



TFCA governance & “local government”: law perspectives through a South African lens

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Introduction

- GLTFCA is a complex ‘governance system’
 - Multi-layered state governments
 - Domestic law
 - Regional law
 - International law
 - TFCA and park authorities
 - Community members
 - Stakeholders from elsewhere
 - Others?



Introduction

- Significant emphasis on ‘local communities’ in TFCA literature and practice, less so on “local authorities”
- **Still, local authorities** form part of complex governance system - serve as **nexus between bodies with power and local communities** in Zimbabwe, South Africa and Mozambique



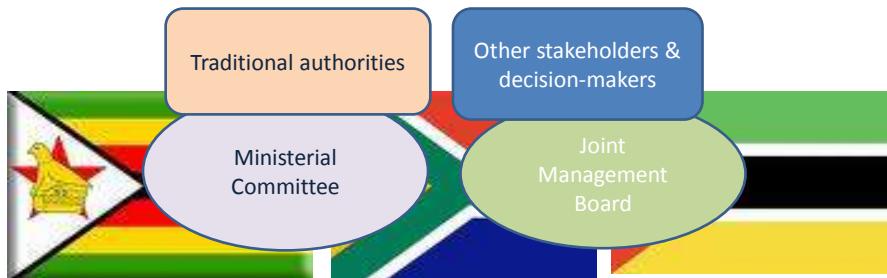
Question underpinning this presentation



Why is it important from a legal point of view to involve **local authorities** in managing and governing a TFCA and in this context, what are the use and function of **integrated development planning** and **cooperative governance** as statutory tools in South African law?

GLTFCA: a unit of ‘governance’

- Based on governance theory and literature the GLTFCA is a unit of governance
- Mix of state governments and other decision-making bodies makes this **a complex system** of governance



Defining “governance”

Governance is ultimately concerned with creating the conditions for **ordered rule** and **collective action**. The **outputs of governance are not therefore different from those of government**. It is rather a difference in **processes**. The baseline agreement is that governance refers to the development of governing styles in which **boundaries between and within public and private sectors have become blurred**. The essence of governance is its focus on governing mechanisms which do not rest on recourse to the authority and sanctions of government.

-- Stoker --

Defining “governance”

The governance concept points to the creation of a structure or an order which cannot be externally imposed but is the result of the **interaction of a multiplicity of governing and other influencing actors.**

--Kooiman and Van Vliet --

Defining “governance”

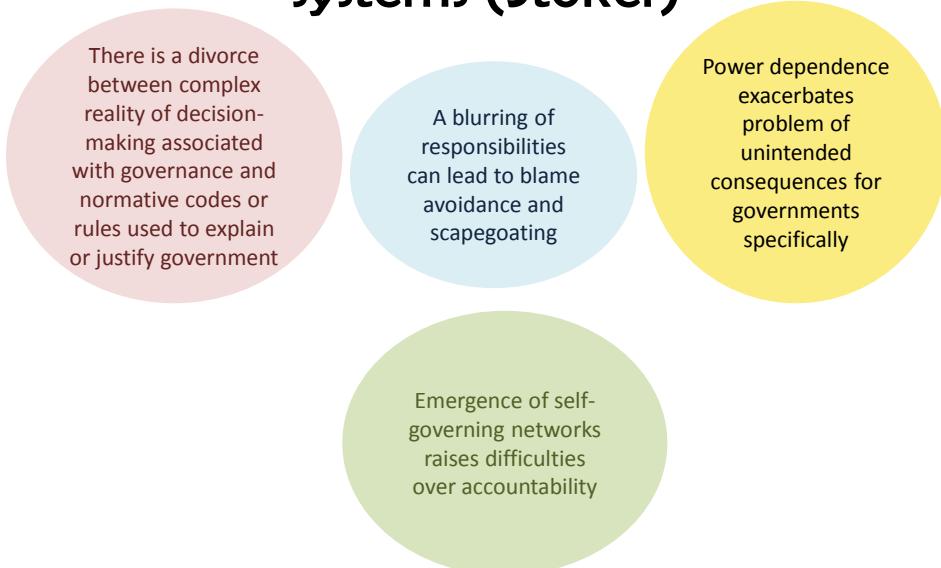
To presume the presence of governance without government is to conceive of functions that have to be performed in any viable human system ...
Among the many necessary functions, for example, are the needs wherein any system has to cope with external challenges, to prevent conflicts among its members ... to procure resources and to frame goals and policies designed to achieve them.

-- Rosenau --

Stoker's complementary features of “governance”



Challenges confronting governance systems (Stoker)



Bottom line



The GLTFCA is a system of governance that comprises of government (“the state”) and other types of governors.

“The State” is a complex notion itself comprising of different layers/spheres/levels – all of which are affected when a TFCA crosses its administrative and jurisdictional boundaries.

Local government forms part of “the State” in the GLTFCA governance system and this inevitably goes along with challenges.

Local government in strict sense exists in Zim, Moz and SA

South Africa	Mozambique	Zimbabwe
<ul style="list-style-type: none"> Semi-federal government construction Three spheres of government: autonomous yet interdependent and interrelated Entire chapter in Constitution devoted to powers, functions and objects of LG 283 municipalities (metro, local and district) Wall to wall local government in all nine provinces – include traditional leaders Significant emphasis on role in development 	<ul style="list-style-type: none"> LG comprises of community leaders appointed by a District Administrator – acts as heads of villages Can also be self-selected Distinction made in Constitution between ‘representative organs’ and ‘executive organs’ in LG Decisions of representative organs binding in their jurisdictions Executive organs must ensure compliance and implementation of programs aimed at development 	<ul style="list-style-type: none"> 8 provinces administered by a provincial commissioner appointed by the central government Local services provided by city, town and rural councils Ministry of LG charged with ensuring establishment of local authorities where necessary and local adherence to legislation Not clear whether Council of Chiefs form part of the city, town and rural councils Status, object and functions of LG not clear from Constitution

LG in conservation: legal & governance perspectives

- Role of LG in conservation widely acknowledged:
 - **UN Local Agenda 21**
 - International Council for Local Environmental Initiatives (**ICLEI**)
 - Inclusive reading of **African Charter on Democracy, Elections and Governance** – decentralisation of power and responsibility to implement policies and strategies to protect environment and achieve sustainable development
 - Supported by **African Charter on Human and Peoples' Rights** and **African Convention on the Conservation of Nature and Natural Resources**

LG in conservation: different legal & governance perspectives

- **Multilateral Treaty establishing the Great Limpopo Transfrontier Park** as well as original **Gaza-Kruger/ Moz Agreement** have as objective to establish frameworks and strategies for “local community involvement and participation”
- **Domestically (South Africa):**
 - LG co-responsible for realisation of constitutional environmental right
 - LG only one of the three spheres incurring a double environmental duty in Constitution (sections 24 and 152(1)(d))
 - Implicit link between protection of natural resources and ability to provide services

Subsidiary question arising....

If local government (x3) forms part of the complex GLTFCA governance system and if law (also soft law in some cases) recognises role of local government in conservation, what does it mean in tangible terms?

So what?

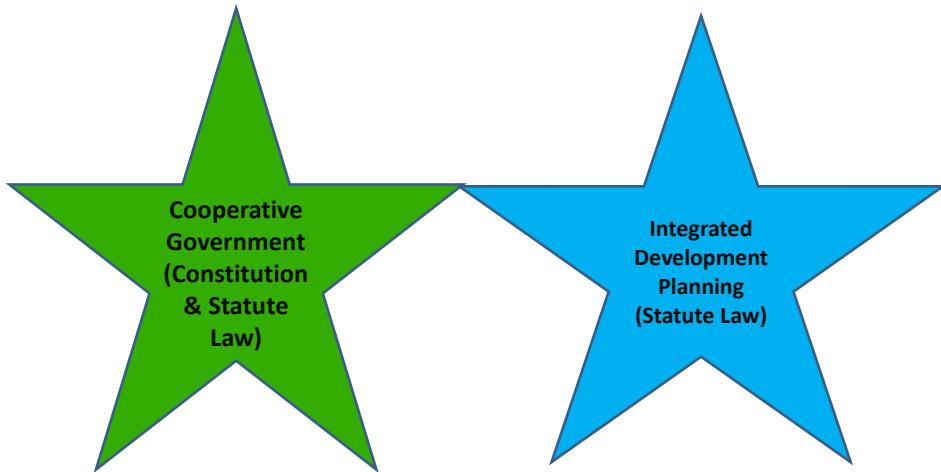


LG in the GLTFCA

- “The State” includes local authorities in all three countries
- All TFCA literature and instruments focus on importance of ‘local communities’ as role-players
- LG important nexus between local communities and other stakeholders with power but in all three countries an inextricable tie exists between LG and other spheres/levels of government (let alone other non-governmental decision-makers)
- **Calls for very strong and well-functioning relationships within ‘the state’ setup and the GLTFCA setup**



Champion governance tools in SA law



What is 'cooperative government'?



Cooperative government

- The structures of the state (authorities with power) are designed in a way to facilitate cooperation among role-players – both politicians and officials
- Plain language: a government in which ‘the organs of state’ work together to achieve communal objectives
- Antonym for a fragmented government system
 - Institutional fragmentation
 - Legislative fragmentation
 - Inter-sectoral fragmentation
 - A fragmented compliance and enforcement regime
 - Silo-based and issue specific regulation
 - Institutional confusion and overlap

Constitution of SA

- **Section 41 Principles of co-operative government and intergovernmental relations**
 - (1) All spheres of government and all organs of state within each sphere must-
 - *(a) preserve the peace, national unity and the indivisibility of the Republic;*
 - *(b) secure the well-being of the people of the Republic;*
 - *(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;*
 - *(d) be loyal to the Constitution, the Republic and its people;*

Constitution of SA ...

- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
- (f) not assume any power or function except those conferred on them in terms of the Constitution;
- (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and

Constitution of SA

- (h) co-operate with one another in mutual trust and good faith by-
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.

Constitution of SA

- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.

Intergovernmental Relations Framework Act (2005)

- Statutory refinement of the principles in Constitution
- Provision made for:
 - Intergovernmental structures in all three spheres of government
 - Conduct of intergovernmental relations
 - Settlement of intergovernmental disputes



Integrated Development Plans (IDPs)

- SA's response to the UN's Local Agenda 21 is a system of integrated development planning
- Statutorily entrenched in the Local Government: Municipal Systems Act (2000)
- Objective is to integrate the laws, policies and programmes aimed at development and the realisation of socio-economic rights of different organs of state
- Act makes it clear that the IDP system underpins cooperative government
- Content and adoption processes clearly outlined

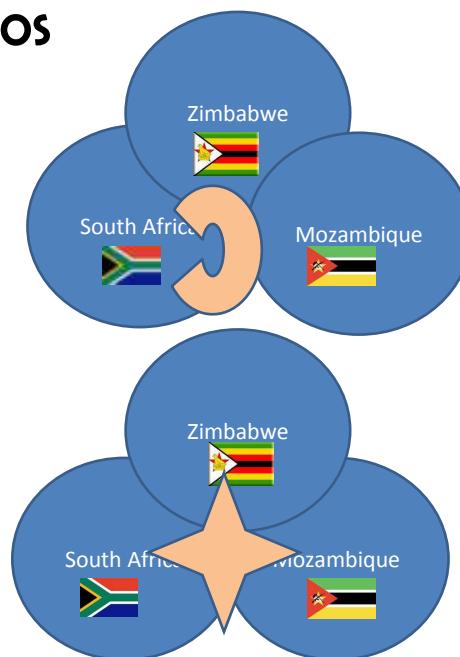
Integrated Development Plans (IDPs)

- Broader objectives of the GLTFCFA and GLTFCP are mirror images of that set by IDPs in the domestic context as far as it concerns social, economic, cultural and environmental factors in development
- Tool to steer collective action towards collective goals and to avoid overlap, duplication and blurred responsibilities
- Short term, medium term and long term targets
- Align resources and capacity with implementation
- Revised every five years

Drawing some links

- Local government structures and powers differ in SA, Mozambique and Zimbabwe
- Equaliser in the GLTFCA context – emphasis on ‘local communities’ and on role of local government in development
- Possible to draw up a generic framework for the involvement of the ‘lowest level’ of institutionalised government in the GLTFCA governance system – need not encroach on state sovereignty or structures
- SA’s principles for cooperative government and IDP system can be usefully employed in strengthening local government involvement in GLTFCA governance
- Meaning of tools can be seen by way of two scenarios

2 scenarios



Status Quo?



Mutale Local Municipality (SA side)

- One of four local municipalities comprising Vhembe District Municipality
- Almost entirely rural community
- Situated in far north eastern corner of the District
- Serves a population of app. 131 781 spread over 150 villages
- Total land cover is 2375, 78212 Hectares
- Kruger National Park forms eastern boundary of Mutale Local Municipality, with Limpopo River forming the north-eastern boundary
- Shares borders with Musina Local Municipality and the Republic of Zimbabwe on the North, the Republic of Mozambique on the East, Makhado Local Municipality to the west and Thulamela Local Municipality to the south



Mutale Local Municipality ...

- Does not seem to be part of any formal structures for cooperative government in the TFCPA context
- Existing IDP (2011) makes no mention at all of the GLTFCA or GLTCP
- No Environmental Management Plan exists
- No Disaster Management Plan exists
- No planning or cooperation in relation to the GLTFCA
- IDP and cooperative government fails on SA side ?
- IDP and cooperative government fails in the bigger GLTFCA context ?

Vhembe Municipality (SA Side)

- Located in Northern part of Limpopo Province and shares borders with Capricorn, Mopani District municipalities in the eastern, and western, directions
- Sharing of borders extends to Zimbabwe and Botswana in the North West, and Mozambique in the south east through the Kruger National Park



Vhembe District Municipality ...

- Does not seem to be part of any formal structures for cooperative government in the TFCPA context although several structures for cooperative government otherwise such as district forums
- Existing IDP (2011) merely mentions the GLTFCA as an 'opportunity' for the municipality
- Challenges listed in IDP include 'access to land'; 'resource management' and 'droughts and floods'
- No Environmental Management Plan
- No Disaster Management Plan
- No planning or cooperation in relation to the GLTFCA
- IDP and cooperative government fails on SA side ?
- IDP and cooperative government fails in the bigger GLTFCA context ?

Optimising the GLTCA as 'unit of governance'

- LG has a role to play in GLTCA – voice of community, part of the state and by law part of the governance system of the area
- LG also embraces traditional authorities (NB!)
- LG can arguably make a positive contribution – 2 scenarios:
 - SA side of GLTFCA (limited benefit for the greater good)
 - To entire GLTFCA (through a structure of cooperative GOVERNANCE (not only cooperative GOVERNMENT) and effective design and implementation of IDPs

Optimising the GLTCA as ‘unit of governance’

- Proposal: **First get Scenario 1 right then use as laboratory for extension to the broader GLTFCA**
- Success areas in SA to be investigated
- Success areas abroad to be investigated – Chesapeake Bay ?
- Start designing a set of cooperative governance principles suitable for the GLTFCA
- Start designing an integrated development plan framework in line with that which SA has for entire GLTFCA - community involvement, alignment with objectives with park etc



Thank you....