

Implementing the 2013 Constitution of Zimbabwe: Provincial and Local Government - Division of responsibilities and their funding

Professor Nico Steytler
South African Research Chair in Multilevel
Government, Law and Policy
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Constitutional mandate of Parliament

- Constitution provides extensive principles about devolution
 - Preamble
 - Preamble to chapter 14
 - Objectives
- Constitution provides only a broad framework for devolution, to be filled in by Acts of Parliament
- Through these Acts Parliament will give concrete shape to devolution project

Acts of Parliament

- An Act must provide for the manner in which **provincial and metro councils** exercise their functions (s 270(2))
- An Act may confer **additional functions** on provincial and metro councils, that may be conferred on them (s 270(1)(f))
- An Act may confer functions on **local authorities** (LA), including (a) law-making (b) power to levy rates and taxes and to raise sufficient revenue (s 276(2)).
- Annual Act on **division of revenue** raised nationally (s 301(1))
- An Act to make provision to ensure that **employees** of MLGs are politically neutral (s 266(4))
- An Act must provide mechanisms for Parliament to **monitor and oversee expenditure** (s 299(2))
- An Act must provide mechanisms and procedures to facilitate **co-ordination** between the three levels (s 265(3)).

Role of Parliament

- Detailed scrutiny of each Bill presented to Parliament: meets constitutional requirements; technical coherence
- Allowing and encouraging consultation on the Bills
- Coherence of Bills from one department
- Coherence across sectors more difficult

Principles guiding and structuring the Acts: division of powers and responsibilities

PLG are substantive constitutional institutions with responsibilities

- Principle of good governance: Devolution and decentralisation of governmental powers and functions (s 3(2)(l)).
- Objective of devolution: To give powers of local governance to the people (s264(1))
- To recognize the right of communities to manage their own affairs (s 264(1))
- “When appropriate” governmental powers and responsibilities must be devolved (s 264(1)) – where PLG better suited for the effective delivery of services
- When “competent to carry out those responsibilities efficiently and effectively” (s 264(1))
- Intersection with obligation of socio-economic rights in Bill of Rights (education, health care, food and water)

Principles guiding for Act: **provincial and metro councils' responsibilities**

Functions – section 270 – indirectly elected / representatives

Broad scope: “responsible for the **social and economic development** of its provinces”

- Planning and implementing **socio-economic development** (education, public health facilities (s 301(2)(d))?)
- Co-ordinating and implementing **[national] governmental programmes**
- Planning and implementing measures relating to **natural resources**
- Promoting **tourism** and developing facilities
- Monitoring and evaluation the use of **resources** in its province [also of LAs?]

Guiding principles for Act: **Local authorities' responsibilities**

- Responsibilities: Local Authority has “right to govern, on its own initiative, the local affairs of the people” and “has all powers necessary for it to do so” (s 276(1))
- “Local affairs”: basis services such as educational and public health facilities, water, roads, social amenities and electricity” (s 301(2)(d))
- Historical or also new functions?

Guiding principles for Act: **financing PLG responsibilities**

(1) **Funding follows functions, follow structures**

- A national objective of good governance: all governmental institutions “are provided with **adequate resources and facilities** to enable them to carry out their functions conscientiously, fairly, honestly and efficiently” (s 9(2))
- An objective of devolution is to transfer from the national government responsibilities and resources “to establish a **sound financial base**” for each PLG (s 264(2)(f))

Guiding principles for Act: financing responsibilities

(2) PLG is to be largely self-financing

- Factor in determining vertical and horizontal division of revenue is **fiscal capacity and efficiency** of PLG (s 301(2)(d))
- Small minimum amount of **5% of national revenue** to PLG (s 301(3))
- LAs empowered to levy **rates and taxes** and general raise sufficient revenue for them to carry out their objects and responsibilities (s 276(2)(b))
- PLG can set **fees and charges** for services rendered
- **Accountability** (important constitutional value) enhanced by self-reliance (preamble)
- Current practice

Guiding principles for Act: financing responsibilities

(3) Supplementary, the equitable sharing of resources in recognition of unequal distribution of resources / development

- Principle of good governance – equitable sharing of national resources (s 3(2)(j))
- National development – balance between rural and urban development (s 13(1))
- The equitable allocation of national resources (preamble to ch 14)
- Revenue raised nationally must be shared equitably between the central government and PLG (s 298(1)(b))
- To provide basic services to “**marginalized areas**” (s 301(2)(d))
- **Economic disparities** within and between provinces (s 301(2)(g))

Annual Act making the division horizontally and vertically

Method: fair, formula, transparent process, consolidated revenue fund

Guiding principles for Act: financing responsibilities

(4) Strong central supervision of PLG financial expenditure

- Parliament must monitor and oversee expenditure by the state (including PLG) (s 299(1))
- No right to borrow money (s 300) - permission
- Framework for PLG finances, expenditure

Provinces' financial sources

- Own revenue
 - Fees and charges
 - Taxes – if conferred
 - Borrowing – if permitted
- Transfers – duty to provide a slice of equitable division
 - Capital grants
 - Other allocations, and any conditions on which allocations are made (s 301(1)(b))
 - Unconditional
 - Conditional

Local authorities' financial resources

- Own revenue
 - Fees and charges
 - Rates and taxes
 - Borrowing – if permitted
- Transfers – to duty to provide a slice of equitable division
 - Capital grants
 - Other allocations, and any conditions on which allocations are made (s 301(1)(b))
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Guiding principles for Act: Intergovernmental relations

Section 265(1) Co-operate with one another, in particular by –

- (i) Informing one another of, and consulting one another on, matters of common interests;
- (ii) Harmonising and co-ordinating their activities

An Act must provide appropriate mechanisms and procedures to facilitate co-ordination between central government and PLG

Content:

- Main focus is service delivery by levels and financing them
- Structures – political executive forums, technical forums
- Procedures
 - Implementation protocols
 - Dispute resolution mechanisms, avoiding litigation

Concluding remarks

- Devolution is innovation in Constitution – new laws required – major challenge
- Slow, hard process to meet challenge
- Portfolio Committee on Local Government has its role cut out for it – key actor
- Supportive environment