

Trends, benefits & pitfalls of multilevel government

Jaap de Visser



University of the Western
Cape
Cape Town

- Trends
- Benefits & pitfalls
- Overview of key provisions in 2013
Constitution

International instruments, promoting decentralisation

Year	Title
1993	World-Wide Declaration of Local Self-Government
2003	UN Draft Guidelines on Decentralization (Vancouver Draft)
2005	Commonwealth Principles on Good Practice for Local Government
1985	European Charter of Local Self-Government
1999	Victoria Falls Declaration
2005	Kigali Declaration
2007 / 2012	African charter on democracy, elections and governance (ACDEG) obliges member states to 'decentralize power to democratically elected local authorities as provided for in national laws'.

Constitutions with local and/or regional government

country	year of adoption
Uganda	1995
Ethiopia	1995
South Africa	1996
Nigeria	1999
Sudan	2005
Kenya	2010
South Sudan	2011
Zimbabwe	2013
Tunisia	2014

Benefits & pitfalls

- **Why** multilevel government and what are the **dangers?**
- Broad overview of arguments, centred around:
 1. **development**
 2. **democracy**
 3. **managing diversity**
- + relevant constitutional provisions
- NB application is **context-specific**

1 Development

- ‘improves allocative **efficiency**’ – makes govt. able to better match preferences of residents
- enhances development through ‘better citizen **participation**’ in it
- ‘stimulates **innovation and experimentation**’ in service delivery

1 Development

- ‘improves allocative **efficiency**’ – makes govt. able to better match preferences of residents
 - *communities’ right to manage their own affairs (s 264)*
- enhances development through ‘better citizen **participation**’ in it
 - *Preamble: participation of local communities*
- ‘stimulates **innovation and experimentation**’ in service delivery

1 Development

- ‘breeds **corruption**’ - local discretion and proximity result in elite capture
- ‘promotes **inequality**’ – decentralised taxing and spending increases disparities
- ‘causes **macro-economic instability**’ – decentralised taxing, spending and borrowing destabilises economy
- requires high levels of **capacity**

1 Development

- ‘breeds **corruption**’ - local discretion and proximity result in elite capture
- ‘promotes **inequality**’ – decentralised taxing and spending increases disparities
 - *Preamble: ‘equitable distribution’ / equitable sharing (s 3, s 264)*
- ‘causes **macro-economic instability**’ – decentralised taxing, spending and borrowing destabilises economy
- requires high levels of **capacity**
 - *Devolution to LAs / provincial authorities ‘which are competent’ (S 264)*

2 Democracy

- ‘restrains concentration of power’
- ‘stimulates citizen participation’
- ‘enhances accountability’
- multiple sites of politics is ‘good for multi-party democracy’ – requires mutual tolerance
- subnational governments is where future leaders emerge

2 Democracy

- ‘**restrains** concentration of power’
 - *S 3: separation of powers*
- ‘stimulates citizen **participation**’
- ‘enhances **accountability**’
 - *S 3: accountability*
- multiple sites of politics is ‘good for **multi-party democracy**’ – requires mutual tolerance
 - *Multi-party democracy / rights of all parties (s 3)*
- subnational governments is where **future leaders** emerge

3 Managing diversity

- ‘diffuses competition for power’
- ‘opportunities to govern for more than one group’
- ‘opportunities for special accommodation of specific groups’
- ‘greater sense of unity’ through recognition of diversity

3 Managing diversity

- ‘diffuses competition for power’
 - *S 18: promote fair representation of all regions in govt.*
- ‘opportunities to govern for more than one group’
 - *S 18: promote fair representation of all regions in govt.*
- ‘opportunities for special accommodation of specific groups’
- ‘greater sense of unity’ through recognition of diversity
 - *“foster national unity” (s 264)*

3 Diversity

- 'weakens national unity by **accentuating identity**'
- stimulates **secessionist** tendencies'

3 Diversity

- ‘weakens national unity by **accentuating identity**’
 - *Preamble: “preserve national unity”*
 - *“Preserve peace, indivisibility” etc. (s 264)*
- stimulates **secessionist** tendencies’
 - *Preamble: “Prevent secessionism”*

- none of the benefits/pitfalls are absolute - must be **balanced** in context-specific manner,
- **appropriate design** of legal framework

Balancing three dimensions

1. autonomy – **how much discretion** for local / regional govts?
2. supervision – will national govt. exercise **oversight**?
3. cooperation – levels of govt. **working together**?

→ 2013 Constitution of Zimbabwe?

- Terminology → **unitary** state with **devolution**, based on Constitution

devolution is a **principle of good governance** (s 3(2)(1))

“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” (s 264)

1. when is devolution ‘appropriate’ and when is an authority ‘competent’?
2. who decides?
3. will courts play a role? – s 175 courts may strike down law / conduct that is unconstitutional

autonomy?

- Do subnational govts. enjoy **security of existence?**
- Is subnational leadership **elected locally?**

autonomy?

- Do subnational govts. enjoy **security of existence**?
 - *S 5: 3 tiers*
 - *Provinces are listed (s 267)*
 - *Parliament regulates local government institutions (s 267 & s 275)*
- Is subnational leadership **elected locally**?

autonomy?

- Do subnational govts. enjoy **security of existence**?
 - S 267
 - *Provinces are listed*
 - *Parliament regulates local government institutions (s 275)*
- Is subnational leadership **elected locally**?
 - *cllrs must be elected (s 265(2))*
 - *mayors must be elected (s 274, 278)*
 - *directly elected mayors for ULAs?*
 - *prov & metro councils accountable to residents + **nat govt.***
 - *Parliament regulates prov councils*

autonomy?

- **powers** over functional areas?
- permitted to raise **own revenue** and/or **borrow**?
- **control their own administrations**?

autonomy?

- **powers** over functional areas?
 - *Constitutional functions for prov & metro councils (s 270)*
 - *Parliament allocates powers to exec mayors of ULAs*
 - *LAs have “right to govern...local affairs... and... the necessary powers to do so” (s 276)*
 - *Parliament allocates power to LAs (s 276)*
- permitted to raise **own revenue** and/or **borrow**?
 - *Parliament allocates taxing powers (s 276)*
- **control their own administrations**?
 - *A ‘single public service’ (s 199) (includes LAs?)*
 - *Act of Parliament for provincial employees (s 273)*

supervision?

- national laws to regulate exercise of powers?
- national govt monitoring?

supervision?

- national laws to regulate exercise of powers?
 - National govt. grants + regulates powers
 - *Parliament* regulates financial mismanagement (s 308)
- national govt **monitoring**?
 - *Parliament* monitors expenditure by the State ...at every level, including... provincial and metropolitan councils and local authorities... (s 299)
 - **Auditor-General** audits accounts of provincial councils and local authorities (s 309)

supervision?

- national govt **supporting** subnational govts?
- **intervention** when a subnational government fails? checks and balances?
- **redistribute** resources across subnational govts?

supervision?

- national govt **supporting** subnational govts?
- **intervention** when a subnational government fails? checks and balances?
 - *Independent Tribunal may ‘impeach’ cllr*
- **redistribute** resources across subnational govts?
 - *Parliament must provide for “equitable allocation” (s 301)*

Cooperation?

- levels of government **joined up** in national institutions?
- norms/principles for cooperation between levels of govt?
- procedures / structures for joint projects
- resolve disputes?

Cooperation?

- levels of government **joined up** in national institutions?
 - no central govt. institutions that include representatives of LG / PCs
 - provincial councils?
- norms/principles for cooperation between levels of govt?
 - e.g. 265 Constitution
- procedures / structures for collaboration
 - **Parliament** must provide mechanisms and procedures... (S 265)
- resolve disputes?

In sum

- 2013 Constitution of Zimbabwe **part of new trend** in Africa wrt using multilevel govt
- devolution entrenched **as a principle** but national government firmly in control of extent and pace
- Acts of Parliament to structure devolution
- Acts of Parliament must adhere to Constitution

How long did it take South Africa?

- 1997: Constitution in operation
- 1998: White Paper on Local Government
- Laws needed on:
 - Fiscal relations (1997)
 - Boundaries (1998)
 - Structures & elections (1998)
 - Systems (planning, governance) (2000)
 - Property Rates (2005)
 - Intergovernmental Relations (2005)

Thank You