



# **Implementation of the 2013 Constitution of Zimbabwe: provincial and local governments**

‘Talking’ Governance

by

Tinashe C Chigwata

Email: [tchigwata@uwc.ac.za](mailto:tchigwata@uwc.ac.za)

COMMUNITY LAW CENTRE



# Background

## ■ New Constitution

- Provides a platform for the development of our ‘own’ governance structures and processes
- Need to develop a statutory and institutional framework that complies with the new constitutional demands
- We may have to change some of the ‘old’ practice, culture and attitudes

## ■ Parliament, civic movement and citizens have a key role to play

# 2013 Constitution- strives to advance democracy, development and other goals

- Preamble of the Constitution
- Expansive Bill of Rights
- Preamble of Chapter 14
  - Citizen participation, democratic representation, local accountability, transparency

# Provincial and metropolitan councils

- Establishment- **enactment of the relevant piece of legislation- S 270(2)**
  - Criteria to be followed when establishing provincial and metropolitan councils?
- Composition-
  - indirectly elected, directly elected + appointed officials- S 268(1) and S 269
  - **Democratic gain?** Yes- provides a foundation upon which democratic representation can be built at provincial level

# Contie....

- Election of chairpersons
  - Elected by members of the provincial council- S 272(1) - **democratic gain**
  - Mayor is the chairperson in case of metropolitan provinces-S 269(1)(b)
- Removal of chairpersons- S 272(6)
  - resignation, disqualification, removal by the provincial council, the tribunal
  - Enactment of the relevant Act providing for the role of the independent tribunal- S 272(7)- **democratic gain**

# Internal structures

- Provincial and metropolitan councils may establish committees- S 271
  - Committees in provincial councils are to be presided by directly elected officials- S 268(1)(h)- **democratic gain**
  - Committees in metropolitan council are to be chaired by persons appointed in terms of **269(1)(h)**- such a provision does not exists in the Constitution
  - Rather, committees should be chaired by mayors and chairpersons or their deputies- S 269(1)(f)

# Administrative arm

- An Act of Parliament to provide for the establishment, structure and staff of provincial and metropolitan councils- S 270(2)
  - Two options
  - 1. Secondment of staff from the national government to provincial governments?
  - 2. Giving provincial and metropolitan councils power over personnel establishment
  - Option 2- a government has power over its administrative arm

# Establishment and abolition of local authorities

- While recognising the role of local authorities, the Constitution does not provide for the manner in which each local authority is to be established-  
See S 5, S 274 and S 275
  - Who is involved?, What criteria is used?
  - Role of citizens? Rationale for independent bodies
  - Colonial tripartite (now dual) system of local government?

# Composition of councils

- Directly elected councillors- S 265(2)
  - No room for appointed persons
  - **Democratic gain** but effective representation is required
- Qualifications of councillors
  - No educational qualifications- in the 2013 Constitution
  - Impact on **quality of councillors**, therefore of councils?
  - Prescribe minimum level of education

# Disciplinary procedures

- Develop a national code of conduct for councillors
  - Enforced by the public
  - Enforced by the national government.
- Suspension and dismissal
  - Necessary if justifiable on clearly written rules + Respect for local democracy
  - Role of independent body in terms of S 278 applauded- **democratic gain**

# Committees of the council

- Local authorities now have ‘all’ the powers necessary to govern- S 276(1)
  - This arguably includes the power to set up committees
    - Discretion to set up committees
    - Variation in nature of committees between urban and rural local authorities justifiable or its just a ‘colonial legacy’?
    - National framework for the establishment and responsibilities of committees is vital
- Supervise

# Administrative arm

- Important arm of implementing policies
  - The administrative arm of a local authority should be accountable to the council- **Role of the Local Government Board**
  - Assign to local authorities powers over personnel issues, including appointment of senior officials- **'all' the powers necessary to govern- S 276(1)**
  - Establish a national framework comprising minimum level of qualifications and experience required for recruitment + code of conduct- **Supervise**

# The institution of traditional leadership

- Important institution in rural local governance
- Role recognised in chapter 15
  - Clarification of **jurisdictions** and **competencies** between traditional leaders and rural local authorities
  - Role in council
  - Relationship with councillors-  
**incomparable remuneration packages** between councillors and chiefs?

# Way forward

- New Constitution has laid the necessary foundation and provided us with an opportunity to develop a strong and responsive system of local government
  - The national government (including Parliament) is in control and will determine the outcome. (but citizens have a stake in this)
  - Lets make use of this opportunity to develop the ‘right’ kind of legislation, institutions and relationships

# Thank You

[tchigwata@uwc.ac.za](mailto:tchigwata@uwc.ac.za)

