

## CHAPTER 14

### PROVINCIAL AND LOCAL GOVERNMENT

#### PREAMBLE

*Whereas it is desirable to ensure:*

*(a) The preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism;*

*(b) The democratic participation in government by all citizens and communities of Zimbabwe; and*

*(c) The equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas;*

*There must be devolution of power and responsibilities to lower tiers of government in Zimbabwe.*

#### PART 1

#### PRELIMINARY

##### **264 Devolution of governmental powers and responsibilities**

(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.

(2) The objectives of the devolution of governmental powers and responsibilities to provincial and metropolitan councils and local authorities are—

(a) To give powers of local governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them;

(b) To promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole;

(c) To preserve and foster the peace, national unity and indivisibility of Zimbabwe;

(d) To recognise the right of communities to manage their own affairs and to further their development;

(e) To ensure the equitable sharing of local and national resources; and

(f) To transfer responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.

##### **265 General principles of provincial and local government**

(1) Provincial and metropolitan councils and local authorities must, within their spheres—

(a) Ensure good governance by being effective, transparent, accountable and institutionally coherent; 121

- (b) Assume only those functions conferred on them by this Constitution or an Act of Parliament;
  - (c) Exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another tier of government;
  - (d) Co-operate with one another, in particular by—
    - (i) Informing one another of, and consulting one another on, matters of common interest;
    - (ii) Harmonising and co-ordinating their activities;
  - (e) Preserve the peace, national unity and indivisibility of Zimbabwe;
  - (f) Secure the public welfare; and
  - (g) Ensure the fair and equitable representation of people within their areas of jurisdiction.
- (2) All members of local authorities must be elected by registered voters within the areas for which the local authorities are established.
- (3) An Act of Parliament must provide appropriate mechanisms and procedures to facilitate co-ordination between central government, provincial and metropolitan councils and local authorities.

### **266 Conduct of employees of provincial and local governments**

- (1) Employees of provincial and metropolitan councils and local authorities must act in accordance with this Constitution and the law.
- (2) No employee of a provincial or metropolitan council or a local authority may, in the exercise of their functions—
  - (a) Act in a partisan manner;
  - (b) Further the interests of any political party or cause;
  - (c) Prejudice the lawful interests of any political party or cause; or
  - (d) Violate the fundamental rights or freedoms of any person.
- (3) Employees of provincial and metropolitan councils and local authorities must not be office-bearers of any political party.
- (4) An Act of Parliament must make provision to ensure the political neutrality of employees of provincial and metropolitan councils and local authorities.

## **PART 2**

### **PROVINCES AND PROVINCIAL AND METROPOLITAN COUNCILS**

#### **267 Provinces and districts of Zimbabwe**

- (1) The provinces into which Zimbabwe is divided are—
  - (a) Bulawayo Metropolitan Province;
  - (b) Harare Metropolitan Province;
  - (c) Manicaland Province;
  - (d) Mashonaland Central Province; 122

- (e) Mashonaland East Province;
- (f) Mashonaland West Province;
- (g) Masvingo Province;
- (h) Matabeleland North Province;
- (i) Matabeleland South Province; and
- (j) Midlands Province;

whose boundaries are fixed under an Act of Parliament.

(2) An Act of Parliament—

- (a) Must provide for the division of provinces into districts; and
- (b) May provide for the alteration of provincial and district boundaries;

After consultation with the Zimbabwe Electoral Commission and the people in the provinces and districts concerned.

### **268 Provincial councils**

(1) There is a provincial council for each province, except the metropolitan provinces, consisting of—

- (a) A chairperson of the council, elected in terms of section 272;
- (b) The senators elected from the province concerned;
- (c) The two senator chiefs elected from the province concerned in terms of section 120(1) (b);
- (d) The president and deputy president of the National Council of Chiefs, where their areas fall within the province concerned;
- (e) All the Members of the National Assembly whose constituencies fall within the province concerned;
- (f) The women Members of the National Assembly who are elected in terms of section 124(1) (b) from the province concerned;
- (g) The mayors and chairpersons, by whatever title they are called, of all urban and rural local authorities in the province concerned; and
- (h) Ten persons elected by a system of proportional representation referred to in subsection (3);

(2) A person is qualified to be elected to a provincial council in terms of subsection (1) (f) if he or she is qualified for election as a Member of the National Assembly.

(3) Elections to provincial councils must be conducted in accordance with the Electoral Law, which must ensure that the councillors referred to in subsection (1)(f) are elected under a party-list system of proportional representation—

- (a) which is based on the votes cast for candidates representing political parties in the province concerned in the general election for Members of the National Assembly; and
- (b) In which male and female candidates are listed alternately, every list being headed by a female candidate.

- (4) The seat of a member of a provincial council referred to in—
- (a) Paragraph (b), (c), (e) or (g) of subsection (1) becomes vacant if the member vacates his or her seat in Parliament;
  - (b) Paragraph (d) of subsection (1) becomes vacant if the member ceases to be a mayor or chairperson of a local authority in the province concerned;
  - (c) Paragraph (f) of subsection (1) becomes vacant in the circumstances set out in section 129, as if the member were a Member of Parliament.

### **269 Metropolitan councils**

- (1) For each of the metropolitan provinces there is a metropolitan council consisting of—
- (a) In the case of Bulawayo, the mayor of the City of Bulawayo, who is the chairperson of the Bulawayo Metropolitan Council;
  - (b) In the case of Harare—
    - (i) The mayor of the City of Harare, who is the chairperson of the Harare Metropolitan Council; and
    - (ii) The mayor or chairperson of the second-largest urban local authority within the province, who is the deputy chairperson of the Harare Metropolitan Council;
  - (c) All the Members of the National Assembly whose constituencies fall within the metropolitan province concerned;
  - (d) The women Members of the National Assembly who are elected in terms of section 124(1) (b) from the metropolitan province concerned;
  - (e) The Senators elected from the metropolitan province concerned; and
  - (f) The mayors and deputy mayors and the chairpersons and deputy chairpersons, by whatever title they are called, of all local authorities in the metropolitan province concerned.
- (2) The seat of a member of a council referred to in—
- (a) Paragraph (a) or (b) of subsection (1) becomes vacant if the member ceases to be mayor, deputy mayor or chairperson, as the case may be;
  - (b) Paragraph (c), (d) or (e) of subsection (1) becomes vacant if the member vacates his or her seat in Parliament;
  - (c) Paragraph (f) of subsection (1) becomes vacant if the member ceases to be a mayor, deputy mayor, chairperson or deputy chairperson, as the case may be, of a local authority in the metropolitan province concerned.

### **270 Functions of provincial and metropolitan councils**

- (1) A provincial or metropolitan council is responsible for the social and economic development of its province, including—
- (a) Planning and implementing social and economic development activities in its province;
  - (b) co-ordinating and implementing governmental programmes in its province;
  - (c) Planning and implementing measures for the conservation, improvement and management of natural resources in its province; 124

- (d) Promoting tourism in its province, and developing facilities for that purpose;
  - (e) Monitoring and evaluating the use of resources in its province; and
  - (f) Exercising any other functions, including legislative functions, that may be conferred or imposed on it by or under an Act of Parliament.
- (2) An Act of Parliament must provide for the establishment, structure and staff of provincial and metropolitan councils, and the manner in which they exercise their functions.
- (3) Members of a provincial or metropolitan council are accountable, collectively and individually, to residents of their province and the national government for the exercise of their functions.

### **271 Committees of provincial and metropolitan councils**

For the better exercise of their functions, provincial and metropolitan councils may establish committees but each such committee must be presided over by a member referred to in section 268(1)(f) or 269(1)(f), as the case may be.

### **272 Chairpersons of provincial and metropolitan councils**

- (1) At its first sitting after every general election, a provincial council must elect a chairperson from a list of at least two qualified persons submitted by—
- (a) The political party which gained the highest number of National Assembly seats in the province concerned; or
  - (b) If there is no political party such as is referred to in paragraph (a), the political party which received the highest number of votes cast in the province in that general election for Members of the National Assembly.
- (2) A person is qualified for election as the chairperson of a provincial council if he or she is qualified for election as a Member of the Senate.
- (3) The office of chairperson of a provincial council is a public office but does not form part of the Civil Service.
- (4) Before commencing his or her duties, the chairperson of a provincial council must take before the clerk of the provincial council the oaths of loyalty and office in the forms set out in the Third Schedule.
- (5) The chairperson of a provincial council may resign by announcing his or her resignation in person to the provincial council.
- (6) The chairperson of a provincial council must vacate his or her office—
- (a) On the day on which the provincial council first meets after a general election;
  - (b) If he or she becomes disqualified to be a member of the provincial council;
  - (c) If a resolution for his or her removal from office is passed by at least two-thirds of the total membership of the provincial council; or
  - (d) If he or she is removed from office by a tribunal referred to in subsection (7).
- (7) An Act of Parliament must provide for the establishment of an independent tribunal to exercise the function of removing chairpersons of provincial councils from office, but any such removal must only be on the grounds of—
- (a) inability to perform the functions of their office due to mental or physical incapacity; 125

- (b) Gross incompetence;
  - (c) Gross misconduct;
  - (d) Conviction of an offence involving dishonesty, corruption or abuse of office; or
  - (e) Wilful violation of the law, including a local authority by-law.
- (8) A chairperson of a provincial council does not vacate his or her office except in accordance with this subsection.
- (9) An Act of Parliament must provide for the election of mayors for the metropolitan provinces.

### **273 General provisions relating to provincial and metropolitan councils**

- (1) An Act of Parliament must make provision, consistent with this Chapter, for the establishment and functions of provincial and metropolitan councils and, in particular, for—
- (a) The procedures of provincial and metropolitan councils;
  - (b) The functions of chairpersons of provincial and metropolitan councils;
  - (c) The conditions of service of members of provincial and metropolitan councils; and
  - (d) The appointment, conditions of service and removal of employees of provincial and metropolitan councils.
- (2) The Electoral Law must make provision, consistent with this Chapter, for the filling of vacancies in the seats of the members of provincial councils referred to in section 268(1)(f) and in the offices of chairpersons of provincial councils, which vacancies must be filled—
- (a) By persons belonging to the same political parties as those who previously held the seats or offices; and
  - (b) Except in the case of chairpersons, by a person of the same gender as the persons who previously held the seats.

## PART 3

### LOCAL GOVERNMENT

#### **274 Urban local authorities**

- (1) There are urban local authorities to represent and manage the affairs of people in urban areas throughout Zimbabwe.
- (2) Urban local authorities are managed by councils composed of councillors elected by registered voters in the urban areas concerned and presided over by elected mayors or chairpersons, by whatever name called.
- (3) Different classes of local authorities may be established for different urban areas, and two or more different urban areas may be placed under the management of a single local authority.
- (4) The qualifications and procedure for the election of persons referred to in subsection (2) must be set out in the Electoral Law.
- (5) An Act of Parliament may confer executive powers on the mayor or chairperson of an urban local authority, but any mayor or chairperson on whom such powers are conferred must 126

Be elected directly by registered voters in the area for which the local authority has been established.

### **275 Local authorities for rural areas**

(1) There are rural local authorities, established in accordance with this section, to represent and manage the affairs of people in rural areas.

(2) An Act of Parliament must provide for—

(a) The establishment of rural local authorities;

(b) The election, by registered voters in the rural areas concerned, of councils to manage the affairs of the local authorities referred to in paragraph (a);

(c) The election of chairpersons, by whatever title they may be called, to preside over the councils referred to in paragraph (b); and

(d) The qualifications of members of the councils referred to in paragraph (b).

(3) Different classes of local authorities may be established for different rural areas, and two or more different areas may be placed under the management of a single local authority.

### **276 Functions of local authorities**

(1) Subject to this Constitution and any Act of Parliament, a local authority has the right to govern, on its own initiative, the local affairs of the people within the area for which it has been established, and has all the powers necessary for it to do so.

(2) An Act of Parliament may confer functions on local authorities, including—

(a) A power to make by-laws, regulations or rules for the effective administration of the areas for which they have been established;

(b) A power to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objects and responsibilities.

### **277 Elections to local authorities**

(1) Elections of councillors of local authorities must be held—

(a) In the case of a general election of mayors and councillors, concurrently with a general election of Members of Parliament and President;

(b) in the case of an election, other than a general election, to fill one or more casual vacancies, as soon as practicable after the vacancies have occurred.

(2) Elections of mayors and chairpersons of local authorities, other than mayors or chairpersons on whom executive powers have been conferred under section 274(5), must be held at the first sitting of the councils concerned following a general election.

(3) Except as otherwise provided in subsection (2) or an Act of Parliament, mayors, chairpersons and councillors of local authorities assume office on the ninth day after the announcement of the results of the general election in which the councillors were elected.

### **278 Tenure of seats of members of local authorities**

(1) The seat of a mayor, chairperson or councillor of a local authority becomes vacant in the circumstances set out in section 129, as if he or she were a Member of Parliament, any reference

to the Speaker or President of the Senate in section 129(1)(k) being construed as a reference to the Minister responsible for local government.

(2) An Act of Parliament must provide for the establishment of an independent tribunal to exercise the function of removing from office mayors, chairpersons and councillors, but any such removal must only be on the grounds of—

(a) Inability to perform the functions of their office due to mental or physical incapacity;

(b) Gross incompetence;

(c) Gross misconduct;

(d) Conviction of an offence involving dishonesty, corruption or abuse of office; or

(e) Wilful violation of the law, including a local authority by-law.

(3) A mayor, chairperson or councillor of a local authority does not vacate his or her seat except in accordance with this section.

### **279 Procedure of local authorities**

An Act of Parliament must provide for the procedure to be followed by councils of local authorities.