Act should also provide for representation on council of councillors representing special interests including people with disabilities, youths and ethnic minorities. To the extent that a PR system has already been accepted at national and provincial level, there should be no good reason why the same cannot be introduced at local government level.

### **The Water Act [Chapter 20:24]**

The water act gives sweeping powers to the Minister responsible for its administration to declare the areas in which Rural District Councils and Urban Councils have jurisdiction over water resources. Furthermore, the Minister responsible for Local Government appoints Catchment Councils which manage specific catchment areas and has the power to change these councils and to set their allowances. Such provisions totally remove the management of water from the elected representatives of residents of the districts or urban areas in which the water resources are and place it under bodies that serve at the pleasure or mercy of the Minister. Water is a basic need for all and access to it should be held as a basic right. Disempowering local people from issues of water resource management is not at all in the spirit of devolution. It is therefore critical that such legislation be aligned to the Constitutional provisions for devolution.

It has already been observed that service delivery best takes place at the local level. Accordingly, the water act should be amended to ensure that the responsibility for provision of water lies squarely with local authorities with central government retaining the roles related to overall policy setting and quality control. This assignment of responsibility to local authorities must be accompanied by adequate resource allocation and provisions to strengthen the capacity of local authorities to raise the necessary revenue.

### **The Public Health Act [Chapter 15:09]**

Should be reviewed with a view to strengthening the public health system at every tier and clarifying the roles and responsibilities for public health management at each tier of government.

## 6. RECOMMENDATIONS.

### Recommendations for enhancing women's participation

The process of alignment of legislation to the Constitution as discussed above must be expedited. Implementation of the provisions of the Constitution should however not be unduly delayed while waiting for a state of perfect alignment. There ought to be acceptance of the idea that it may not be possible to come up with a model that is perfect in every respect until some form implementation, however imperfect, has taken place and critiqued on the basis of its performance. It may be that devolution is not an event but an ongoing process that will need to be continually refined through trial and error.

Linked to the recommendation above, Government should put in place a mechanism to periodically monitor and evaluate the system of devolution in Zimbabwe such a mechanism could be a consultative forum consisting of stakeholders drawn from government, the public service, civil society, citizens' groups, the academia, and business to come up with recommendations to refine the system.

Civil society organisations should engage in a process of continuous engagement of communities at grassroots level to raise awareness of the provisions of the Constitution on devolution and how they can work to improve the lives of ordinary people. There should also be concerted efforts to promote civil competence amongst the citizens to build the capacity of communities to hold government at every level accountable for outcomes related to good governance and service delivery.

## BIBLIOGRAPHY

1. Chigwata Tinashe "Emerging debates about, and prospects for, devolution in Zimbabwe" <https://www.researchgate.net/publication/332971143>
2. Fombad C 'Constitutional Entrenchment of Decentralization in Africa: An Overview of Trends and Tendencies (2018) 176, 184
3. Jephias Mapuva and George P. Miti "Exploring the uncharted territory of devolution
4. in Zimbabwe" *Journal of African Studies and Development* Vol. 11(2), pp. 12-20, February 2019
5. Moyo P and Ncube C'Devolution of power in Zimbabwe's new Constitutional



order: Opportunities and potential constraints’

6. “Equity and Gender Concerns in Managing Devolution in Kenya”, a policy brief December 2012 No. 3, society for international development (SID),
7. The Dynamics of Devolution in Zimbabwe, a briefing paper on local democracy, ACTIONAID.

## **LIST OF STATUTES**

The Constitution of Zimbabwe, 2013

The Provincial Councils and Administration Act [*Chapter 29:11*]

The Public Finance Management Act (PFMA) [*Chapter 22:19*]

The Urban Councils Act [*Chapter 29:15*]

The Rural District Councils Act [*Chapter 29:13*]

The Electoral Act [*Chapter 2:13*]

The Public Health Act [*Chapter 15:09*]

Constitution of Zimbabwe Amendment Bill 2019, H.B 2 of 2019

# We Pay You Deliver Consortium members

