

**MIDLANDS STATE UNIVERSITY
FACULTY OF LAW**



**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF A MASTER OF
LAWS IN CONSTITUTIONAL AND HUMAN RIGHTS LAW DEGREE**

RESEARCH TOPIC

**Devolution of power as a means to realise the right to development: A
Zimbabwean perspective *vis a vis* the Ugandan experience**

By

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TITLE PAGE

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MIDLANDS STATE UNIVERSITY

2019

DECLARATION

I, **CHARLES VHUDZI**, do hereby declare that this dissertation is the result of my own investigation and research, except to the extent indicated in the acknowledgement, references and by comment included in the body of the report, and that it has not been submitted in part or full for any other degree at any other university.

.....

STUDENT SIGNATURE

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APPROVAL FORM

The undersigned certify that they have read and recommended to the Midlands State University for acceptance a research project entitled “**Devolution of power as a means to realise the right to development: A Zimbabwean perspective vis a vis the Ugandan experience**” submitted by **CHARLES VHUDZI R189656E** in partial fulfilment of the requirement of the Master of Laws in Constitutional and Human Rights Law Degree.

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ABSTRACT

The crux of the study is the analysis of whether devolution of governmental powers can be used as a mechanism to achieve the realisation of the right to development in Zimbabwe. The study brings devolution into context analysing what devolution entails. An evaluation of the right to development and its fundamental principles such as transparency is also undertaken in order to examine the point of harmony of the two principles of devolution and the right to development. The study further examines how the right to development is provided for in international law. The harmony between devolution and the right to development is established showing how theoretically the existence of devolution in a jurisdiction could potentially lead to the realisation of the right to development. The study then examines the jurisdiction of Uganda which is a country that has implemented an ambitious form of devolution of governmental powers with five tiers of lower levels of government. Observations are made that despite implementing an extensive devolution legal framework the realisation of the right to development has been marred by bad politics and constant interference by the central government. The study observes that it is not just adequate to have laws on paper there should be execution and implementation of the same. The Zimbabwean position on devolution was also evaluated herein with an overview of what the Zimbabwean Constitution provides for both aspects. Conclusions are reached to the effect that the realisation of development can be indeed an objective of devolution of governmental powers. The study makes recommendations and conclusions based on the findings particularly on how best devolution of governmental powers to lower levels of government may be utilised as a mechanism to realise the right to development.

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DEDICATIONS

To my parents and the Vhudzi family. The sky is the limit. Go out seize the world and conquer!!!

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ACRONYMS

African Charter on Human and Peoples' Rights.....	ACHPR
United Nations Declaration on the Right to Development.....	UNDRTD
Universal Declaration of Human Rights.....	UDHR
Centre for Minority Rights Development.....	CEMIRIDE
National Resistance Movement.....	NRM

CHAPTER ONE

1.1 INTRODUCTION

Devolution of power is a topical issue in Zimbabwe that has been debated across the board with calls for its implementation resonating from communities perceived to be underdeveloped or marginalised. Portions of the Zimbabwean population have agitated for devolution of governmental powers due to perceptions that certain areas of Zimbabwe, which are rich in resources, are being neglected. An appraisal of Zimbabwe's recent constitutional reform, more so the draft constitutions and the drafting exercise of the current Constitution would reveal that Zimbabweans are in agreement that there is a need to devolve powers.¹ As such, calls for devolution and decentralisation of powers from top government to the lower echelons of power such as local government have grown louder. Uganda has been described as a model country implementing devolution that has resulted in laudable milestones of development as such, this study makes use of Uganda as a comparator to Zimbabwe.

In its most basic form, devolution, as part of the decentralisation of government, entails the transfer of authority from central government to local-level governmental units holding corporate status granted under state legislation.² A devolved system of government has the potential to transform the socio-economic status of communities and the ability to integrate previously marginalised communities into the economy,

¹ TC Chigwata "Devolution Demystified: Emerging Debates and Prospects for Devolution in Zimbabwe a Discussion Paper *Zimbabwe Legal Information Institute*,"

² B Mhlanga, "Devolution – The 'Ticklish' Subject: The 'Northern Problem' and the National Question in Zimbabwe" 1 (2012): 26. *UBUNTU Vol. 1 Nos 1 & 2 (2012)*

encourage efficiency and enhance popular participation in decision making.³ A nexus can thus be drawn between devolution and development.

The right to development was first given legal recognition in the 1981 African Charter on Human and Peoples' Rights (ACHPR) and was later incorporated into the global human rights framework through the adoption of the 1986 Declaration on the Right to Development by the UN General Assembly.⁴ The ACHPR is the only human rights treaty in which the right to development is legally binding.⁵⁶ The right to development, which is an inalienable human right, is the right to a particular process of development in which all human rights and fundamental freedoms can be fully and progressively realized. This right is imposed as a duty upon states to individually or collectively fulfil or promote the realisation of the right to development. Zimbabwe as a state party to the ACHPR is thus bound to ensure the exercise of the right to development of its citizens. This research focuses on the interconnectedness of devolution and the right to development, essentially, how devolution can be used as a tool in Zimbabwe to realise the right to development.

³ T Mukwewa, The. "Devolution as a Panacea to Development." The Chronicle. Accessed April 13, 2019. <https://www.chronicle.co.zw/devolution-as-a-panacea-to-development/>.

⁴ F Cheru, "Developing Countries and the Right to Development: A Retrospective and Prospective African View." (2016) *Third World Quarterly* 37, no. 7: 1283.

⁵ S A D. Kamga, "The Right to Development in the African Human Rights System: The Endorois Case," (2011) *De Jure Law Journal* 6

⁶ Article 22 of the African Charter on Human and Peoples Rights All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind

1.2 BACKGROUND TO THE STUDY

Historically, any talk of devolution in Zimbabwe was met with resistance and accusations of secessionism would immediately be raised.⁷ This can be attributed to the perceived “political and developmental divide” between Zimbabwe’s provinces. Manicaland, Midlands and Matabeleland have been identified as the provinces which have long blamed their underdeveloped public and social infrastructure in comparison to other provinces on a deliberate policy of marginalisation by the central government which favours other provinces for political expediency.⁸ The fear of secessionism raised in objection to devolution is reflected in the Constitution of Zimbabwe in the preamble to Chapter 14 of the constitution on provincial and local government. It provides that

“whereas it is desirable to ensure the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism there must be devolution of power and responsibilities to lower tiers of government in Zimbabwe.”

Tracing back to 2012 fears of a devolved state permeated through negotiations for the current Constitution of Zimbabwe. Dr Chombo the former Minister of Local Government in 2012 echoed fears of the former President that devolution of power increases ethnic and civil strife.⁹ The former minister was of the opinion that “loosening central control triggers an inevitable sequence of ever-greater demands

⁷ Negotiations for the 2013 Constitution. Comments by the former President Robert Mugabe. To him: “Those things are done in big countries, not a small country like ours... Some are talking about separating Matabeleland region to become a country; that is impossible we don’t want that” (*NewsDay*, 14 March 2012)

⁸ P Moyo, & C Ncube. “Devolution of Power in Zimbabwe’s New Constitutional Order: Opportunities and Potential Constraints.” 18 (2014) *Law, Democracy and Development* 6

⁹ N T. Nhede, “Devolution of Power and Effective Governance,” *African Journal of Public Affairs* 7

for autonomy, ratcheting up the centrifugal pressures of the State”¹⁰ Despite these fears, devolution was incorporated into the 2013 Constitution paving a clear path for enhanced development of previously marginalised areas. This has, however, not been the case with the government dragging its feet to implement devolution.

Mhlanga posits that while the discussion on devolution is necessary and pertinent for Zimbabwe, given the crisis spurred by the lack of equitable distribution of resources, it has also tended to follow ethnic fault lines between Matebeleland and Mashonaland.¹¹ Devolution has often been resisted mainly because of the fear that a region like Matebeleland might want to secede.¹² As such, the devolution of governmental powers has not been the most welcome concept. It can be argued that despite such fears by the central government of losing control of regions, the disparity in development cannot be ignored especially so when communities that have resources have failed to realise any development from these resources.

The 2013 Constitution cemented the aspect of devolution into Zimbabwean law. This Constitution was a negotiated document with devolution as a political compromise. This introduction of the concept of devolution marked a recognition of the fact that its lack thereof in Zimbabwe had resulted in disparities in levels of development between provinces. Devolution is crucial to community development. Devolution in Zimbabwe post-2013 has thus become more contemporary as exhibited by the fact that Zimbabwe’s 2019 Independence celebrations were held under the theme “Zimbabwe @ 39; Embracing Devolution for Vision 2030”. This development does not necessarily mean that misconceptions about devolution have been eradicated in

¹⁰ N T. Nhede (n 9 above) 10

¹¹ Mhlanga (n 2 above)4

¹² Mhlanga (n 2 above)6

government. This study seeks to demystify these misconceptions exploring and examining how devolution of governmental powers is a tool for furthering development in Zimbabwean communities.

Like any change in the status quo, the political upheavals that emanated from the contested legitimacy of the government that followed the violent 2008 elections in Zimbabwe provided the impetus for a devolved system of governance.¹³ This laid the ground for a new negotiated Constitution with calls being made to devolve governmental powers in Zimbabwe. However, in Uganda, the implementation of devolution was meant to ensure an opening of political opportunities at the local levels in order to allow greater participation by all former warring factions in the governance of the country.¹⁴

Mhlanga notes that regional differences in Zimbabwe in terms of development and the failure of the central government to establish indices in resource allocation have given impetus to calls for devolution.¹⁵ The origins of calls for devolution in Zimbabwe can be easily traced to disparities in development. This study thereby interrogates how devolution of governmental powers may be utilised to create an environment that is conducive for the realisation of the right to development by Zimbabwean communities. Deacon states that in addition to promoting development, devolution of power acknowledges the presence of distinct identity among regions.¹⁶ Deacon acknowledges that regions of any given country are bound to have

¹³ P Moyo & C Ncube. (n 8 above)8

¹⁴ P Moyo & C Ncube. (n 8 above)8

¹⁵ Mhlanga (n 2 above)18

¹⁶ R. Deacon, "Devolution in the United Kingdom," (2012) 35

differences and devolution of governmental powers to lower echelons allows them to be developed.¹⁷

The right to development originated in the so-called decade of development that is in the 1970s and 1980, the right to development was introduced as one of the several rights belonging to a “third-generation” of human rights.¹⁸ The third-generation human rights is the classification of rights consisting of solidarity rights belonging peoples or groups this class of rights covered global concerns like development, environment, humanitarian assistance among others.¹⁹ The United Nations General Assembly proclaimed development as a human right in its 1986 United Nations Declaration on the Right to Development (UNDRTD).²⁰ The recognition of the right as a binding right in the international sphere has however faced abject resistance from developed countries, with developing countries embracing the right. The right has been highly politicised regardless of the fact that more than 30 years have passed since the adoption of the Declaration on the Right to Development, views among States are still divided.²¹ Notwithstanding disparagement from various legal scholars, it is now widely accepted that the right to development is recognised as a human right thanks to the efforts of the United Nations to implement the right.²²

It is trite that Devolution of governmental powers is an area without much contention, however, the same cannot be said of the right to development. The study in

¹⁷ Deacon (n 16 above) 64

¹⁸ A B Khakula, Realizing the Right to Development Through Devolution in Kenya available at https://www.academia.edu/30022190/REALIZING_THE_RIGHT_TO_DEVELOPMENT_THROUGH_DEVOLUTION_IN_KENYA (accessed 15/02/2019)

¹⁹ A B Khakula, (n 18 above) 4

²⁰ A B Khakula, (n 18 above) 4

²¹ Report of the Special Rapporteur on the right to development *Human Rights Council* Thirty-sixth session 2017

²² A B Khakula, (n 18 above) 4

analysing how devolution is a panacea to development examines the scope and content of the right to development. Scholars have disagreed over its form and content with multiple theories and debates. Valentine postulates that the United Nations Declaration on the Right to Development (UNDRTD) does not express the content of the right to development in concrete and solid form.²³ Valentine further submits that at the national level, it is to be developed by the state by expressing national development policies favourable to its realisation.²⁴ Such policies need to be crystallized into law by establishing a comprehensive legal and institutional framework in order to transform the objectives of development into claims or entitlements of the beneficiaries right-holders, with corresponding obligations on the part of the duty bearers.²⁵ Accordingly, in order to realise the right to development through devolution, it is essential to make such objectives of devolution justiciable, to allow communities the opportunity to enforce such development.

Reenan argues that the right to development is procedural rather than substantive in nature.²⁶ This essentially translates to that development is a process leading towards a goal rather than an end in itself. This implies that the right to development is only a right to pursue development and therefore, substantively considered, its recognition as a right serves no real purpose.²⁷ For many, particularly those in the northern hemisphere, the right to development is viewed as 'a human right without content, definitive right holders and duty holders'²⁸ , On the other hand, some scholars like

²³ S R Valentine, "The Right to Development in International Law: The Case of Pakistan." no. 4: 543. (2012) *Contemporary South Asia* 20,

²⁴ S R Valentine (n 23 above) 4

²⁵ S R Valentine (n 23 above) 5

²⁶ Reenan, TP. "The Right to Development in International and Municipal Law," (1995) 23

²⁷ Reenan (n 26 above) 7

²⁸ R N. Ozoemena, "'Shining the Light' on Africa,". Vol 47(3) (2017) *Africa Insight*

Bunn argue that despite criticisms the right to development is gaining traction due to efforts of the United Nations. Bunn argues that the right to development is moving towards being accepted as a positive principle of international law that is an element of the international bill of rights in spite of misgivings voiced by certain scholars and in political circles regarding the enforceability and actualisation of the right to development.

The drive for devolution has not only been exhibited in Zimbabwe only but across multiple African countries wherein aspects of disparities in development have been observed. This study makes observations on the efforts in Uganda while juxtaposing it with the Zimbabwean approach. Uganda has undergone decentralisation both as a system and process of devolution of power from the central to the local authorities.²⁹ Uganda's efforts at decentralisation have been nationally and internationally acclaimed.³⁰ Devolution in Uganda has made immense contributions to service delivery, welfare growth and enhancements to rural development.³¹ Writing on Decentralisation in Uganda Ssonko³² identifies that the Ugandan decentralisation reform initiated in 1992 has been praised as exceptional among developing countries, in terms of the scale and scope of the transfer of power and responsibilities to the local level.³³ The notable successes of devolution influencing and fostering development in Uganda make it a suitable comparator to Zimbabwe.

²⁹ J A, Okidi & M Guloba Decentralisation and Development: Emerging Issues from Uganda's Experience. (2006) Occasional Paper No. 31 *Economic Policy Research Centre*,

³⁰ J A Okidi & M Guloba (n 29 above) 4

³¹ J A Okidi & M Guloba (n 29 above) 4

³² D K.W. Ssonko, Decentralisation and Development: Can Uganda Now Pass the Test of Being a Role Model? Issue 13/14: (2013) *Commonwealth Journal of Local Governance*

³³ D K.W. Ssonko (n 32 above) 5

The right to development is also contained within the African Charter as a binding right as already discussed above³⁴ It can be argued that disparities in development in Zimbabwe are clear evidence of a violation of the right to development of marginalised communities. Devolution of governmental powers may be a remedy to this misnomer. It is against such a background of mistrust, and fears of secessionism on the concept of devolution and the debate on the scope and content of the right to development that this research into whether devolution of power can be used as a tool to achieve the right to development in Zimbabwe is necessitated.

1.3 PROBLEM STATEMENT

The Constitution makes provision for devolution of governmental power and responsibilities. The right to development, though not reflected in the bill of rights, can be inferred from provisions in the Constitution that have been identified. The right to development is, furthermore, provided for in international instruments such as the ACHPR³⁵ and accrues to all human beings including Zimbabwean communities, urban and rural. However, in practice devolution of power has not been implemented as per the dictates of the Constitution, there is no legislative framework that mainstreams devolution and recognises how this can further the right to development. This prevailing situation of concentration of governmental power in central government has threatened the realisation of the right to development as communities continue to have differences in levels of development. The disparity in development among provinces in Zimbabwe is likely to prevail with no prospects of

³⁴ Article 22 of the ACHPR reads as follows: (1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. (2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

³⁵ Article 22 of the ACHPR

improvements unless devolution is implemented with the primary goal of fostering development.

1.4 RESEARCH QUESTIONS

1.4.1 MAIN RESEARCH QUESTION

Whether devolution of power can be used as a tool to realise the right to development for Zimbabwean communities?

1.4.2 SUB RESEARCH QUESTIONS

1. What are the theoretical conceptions of devolution of power and the right to development?
2. What has been the approach of Uganda to Devolution of Power as a means to realise the right to development?
3. Whether devolution of power is an adequate tool to realise the right to development in Zimbabwe?
4. What legal reforms are necessary to further devolution of power in order to realise the right to development in Zimbabwean communities?

1.5 RESEARCH METHODOLOGY

This research is desktop research that will adopt an analytical approach to make a critical evaluation of whether devolution can be used as an appropriate tool to achieve the realisation of the right to development among Zimbabwean communities. The research will be largely qualitative, examining domestic legislation and

international law instruments, the study ultimately makes use of views and opinions of scholars in order to obtain a balanced analysis. Relevant legal provisions in Acts of Parliament, the Constitution and case law to ascertain the extent to which they address the subject matter of devolution and the right to development of communities in Zimbabwe. The research will incorporate the comparative method of research, juxtaposing Zimbabwe's devolution process and how it can lead to the realisation of the right to development, to that of Uganda, where there has been perceived success. Uganda's legislation is readily available in English. This comparator is chosen due to its advanced stage of devolution.

Other primary and secondary sources of law on devolution and the right to development in Zimbabwe will be used including internet sources, newspaper articles, journal articles international instruments and textbooks.

1.6 SIGNIFICANCE OF THE STUDY

Devolution in Zimbabwe is an issue that is currently at the forefront of discussions as proved by the 2019 independence theme. Disparities in the development of communities and different areas in Zimbabwe has been prominent. This study is highly significant in that it investigates how communities can exercise and realise their right to development through devolution of power. Development is a critical issue which importance cannot be understated due to the fact that its lack thereof leads to disgruntlement, disunity and in extreme cases communities agitate for secession from the country. The research will contribute immensely to existing literature and academic discourse as there are limited writings on devolution in Zimbabwe and the right to development.

1.7 DELIMITATION OF STUDY

This research is limited to the study of devolution as a means of realising the right to development of Zimbabwean communities. The research is limited to whether Zimbabwean communities can realise their right to development through devolution. It is further limited to a comparison between Zimbabwe and Uganda in order to ascertain what lessons Zimbabwe may draw from Uganda.

1.8 CHAPTER SYNOPSIS

Chapter 1

This is the introductory chapter, it contains the introduction, the background to the study, problem statement, research objectives, research methodology, the literature review and the synopsis of chapters.

Chapter 2

Chapter 2 interrogates the theoretical conceptions of devolution and the right to development. The Chapter provides a linkage between devolution and the right to development.

Chapter 3

Chapter 3 consists of an evaluation of how Uganda has implemented devolution of governmental powers and whether it has been successful in bringing about the realisation of the right to development. The chapter lays a foundation for the examination of the Zimbabwean jurisdiction.

Chapter 4

Chapter 4 builds upon the momentum of chapter 3 analysing whether current conceptualisation of devolution in Zimbabwe creates a conducive environment for the full and effective realisation of the right to development

Chapter 5

A concluding chapter giving recommendations on the improvements and modifications that can be made to advance the realisation of the right to development through devolution of power.

CHAPTER TWO

2.1 INTRODUCTION

This chapter analyses literature in order to gain insights into the ideal situation wherein devolution is used as a means to achieve the right to development. This chapter looks at the foundational framework of the right to development and how it is encapsulated in international law. The chapter seeks to establish the relationship between the two aspects of devolution and the right to development. The chapter looks at the core principles of what makes up a devolved state probing into how devolution facilitates the transitioning of power or authority to formulate policies.

It is critical to explore the two elements in order to ascertain their point of convergence. The Chapter traces how this controversial right that has been the subject of heated debate can be recognised as a right in itself especially in the African context which is the only continent wherein the right to development is recognised as binding. This Chapter lays down a background of the analysis to be conducted in Chapter three and four.

2.2 CONTEXTUALISING DEVOLUTION

In placing, the devolution of governmental powers into context, it is essential to define what constitutes devolution. Gichuhi and Njuguna define devolution as the transfer of powers from the central order of government to a local order of government.³⁶ Essentially, the governments devolve functions; they transfer powers for decision making, finance and management to independent units of local

³⁶ D, Gichuhi, & I M Njuguna. "An Assessment of the Impact of Devolution on Women Empowerment in Nakuru County." 22, no. 04 (2017). *IOSR Journal of Humanities and Social Science* 2

government with corporate status.³⁷ Scholars Juma and Mulongo put this out more succinctly stating that devolution merely means a legal yielding of controls from central government to subordinate levels of government such as provincial, district or municipal tiers.³⁸ Devolution can be identified as a political and financial issue as it incorporates the election of local representatives by local people and granting lower levels of government autonomy over a budget that is ordinarily administered by the central government³⁹

The primary goal of devolution is to promote development in all geographical areas of the state. Devolution is characterised by cultural, economic and political dimensions.⁴⁰ In order for devolution to be successful, demands political developments that will create the capacity of the region to handle the transfer of powers.⁴¹ Despite fears that are held by most governments, devolution, instead of dividing the nation, promotes the equitable distribution of resources and national cohesion.⁴² The most prioritised goal of any government is the ability to deliver a sound economy and sound governance to its citizens. That can only be achieved if there is fairness in the distribution of the resources.⁴³ Devolution allows this to happen as provinces and regions in a country are given the autonomy and self-governance ability thus allowing progression and development.

³⁷ D, Gichuhi, & I M Njuguna. (n 36 above) 2

³⁸ T, Juma, & L S Mulongo. "Devolution and Governance Conflicts in Africa: Kenyan Scenario." (2014) SSRN *Electronic Journal*,

³⁹ T, Juma, & L S Mulongo. (n 38 above) 2

⁴⁰ D, Gichuhi, & I M Njuguna. (n 36 above) 2

⁴¹ D, Gichuhi, & I M Njuguna. (n 36 above) 2

⁴² T, Juma, & L S Mulongo (n 38 above) 4

⁴³ T, Juma, & L S Mulongo (n 38 above) 3

The existence of devolution in any given jurisdiction entails the presence of various factors which must be exhibited.⁴⁴ One such factor that is required is the presence of a central administration or central government which is responsible for the overall administration of the state.⁴⁵ When the central government is in existence there should be a transference of administrative powers to lower structures of government which can either be local, regional or provincial levels of administrations.⁴⁶ Such transference should be ensured through the constitution of the country.⁴⁷

The powers that are transferable to local levels of government include those of making policy and subsidiary legislation, financial administrative powers, the execution of policies and ensuring that there is transparency and accountability.⁴⁸

The downward transference from central government to lower echelons of power is therefore critical to the existence of devolution of governmental powers. The local levels of government which are granted powers should be in a position to continue exercising those powers in the same manner that the central government would have done. The lower levels of government thus enjoy autonomy from each other and also from the central government.⁴⁹ The lower authority in a devolved setting of government is thereby empowered to conduct itself in any way without referring to the central government for permission.

Associated benefits of devolution also include the ability of devolution to make democracy stronger by granting people the ability to contribute in matters relating to

⁴⁴ K Chatiza (etal) The Constitution of Zimbabwe 2013 as a basis for local government transformation: A Reflective Analysis Commonwealth Local Government Forum 33

⁴⁵ P Moyo & C Ncube. (n 8 above)2

⁴⁶ P Moyo & C Ncube. (n 8 above)3

⁴⁷ P Moyo & C Ncube. (n 8 above)3

⁴⁸ P Moyo & C Ncube. (n 8 above)3

⁴⁹ P Moyo & C Ncube. (n 8 above)3

their local areas.⁵⁰ Devolution enables local authorities to exercise discretionary powers when making decisions on matters that affect local communities.⁵¹ It can be argued that because devolution enhances participation, it inevitably allows enhanced development because of the direct involvement of the persons who expect to benefit.

Nhede rightfully proposes that devolution recognises the right and potential of local communities to self-management.⁵² It encourages local development and national unity through acceptance of diversity and ultimately promoting equitable distribution of resources at the same time ensuring that there are stringent checks and balances.⁵³ Ojambo, writing on the principal objectives of devolution, states that these encompass the promotion of accountability, transparency, efficiency in governance and service delivery, and the empowerment of the masses from grass-root levels, through the promotion of the participation of individuals and communities in their governance⁵⁴

It is crucial to note that the drive and calls for devolution vary from nation to nation as guided by different historical dispensations unique to every country.⁵⁵ In most cases devolution has been promoted as a response to the historical, political and economic problems.⁵⁶ Devolution of governmental powers serves as an enhancer of participation and accordingly, devolution gives more direct access for the people to the government and the government to the people thus stimulating the whole nation

⁵⁰ N T. Nhede, "Devolution of Power and Effective Governance," *African Journal of Public Affairs* 2

⁵¹ N T. Nhede, (n 50 above) 2

⁵² N T. Nhede, (n 50 above) 4

⁵³ N T. Nhede, (n 50 above) 4

⁵⁴ H Ojambo, "Decentralisation in Africa: A Critical Review of Uganda's Experience," (2012) *PER / PELJ* (15) 2

⁵⁵ T, Juma, and L S Mulongo (n 38 above) 4

⁵⁶ T, Juma, and L S Mulongo (n 38 above) 4

to participate in national development plans.⁵⁷ By enhancing participation, devolution ultimately works as a cohesive agent rather than a divisive one that is it brings citizens together in participation towards development.

Ojambo postulates that if devolution of governmental powers is implemented appropriately it holds potentials for effectual and accountable governance through the augmented participation of the people in the way they are governed.⁵⁸ That is, decentralisation promotes people's participation in important government functions such as decision making, the identification of problems, priority setting, planning and monitoring the implementation of any programmes, which in effect promotes and ensures the better allocation and utilisation of resources.⁵⁹

When local government is granted the autonomy to make decisions there is potential to initiate unique development plans relevant to their regions taking into account their unique challenges, opportunities and regional priorities.⁶⁰ It can, therefore, be argued that devolution stimulates socio-economic development.⁶¹ Nhede identifies local development as a precursor to international development.⁶² The resultant effect of promoting devolution of governmental powers to lower echelons like local government developmental plans cascade from central government and allow local development.

⁵⁷ D, Gichuhi, & I M Njuguna. (n 36 above) 2

⁵⁸ H Ojambo (n 54 above) 6

⁵⁹ H Ojambo (n 54 above) 4

⁶⁰ N T. Nhede, (n 50 above) 4

⁶¹ N T. Nhede, (n 50 above) 4

⁶² N T. Nhede, (n 50 above) 4

2.3 CONTEXUALISING THE RIGHT TO DEVELOPMENT

This has been a highly controversial right that has been the subject of much debate but has overtime gained momentum and recognition. The origins of this right to development appear to have been adopted as an international right.⁶³ The right was regarded as a right of political entities, states and peoples under foreign rule or colonial domination.⁶⁴ When it was first propounded, the right to development was a collective right.⁶⁵ That is a right accruing to a group of persons. However, this notion has since expanded to encompass the idea of a right to development as a human right accruing to individuals.⁶⁶

The drive for the recognition of the right gained much traction in the 1970s and 80s and was largely shaped by the euphoria instigated by the so-called development decade.⁶⁷ The origins of the right to development can be traced to the pressing and growing international concern for human dignity.⁶⁸ When this right was first propounded in international law there was an apparent polarisation and differences in opinion over the recognition of the right between developed countries and developing countries.⁶⁹ The disparities in opinion largely lay in the fact that developed countries were not willing to recognise the right, which in all essence sought to place an obligation on them to assist developing countries.⁷⁰

⁶³ R. D'Sa, "The 'Right to Development' and the New International Economic Order, with Special Reference to Africa," Vol. 3, Article 10 *Third World Legal Studies*: 4

⁶⁴ R D'Sa, (n 63 above)4

⁶⁵ R D'Sa, (n 63 above)5

⁶⁶ R D'Sa, (n 63 above)3

⁶⁷ S B Magashi, "The Human Right to Development in Nigeria," (*unpublished thesis*)

⁶⁸ S B Magashi, (n 67 above) 12

⁶⁹ A. Getachew, "The Normative Understanding of the Right to Development under the African Charter on Human and Peoples' Right; Lesson for Ethiopia," *Addis Ababa University College of Law and Governance Studies* 82

⁷⁰ A Getachew (n 69 above) 16- This disparity was reflected in that the declaration on the right to development was adopted by a vote of 146 to 1 with eight abstentions. All the eight

2.3.1 THE RIGHT TO DEVELOPMENT UNDER INTERNATIONAL LAW

The origins of the right to development are traceable to the Universal Declaration of Human Rights (UDHR) which provides for fundamental human rights. The UDHR carries the foundation of the right to development stating that

“Everyone, as a member of society...is entitled to the realization...of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.⁷¹

The above quote signifies the right to development in the sense that development is viewed as the pursuit of economic growth as a way to realise development. The human being is seen as being the centre of the right to development as such the developmental process is always implemented with the idea of the betterment of way of life or improved wellbeing which in this scenario is shown by the pursuit of free development of personality. The benefits of the development process can only be fully realised where there is a realisation of economic, social and cultural rights of the individual.

It is essential to note that there have been debates as to whether this right is justiciable under international law. The debates surrounding the right to development are concentrated in the UN human rights arena and remain highly politicised between northern and southern governments.⁷² Magashi argues that the right to

the abstentions were from the developed countries and the US voted against. This shows the overwhelming support of the right by developing countries and the negative attitude of the north for the right

⁷¹ UDHR, Art.22

⁷² Piron, L-H. “The Right to Development: A Review of the Current State of the Debate -,” 2002, *Right to Development Report 8*

development is in essence not a right in international law.⁷³ He bases this argument on the fact that it is best described as a product of soft laws because virtually all the legal instruments except the ACHPR, provide for the right are non-binding.⁷⁴ The ACHPR has brought about the consolidation of the right to development which incidentally is binding on African states.

2.3.1.1 UNITED NATIONS DECLARATION ON RIGHT TO DEVELOPMENT

The international community progressed to recognise the right to development as a human right under the UN Declaration on the Right to Development (UNDRTD).⁷⁵

The process of development is contingent upon the engagement of the right holders in development activities and the fair distribution of benefits.⁷⁶ Without the inclusion of the rights holders, there can be no development. The UNDRTD recognises the human being as the subject of the right, with the state being the duty bearer.⁷⁷ The UNDRTD defines the right to development as a human right which contains specific entitlements for 'every human person' and 'all peoples' 'to participate in, contribute to, and enjoy economic, social-cultural and political development.'⁷⁸

The UNDRTD provides for the meaning of the right, the rights holders and duty bearers.⁷⁹ The UNDRTD identifies development as an all-inclusive process for continuous improvement of individual and collective wellbeing.⁸⁰ The Preamble of the UNDRTD defines development as

⁷³ S B Magashi, (n 67 above) 45

⁷⁴ S B Magashi, (n 67 above) 45

⁷⁵ UN Declaration on the Right to Development.

⁷⁶ A Getachew (n 69 above) 16

⁷⁷ Article 2 (1) of the UNDRTD

⁷⁸ Article 1(1) of the UNDRTD,

⁷⁹ A Getachew (n 69 above) 16

⁸⁰ Article 1(1) of the UNDRTD

“comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”.⁸¹

Three key principles may be drawn on the right to development as drawn from the UNDRTD. The key principles of the right to development is that the right to development is an inalienable human right,⁸² all human rights and fundamental freedoms can be fully realised through a particular economic, social, cultural and political development process,⁸³ all human persons and all peoples are entitled to participate, to enjoy and to contribute in the particular development process.⁸⁴ The UNDRTD places the burden on states and the international community to formulate appropriate development policies.⁸⁵ The human being is at the centre of development and the chief beneficiary of development policies. the processes through which such policies are developed should be participative.⁸⁶ The UNDRTD proclaims the human person as the ‘central subject of development.’⁸⁷

An obligation is placed for the fair distribution of benefits that arise as a result of the above-mentioned policies.⁸⁸ Meaningful participation is thus a core element of development. The UNDRTD also requires the development process to encourage social justice, this includes the fair and equitable distribution of development benefits to individuals⁸⁹ guaranteeing that there equal opportunities afforded to everyone⁹⁰,

⁸¹ Preamble of the UNDRTD

⁸² Article 1(1) of the UNDRTD

⁸³ Article 1(1) of the UNDRTD

⁸⁴ Article 2(1) of the UNDRTD

⁸⁵ Article 2 (3) of the UNDRTD

⁸⁶ L-H Piron, (n 72 above) 10

⁸⁷ Reenen (n 26 above) 5

⁸⁸ Article 2(3) of the UNDRTD

⁸⁹ Article 2(3) of the UNDRTD

⁹⁰ Article 8(1) of the UNDRTD

The development process should further allow equality in access to basic resources and services, and promote the erasure of all social injustices.⁹¹

The birth of the right to development as a binding right has faced opposition from developed countries to the extent that the right to development is still not a binding right against the international community. The UNDRTD and other international instruments wherein the right to development is contained are regarded as soft law which means that they are treated as nonbinding laws. This is besides the fact that the rights legal foundation can be traced in binding human right documents.⁹²

Getachew submits that the UNDRTD has failed to attain the status of a legally binding document mainly because of the highly politicised nature of the right.⁹³ The origins of this politicisation lie in the fact that beneficiaries of the right to development under the UNDRTD have been The fact that the beneficiaries of the right are both individuals and peoples contributed to its politicisation⁹⁴ The right to development promotes “people-centred development” and in interpreting this, individuals become holders of the right to development even though it is also regarded as a group right.⁹⁵ It is, however, clear that the state is the primary duty holder owing fulfilment of the duty to individuals or a group of persons within the state.

Participation is a key aspect of the UNDRTD. It provides that “States should encourage popular participation in all spheres as an important factor in the development and in full realisation of all human rights.” Participation must be

⁹¹ L-H Piron, (n 72 above) 10

⁹² A Getachew (n 69 above) 29

⁹³ A Getachew (n 69 above) 29

⁹⁴ A Getachew (n 69 above) 29

⁹⁵ L-H Piron, (n 72 above) 12

encouraged in the design of policies that will affect the people.⁹⁶ This resonates well with democracy and in a given democracy, it is not adequate for the populace to have the right to exercise their right to vote or be represented by representatives in central or local government; citizens should be afforded the opportunity, occasionally, to participate in the determination of the fruits of development⁹⁷

From the UNDRTD it is not clear how states can be held accountable by their own citizens for the realisation of the right to development. Piron argues that some developing states have no intention of implementing the right at the national level, and are only concerned with its usefulness to make claims at the international level.⁹⁸ This, however, is not the position with African countries who are member states to the African Charter on Human and Peoples which is the subject of discussion in due course. The UNDRTD thereby recognises other thematic aspects such as self-determination, international cooperation, participation and comprehensive development.⁹⁹

The Vienna Declaration and Programme of Action¹⁰⁰ reiterate the importance of the right to development and equates it with other internationally recognised human rights.¹⁰¹ The Vienna Declaration consolidates the right to development as contained in the UNDRTD is “a universal and inalienable right and an integral part of fundamental human rights. The Vienna Declaration further reaffirms the position in the UNDRTD that the human person is the central subject of development. The Vienna Declaration is non-binding and only serves to reaffirm principles that are

⁹⁶ Article 8(2) of the UNDRD

⁹⁷ S B Magashi, (n 67 above) 55

⁹⁸ L-H Piron, (n 72 above) 12

⁹⁹ L-H Piron, (n 72 above) 10

¹⁰⁰ Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

¹⁰¹ S B Magashi, (n 67 above) 45

stated in the UNDRTD. The primary purpose of this was to consolidate the worldwide recognition of the right to development as a universal right.

2.3.2 THE RIGHT TO DEVELOPMENT UNDER AFRICAN HUMAN RIGHTS SYSTEM

The African Charter on Human and Peoples Rights (ACHPR) has been lauded as the only human rights treaty in which the right to development is legally binding. The Charter provides as follows:

“(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”¹⁰²

The Charter recognises that peoples have a right to economic, social and cultural development clearly appreciating all the spheres of development. The wording of the Charter points to the fact that state parties to the ACHPR intended to create binding legal rights and duties in respect of the right to development.¹⁰³ States are thus duty-bound to ensure the exercise of the right to development, in so doing states can do so together collectively or individually. This responsibility necessitates the creation of an enabling environment and providing the opportunity to put the right to

¹⁰² Article 22 of the ACHPR

¹⁰³ S A D Kamga, (n 5 above) 6

development effectively into practice.¹⁰⁴ It will later be argued that this right to development can be achieved through effecting a devolved system of government.

The African Charter dispenses with the argument that the right to development belongs to a generation of rights that is not enforceable. The Charter provides for a recognition of the indivisibility of all rights. The Charter provides that for the recognition of all generation of rights and their justiciability.”¹⁰⁵ Secondly, the Charter does not allow derogations from the commitments under it.¹⁰⁶ As such state parties who subscribe to the Charter may not derogate from the recognition of the right to development as it is explicitly provided for in the Charter. Notwithstanding the fact that the right to development is not binding and clearly articulated in international law, African states expressly chose that this right should be binding.¹⁰⁷ This is a testament to the fact that developing countries are the ones who have advocated for the recognition of this right.

The African Commission in a resolution reiterated the inalienability of the right to development stating that the right to development is

“an inalienable human right by virtue of which every human being is entitled to participate in, contribute to and enjoy the economic, social, cultural and political development of a society.”¹⁰⁸

Accordingly, the right to development is recognised as an inherent right that accrues to the human being on the basis of the need for development that is inherent to all

¹⁰⁴ C C. Ngang, “Towards a Right-to-Development Governance in Africa.” *Journal of Human Rights* 17, no. 1 (2018):

¹⁰⁵ Article 22 of the African Charter on Human and Peoples Rights

¹⁰⁶ Article 22 of the African Charter on Human and Peoples Rights

¹⁰⁷ C, C Ngang, (n 104 above)9

¹⁰⁸ Resolution on the African Commission on Human and Peoples’ Rights, 29th Ordinary Session of the Assembly of head of States and Governments of the OAU, 28-30June,1993,Cairo,
http://www.africaunion.org/Official_documents/Heads%20of%20State%20Summits/hog/3HoGAssembly1993.pdf

human beings.¹⁰⁹ It also has a participatory nature that entitles individuals and peoples to be engaged in the process of development to contribute and enjoy the outcome thereof.¹¹⁰ It is up to the member states on how best they can create an environment through which this right can be fully recognised.

This right has been the subject of litigation under the African Commission with the *locus classicus* is the case of the communication *Centre for Minority Rights Development (CEMIRIDE) (on behalf of the Endorois) v Kenya (Endorois case)* decided by the African Commission on Human and Peoples' Rights in 2009 dealt with the violation of multiple rights including the right to development of indigenous peoples.¹¹¹ The subject matter of this dispute was that the Kenyan government had unilaterally evicted Endorois people usurping their ancestral land and turning it into a game reserve. The Kenyan government had gone to grant mining and logging concessions to third parties at the expense of the local community without having engaged the community to provide compensation for value lost or consulted the people or allowed their participation.

The legal subject matter which burdened the African Commission was whether the right to development of the Endorois people had been violated. The African Commission formulated a two-prong test for ascertaining whether violations of the right had occurred. The Commission asserted that the test was both constitutive and instrumental, in other words testing substantive and procedural implementation of the right to development. The Court came up with the criteria that recognising the right to development requires the fulfilment of five main criteria that is the

¹⁰⁹ A Getachew (n 61 above) 21

¹¹⁰ A Getachew (n 61 above) 21

¹¹¹ S A D Kamga, "The Right to Development in the African Human Rights System: The Endorois Case," (2011) *De Jure*

development process must be equitable, there should be non-discrimination, the process should be participative, elements of accountability and transparency together with equity and choice.¹¹² As has already been noted above, Article 22(1) of the African Charter, imposes a duty on African states to guarantee the exercise of the right to development. This provision was construed in the *Endorois* case as charging a state with a create conditions favourable to peoples' development.¹¹³ The African Commission held that this can be done through the fulfilment of the above criteria.

The African Commission in adjudicating over the matter and in examining the violation of the right to development found that there was lack of “meaningful participation” by the Endorois people who were only informed about the project that affected their land after decisions had been made which decisions affected them negatively.¹¹⁴ This decision was noteworthy because it interrogated the scope and content of the right to development.

Kamga, writing on the Commission's in the *Endorois* decision, states that the Commission highlighted the holistic character of the right to development which encompasses elements of non-discrimination, participation, accountability and transparency, equity and choices as well as capabilities. The Commission classified the right to development as being both “constitutive and instrumental”, hence the

¹¹² *Centre for Minority Rights Development (CEMIRIDE) (on behalf of the Endorois) v Kenya*

¹¹³ *Centre for Minority Rights Development (CEMIRIDE) (on behalf of the Endorois) v Kenya*

¹¹⁴ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya. African Commission, 27th Activity Report, 2009. Communication 276/2003,*

violation of either procedural or substantive element constitutes an encroachment on the right.¹¹⁵

2.4 HARMONISING DEVOLUTION AND THE RIGHT TO DEVELOPMENT

The objective of the study seeks to consolidate the two aspects of the right to development and ascertain how this right can be realised through devolution of governmental powers. Accordingly, a nexus between the right to development and devolution as a concept of municipal law can be drawn. The point of convergence lies in the objective goal that is sought by the existence of the two aspects. When devolving governmental powers, the state will be seeking to facilitate development within the state. While the criteria for the existence of the right to development is set is premised on the enhancement of participation, ensuring that there is an equitable distribution of resources amongst citizens, enhancing accountability and transparency.

It can be reasoned that the devolution of powers seeks to achieve the same criteria that constitute the right to development. Devolution clearly seeks to enhance development among local communities and enhance citizen participation in developmental efforts. The right to development has as part of its component citizen participation and the overall betterment of humanities wellbeing. It can be therefore asserted that there is a nexus between the right to development and devolution of governmental powers.

¹¹⁵ S A D Kamga, "The Right to Development in the African Human Rights System: The Endorois Case," *De Jure* (2011)7

The quest for development clearly is the basis and main objective of devolving power to lower echelons of government.¹¹⁶ Devolution promotes the social and economic development of the citizenry through the provision of proximate easily accessible services that one would have otherwise had to seek at central government in a centralised system of governance.¹¹⁷ A key aspect of the right to development is citizen participation in matters affecting them. Devolution consequentially has the effect of enhancing the participation of the people in the exercise of the powers of the State.¹¹⁸ Devolution of governmental powers in a way amounts to recognising the right of communities to manage their own development. Devolution affords people a chance to participate in crafting their own unique and appropriate development agenda based on their socio-economic, cultural and political needs.¹¹⁹ The two legal aspects converge in that in order to fulfil the right to development there is a need for participation by citizens, devolving governmental powers rightfully enables the realisation of the right to development.

Contrary to beliefs by critics of devolution, devolution is intended to foster national unity by recognising diversity in the nation. It ensures accessibility of resources by all thus eliminating the vice of marginalisation of certain communities and peoples and groups in the state.¹²⁰ By enabling equal access to resources, avenues of participation are created the resultant effect being that citizens are able to contribute to and enjoy economic, social, cultural and political development. Citizens are further empowered to benefit from a fair share of resources. The government has the responsibility to formulate national development policies, such policies are required

¹¹⁶ C M Bosire, "Devolution for Development, Conflict Resolution, and Limiting Central Power: An Analysis of the Constitution of Kenya 2010," (*unpublished thesis*)

¹¹⁷ A B Khakula, (n 18 above) 25

¹¹⁸ A B Khakula, (n 18 above) 25

¹¹⁹ A B Khakula, (n 18 above) 25

¹²⁰ A B Khakula, (n 18 above) 24

to be participatory. Such participation is required to be active and meaningful participation. Further to this is that the state should ensure that there is an equitable and fair distribution of resources. It is submitted that devolution is a tool that can be utilised to meet the state's obligations under the right to development if a government implements devolution as a developmental policy the right to development would be inevitably realised¹²¹.

Scholars Juma and Mulongo identify a caveat to the discourse that devolution enhances development positing that

“The mere fact of opting for decentralization shall not by itself ensure that the population effectively participates in its development which is the ultimate goal of a good policy of decentralization and good governance. It is important to set up mechanisms reassuring the participation of the population....”¹²²

This poignant warning suggests that however good the system may be, it is bound to have setbacks.¹²³ What is critical to note is the fact that there is an acknowledgement that the enhancement of development is the ultimate goal of devolution of governmental powers to lower echelons.

The devolution of powers, therefore, facilitates the construction of a modern democratic developmental state characterised by the goals of coherence and authoritative governance, accountability, inclusiveness, stability, participatory development, ability to generate consensus and popular participation.¹²⁴

¹²¹ Article 2(3) of the UNDRTD

¹²² T, Juma, and L S Mulongo (n 38 above) 3

¹²³ T, Juma, and L S Mulongo (n 38 above) 3

¹²⁴ Moyo, G, (etal) “Can Devolution Aid the Construction of a Democratic Developmental State in Zimbabwe?” 4, no. 2 (2015): 25.

2.5 CONCLUSION

In summation of the chapter, it is clear that the birth of the right to development has been long and protracted, facing hurdles in the international sphere and still failing to become binding to date. However, it is critical to note that this right has gained recognition in the African spheres as a binding right that places duties upon the state to create an environment that is conducive to the realisation of the right to development. The point of convergence of the right to development and devolution as an aspect of municipal law has been clearly set out.

Chapter two traced how scholars have theorised devolution. The benefits of implementing a devolved system of government were also examined. It has been shown that devolution endows local communities with power and authority to manage their own affairs. The chapter further theorised how the right to development constitutes of elements such as participation which are enhanced by devolving governmental powers.

Chapter two has set out a backdrop for chapter three which interrogates how Uganda has implemented devolution. A foundation has been established in this chapter for the examination of Uganda in order to ascertain if devolution can really be used as an adequate tool to achieve the right to development in Zimbabwe.

CHAPTER THREE

3.1 INTRODUCTION

This is a chapter that seeks to draw lessons from Uganda a jurisdiction where devolution has been implemented. The chapter examines the perspective of Uganda and how Uganda has implemented principles of devolution of governmental powers. This chapter examines how Uganda has implemented devolution of governmental powers in the local setting towards the realisation of the right to development. The purpose of this chapter is meant to be a measuring yardstick and a determinate of whether Zimbabwe is on the right track towards realising the right to development through devolution of governmental powers.

Chapter three examines the rationale and historical background of why devolution was implemented in Uganda. The chapter pays homage to the fact that laws and policies created and changed as a reaction to historical occurrences and events. The chapter explores Uganda's extensively devolved legal framework. The chapter also analyses Uganda's conceptualisation of the right to development investigating how devolution of governmental powers became a part of Uganda's law.

3.2 HISTORICAL BACKGROUND OF DEVOLUTION IN UGANDA

Devolution of governmental powers in Uganda finds its origins during the colonial era when Uganda was a British Colony.¹²⁵ The British System of governance consisted of administrative units which were in essence Kingdoms but operated as federal

¹²⁵ M, Nabukeera, (etal). "Recentralization of Kampala City Administration in Uganda: Implications for Top and Bottom Accountability." 5, no. 3 (2015) *SAGE Open* 1

states.¹²⁶ Uganda attained independence in 1962 and by that time it consisted of four kingdoms and eleven districts.¹²⁷ The Independence Constitution of Uganda carried on with a devolved system of governance which comprised elements of federalism and decentralisation.¹²⁸ The 1962 independence Constitution was however dispensed with, in 1966. The successor to the 1962 Constitution created a centralised form of government abolishing the devolved form of governance of 1962.¹²⁹

The system of governance would soon take a sudden turn which came with the forceful overthrow of the government of President Obote. The government of Idi Amin would take over and implement a largely military regime or government from 1971 to 1979.¹³⁰ The Idi Amin government went on to establish regional and provincial administrations which were run by Governors who were members of the military and had high ranks.¹³¹ From the period between 1980 to 1985 the Obote government had retaken power and it largely maintained the system of governance under the Idi Amin government.¹³² This system of governance of Uganda had mostly centralised until the National Resistance Movement (NRM) which is the current ruling party in Uganda since 1986.¹³³

¹²⁶ M, Nabukeera, (n 124 above) 1

¹²⁷ P, I Mwesigwa. "Devolution and Empowerment through the Local Government System in Uganda: A Case Study of Hoima District Local Government.," 2004. (*unpublished thesis*)7

¹²⁸ P I Mwesigwa. (n 126 above) 7

¹²⁹ P I Mwesigwa. (n 126 above) 7

¹³⁰ H Ojambo (n 54 above) 3

¹³¹ H Ojambo (n 54 above) 3

¹³² H Ojambo (n 54 above) 3

¹³³ H Ojambo (n 54 above) 3

The NRM party proceeded to emphasise on instituting a devolved system of government.¹³⁴ This emphasis saw the adoption of the Local Government Statue of 1993 and the Local Government Act of 1997.¹³⁵ The 1995 Constitution of Ugandan Constitution would come in to consolidate the devolution of governmental powers to lower levels of government.¹³⁶ The rationale for this drive for devolution which has been applauded as the most ambitious system in Africa can be found in the political turmoil that wrecked Uganda's early days.¹³⁷ The results of the current system of governance has been the subject of much contention and dispute however the content and core of devolution efforts in Uganda are applaudable.

3.3 UGANDA'S DEVOLUTION FRAMEWORK

The Ugandan Constitution recognises the importance of devolution as a critical aspect.¹³⁸ The need for devolution in Uganda appears in the political objectives of the Ugandan Constitution.¹³⁹ The Constitution makes provision that the state should be guided by the principles of devolution and decentralisation.¹⁴⁰ The objective of devolution in the Ugandan Constitution is meant to grant powers to the people at lower levels with the rationale being that the people are in a better position to manage their own affairs.¹⁴¹ The inclusion of devolution as an aspect of Uganda's political objectives goes to show the import that devolution is afforded in Uganda.

¹³⁴ H Ojambo (n 54 above) 4

¹³⁵ S Steiner, "Decentralisation in Uganda: Exploring the Constraints for Poverty Reduction." *SSRN Electronic Journal*, 2006.

¹³⁶ S Steiner (n 135 above) 2

¹³⁷ D K.W. Ssonko (n 32 above) 5

¹³⁸ Article II (iii) of the Ugandan Constitution

¹³⁹ Article II (iii) of the Ugandan Constitution

¹⁴⁰ Article II (iii) of the Ugandan Constitution

¹⁴¹ Article II (iii) of the Ugandan Constitution

Unlike the wording of the Zimbabwean Constitution which provides for devolution in an ambiguous manner that is devolution should be implemented whenever possible. The wording of the Ugandan Constitution is deliberate and intentional leaving no room for doubt that the system of government that should prevail is to be a devolved one.¹⁴² The Constitution establishes the district as the basis of the system of local governance, and that there can be lower levels of government which can be established under the district that is lower local and administrative units.¹⁴³

The Ugandan Constitution ensures that the system of government is one which ensures that the functions, powers and responsibilities are devolved and transferred from central government to local government.¹⁴⁴ In devolving governmental powers the ultimate goal sought is the enhancement of peoples' participation and democratic control in the making of decisions that affect them.¹⁴⁵ As has been reiterated in the preceding chapter ensuring the participation of the people guarantees that the people are in a position to facilitate their development. The legal framework in Uganda is crafted in a manner that it applies to all the levels of local government.¹⁴⁶ Devolution in Uganda is structured in a top-down manner where power should cascade from the apex which is central government and down to lower stratum of government.¹⁴⁷

¹⁴² Article 176(1) of the Ugandan Constitution

¹⁴³ Article 176(1) of the Ugandan Constitution

¹⁴⁴ Article 176(1) of the Ugandan Constitution

¹⁴⁵ Article 176(2)(a) of the Ugandan Constitution

¹⁴⁶ Article 176(2)(b) of the Ugandan Constitution

¹⁴⁷ Article 176(2)(b) of the Ugandan Constitution

The Ugandan system of government is well evolved with the district being the basic unit of governance.¹⁴⁸ Within that district are established other local governments and administrative units.¹⁴⁹ Each district is run by a district council whose members are elected into power.¹⁵⁰ The District Council has both legislative and executive powers having the authority to make laws enforce them.¹⁵¹ There a different structure between urban and rural structures. There are five tiers in Uganda's system of governance in the rural areas which include the village council (LC1) which is the lowest level, then the parish council (LC2), then by the sub-county council (LC3), then the county council (LC4), right at the apex of the district system is the district council (LC5).¹⁵² The Urban structure of local governance in Uganda is designed in such a way that the village council is at the lowest level (LC1) followed by the parish or ward council (LC2), then the municipal or town division(LC3), then the municipality (LC4) and then the at the apex the district council (LC5/mayor).¹⁵³

The Ugandan system of devolution is commendable what is noteworthy is that the structures of local governance that is the district council and the sub-county council in both the urban and rural setting are recognised as units with a corporate status that is they have perpetuity also having a common seal.¹⁵⁴ The units of government are further capable of suing and being sued in their corporate name however should be distinguished from the administrative units that is the village council, parish council and the county council which do not enjoy corporate status but merely serve

¹⁴⁸ Section 3 Local Government Act of 1997.

¹⁴⁹ Section 3 Local Government Act of 1997.

¹⁵⁰ Section 3 Local Government Act of 1997.

¹⁵¹ Section 3 Local Government Act of 1997.

¹⁵² H Ojambo (n 54 above)2.

¹⁵³ H Ojambo (n 54 above)2.

¹⁵⁴ Section 3 Local Government Act of 1997.

as administrative units.¹⁵⁵ These units monitor service delivery, assist in the preservation of order and security and also serve as a dispute resolution mechanism.¹⁵⁶ A clear pattern of power cascading to the people can be observed as citizens are granted an opportunity for participation in their governance.

Devolution in Uganda was clearly implemented with the view to enhance developmental priorities in local areas. Zimbabwe which has not a clearly devolved system of governance can learn from the framing of the Ugandan devolution system. Local government councils in Uganda are mandated with the duty to perform a variety of duties. These duties include the making of development plans, such plans should be based on priorities that are developed locally.¹⁵⁷ The local people are appropriately placed to identify and recognise developmental deficits in their societies and take adjustment measures accordingly.¹⁵⁸ This enhances development and consequently the right to development among local communities. The local government structures are further tasked with the role of raising revenue and budgeting clearly showing that administration of local areas is left under the purview of local structures.¹⁵⁹

The level of devolution set up in Uganda is of a sophisticated nature with local structures being empowered to establish statutory commissions and abolish or set up offices that deal with public service in the district.¹⁶⁰ The District council has functionaries within it such as the District Lands Boards and District and Urban

¹⁵⁵ H Ojambo (n 54 above)2

¹⁵⁶ Section 30 Local Government Act of 1997

¹⁵⁷ S Steiner (n 135 above) 3

¹⁵⁸ S Steiner (n 135 above) 4

¹⁵⁹ Section 79 of the Local Government Act

¹⁶⁰ D K.W. Ssonko (n 32 above) 5

Tender Board.¹⁶¹ The Local Governments are also tasked with the management of service delivery such as education with the exception of tertiary education, the provision of health services with the exception of referral hospitals among other duties.¹⁶² This just goes to bear testament to the far-reaching ambition that devolution is accorded in Uganda. Critical service delivery is placed under the authority of local structures this makes it easier to hold the government to account over non-delivery as accessibility is enhanced.

The structuring of devolution of government in Uganda has been described as ambitious and sweeping in the developing world.¹⁶³ The successes of devolution in Uganda in bringing about efficacy in development has been a contentious subject. The quality of service delivery has been lamented due to the fact that districts that have limited financial resources in their areas have become less developed than those areas which have adequate resources.¹⁶⁴ Due to lack of adequate resources in some districts, this has reduced those districts to become redundant with good governance and accountability mechanisms being defunct or non-existent.¹⁶⁵

The Ugandan situation is one which is not perfect, and it is a scenario wherein there is a legal framework for devolution, but the manifestation does not bring out the intended results.¹⁶⁶ While devolution has been implemented in the form and content of the legal framework and the structures set up. Accountability and efficiency of the government in Uganda remains quite an elusive concept this is despite the

¹⁶¹ D K.W. Ssonko (n 32 above) 55

¹⁶² Part 2 of the second schedule of the Local Government Act, 1997

¹⁶³ H Ojambo (n 54 above) 1

¹⁶⁴ D K.W. Ssonko (n 32 above) 3

¹⁶⁵ D K.W. Ssonko (n 32 above) 3

¹⁶⁶ D K.W. Ssonko (n 32 above) 5

implementation of devolution policy.¹⁶⁷ The lack of efficacy can be attributed to political disparities between the ruling party and the opposition party wherein the opposition party is in control of the majority of local government institution just like the prevailing situation in Zimbabwe.¹⁶⁸

Lessons that can be drawn from the Ugandan situation are that for a nation to reap any benefits such as enhancement of development from running a devolved system of government it goes beyond the mere adoption of a devolved system of government.¹⁶⁹ In as much the formalist or legalistic adoption of a devolved system of government promises benefits the success of such is conditional on the presence of various factors. These factors include the availability of necessary resources, the level of commitment of central government and awareness of the populace. Ojambo finds the Ugandan situation quite intriguing due to the fact it exemplifies a scenario where there is a formal legal framework that has been commended internationally as one of the most ambitious forms of devolution of government.¹⁷⁰ However, despite that level of implementation of devolution in Uganda on the legal front it fails to tally with public service being described as deplorable and resources being plundered by greedy politicians.

Efforts of devolution in Uganda though have started well hit a snag along the way due to the distrust between the central government and local government structures.¹⁷¹ This government emanates primarily from the fact that the opposition in Uganda has been receiving increased acclaim in the local government structures

¹⁶⁷ H Ojambo (n 54 above)2

¹⁶⁸ H Ojambo (n 54 above) 4

¹⁶⁹ H Ojambo (n 54 above) 4

¹⁷⁰ H Ojambo (n 54 above) 4

¹⁷¹ S Steiner (n 134 above) 5

leading to a scenario where the opposition parties have dominated local district structures much to the chagrin of central government which comprised by ruling party majority that it the NRM.¹⁷² This has resulted in a scenario where the Central government is fighting for political support as such efforts have been made to sabotage the strides of devolution in enhancing the realisation of the right to development.¹⁷³ This animosity between the central government and local government structures is not a foreign concept to Zimbabwe and is also evident in the manner that the central government always seeks to blame the Movement for Democratic Change run councils for deplorable service. In Uganda due to the instinct of survival by the ruling party efforts have been made to recentralise the system of government exhibited through fiscal and political interference by central government negatively impacting the autonomy of local government structures.

3.4 UGANDA'S CONSTITUTIONAL FRAMEWORK FOR THE RIGHT TO DEVELOPMENT

As earlier mentioned, the history of Uganda's governance system shows a system that was largely devolved or regionalised and each region in Uganda has its own developmental needs. Uganda's regions have faced various problems that have impacted on the realisation of the right to development in Uganda and these range from human rights atrocities, natural disasters and regional instability caused by rebels.¹⁷⁴

¹⁷² S Steiner (n 134 above) 6

¹⁷³ S Steiner (n 134 above) 6

¹⁷⁴ G M, Ngwatu, *The Right to Development in Uganda: Myth or Reality?* In C Ngang (Ed) *Perspectives on the Right to Development* (2018) 219

The right to development in Uganda is grounded in the Constitution apart from that Uganda like Zimbabwe is a state party to the African Charter as such it is bound by the right to development set out therein.¹⁷⁵ The Ugandan Constitution establishes the right to development under the National Objectives and Directive Principles of State Policy, the objectives compel the Ugandan state to facilitate rapid and equitable development.¹⁷⁶ Unlike the Zimbabwean Constitution which brings out principles of the right to development without explicitly mentioning it as a right the Ugandan Constitution explicitly recognises the existence of this right albeit in the objectives.¹⁷⁷ The right to development is thereby contained in the national objectives as opposed to the bill of rights which contains civil and political rights this position is similar to the Zimbabwean Constitution. The Ugandan state is further compelled to encourage private initiative and self-reliance.¹⁷⁸

The Ugandan Constitution is more comprehensive in realising the right to development as compared to the Zimbabwean Constitution. The Ugandan Constitution recognises that the people of Uganda have a role to play in their development.¹⁷⁹ A duty is then placed on the state to ensure that people are in a position to fulfil that role, as the state is duty-bound to ensure that it takes all the necessary steps to involve the populace in the formulation and implementation of development plans and programmes which affect them.¹⁸⁰ This is quite similar to the Zimbabwean conception of the right to development which recognises that people participation is key. What should be noted is that devolution presents a suitable

¹⁷⁵ G M, Ngwatu, The Right to Development in Uganda: Myth or Reality? In C Ngang (Ed) (n 173 above) 219

¹⁷⁶ Article IX of the Ugandan Constitution

¹⁷⁷ Article IX of the Ugandan Constitution

¹⁷⁸ Article IX of the Ugandan Constitution

¹⁷⁹ Article X of the Ugandan Constitution

¹⁸⁰ Article X of the Ugandan Constitution

platform for the participation of people and consequently enhancing the right to development.

The Constitution of Uganda further places a duty on the state in development to give the highest priority to enacting legislation, which legislation should establish measures that enhance and protect the right of the people to equal opportunities of development.¹⁸¹ The equity aspect of the right to development is thereby recognised. As part of its role in fulfilling the right to development in Uganda, the state has a duty to stimulate agricultural, industrial, technological and scientific development by adopting appropriate policies and through the passing of legislation that enables development. It can be argued that Uganda has implemented devolution legislation in a bid to realise the right to development in previously marginalised areas.

As a follow up to the above discussion it is clear that the right to participate in developmental efforts either individually or through chosen representatives is an enshrined in the Ugandan Constitution.¹⁸² Devolution efforts enable representatives from all levels of society to give people a voice and to participate in their development. Accordingly, the Ugandan Constitution recognises the right to development although it is only contained the National Objectives and Directive Principles of State Policy and not in the bill of rights. The wording of scope and content of this right would appear to be justiciable in Uganda in as much as it would be in Zimbabwe as will be shown in the next chapter. Theoretically, a citizen in both the Zimbabwean and Ugandan Jurisdictions could sue the state arguing that the

¹⁸¹ Article XI of the Ugandan Constitution

¹⁸² G M, Ngwatu, *The Right to Development in Uganda: Myth or Reality?* In C Ngang (Ed) *Perspectives on the Right to Development* (2018) 222

state has failed to facilitate the realisation of the right to development and cite the devolution of governmental powers as the relief sought.

3.5 UGANDA AS ROLE MODEL FOR DEVOLUTION RESULTING IN THE REALISATION OF THE RIGHT TO DEVELOPMENT

The Ugandan system on devolution has been praised as the most ambitious form of devolution in the developing world.¹⁸³ As such lessons can already be drawn and these lessons can be in the positive or the negative. The negative sense being pitfalls that should be avoided by Zimbabwe in implementing devolution. Various landmarks have been achieved towards devolution and decentralisation in Uganda which have consequently had an impact on the right to development. The institutional framework of devolution has been implemented with significant strides with there being a framework defined by the Constitution of Uganda which framework is operationalised or put into effect by the Local Government Act of 1997. This is contrary to the Zimbabwean situation which has a constitutional framework with little effort having been done on the ground to concretise devolution of governmental powers.

The implementation of devolution in Uganda has seen the reaping of various benefits that stem from the implementation of a devolved system of government. Devolving

¹⁸³ D K.W. Ssonko (n 32 above) 3

powers from central government has empowered the Ugandan citizens, it is not only ensured the delivery of coordinated services in most districts. The Ugandan hierarchy of local government which has been discussed earlier goes down to the lower levels of society thereby enabling the development of communication channels between society and local and central government.¹⁸⁴ It is through engagement that participation is achieved and consequently the right to development. Elected officials in local government have come under scrutiny and have attained office well aware of the accountability and performance demands of their areas.

Amongst the benefits of devolution in Uganda, the development infrastructure for primary education and health care has been visible. Devolution of governmental powers in Uganda has led to the expansion of access to education. Despite the fact that some students fail to finish their education due to extenuating factors like forced early marriages and family poverty which results in child labour. Devolution has also enhanced health infrastructure. Ssonko identifies that devolution aspects have also been incorporated in the structuring of health services. The Hospital system is composed of four levels of national and regional referral hospital and each hospital is classed depending on the services provided at that facility. Implementing such a decentralised structure in the health sector ensured the construction of new health structures thereby enhancing the livelihood of Uganda citizens.

3.6 CONCLUSION

Lessons on devolution being an enhancer of development have been drawn from the Ugandan jurisdiction in this chapter. It is clear that it is not sufficient to have a

¹⁸⁴ J A. Okidi, & G Madina, "Decentralization and development: Emerging issues from Uganda's experience," (2006). Occasional Papers 93810, *Economic Policy Research Centre*

framework and legal structures of devolution without the necessary capacitation of those structures. Development and devolution are concepts that are tied, however, there is a need for structures of government to be empowered with necessary resources otherwise devolution would not yield positive results. It is, however, clear that were properly implemented devolution could yield positive results.

Chapter three took a look into the Ugandan jurisdiction which is a country that has implemented devolution of governmental powers on an immense and commendable scale. The Chapter delved into how devolution of governmental powers in Uganda has to some extent led to the realisation of the right to development. The chapter also looked at whether Uganda can be used as a role model for devolution principles leading to the realisation of the right to development.

CHAPTER FOUR

4.1 INTRODUCTION

This Chapter four analyses whether the conceptualisation of devolution in Zimbabwe creates a conducive environment for the full and effective realisation of the right to development. The Chapter examines the Constitutional framework of devolution of power further examining how the right to development can be derived from Zimbabwe's Constitution. Chapter four builds upon the momentum of chapter three in order to determine if Zimbabwe's conceptualisation of devolution is correctly placed to be a panacea to lack of development.

Chapter 3 examines the Constitution of Zimbabwe to bring out the right to development from the constitutional principles. The Chapter examines the justiciability of the right to development and whether citizens can litigate this right in situations where government policies such as devolution are implemented in a manner that does not urge the realisation of this right, The Chapter scrutinises how development as an objective of devolution can be realised.

4.2 CONSTITUTIONAL FRAMEWORK OF DEVOLUTION OF POWER

The Constitution of Zimbabwe has established a framework for devolution of governmental powers. Chigwata acknowledges that although the 2013 Constitution is not a flawless document that entrenches all the necessary aspects of an effective devolution programme, it does provide the starting point towards the establishment of a non-centralised form of government in Zimbabwe.¹⁸⁵ It is trite that the process of devolution cannot be achieved overnight what is required is to put in place a participatory, inclusive and consensus-driven process to facilitate a common and shared vision that is appreciated by the citizens on devolution that then shapes the relevant reforms, whether constitutional, legislative, institutional, financial or/and administrative.¹⁸⁶ The nature of devolution is that it should be implemented in a participatory manner that is inclusive and participatory.

The 2013 Constitution has set up a constitutional value system that is fundamental for interpretation of the Constitution as a document. The Constitution establishes that among the varied principles of good governance, which bind the State and all institutions and agencies of government at every level, the devolution and decentralisation of governmental power and functions is also included.¹⁸⁷ The recognition of devolution in the founding values and principles to the Constitution goes to show that there is recognition of a form of decentralisation which in turn signifies the importance attached to devolution by the constitutional drafters.¹⁸⁸

Although there is an introduction of devolution of power in the Constitution the 2013 Constitution still retains a unitary form of government, which suggests some form of

¹⁸⁵T C Chigwata, Devolution demystified: Emerging debates and prospects for devolution in Zimbabwe A discussion paper available at <https://zimlil.org/content/devolution-demystified-emerging-debates-and-prospects-devolution-zimbabwe-discussion-paper>

¹⁸⁶ T C Chigwata (n 185 above)2.

¹⁸⁷ Section 3(2)(l) of the Constitution of Zimbabwe.

¹⁸⁸ T C Chigwata (n 185 above)4.

aggregated power or retention of some functionaries at the national centre or in central government.¹⁸⁹ Devolution of governmental power can be classed as the most comprehensive form of decentralisation as it seeks to diffuse substantial governmental powers, authority, responsibilities and resources to subnational or local units. The local units to which power is devolved to exercise a degree of independence and self-sufficiency thereby granting subnational governments a certain level of discretion in the exercise of their duties and obligations'.¹⁹⁰ This all reverts back to the enhancement of local development by allowing sub-national governments to spearhead development projects at the local level.

The preamble to Chapter 14 lays the basis for devolution in Zimbabwe's Constitution which provides that it is desirable that there be devolution of power and decentralisation of power and responsibilities to lower tiers of government in Zimbabwe.¹⁹¹ The Constitution gives various reasons why it is desirable to have a devolved system of government these being the preservation of national unity and the prevention of the of all forms of disunity and secessionism. Of relevance is the recognition that devolution should be implemented to enhance the democratic participation in government by all citizens and communities of Zimbabwe. Participation by citizens and communities in their governance is therefore essential.

The Preamble further reiterates the importance of participation highlighting that the equitable allocation of national resources and the participation of local communities

¹⁸⁹ T C Chigwata (n 185 above)5.

¹⁹⁰ T C Chigwata (n 185 above)6.

¹⁹¹ Preamble to Chapter 14 of the Constitution.

in the determination of development priorities within their areas.¹⁹² The preamble of Chapter 14 of the Constitution already points out how the right to development can be materialised through devolution. Aspects of participation of which are the core elements of the right to development are exhibited together with the acknowledgement that the aim of devolution is indeed to achieve developmental priorities.

The preamble to Chapter 14 provides a foundational caption for the establishment of a devolved system of government as such the basis for devolution. Chigwata casts doubts on the strength of the foundation given the use of the words 'whereas it is desirable' which are predisposed to a number range of interpretations. However, the drafters of the Constitution cannot be faulted given the extensive debate which preceded the inclusion of devolution in the Constitution. It can be argued that indeed it is desirable that governmental powers be devolved to lower echelons as a form of aspirational value or process which cannot be realised at a whim or immediately. It is nonetheless striking that the Constitution identifies devolution as the most desirable form of dispersing governmental powers, responsibilities and resources in Zimbabwe to realise development, democracy and peace, including national integration.¹⁹³

The Constitution further goes on to lay the bedrock for devolution providing that 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.¹⁹⁴ The Constitution leaves it open and does not go on to define what is meant by whenever appropriate. This,

¹⁹² Preamble to Chapter 14 of the Constitution of Zimbabwe.

¹⁹³ T C Chigwata (n 185 above)

¹⁹⁴ Section 264 (1) of the Constitution of Zimbabwe

therefore, leaves it open to interpretation and this is one of the criticisms levelled against the establishment of devolution in Zimbabwe.

The Constitution sets out objectives of devolution of governmental powers and responsibilities to provincial and metropolitan councils and local authorities.¹⁹⁵ In the implementation of devolution, the point of departure for the government should be to grant autonomy, self-governance and 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.¹⁹⁶ The ultimate goal is thus to afford the transition of power from the central government in order to ensure that citizens have a say in matters that are incidental to them.

Another objective of devolution that is recognised in the Constitution is to promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole.¹⁹⁷ When powers are devolved it is easier to hold government accountable and enhance effectiveness due to the fact that bureaucracy is limited by granting local government autonomy resultantly leading to better development. It is key that despite the implementation of devolution peace should be fostered and preserved together with unity ensuring that Zimbabwe is one unit and one country that is indivisible.¹⁹⁸ This was clearly implemented to allay fears of secessionism.

The objectives of devolution are interrelated with the right to development and Constitution expressly recognises this in stating that one of the objectives of devolution is to recognise the right of communities to manage their own affairs and to

¹⁹⁵ Section 264 (2) of the Constitution of Zimbabwe

¹⁹⁶ Section 264 (1) of the Constitution of Zimbabwe

¹⁹⁷ Section 264(2)(b) of the Constitution of Zimbabwe

¹⁹⁸ Section 264(2)(c) of the Constitution of Zimbabwe

further their development.¹⁹⁹ This closely ties in with the core principles of the right to development as set out in the Endorois case. The Constitution expressly recognises that communities have the right to manage their own affairs in other words communities should be afforded the independence and leeway to further their own interests. There is express mention of the fact the right of communities to further their development. It can be inferred that from the wording of the Constitution there is a realisation that devolution is a tool for the furtherance or realisation of the right to development. This is further consolidated in that devolution is meant to ensure that there is equitable sharing of local and national resources.²⁰⁰ Some areas in Zimbabwe have been marginalised with the root cause being a lack of equitable sharing of resources. When resources are shared in an unequal manner this ultimately results in disparities in development.

Introducing devolution in Zimbabwe is meant to realise a transfer of responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.²⁰¹ This is a form of fiscal devolution wherein local government is granted the power to manage its own finances for the benefit of that area. The overarching principle is that of ensuring that control of finances is granted to lower echelons of power so that they can spearhead development efforts without the oversight of the central government. Efforts towards development are thereby directed where there are finances because local government is better placed to handle development efforts than the central government which in most scenarios tends to prioritise political expediency goals.

¹⁹⁹ Section 264(2)(d) of the Constitution of Zimbabwe

²⁰⁰ Section 264(2)(e) of the Constitution of Zimbabwe

²⁰¹ Section 264 (2)(a) of the Constitution of Zimbabwe

The Constitution provides within the wider scope of content for general principles to be observed in devolution and these include a duty that is placed on the provincial and metropolitan local authorities to ensure that good governance is observed through being effective, transparent, accountable and institutionally coherent.²⁰² In ensuring that there is transparency banes to development such as corruption are avoided and realisation of the right to development. As will further be examined, characteristics of the right to development include accountability and transparency as such in complying with the principles of the right to development the realisation of the right to development is promoted.

The principle that devolution should ensure the fair and equitable representation of people within their areas of jurisdiction supports the participation element of devolution of governmental powers.²⁰³ People are afforded representational participation through their representatives in local government. In order to guarantee that the people are afforded representatives from their own areas, the Constitution makes it mandatory that all members of local authorities should be elected registered voters within the areas where the local authorities are established.²⁰⁴ The rationale being that to be registered as a voter one has to be a resident of that area. This ensures that people are afforded a direct participation stake with no danger of intrusion by outsiders.

The Constitution recognises the creation of ten provinces in Zimbabwe and the creation of sub-districts as part of the devolution unit.²⁰⁵ There is the establishment of a Provincial Council which is responsible for management in all provinces except

²⁰² Section 265 (1)(a) of the Constitution of Zimbabwe

²⁰³ Section 265 (1) (g) of the Constitution of Zimbabwe

²⁰⁴ Section 265 (1) (g) of the Constitution of Zimbabwe

²⁰⁵ Section 267(1) of the Constitution of Zimbabwe

the metropolitan provinces. The Provincial Council is constituted in a manner that recognises the various representatives of the people. The Composition of the Council is such that it is made up of various individuals including an elected chairperson, senators from the province in question, two senator chiefs, the president and deputy president of the National Council of Chiefs if they from the province in question, all members of the national assembly in the province in question, female members of parliament for that province, mayors or chairpersons of urban and rural local authorities of the province in question and ten persons elected by a system of proportional representation. This clearly shows that Provincial Councils are constituted of a myriad composition of individuals from all walks of life and representatives of every corner of the province in question thus affording participation representation which is critical to development efforts as these representatives are able to identify areas with development gaps.

The structure is slightly different for metropolitan provinces with composition for Bulawayo metropolitan province being headed by the mayor of the city of Bulawayo and ordinarily the chairperson of the council. The Constitution of the Harare Metropolitan Province includes the mayor of the city of Harare and either the mayor or chairperson of the second-largest urban area of the Harare Metropolitan Province. The two metropolitan provinces are then composed similarly by members of the national assembly, female members of parliament and the mayors and deputy mayors and chairpersons and deputy chairpersons of the local authorities of the metropolitan province in question. This reiterates the above assertion that the composition allows the adequate proportional representation of the inhabitants of the province in question and in addition allowing citizens to participate through their representatives.

The Establishment of Urban local authorities is provided for in the Constitution and these are mandated with the representation and management of the affairs of the people in urban areas,²⁰⁶ Additionally, the law provides for the creation of local authorities for rural areas.²⁰⁷ The same principle of participation ensures that urban local authorities should be managed by councils. Such councils should be composed of councillors which are elected officials and are presided over by a mayor or chairpersons. The same is can be said for the local authorities of rural areas. Local authorities can be empowered through an act of parliament to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objects and responsibilities. Enabling local authorities to raise revenue paves a way for the realisation of the right to development as local authorities are able to raise funds for the pursuit of development goals in their areas of management.

4.3 CONSTITUTIONAL FRAMEWORK OF THE RIGHT TO DEVELOPMENT

Although not expressly provided for in the Constitution the right to development is a critical aspect that can be drawn from Constitutional provisions. The drafters of the Constitution clearly had the view that development should have an integral part in Zimbabwe's law as will be discussed below. The right to development as shown in the preceding chapter has an internal dimension where the state is duty-bound to ensure the realisation of this right among its citizens.²⁰⁸ Accordingly, on top of domestic obligations, Zimbabwe as a subject of international law has a duty to

²⁰⁶ Section 274 (1) of the Constitution of Zimbabwe

²⁰⁷ Section 275(1) of the Constitution of Zimbabwe

²⁰⁸ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (Ed) *Perspectives on the Right to Development* (2018) 257

implement the right to development and in doing so come up with suitable national development policies'.²⁰⁹ Zimbabwe is also duty bound to undertake, at the national level, all necessary measures for the realisation of the right to development'. Zimbabwe can opt to 'take steps, individually and or together collectively with other states intended to further the realisation of the right to development'.²¹⁰

4.3.1 JUSTICIABILITY OF THE RIGHT TO DEVELOPMENT UNDER THE 2013 CONSTITUTION

The Constitution of Zimbabwe provides for national development as an aspect of Zimbabwe's national objectives.²¹¹ The state is required together with all its institutions in all levels of power to strive to facilitate equitable development at a fast pace. The state should take measures that ensure balanced development in the different areas of Zimbabwe particularly a balance between urban and rural development. Although there is no express provision of the right under the bill of rights there is clear wording that is peremptory that the state is compelled to ensure that there should be balanced development in Zimbabwe. Recognising the right to development requires fulfilling the following five main criteria that is equitability, non-discrimination, participation, accountability, and transparency²¹²

In the implementation of development, the Constitution makes cognisance of key principles of the right to development. Key to this is the participation of the people and their involvement in development efforts. The government is required to include the public in the preparation and execution of development plans and programmes

²⁰⁹ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development In The Zimbabwean Constitution in C Ngang (n 208 above) 257

²¹⁰ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development In The Zimbabwean Constitution in C Ngang (n 208 above) 257

²¹¹ Section 13 of the Constitution of Zimbabwe

²¹² K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development In The Zimbabwean Constitution in C Ngang (n 208 above) 257

that affect them'.²¹³ The participation principle is similar to that set out in the UNDRTD which requires states to encourage popular participation in all spheres as a vital factor in the development and in the full realisation of all human rights'.²¹⁴

Participation in development efforts would comprise of enabling the Zimbabwean population who are affected by any development or are the subjects of any development efforts the opportunity to partake and contribute to the preparation of development plans. Citizens should also enjoy the benefits of deriving from the development process. It is important that such participation must be active, free and meaningful not only in the process but also in the development outcomes.²¹⁵ The *Endorois* case places emphasis on the necessity for meaningful and effective participation and establishes that a government has a duty to consult with the indigenous peoples, especially when dealing with sensitive issues such as land. Consultation cannot be done after the fact, as such the community should be given ample opportunity to shape the development process and any other policies.

Phulu and Kamga posit that although the Constitution of Zimbabwe provides for a Declaration of Rights wherein fundamental rights are contained that does not impede the existence of other rights and freedoms that may be recognised or conferred by law, to the extent that those rights are consistent with the Constitution.²¹⁶ There is no currently any legislation or statute in Zimbabwe that gives effect to the right to development. The right can, however, be inferred from Constitutional provisions.

²¹³ Section 13 of the Constitution of Zimbabwe

²¹⁴ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development In The Zimbabwean Constitution in C Ngang (n 208 above) 257

²¹⁵ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising The Right To Development In The Zimbabwean Constitution in C Ngang (Ed) (n 208 above) 257

²¹⁶ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 257

The couching of the objective of national development²¹⁷ in the Constitution bears resemblances with the way some of the economic, social and cultural rights in the Declaration of Rights to the extent that it affirms or establishes the right to development while also defining the obligations or duties of the state in respect of that right.²¹⁸ The wording of the Constitution establishes clearly that there is a right to development even though it is not contained expressly in the Constitution. Section 13(3) consolidates the measures to enhance national development that are in Sections 13(1-2) stating that 'measures referred to in this section must protect the right of the people, particularly women, to equal opportunities in development'²¹⁹ It is the obligations placed upon the state which render the right to development a right.

Scholars analysing the import of national objectives in the Constitution aver that on a shallow level, the national objectives appear to be entirely an interpretive aid to be used in Constitutional interpretation.²²⁰ However, upon closer introspection, the national objectives can indeed be justiciable.²²¹ The peremptory nature of the language and structure used in the construction of the constitutional provisions show that the drafters had a grander design in mind. The use of compelling language such as "the state must" shows that the state is given no room for derogation. Accordingly, where the state fails to implement development principles in accordance with the

²¹⁷ Section 13 of the Constitution of Zimbabwe

²¹⁸ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 261

²¹⁹ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 261

²²⁰ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 257

²²¹ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development In The Zimbabwean Constitution in C Ngang (n 208 above) 257

measures set out in the Constitution citizens can hold the state to account through litigation.

From the onset, the Constitutional objectives guide all institutions and agencies of government throughout the hierarchy of governmental powers and every stratum. When Government is devising and implementing laws and policy decisions it should be guided by these objectives.

The Constitution establishes a duty on the courts to pay due regard to the objectives set out in chapter two of the Constitution when interpreting a provision that imposes obligations on the state.²²² What this means is that a competent court cannot adjudicate on a matter wherein the subject matter of the dispute pertains to the nature of the state's obligations without paying due cognisance to the National Objectives in the Constitution of Zimbabwe. As such national objectives such as national development constitute an interpretive aid which should be utilised in the interpretation of the Constitution. Phulu and Kamga assert that the nature of the language section 8(1) of the Constitution it would appear that the clause, in fact, is justiciable.²²³ The section makes it compulsory that all state institutions and agencies at all levels should be guided by the National objectives in Chapter 2 of the Constitution in the formulation of policies and laws. In this vein of thought, it can be argued where a law or policy fails to be guided with the spirit of the national objectives such law can be subject to challenge in a court of law. Such law or policy can be challenged as being a nullity and unconstitutional. It can accordingly be

²²² Section 8 (2) of the Constitution of Zimbabwe

²²³ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right To Development In The Zimbabwean Constitution in C Ngang (Ed) *Perspectives on the Right to Development* (2018) 262

submitted that the national objectives including that of national development in section 13 confer rights on Zimbabwean citizens that can be constitutionally enforced.

It is apparent that the Constitution creates a positive duty on the state to ensure that policies and legislation reflect the national objectives which include the objective of national development. The objective of national development as set out in section 13 of the Constitution in conjunction with other national objectives mandates that the state and its institutions and agencies in all levels of government should factor in components and aspects of the right to development such as efficiency, competency, accountability, transparency, personal integrity and financial probity. Courts in Zimbabwe thereby have the latitude to compel state institution or agency to conform to a certain provision of the National Objectives. So, in essence, litigation can be brought against the state averring the state has failed to factor in national development and consequentially the right to development in legislative and policymaking.

4.3.2 SCOPE AND CONTENT OF THE RIGHT TO DEVELOPMENT IN THE ZIMBABWEAN CONSTITUTION

The right to development although not set out in the bill of rights has its foundation set out in the national objectives of the Constitution.²²⁴ The Constitution provides that the State and all institutions and agencies of government at every level must endeavour to facilitate rapid and equitable development, and in particular must take measures to bring about balanced development of the different areas of Zimbabwe,

²²⁴ Section 13 of the Constitution of Zimbabwe

in particular, a proper balance in the development of rural and urban areas.²²⁵ The crafting of section 13 makes apparent the recognition of the right to development. The right to development is recognised by the requirement to fulfil the principles of equitability, non-discrimination, participation, accountability and transparency, among other rights, to development indicators.²²⁶ These principles are exhibited in the objective of national development.

An examination of section 13 satisfies the principles established in the Endorois Case for recognising the right to development. Section 13 covers all the material rudiments of the right to development. The section is targeted towards enhancing the development of local communities, and section 13(3) makes explicit reference to protecting the rights of people to equal opportunities in development and particularly women.²²⁷ There is an expression of emphasis on the involvement of the people in development plans and programmes thereby consolidating the participation element of the right to development in Zimbabwe²²⁸

As has already been discussed above the recognised five main criteria for recognising the right to development are the principles of equitability, non-discrimination, 'participation, accountability and transparency. These elements are present in the Constitution are directly addressed by reference to equitable development in section 13(1) while participation is canvassed in sections 13(2) and

²²⁵ Section 13(1)(d) of the Constitution of Zimbabwe

²²⁶ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 262

²²⁷ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 263

²²⁸ Section 13 (2) of the Constitution of Zimbabwe

(3), as well as equal opportunities and gender mainstreaming in section 13(3).²²⁹ Sections 13(3)-(4) directly address the aspect of benefit-sharing as a duty imposed on the state to ensure that everyone has equal opportunities for development and that local communities benefit from the resources in their area.²³⁰

In addition, it can be posited that the right to development of communities can be further inferred from the constitution of Zimbabwe which provides that in implementing measures to enhance national development the state must protect and enhance the right of the people, particularly women, to equal opportunities in development.²³¹ Clearly although not set out in the bill of rights this is a recognition that there should be equality in development. The Constitution also compels the state to ensure that local communities benefit from the resources in their areas.²³² Ojambo writing on the principal objectives of devolution states that these encompass the promotion of accountability, transparency, efficiency in governance and service delivery, and the empowerment of the masses from grass-root levels through the promotion of the participation of individuals and communities in their governance²³³

The right to development of communities and how it relates to devolution becomes apparent in Section 264 (2) (d) which states that as one of the objectives of devolution of governmental powers and responsibilities to provincial and metropolitan councils and local authorities is meant to recognise the right of communities to manage their own affairs and to further their development. The

²²⁹ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 263

²³⁰ K I Phulu & S D Kamga 'Towards A Happy, Prosperous and Fulfilling Life': Recognising the Right to Development in The Zimbabwean Constitution in C Ngang (n 208 above) 263

²³¹ Section 13 (3) and (4) of the Constitution of Zimbabwe

²³² Section 13(4) of the Constitution of Zimbabwe

²³³ H Ojambo (n 54 above) 2

Constitution accordingly in this provision acknowledges that communities are bearers of the right to development and that such realisation of such right can be realised through devolution of governmental powers thereby empowering communities to participate and have a stake in their development. Merging devolution of governmental powers with the right to development thereby becomes harmonious due to the interplay of key principles such as participation, service delivery, ensuring autonomy and self-governance in the citizenry among other aspects.

4.4 DEVELOPMENT AS AN OBJECTIVE OF DEVOLUTION

The harmony between the two aspects of devolution and the right to development is apparent. Devolution is an avenue for ensuring the recognition of the right of communities to manage their own affairs and the furtherance of their own development. Proper structuring of devolution can ensure that there is equitable sharing of local and national resources.²³⁴ The equitable distribution of resources is an element of the right to development that is reflected in the UNDRTD. In order for there to be any meaningful realisation of the right to development, devolution is a necessary tool to transfer responsibilities and resources from the national government, this is to establish a sound fiscal base for each and every lower level of government down to the local authority. Chigwata posits that introspection of the Constitution envisions the devolution of powers together with responsibilities and resources not only to the established provincial and local levels but to structures beyond the local government level.²³⁵ By devolving powers to lower stratum this

²³⁴ T C Chigwata (n 185 above)4

²³⁵ T C Chigwata (n 185 above)4

establishes a foundation for the realisation of the right to development thereby incidentally enhancing the realisation of the same right.

The participation element of the right to development is exhibited in the devolution of governmental powers in that devolution in Zimbabwe is crafted with the objective to recognise the right of communities to take charge of their own affairs and to facilitate their development.²³⁶ Communities when granted autonomy are better placed to identify gaps in development and implement the necessary development programs. Development policies that originate from the central government may not be articulate and precise considering that a devolved system ensures local government has political autonomy ensuring participatory and inclusive governance.

The Zimbabwean Government in enhancing the realisation of the right to development should implement devolution of governmental powers. Devolution is meant to ensure that there is equitable distribution of local and national resources.²³⁷ By so doing the government ensures that development efforts stem from the bottom going up. Devolution alleviates the plight of local communities who bemoan a lack of resources as a barrier to development. When resources are placed in the control of local communities this gives development chances of better success as these communities are better equipped to identify development priorities.

Provincial and Metropolitan Councils in Zimbabwe are mandated by the Constitution to be responsible for social and economic development initiatives within their respective provinces.²³⁸ In doing so the councils are tasked with planning and implementing social and economic development activities.²³⁹ Ancillary to this, it the

²³⁶ Section 264(1) (d) of the Constitution of Zimbabwe

²³⁷ Section 264(1) (d) of the Constitution of Zimbabwe

²³⁸ Section 270 (1) of the Constitution of Zimbabwe

²³⁹ Section 270 (1) (a) of the Constitution of Zimbabwe

role of councils in the oversight and management of resources.²⁴⁰ In a devolved setting of government development initiatives are easier to implement as the direct and local representatives of the communities are at the forefront of implementing development plans.

4.5 CONCLUSION

The above discussion places both concepts of devolution and the right to development within the confines of the Zimbabwean Constitution. It has been shown that devolution is an aspect that is guaranteed by the Constitution. The Zimbabwean Constitution although not expressly exhibits principles of the right to development which share a commonality with principles of devolution.

Chapter four examined Zimbabwe's domestic and national framework of the right to development. The Chapter traced the constitutional frame working of devolution of governmental powers and the right to development. The chapter showed how despite the lack of a clear cut consolidation in the bill of rights the right to development can be arguably justiciable despite the absence of a test case to that effect. The scope and content of the right to development were also examined showing how the practical implementation of devolution of governmental powers in Zimbabwe can be a panacea to lack of development. Devolution of governmental powers can clearly be utilised to enhance the realisation of the right to development by Zimbabweans.

²⁴⁰ Section 270 (1) (c) of the Constitution of Zimbabwe

CHAPTER FIVE

5.1 INTRODUCTION

Chapters one to four have examined various aspects of devolution and the right to development. It is essential, to sum up, the various arguments and arrive at a conclusion on whether devolution is an appropriate tool to enhance the realisation of the right to development in Zimbabwe. This is a concluding chapter that proffers recommendations on how best devolution can be co-opted to ensure the realisation of the right to development.

5.2 SUMMARY OF ARGUMENTS

5.2.1 CONCEPTUALISING THE RIGHT TO DEVELOPMENT AND DEVOLUTION

The conceptual framework for both aspects of the right to development and devolution of governmental power was laid out in Chapter two. It was established that devolution can be a panacea to development. The Chapter established the interplay between devolution concepts and aspects of the right to development. Participation of the people is a key factor of the devolution of governmental powers as much as it is also a key aspect of the right to development. Resultantly when individuals are afforded the right to participate in issues of their welfare, development

is enhanced. The criteria for determining whether the right to development has been adequately realised was discussed. If properly implemented it is apparent that devolution of governmental powers would result in the fulfilment of criteria required for the realisation of the right to development.

5.2.2 DEVOLUTION AS A TOOL TO REALISE THE RIGHT TO DEVELOPMENT IN ZIMBABWE

Chapter 3 dealt with the constitutional framework of the devolution of governmental powers in Zimbabwe. The Chapter established how devolution was enshrined in the Constitution of Zimbabwe. Devolution of governmental powers in Zimbabwe is envisioned with the intention to establish set objectives such as the granting of the citizenry participation opportunities. The big idea behind devolution is to shift power from central government to local government in order to allow the people to have decisional and fiscal autonomy and thereby make choices and decisions which are best suited for them. Devolution in Zimbabwe is thus meant to enhance the accountability of government to the citizens. Essentially devolution offers the people an opportunity or the ability to have a say in developmental projects that affect them.

It was established that although the right to development is not expressly provided for in clear and unambiguous language in the Zimbabwean Constitution it is still very much part of Zimbabwe's laws. Zimbabwe is duty-bound to guarantee fulfilment of the right to development to its citizens due to that Zimbabwe is a state party to the African Charter. Despite the absence of clear-cut express provision of the right elements of the right are exhibited from the wording of section 13 of the Constitution of Zimbabwe. Despite the fact that this is not in the bill of rights, it can be concluded that this right is justiciable in Zimbabwe due to the nature of the wording that is used

in the section. The right to development becomes apparent due to that an obligation is placed on the Zimbabwean state to ensure that there is equitable development and that the people are guaranteed of participation in developmental plans and programmes that affect them. The Constitutional provisions on the development tally well with the international conception of the right to development which leads to the conclusion that the right to development is part of Zimbabwe's legal framework.

Where government fails to implement devolution, a potential litigant could approach the court arguing that they are not being involved in developmental efforts and their relief could be that devolution is implemented as the end goal of devolving governmental powers is to ensure that that there is development in all areas. Development is ancillary to the concept of devolution due to shared characteristics such as participation and equity. It has been argued that development is a goal of devolution of governmental powers as such when implemented with foresight devolution can be a pathway to enhancing the realisation of the right to development and ultimately development itself.

The primary argument is thus that devolution can indeed be used to facilitate the realisation of the right to development in Zimbabwe if it is properly implemented.

5.2.3 THE UGANDAN EXPERIENCE WITH DEVOLUTION AND THE REALISATION OF THE RIGHT TO DEVELOPMENT

Lessons were drawn from the Ugandan experience with devolution which legal framework is highly applauded and commendable. The Ugandan experience with devolution of governmental powers has had some positive results and negative ones at the same time. When the government began its decentralisation efforts the benefits of devolution were easily decipherable however somewhere along the line

due to loss of political support because most local government posts were filled by the opposition party much akin to the Zimbabwean situation. The Ugandan government has begun to recentralise and concentrate some of the governmental functions previously left under the purview of the local government. It has thus been difficult to reap from the benefits of devolution including enhancement of the right to development with the interference from central government.

Akin to the Zimbabwean situation the Ugandan right to development is contained within the Constitutions objectives and not in the bill of rights. The Ugandan wording of the right is more express than the Zimbabwean position with elements of the right being put out succinctly in a clear, elaborate and deliberate manner. The Ugandan state is duty-bound to enact legislation that through that enables development with local government legislation being some of the legislation that enables the realisation of the right to development.

Chapter four also elaborated the pitfalls of the Ugandan experience which Zimbabwe should avoid which include the politicisation of the devolution and development process or recentralising because central government goals are not being advanced. Central government should always encourage and fund the devolution process in order for there to be substantial development efforts. The Ugandan experience, however, shows that devolution of governmental powers does indeed lead to the realisation of the right to development.

5.3 THE WAY FORWARD TO ENSURE DEVOLUTION LEADS TO THE REALISATION OF THE RIGHT TO DEVELOPMENT

5.3.1 ENACTING LEGISLATION THAT ENABLES DEVOLUTION IN ZIMBABWE

Despite the inclusion of devolution principles in the 2013 Constitution of Zimbabwe to date legislation that gives effect to devolution principles as enunciated in the Constitution. In order for devolution to bear fruits of development or realisation of the right to development, it is essential for the operationalising legislation to be put into effect and this can only be done through legislation. The starting point would be to craft legislation that gives effect to devolution principles and acknowledges the creation of a three-tier form of government that is envisaged by the Constitution.

There is a need for power to be devolved to the Provincial and Metropolitan Councils and other local authorities. Instead of actually operationalising devolution that government in 2016 in passing the Local Government Act made provisions that encroach on the independence and autonomy of local government structures in that wide powers were granted to the central government to dismiss from office duly elected chairpersons and mayors thereby concentrating powers to the central government.²⁴¹

With the key interaction between having been established already, implementing a devolved system of government through legislation provides the framework for the achievement of fair and balanced development. This is due to the fact that when

²⁴¹POLICY BRIEF ON THE IMPLEMENTATION OF DEVOLUTION IN ZIMBABWE: Recommendations on the Structure/Composition, Functions and Funding of Provincial and Metropolitan Councils (PMCs) <http://kubatana.net/wp-content/uploads/2018/11/CCDZ-HRT-POSITION-PAPER-ON-IMPLEMENTATION-OF-DEVOLUTION-.pdf>

granted the autonomy and self-governance authority as envisaged by the Constitution the Provincial and Metropolitan Councils are in a position to set local development priorities. The enactment of pro-devolution legislation ensures that there enhanced transparency and accountability in governance and decision making. The management of resources and public affairs by local authorities is improved. The legislation ensures that scope and mandate of duties should be clearly defined with the central government playing a clear oversight role of ensuring that governance and use of public resources are done in a transparent manner.

The implementation of devolution principles through legislation is a critical matter that should be treated with the urgency it deserves. Development is a fundamental element and Zimbabwe has to catch up with the rest of the world in terms of development as such devolution presents itself as a solution to this dilemma. There is a need to ensure that the enacted legislation conforms with principles of development such that it should include participation elements, exhibit democratic principles, be inclusive and show elements of transparency and accountability. Furthermore, the principles of equitable development should be manifest. As such it is vital that devolution legislation is implemented without delay in order for developmental programmes to commence.

5.3.2 ALIGNING EXISTING DOMESTIC LEGISLATION WITH THE CONSTITUTION OF ZIMBABWE

It is also essential to align existing legislation to Zimbabwe's current legislation in order for current legislation to be intra vires the Constitution. Although there is a current alignment process being done currently the process has been heavily

criticised as being too slow and lacking urgency. The current Provincial Councils and Administration Act [Chapter 29:11] has been tabled for amendment with progress having been made. This amendment seeks the devolvement of governmental powers to local authorities and provincial and metropolitan councils.²⁴²

5.3.3 ENSURING AUTONOMY AND LIMITING CENTRAL GOVERNMENT INTERFERENCE

In order for a devolved system of government to function there is a need for there to be political autonomy and independence of local government structures and central government. Autonomy is critical in that in most cases where central government interferes it is to the detriment of the right to development as most cases of interference are politically motivated. The nature of the duties and obligations of local government further require that there be fiscal autonomy which enables local government structures to pursue development goals without much reliance on the central government.

5.3.4 ENSURING THAT THE DEVOLUTION PROCESS IS ADEQUATELY FUNDED

One bane to the proper implementation of devolution is the lack of adequate funding of devolution efforts. If devolution is to lead to successful development, there is a need for adequate funding. The Constitution already provides that the central government should allocate not less than five per cent of collected annual revenues

²⁴² <https://www.newsday.co.zw/2018/11/devolution-wheels-start-turning/>

in a fiscal year to the province and local authorities as a share of that year.²⁴³ In ensuring funding, the government guarantees the ability of local government to fulfil their developmental mandate as development programmes can easily be run and maintained. When central government does its budget there is a need for the carrying out of financial revenue projections and assessments with the rationale being to assess the adequacy of allocated revenue. It is further recommended that the central government should factor in the development needs and priorities, the size of the population of each province among other national development goals.

Due to the critical importance of funding to the success of devolution efforts and realisation of the right to development, there should be in place a formula or criteria that are set out clearly in legislation, such would be for the calculation of the percentage of allocation to be given to a province.²⁴⁴ This is essential in that it curbs the possibility of interference or marginalisation of certain provinces in development efforts. Accordingly, principles of equity and equitable development are applicable, and efforts should be done to ensure that all citizens in Zimbabwe get a piece of the cake.

5.4 CONCLUSION

This project has interrogated how the absence of a clear devolved system of government has not been the most of ideal situations. Without devolution of governmental powers, some of Zimbabwe's areas have been overlooked in terms of development. The advent of the 2013 Constitution has sought to alter this state of events bringing a constitutional entrenchment of devolution. The right to

²⁴³ 301(3) of the Constitution of Zimbabwe

²⁴⁴ POLICY BRIEF ON THE IMPLEMENTATION OF DEVOLUTION IN ZIMBABWE: Recommendations on the Structure/Composition, Functions and Funding of Provincial and Metropolitan Councils (PMCs) <http://kubatana.net/wp-content/uploads/2018/11/CCDZ-HRT-POSITION-PAPER-ON-IMPLEMENTATION-OF-DEVOLUTION-.pdf>

development has also been factored in the same Constitution presenting an opportunity to utilise devolution of governmental powers as a utility or tool to enhance developmental priorities in Zimbabwe.

Zimbabwe's devolution and the right to development principles were clearly shown and the harmony between the two concepts elucidated. It is manifest that were properly implemented devolution principles bring about the realisation of the right to development.

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