



# Local government reform in Zimbabwe

A policy dialogue

Edited by Jaap de Visser, Nico Steytler and Naison Machingauta



State, Peace and Human Security Studies

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Community Law Centre  
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The State, Peace and Human Security Programme of the Community Law Centre (University of the Western Cape) conducts research and provides policy advice on state efficiency, human security and peace building in Africa. It focuses on the role of decentralisation and federalism in enhancing the efficiency of African states, in building sustainable peace in post-conflict regions and improving human security on the continent.

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# Foreword

This publication is the result of a collaborative research project of South African and Zimbabwean academics and practitioners active in the field of local government. On 3-4 November 2009 the Community Law Centre hosted a seminar entitled “Policy Dialogue on the Future of Local Government in Zimbabwe”. A diverse spectrum of local government practitioners was assembled to discuss issues related to local government in Zimbabwe.

The seminar was officially opened by the Minister of Local Government, Rural and Urban Development, Hon. Ignatius Chombo MP whose opening speech is included in this book. The seminar was structured around six critical themes relating to local government, namely socio-economic transformation, local government institutions and elections, local government financing, traditional authorities, local government functions and supervision of local government. Six esteemed authors from Zimbabwe prepared and delivered position papers on the above subject matters against the background of comparative comments from South African academics. Their contributions have been consolidated in this book.

In the opening paper, **Kudzai Chatiza** describes the historical context of the development of local government in Zimbabwe and situates the current debate for local autonomy within this context. He traces the historical origins of local institutions - the establishment of the first local government authority in 1891 and the subsequent racial policies and institutions. He shows how the liberation movements mobilised citizens against local government institutions and programmes which symbolised colonial oppression. After independence and specifically after 1999, Chatiza argues that the democratisation processes were at first successful at local government level where independent and opposition candidates were elected as councillors. However, the susceptibility of local government to be captured by opposition forces, has led the central government to limit its powers. This, he argues has derailed local government consolidation as a functioning democratic institution, destroying in the process local government identity and capacity. This has resulted, Chatiza points out, in civil society organisations creating parallel structures which often out compete local authorities in the provision of services. Given this socio-political context, Chatiza explains how the argument for the constitutionalisation of

local government in the current constitutional reform processes is aimed to deal decisively with local government's subjugation to the form and political orientation of the central government. Constitutionalisation is thus seen as critical to entrenching local government as an administrative and political space for citizens.

**Stephen Chakaipa's** paper on local government institutions and elections gives a comprehensive overview of the various institutions involved in the shaping and operation of local governments. It also further adds a detailed picture of local government elections. The local government institutions include the democratically elected institutions in urban and rural areas. In the latter areas they are complemented by the traditional authorities, a topic that is further explored in John Makumbe's paper. Then there are the non-elected provincial councils that serve merely as administrative units of the central government. There are also an array of central government institutions involved in the regulation and supervision of local governments, namely, the Local Government Board, the Local Government ministry and the Local Government Portfolio Committee of Parliament. The third set of institutions that are discussed are those that support local governance, including local government associations, the Municipal Development Partnership (MDP), citizens/residents associations, NGOs (including those dealing with rural local government such as CAMPFIRE) and tertiary institutions providing training. Chakaipa concludes by highlighting a number of challenges. Municipalities face serious financial difficulties and will have to reduce their budgets and tariffs if they wish to get the cooperation of the residents in payment service fees. With the abolition of the executive mayor, it would appear that tensions exist between the now more ceremonial mayor and the powerful town clerk. Although there are elaborate planning systems, the links between the various plans and the budget are weak. There is an overriding influence of national government over local affairs. The national ministry has extensive powers over day-to-day decisionmaking. Chakaipa, then, recommends the revision of the legal framework for local government by constitutionalising the principle of decentralisation, the objectives of local government, the competences of local government, and the funding of local government.

Given Zimbabwe's overall perilous financial state, local governments have not been spared. In his chapter **Boniface Coutinho** outlines the sources of local government revenue as well as how almost all local authorities have faced insurmountable challenges in raising enough funding to ensure effective service delivery ever since independence. He shows that most of the challenges revolve around the failure to ensure effective financial management systems resulting in levying sub-economic tariffs, the failure to ensure cost recovery on essential services, the failure to recover debts in a hyper-inflation environment, and the lack of skilled staff. The most common sources of revenue are rates on property and land, service charges and commercial activities that local authorities may venture on. Although rates constitute between 20 and 30 percent of total revenue, councils have not yet adapted to the use of multi-currencies and demonetisation of the Zimbabwean dollar in February 2009. Most municipalities also receive direct grants from the central government mostly in the form of support for services such as health and education through salary grants. Capital expenditure is financed from either borrowings from the central government or from internally generated revenues. Coutinho points to the consequences of the poor

state of local finances. There is poor service delivery due to a lack of funding. Financial management is also wanting with council's financial affairs not being audited for years. The weak internal controls have also resulted in many cases of fraud, theft and abuse of council assets. He concludes with a number of proposals for policy and law reform. He suggests the legal requirement that councils should report in terms of international public sector financial reporting standards. The annual budget should also be used as a management tool in order to control the use of limited resources. Finally, there should be constitutional provisions detailing how nationally raised revenue is shared with local authorities.

In many African countries, the position of traditional authority vis-à-vis local government is contentious. The debate seems to vacillate between two positions. Where traditional authority is accepted as a necessary limitation on local democracy, it often results in the appointment of traditional leaders onto local councils or the allocation of governance authority to traditional structures. In countries, where local democracy reigns fully and in an unmitigated fashion, traditional authorities are often relegated to advisory functions and the performance of customary roles. In his contribution to this book, **John Makumbe** examines the position of traditional authorities in the local government system of Zimbabwe. He expresses serious reservations with regard to the real impact of traditional structures such as the Council of Chiefs and the Provincial Assemblies. He also criticises the constitutional provision that the Council of Chiefs elects eighteen of its members onto the Senate. On the whole, he concludes that traditional authorities are allocated very limited service delivery functions in Zimbabwe and he points towards the interest of successive regimes to secure the support of traditional authorities. In fact, Makumbe paints a disturbing picture of the ZANU-PF strategy to ensure that support during the recent elections. Looking towards the future, he discusses the broad options for dealing with the relationship between the two institutions, varying from non-regulated co-existence to a single harmonised system, combining both local government and traditional institutions. He argues that, ultimately, traditional authorities should not play any role in local governance and that their functions should be limited to functions related to custom and the rendering of advice to elected governments. Furthermore, he suggests the adoption of a regulated parallel structure whereby politics and traditional leadership are strictly separate.

**Shingiray Mushamba** offers a comprehensive outline of the powers and functions of local authorities in Zimbabwe. The legal framework, including the allocation of powers is split between a framework for rural councils and a framework for urban council. However, the outline indicates that both urban and rural local authorities are expected to perform critical functions in planning, environment, infrastructure and public services such as education, water and sanitation. He argues that the legal framework forces local authorities to operate according to a strict *ultra vires* doctrine and points towards the 'omnipresence' of central government in the actual operational discharge of local authority functions. In that context, he also discusses past and present centralisation trends in education, water and sanitation. Mushamba makes important contributions to the debate about the future of local government in Zimbabwe. He unpacks the divergent views about the rationale for constitutionalisation of local government and reflects on the contention with regard



to the role of provincial governments. He advocates for uniform legislation that provides greater clarity surrounding local government powers and more funding sources for local authorities.

**Naison Machingauta** reviews the practice of supervision of local government against the question as to whether the correct balance has been struck between necessary oversight and local discretion. An overview is presented of central government's supervision powers, ranging from investigations and direct intervention into specific decisions to the takeover of local authorities. Clearly, the structure and practice of supervision of local government in Zimbabwe is a function of Zimbabwe's current legal context in which local government is a creature of statute and exercises delegated authority only. However, looking into the future, the question is whether such tight strictures on the functioning of local authorities will enable those local authorities to release their potential to facilitate development and sustain democracy. The scope for innovation and responsiveness to local needs is directly related to the measure of local discretion offered by the legal framework. In addition, he contends that the supervisory mechanisms grant an unfettered discretion to the central government and he points towards instances where this discretion was abused. In that context, Mr. Machingauta argues that a different balance should be struck between the need for central oversight and preserving the value of local discretion.

It is hoped that these contributions, eloquently rendered by our Zimbabwean colleagues, will provide useful material in the debate surrounding the review of the Zimbabwean Constitution. It is our belief that this Constitutional Review provides an excellent opportunity to seriously reflect on, and firmly guide, the future direction of the sphere of government that should sustain peace, facilitate development and deliver services for all Zimbabweans.

This project would never have been possible without the cooperation of the contributors of papers who prepared the chapters and diligently responded to our comments. We are also very grateful for the financial support that was provided for this project by the Interchurch Organisation for Development Cooperation, the Austrian Development Cooperation (through the Gemeinnuetzige Entwicklungszusammenarbeit GmbH) and the Ford Foundation. We furthermore wish to acknowledge Solly Leeman who assisted with the copy-editing, Hirsh Jain who provided further editorial assistance and our colleagues Phindile Ntliziywana and Annette May, for their support in this project. Finally, we thank Fiona Adams of Pagearts for taking care of the layout and printing of this book.

*Cape Town, July 2010*  
*Jaap de Visser*  
*Nico Steytler*  
*Naison Machingauta*

# Speech by the Honourable Minister of Local Government, Rural and Urban Development

*Dr I M C Chombo (MP)\**

**Honourable members of the Government Portfolio Committee,**

- **President of the Chiefs Council**
- **Our guests from Western Cape University,**
- **ZILGA Representative,**
- **Resource persons,**
- **Combined Harare Residents Association,**
- **Ladies and gentlemen**

I wish to heartily welcome you to this critical policy dialogue forum which focuses on the future of local Government in Zimbabwe. I extend a special welcome to our colleagues from the Community Law Centre at the University of Western Cape in the Republic of South Africa. Their diverse experience and insight will undoubtedly enrich our theory and practice in Zimbabwe.

\* Edited version of the speech at the official opening of the Policy Dialogue on the Future of Local Government in Zimbabwe, held at Holiday Inn, Harare, 3 November 2009.

As we seek to discuss the future of Local Government in Zimbabwe it is perhaps expedient for me to share with you in summary from some of the critical tenets of Zimbabwean Local Government system which admittedly evolved over time, since the pre-colonial era.

The Local Government system in Zimbabwe which is a Unitary State, is predicated on a decentralised mode of governance premised on the virtues of the principle of subsidiarity. However, the extent to which the system is decentralised is subject to debate as decentralisation is a process, not an event. In terms of the legal framework, the following Acts define the modus operandi of the Local Government sector.

- (a) Provincial Councils and Administration Act,
- (b) The Regional Town and Country Planning Act,
- (c) The Urban Council Act,
- (d) The Rural District Councils Act, and
- (e) The Traditional Leaders Act.

The aforecited legal instruments introduced and some of them subsequently amended in the post independence era, empower the Local Government institutions to carry out their mandate. The Acts among other issues define the mandate of Local Governments and in the process define the legal and functional relationships between and among the various actors in Local government, who in essence are the key enablers to development, to the extent that same have to proffer safe landing to all development initiatives.

Key among the local institutions are the Rural District Councils and Urban Councils charged with the mandate to deliver service, as well as promote general development in their areas. In the context of decentralisation, local authorities bring communities close to the decision making process, on local development initiatives, thereby inducing the indispensable sense of ownership and hence sustainability of such development endeavours. These local communities ought to participate in the design, programming, implementation, monitoring and evaluation of sub-national development undertakings.

However, the nature and extent of their participation is a matter that discussants can interrogate.

Central Government must of necessity nurture a conducive environment that enables local authorities to optimally tap into the local resources, material, capital and human. Furthermore, central government should deploy such resources at its disposal to bolster local authorities; provided there is an enabling fiscal framework.

Without pre-empting the dialogue deliberations, it is imperative that we continuously examine the appropriateness of our local government legislative framework and administrative practices, insofar as these impact on the efficient and effective functionality of institutions of delivery. We need to reengineer our councils and indeed other local institutions in a manner that empowers same to discharge their mandate in the ever changing environment. There is merit in motivating a process that seeks to –

- (a) yield a legislative framework that is internally coherent and consistent,
- (b) generate a robust and responsive management architecture,

- (c) enhance democratic participation of the public in the governance and development arena so as engender transparency and accountability,
- (d) proffer and operationalise fiscal policy framework that anchors the local authorities in terms of funding,
- (e) create a visible operational chemistry among Government, traditional leadership institutions and local authorities,
- (f) unlock the potential resident in the local government sector,
- (g) enhance the profile of local government through constitutionalisation and definition of the benefits attendant thereto,
- (h) develop the capacity of various social transformations in order to inform their participation in the local government arena, and
- (i) create space for collaborative effort between the public, private sectors and civil society.

As we acknowledge the environmental constraints that beset councils, it is important to note that the current macro-economic dispensation has made it very difficult for the local government sector in Zimbabwe to function full throttle as evidenced by the general decline of municipal service delivery and capital development.

I am happy that currently there is a global trend towards mainstreaming the local government agenda, a development which Zimbabwe unreservedly embraces.

At continental level, events point to the imperative of enhancing the local government faculty. Indeed the launch of the United Cities and Local Government of Africa (UCLGA) is an eloquent testimony to this commitment. The United Cities and Local Government of Africa is an organisation that gives effect to a resolution of the Third African Cities Summit to establish a Pan African Local Government organization. UCLGA was launched in May 2005 in Pretoria, South Africa. One of the objectives of the organisation is to become an organ of the African Union (AU). To this end, a memorandum was delivered to the Chairperson of the AU in November 2005 calling for the AU's endorsement of the principle of establishing local government, legislatively or constitutionally, as a distinct but subsidiary sphere of government. UCLGA also seeks the endorsement of the AU for the development and adoption of an African Charter, charting the devolution of appropriate authority, responsibility and accountability to local governments of the continent.

Decentralisation and local government have been on the agenda of the Southern African Development community since 1999. In that year, the SADC Local Government Ministers Forum was launched, the objectives of which included regional cooperation and information sharing, encouraging the adoption of constitutional frameworks that promote effective local governance, infrastructure investment and sustainable service delivery, and the incorporation of local government as a sector into SADC's formal structures. At the Ministers' meeting in November 2003, important resolutions were adopted as well as a high level action plan. Key resolutions encouraged member states to enhance local government institutional systems through, inter alia, the promotion of participatory development and democracy, the formulation of integrated development planning methodologies, the promotion of people-centred local economic development, the clarification of the role

of traditional authorities, and the decentralisation of powers, functions and resources to the different levels of government. In implementing the high level action plan, local government is now a formal sector in SADC and recently a SADC Local Government Desk was opened. Some of the tasks that will follow, include the development of a SADC Charter of Local Self-Government and the strengthening of organised local government.

Inevitably much of the work and policy directions of SADC will be informed by the fast developing practice of local government in member states. The reform of local government throughout the SADC region is premised on the promotion of decentralisation and “autonomy”, seeing local governments as a powerful instrument of service delivery and making local government an important agent of stimulating development. A recent study established the following stumbling blocks vis-a-vis attainment of effective decentralisation—

- (a) the relationship between central and local government often remains inadequately defined. While the language of the decentralisation policies alludes to real devolution of powers, in law and practice, local authorities largely remain local agents of the central government without much space to manoeuvre,
- (b) lack of resources and absence of an adequate and sustainable funding base weaken local authorities as organs of the state,
- (c) while the tax base of local government remains small, central government transfers remain the main source of income, particularly for development projects,
- (d) human and material capacity constraints severely impede local authorities in performing their development role, and
- (e) central and local governments do not necessarily enjoy a shared vision.

This seminar presents an ideal forum for exchange of ideas that characterise the neighbourly relationship between Zimbabwe and South Africa. In many respects, our institutions of local government stem from a common history of colonial local institutions. In addition, both countries work in the same common law tradition and are transforming this tradition with their respective constitutions.

Furthermore, our countries have a number of challenges in common. Firstly, the urban/rural divide is a particularly important theme, linked to the difficulty of the creation of self-sustaining local authorities in rural areas. Secondly, we both face critical skills shortages in the public sector. Thirdly, harmonising traditional leadership and democratically elected leadership remains high on the agenda in both countries. Fourthly, the ability of our cities to absorb and deal with challenges resulting from rapid urbanisation is an area of concern.

This seminar will address six critical themes surrounding local government, namely local government functions, local government elections and institutions, supervision of local government, local government financing and the role of traditional authorities.

I wish you well in your deliberations.

# Abstracts

## **Chapter 1: Can local government steer socio-economic transformation in Zimbabwe?**

*Kudzai Chatiza*

Zimbabwe's local government has historically had a subservient role to central government. The current Constitution making process presents an opportunity to address this historical underperformance of local government in terms of transforming and democratising development processes and relations. Local government weaknesses, to varying degrees, lie not only in the law but also in socio-political and economic capacity epitomised in a governance culture limiting local government's developmental potential. Any law reform should not exclusively focus on empowering local government in relation to the other members of the family of public institutions without addressing citizens' empowerment and issues of horizontal accountability.

## **Chapter 2 Local government institutions and elections**

*Stephen Chakaipa*

This contribution begins by defining local government, emphasising its ability to better articulate and respond to local needs. It proceeds by examining the composition and functions of urban local government and rural local government. The paper continues by examining the relationship between traditional leaders and local governance. In addition, it evaluates the national institutions that both support and regulate local government. The paper proceeds by describing the procedures involved in local government elections, as well as their results. It concludes by examining the operational challenges local government faces, arguing that a combination of legislative reforms, capacity building, institutional strengthening, and injection of financial resources will help overcome these obstacles.

### **Chapter 3: Sources of local government financing**

*Boniface Coutinho*

Since independence in 1980, almost all local authorities have been facing insurmountable challenges in raising enough funding to ensure effective service delivery. These challenges revolve around inadequate financial management systems, ineffective cost recovery on essential services, insufficient debt recovery amidst hyperinflation, the lack of skilled and qualified staff due to skills flight to the private sector and to the diaspora, and generally poor financial accounting systems. Law reform interventions, such as requiring that financial reporting be in terms of International Financial Reporting Standards and making ratepayers an important participant in formulating the budget are critical to solving some of these problems. In addition, enhancing the accountability regimes between councils and the relevant Minister and Parliament will help achieve these ends as well.

### **Chapter 4: Local authorities and traditional leadership**

*John Makumbe*

Of the various levels of traditional leaders in Zimbabwe, traditional chiefs are among the most common. Chiefs elect from among themselves representatives to serve on the national Council of Chiefs, which represents the interests of the people that live on communal land to the Minister of Local Government. In addition, chiefs often sit on Rural District Councils, which govern the allocation of communal land. Because they are appointed by the President, are paid monthly allowances by the state, and because of threats made by stage agents, traditional chiefs have indiscriminately supported Zanu-PF. Because they have long been used as political instruments by incumbent ruling parties for their own ends, traditional chiefs ought not to play a role in local governance. Instead, a parallel structure for chiefs ought to be created, with one branch taking responsibility for national issues and the other providing the democratic structures of governance with advice on traditional and cultural matters.

### **Chapter 5: The powers and functions of local government authorities**

*Shingirayi Mushamba*

This paper explores the most important powers, roles and functions of local governments in Zimbabwe. In Zimbabwe, the main institutions at this level are Urban Councils (UCs) and Rural District Councils (RDCs). The paper identifies the sources of these powers and assesses the level of discretion in exercising such powers, that is, the ability of local governments to exercise their powers without central government intervention. In addition, the paper assesses the extent of stakeholder agreement on the mandate and broad functions of local governments. Stakeholders are defined as those supervising or regulating, working in, for, with and expecting benefits from, local government, affected by and affecting local government activities, and those living in local government areas. The paper concludes by discussing policy and legislative issues that deserve review, such as constitutionalising local government and ensuring adequate revenue resources for local governments.

## Chapter 6: Supervision of local government

*Naison Machingauta*

This contribution begins by describing the hierarchical nature of the relationship between central and local government in Zimbabwe. It suggests that this hierarchical character allows central government to supervise local government with a view to bringing it into harmony with national policies. One means by which the central government supervises local government is monitoring. Monitoring relates to the establishment of mechanisms aimed at continuously looking into the general performance of local government and to see whether there is compliance with the relevant legislation. It is an ongoing exercise done by national government, through the Minister, to test, now and again, local government compliance with legislation and national government policies. In addition, the central government engages in intervention, often issuing ministerial directives, making or adopting by-laws on behalf of councils, overturning council resolutions and decisions and dismissing councillors. The paper then argues that there is too much supervision of local authorities by the central government. It proposes that a system of checks and balances be put in place to guard against the excessive use of the power of oversight.





# Can local government steer socio-economic transformation in Zimbabwe?

Analysing historical trends and gazing into the future

*Kudzai Chatiza\**

## 1. Introduction

In both pre and post-independence Zimbabwe local government has been a terrain for sub-national governance conflicts and innovations. The question posed by this paper engages with whether those processes of conflict and innovation have generated lessons that present-day local governments, key stakeholders, and citizens in general, can draw upon to consolidate the role that local government can play in Zimbabwe's development.

\* Kudzai Chatiza is a development researcher and consultant in Harare. His work is on natural resources management. Dr Chatiza holds a Bsc and Msc in Rural and Urban Planning from the University of Zimbabwe and a PhD in Development Studies from Swansea University, UK. His research interest is in local governance, housing, livelihoods and institutional-organisational development.

Local government has at the same time been an extension of central state power and also a means to organise or steer sub-national development. Before 1980 the latter role of local government found more expression and generated real economic development outcomes in European areas while the former (penetration of state power) was evident in its blunt form in African Native areas. Africans' experience of such blunt state power inspired, among other things, the liberation struggle, with local government being seen as a symbol of colonial maladministration. Given such a history it is critical to ask whether, at present, local government can initiate alternative models for Zimbabwe's social, political and economic development. What kind of state-citizen and citizen-citizen relations should local government steer? How should the appropriation of citizen agency by political parties and state institutions be dealt with in local government? Can local governments mobilise relevant local traditions of participation in their steering of local development processes? What changes need to be made regarding the 'ownership structure and culture' of local government in Zimbabwe?

The above questions are raised as a contribution to a search for post-crisis<sup>1</sup> local government legitimacy regarding the generation and distribution of socio-economic benefits and provision of basic services with community participation. The notion of transformation used in the 'title question' refers to radical alteration of state-citizen and citizen-citizen relations at sub-national level aimed at enabling the meeting of local needs (welfare, social, economic and physical infrastructure, services and employment), and thus improving living conditions or quality of life. The pursuit of improved living conditions is what I define in this paper as development. Where local governments steer such an agenda (within and across their areas of jurisdiction) they become developmental. We return to these issues in later parts of the paper but suffice it to mention that the discussion on law and institutional reform in local government is approached from the perspective of creating developmental local government.

In many ways some of the questions in paragraph one and the notions of transformation and development above have informed post-1980 local government reforms. I note and elaborate on the main changes as follows: the one local government Ministry; the one-city policy; amalgamation and de-racialisation of rural local government; application of universal adult suffrage; and the harmonisation of traditional and elected local government structures. I will return to these in the body of the paper to highlight policy and legislative progression (change and continuity) from the pre-1980 period. Suffice it, however, to note that the profile of local government as rural and urban development facilitator has been lifted further through implementation of a decentralisation policy from the mid-1980s. Economic and political liberalisation processes in the 1990s gave the policy further impetus.

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1 From the late 1990s Zimbabwe has been in the midst of a social, economic and political crisis. The beginnings of the end of the crisis were marked by the March 2008 harmonised elections which ZANU-PF effectively lost and thus heralded possibilities of real change. Additional signposts towards a post-crisis reality include the signing of a global political agreement (GPA) in September 2008, and the formation of the shaky Government of National Unity in February 2009.

Sub-national local governance spaces have allowed interaction amongst development organisations within and outside the public sector, viz. state-citizen and citizen-citizen relations. Before and after independence, a number of non-state development organisations have interacted to articulate and implement development activities. Such interaction has acted to shape, and in turn be shaped by, the nature of local government structures and capacities. Nationalist activities before independence and democratisation forces after independence have essentially been nurtured by civil society organisations of varying shapes and sizes. For instance, nationalists mobilised citizens against local government institutions and programmes, which they saw as symbols of colonial oppression.

After independence, and specifically since 1999, Zimbabwean democratising processes were initially successful at the local government level where independent and opposition candidates were elected as councillors. From the perspective of central government (pre and post-1980) local government's susceptibility to be captured by oppositional forces appears to have informed limiting of its power. As noted by De Valk and Wekwete,<sup>2</sup> changes in the nature of the state influenced the form and functions of local government. In this paper, I highlight some of the ways in which central government's attitude towards local government has been shaped by struggles waged by citizens for space and identity within local government. In doing so, I connect relevant arguments to the call for constitutionalising local government, especially the need to protect it as a sphere in which citizens can participate in processes affecting their lives. An argument is developed in this paper that the crisis of legitimacy on the part of central government (before and after 1980) derailed local government consolidation through fracturing socio-political relations, destroying local government identity and capacity.

## 2. History of local government and highlights of law reform

The history of formal local government in Zimbabwe is generally traced from the arrival of the British South Africa Company (BSAC) in 1890. However, some analysts observe that local governance institutions that existed before 1890 deserve recognition and classification as forms of local government.<sup>3</sup> The two points of view regarding when to begin the story of local government in Zimbabwe are not necessarily opposed. They provide insights into the very conception of local government in the country from both a central and a local perspective. Changes in policy and law are a useful framework to use in tracing the history of local government. This is because these capture the essence, structures and functions of local government.

The first formally established local authority was the Salisbury Sanitary Board in 1891.<sup>4</sup> The necessary legal instrument was, however, only enacted in 1894 (Ordinance 2) followed by the first Municipal Law of 1897. Hlatshwayo interprets the time lag or delay between setting up the Salisbury Sanitary Board and Ordinance 2 as an indication that local

<sup>2</sup> De Valk and Wekwete 1990.

<sup>3</sup> ACPDT 2002.

<sup>4</sup> Jordan 1984; Makumbe 1998.

government was established grudgingly.<sup>5</sup> In rural areas the creation of Gwai and Shangani ‘reserves’ under the Matabeleland Order in Council of 1894 signified the beginnings of colonial local government.<sup>6</sup> Subsequent orders, legislation and commissions entrenched White expropriation of African lands till the 1930 Land Apportionment Act, shaping the development of local government in the process.

In terms of urban local government legislation before independence changes were made through the enactment of a Municipal Act in 1930 and the Urban Councils Act in 1973. In big urban local authorities, like Salisbury and Bulawayo, a number of local Town Management Boards were created. From the 1930s through to independence more local government legislative and policy changes were witnessed in African than European areas. This was part of managing the Native question and ensuring that the African rural economy remained secondary and subsidiary to the White economic sector as a basis for assuring availability of African labour for the latter.<sup>7</sup> As a consequence local government institutions in African areas were not autonomous, did not pursue local interests, and lacked local legitimacy and resources compared to those in European areas. Urban and rural areas were divided and development pursued in ways that at the same time subjugated African interests or ambitions and were managed by structures dominated by privileged groups. For instance, the 1973 Urban Councils Act provided for the control of African Townships by ratepaying Whites, ‘Coloureds’ and Asians. Between 1940 and 1970 Advisory Boards were established in African Townships with a purely consultative role. In non-African areas within municipal areas, like Harare (Salisbury), smaller local authorities, invariably known as Area and Town Management Boards, were established. Most of these were incorporated in 1972 before the enactment of the 1973 Urban Councils Act.<sup>8</sup>

As such, local government legislation provided for racially divided urban and rural areas. The divisions were both spatial and institutional. From an historical perspective it is important to note that the first formal local government body was established in an urbanising context. It was only in 1937 that rural local government in a formal sense was given form under the Native Councils Act, amended in 1943, and followed by a 1957 African Councils Act. The creation of Native and later African Councils was progressive. In 1940 there were only 23 Native Councils, increasing to 58 by 1958 before dropping to 52 by 1965. In 1979 there were 220 African Councils,<sup>9</sup> and it was anticipated that 20 more African Councils would have made the full complement. African Councils mainly presided over social service or welfare issues as agricultural development and other infrastructural services were provided by the Department of African Agriculture and the African Development Fund<sup>10</sup>, both directly run from the District Commissioner’s Office.<sup>11</sup> Such an approach reinforced direct White control of the main African economic levers.

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5 Hlatshwayo 1998.

6 Hammar 2003.

7 See Moyana 1984.

8 Jordan 1984.

9 Jordan 1984; Makumbe 1998.

10 Current District Development Fund (DDF). The African Development Fund was mainly funded from levies on African crop produce (NAC 2002).

11 Matumbike 2009.

Pre-independence developments of local government were intricately linked to the land and race questions. The colonial government generally treated the Natives as ‘child-like’, and imposed centrally defined programmes on African and Native Councils. Any pretence of promoting African self-government was overruled by White supremacist policies.<sup>12</sup> African Natives increasingly saw self-help as denial of national resources to the Black majority. Evidence was seen in denial of participation, linking of local government to traditional authorities and the use of chiefs to subdue and contradict nationalist aspirations. As such, national contests for political power between Africans and White settlers (de-colonisation) shaped the discourse and practice of local government. In due course African and Native Councils became synonymous with all unpopular measures and regulations instituted for Africans, especially, herd control, soil conservation (*nhamo yemakandiwa*)<sup>13</sup>, land use planning and land tenure changes.<sup>14</sup> Local government facilities, like, schools, dip tanks, bridges, and clinics, among others, were targeted for destruction during the liberation struggle as a way of resisting and sabotaging the colonial government.

Yoshikuni describes Africans’ experiences of segregationist landscapes in urban areas, particularly state control of African housing.<sup>15</sup> These experiences contributed to the shaping of community action even before the 1920s.<sup>16</sup> Rural and urban Africans were, therefore, ‘the other’, a social history characterised by underprovision of services, political exclusion, and socio-economic ill-treatment,<sup>17</sup> with local government literally reduced to an instrument of the centre. The struggles that the pre-independence political economy inspired were critical in shaping African identities and aspirations at individual, community and national levels. Africans’ experiences of local government institutional processes were influential in defining the agenda of, and participation in, the liberation struggle. In essence the liberation struggle progressively delegitimised colonial local government, creating a basis for starting anew come 1980. The war contradicted African Councils and rationalised the deposition of traditional leaders. By contradicting and destabilising African Councils the liberation struggle (essentially ZANU-PF as de facto appropriator of a national process) installed structures around which early independence local government reforms were built. This sowed the seeds of party political appropriation of local government.

Since 1980 a number of local government reforms have been instituted. In 1980 government created a new single Local Government Ministry, and brought all three types of local government institutions (for urban, commercial farming, and former Tribal Trust Lands) and all legislation (Acts and Statutory Instruments) under the single Ministry. Tribal Trust Lands were re-named Communal Lands, and 55 District Councils were created from the amalgamation of about 220 African Councils. New local government legislation was enacted (District Councils and Urban Councils Acts) to capture the new political dispensation, particularly universal adult suffrage and the one-city concept.

12 See De Valk and Wekwete 1990.

13 Conservation works included back breaking preparation of contour ridges (*makandiwa*) in people’s own fields, which was seen as unjust/problematic (*nhamo*).

14 De Valk and Wekwete 1990.

15 Yoshikuni 2006.

16 Yoshikuni 2006.

17 Auret 1995; Yoshikuni 2006; Moyana 1984.

A 1984 Prime Minister's Directive guided the establishment of grassroots participation structures, and provided a framework for co-ordination of government institutions' participation in rural development. The Directive was enacted into the Provincial Councils and Administration Act (1985), creating the office of Provincial Governor and defining the functions of provincial structures of government.

Duality in rural local government, where commercial farming areas were governed by 45 Rural Councils with all communal lands falling under 55 District Councils, was addressed through the enactment of the Rural District Councils (Amalgamation) Act in 1988. The Act was only implemented from 1993 when 45 Rural Councils were amalgamated with District Councils to form 55 Rural District Councils (RDCs). The number of RDCs has since risen to 60 as new ones were created by subdividing bigger RDCs. The abolition of African Councils to create District Councils was accompanied by transfer of powers of traditional leaders to the new Councils (planning and land allocation), elected Village Development Committees and Community Courts (judicial). However, lobbying and continued practical influence resulted in legislative changes to harmonise modern local government and traditional institutions through the Traditional Leaders Act of 2000.

Reforms were complemented by considerable grant funding and loan support from central government through the Public Sector Investment Program (PSIP) and other funding avenues. At the same time government implemented major national programmes in local authority areas, and facilitated capacity building programmes. Some of the main national programmes were the Integrated Rural Water Supply and Sanitation Program (IWRSSP), Communal Area Management Program for Indigenous Resources (CAMPFIRE), Community Action Project (CAP), District Environmental Action Planning (DEAP), South Eastern Dry Areas Program (SEDAP), and the Rural Development Fund (RDF). The leadership of implementation processes for these programs was mainly from central government institutions, which acted to stifle local authority, visibility and growth. In terms of capacity building initiatives the main examples include the Pilot District Support Program (PDSP), the RDC Engineer Support Program, the (Rural District Councils Capacity Building Program) RDCCBP, Urban I and II, and a host of other programs supported by major donors.

Economic liberalisation in the 1990s was associated with a re-definition of the functions of central government in favour of doing less direct planning and implementation of development programs, offering services, including pressure to reduce subsidies seen as increasing budget deficits and thus a cause of fiscal indiscipline. This provided an impetus for the decentralisation agenda stalled in the late 1980s largely because it was felt that rural local authorities lacked adequate capacity to receive substantial functions transferred from the centre. As an example of loss of faith in rural local authorities, education sector salary and grant administration functions were recentralised and School Development Committees (SDCs), managed closely by the Ministry responsible for education, were established from 1992.<sup>18</sup>

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18 SDCs established under Statutory Instrument 87 of 1992.

Despite such shifts, the momentum for decentralisation remained, and picked with the launch of the RDCCBP in 1996. It culminated in the adoption of the thirteen principles of decentralisation.<sup>19</sup> According to Government of Zimbabwe (2002,) decentralisation aimed to promote democracy (public participation and civic responsibility), to increase efficiency and effective service delivery, and to reduce the role of central government in local services provision and management. Implementation of decentralisation would thus entail creating an enabling environment, building the capacities of local authorities, and transferring functions from Ministries to local authorities.<sup>20</sup> What needs to be noted, however, is that the decentralisation debate was articulated more in relation to rural than urban local government (see Mushamba in his contribution to this volume).

The early independence policy of racial reconciliation, particularly the protection of private property (large scale commercial farms and industrial capital) within the framework of the Lancaster House Agreement, delayed the addressing of both questions. This policy framework created a local government process that was rich in the rhetoric of political participation based on addressing development disparities largely through donor funding and centrally planned programs. Development programs were mainly implemented through field administration structures. While there were very good reasons for such an approach, this resulted in a lopsided and dependent growth model for local government. It is a sector which increasingly looks up and out, values external and upward, rather than local and downward accountability,<sup>21</sup> and uses the criterion of administrative-political representation more than the facilitation of livelihood sustainability.

### 3. Contextualising local government in Zimbabwe

A 1953 document defined the basis of local government as ‘...a genuine community or its creation...and [that] no definition of local government is more suited or urgently needed in Africa than that of a community building agency’.<sup>22</sup> This followed a government sponsored comparative study whose findings were used to facilitate a fairly robust debate on local government.<sup>23</sup> The study influenced government’s view of community building as separate from political representation, tribal authority as a form of local government different from central government and that local government would flow from voluntary movement towards meeting felt needs.<sup>24</sup> Government also sought to avoid dependence and cautioned against spoonfeeding as follows:

*[T]he serious dangers of breeding a species of sub-economic man...ignorant of elementary responsibilities and regarding government as an inexhaustible source of benefits...the problem calls for a re-examination of the present system with a view to assigning a definite sphere of finance and self-help to African Local Government.<sup>25</sup>*

19 Government of Zimbabwe 1996.

20 Government of Zimbabwe 2002..

21 Chatiza 2008.

22 Government of Southern Rhodesia 1953: 2.

23 Government of Southern Rhodesia 1953.

24 Government of Southern Rhodesia 1953.

25 Government of Southern Rhodesia 1953: 6.



As noted in the above section, sound conceptualisation of colonial local government in African areas was undone by racist separate development, something which the post-1980 conception of local government sought to deal with. Unfortunately post-independence conceptualisation of local government exhibits some shifting confusion. A paper presented by the Minister responsible for local government at a 1992 rural development conference captures such a shift reasonably. Minister Joseph Msika defined local government as ‘... the administration of local affairs by local people elected by the registered residents of a given locality’.<sup>26</sup> He further extended this confusion by emphasising that ‘...in Zimbabwe, local government entails the division of functions and responsibilities between central and local government’ before adding that ‘...the final accountability of local Councils remains with central government, which created local government in the first place...local does not extend to include the concept of sovereign self-rule for local authorities’.<sup>27</sup> A paper by the Ministry responsible for local government refers to creation of a lower tier of governance to perform functions that central government, because it is too far away, is unable to perform effectively and efficiently.<sup>28</sup> This confirms the centre-local functional division alluded to by Minister Msika. However, the same Ministry paper defines local government as the creation of participatory and democratic structures capable of identifying local needs and translating them into programmes of action.

The shifting confusion is evident in the contradiction between the concepts of local affairs or needs and locally elected decision makers, on the one hand, and division of functions between central and local government, as well as the notion of transfer of functions inherent in the decentralisation debate, on the other. This is further exaggerated by categorical reference to final accountability lying with central government ‘which creates local government’, i.e. not the residents. This is a structural contradiction in Zimbabwe’s local government which is not accidental, but shows the undemocratic nature of the local governance environment. Central government vacillates between a devolution thrust (administering local affairs by locally elected officials) and a delegation one (performing tasks transferred from, or assigned by, the centre).

As noted by De Valk and Wekwete,<sup>29</sup> this shows the limits of attempts at democratising rural local government without radical economic reform. The latter would allow local generation of practical socio-economic benefits critical to the 1953 conception of local government as community builder. The current weak conception of local government finds expression in the law and other institutions. It reflects elements of self-interest on the part of the Black political elite characteristic of shallow democratisation. The status of local government in the family of public institutions is, therefore, not sufficiently entrenched. Ministries, government departments, and state enterprises impinge on local government functional autonomy. At the same time the party caucus system, where most crucial decisions are often made without citizen consultation, undermines the autonomy and local accountability of Council decision-making spaces.

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26 Msika 1992: 104.

27 Msika 1992: 104.

28 Government of Zimbabwe 2002.

29 De Valk and Wekwete 1990; see also Brand 1991.

### 3.1 Elaborating the local government legislative context

Local government in Zimbabwe has always been legislative and, therefore, not an independent sphere of government.<sup>30</sup> There are two principal pieces of local government law. These are the Rural District Councils Act (1996) and the Urban Councils Act (1996), which are administered by the Ministry responsible for local government. The Ministry co-ordinates the activities of local government bodies, making them extensions of central government.<sup>31</sup> It is responsible for administering the Regional Town and Country Planning Act (1976), the Traditional Leaders Act (2000), and the Provincial Councils and Administration Act (1985). These five pieces of legislation are at the core of local government in Zimbabwe in terms of defining functions, powers, structures, and procedures.

Other sector laws also impinge on local government. The 1961 Local Government Act<sup>32</sup> cited legislation on fruit and vegetable vending, public health, advertisements, shopping hours, and liquor issues. Sector laws define standards often arrived at with limited local authority input. In essence, while local government law provides for the establishment and supervision of Councils, sector laws detail standards that Councils should attain. Post-1980 sector laws central to local government functions include those governing land, public health, education, water, road traffic, administration of justice, business/trade licensing, public utilities (e.g. electricity), and, among others, mining. These laws are administered by Ministries other than the one responsible for local government.

Zimbabwe's legislative environment imposes structural constraints upon sound local governance. The first is the lack of a constitutional provision, and the second is the mosaic of institutions that often contradict local government independence and constrain its soundness. This is made worse when one considers that Zimbabwe's lawmaking is based on the principle that each time a law is passed the new law supersedes previous laws.

In analysing the adequacy and/or appropriateness of legal provisions for local government in Zimbabwe one framework often used is a comparison of the powers of central government and local government (see Table 1). Such analyses use existing local government legislation to identify the powers, and on the basis of simple tallying verdicts on the 'balance of power' are pronounced generally as favouring central government.<sup>33</sup> Others look at the foundational nature of the powers as regards their import and effect in relation to parliamentary legitimacy, legal and strategic soundness, significance to national development, and relevance in terms of the co-ordination function. For instance, Hlatshwayo noted about 200 instances.<sup>34</sup>

However, the simple valuation of instances of 'the Minister/President shall or may' without analysing the strategic rationalisation of such provisions may not be helpful. Although conceptually and practically nebulous, one rationalisation is captured in the concept of the 'public interest'. To the extent that there are cases of procedural and substantive failings in Councils,<sup>35</sup> and that Councils individually and collectively fail to

30 See Zimbabwe Institute 2005.

31 Zimbabwe Institute 2005.

32 Government of Southern Rhodesia 1961.

33 ACPDT 2002.

34 Hlatshwayo 1998.

35 Zimbabwe Institute 2005.

address such failings, ‘central interference’ needs to be problematised in terms of holding councils accountable. I will return to this strategic question later in the paper.

**Table 1: Local and central government power differentials**

<b>Powers of local government</b>	<b>Powers of central government</b>
<ol style="list-style-type: none"> <li>1. Plan and implement local development.</li> <li>2. Manage water and sanitation.</li> <li>3. Provide and maintain roads.</li> <li>4. Manage education and health.</li> <li>5. Manage refuse removal.</li> <li>6. Provide housing and serviced stands.</li> <li>7. Manage cemeteries.</li> <li>8. Carry out social welfare.</li> </ol>	<ol style="list-style-type: none"> <li>1. Establish, abolish or alter local government status.</li> <li>2. Fix the area of a local authority (number of wards and thus Councillors).</li> <li>3. Approve the getting or taking over of land by the local authority.</li> <li>4. Carry out planning and estate development.</li> <li>5. Appoint the Local Government Board.</li> <li>6. Appoint a Valuation Board.</li> <li>7. Appoint auditors.</li> <li>8. Appoint an investigating team where an inquiry is needed.</li> <li>9. Suspend or dismiss councillors who have committed serious offences.</li> <li>10. Appoint a commissioner to run the affairs of a Council when there are no councillors.</li> <li>11. Give general direction on policy.</li> <li>12. Authorise anything not covered by the Act.</li> <li>13. Publish model by-laws, direct Councils to adopt specific by-laws and approve Council developed by-laws.</li> <li>14. Suspend a Council resolution when it goes against the interests of residents.</li> <li>15. Correct any omissions.</li> <li>16. Establish bus stops.</li> <li>17. Regulate accounting and loans.</li> <li>18. Prescribe amounts beyond which Councils should seek tenders.</li> <li>19. Approve income generating projects and co-operatives.</li> <li>20. Direct Councils to pay their debts and reduce deficits.</li> <li>21. State what types of local charges can be raised without approval.</li> </ol>

*Source: adapted from ACPDT 2002:48*

The other framework relates to comparison of local government institutions over time and across national territories. For Zimbabwe, the usual comparisons are with the South African local government system, and, among others, Commonwealth local government principles. Increasingly the evaluation of Zimbabwe’s local government is in relation to grounded or

localised notions of good governance or democracy driven by citizen expectations and experiences. Relevant law reforms are often inspired by such comparisons. As Adedeji and Hyden caution, there is a risk of using formal, statutory or conventional criteria for exclusion in an unconscious fashion.<sup>36</sup> As such, this analysis has combined both formal statutory criteria and empirical evidence for discussing gaps in the local government legal framework. The section on civil society organisations below highlights some of the experiences that inform local government law reform.

Another framework often used relates to structures that exist to pursue and govern sub-national development planning and management. The structures of local government are juxtaposed to central government and those of other institutions (e.g. traditional leaders, civil society organisations, etc). Using such a framework, it was concluded that civil society organisations, among others, were creating parallel structures, which were out-competing local government ones.<sup>37</sup> Analyses from this perspective often blame the law for not protecting local development institutions generally, and local authorities particularly, from central ‘bullying’. Some commentators argue that because local government in Zimbabwe is created through Acts of Parliament and not the Constitution, it makes it vulnerable to political manipulation.<sup>38</sup>

Local government’s dependence on central government, enshrined in the law, is seen as weakening local governance. For instance, De Valk and Wekwete note that local government conditions were such that central government had a lot of powers.<sup>39</sup> In their view the conditions ‘...open up the possibility that the Council be used by central government institutions for the purpose of implementing their priorities...they form important constraints to exercising decentralised authority, thereby hampering the process of participation’.<sup>40</sup>

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36 Adedeji and Hyden 1974.

37 CBCC 1999.

38 Hlatshwayo 1998; Zimbabwe Institute 2005.

39 De Valk and Wekwete 1990.

40 De Valk and Wekwete 1990: 96.

**Table 2: Summary of local government institutional changes**

Key area	Main changes
Elections and participation	<ol style="list-style-type: none"> <li>1. Alignment of Council election with universal adult suffrage and age of majority (18 years, from 21 years before). Registered voter in a Council area rather than property ownership as eligibility criterion.</li> <li>2. Citizens vote for Councillors. Between 2002 and 2008 also voted for Executive Mayors in urban local authorities. Ceremonial Mayor chosen by fellow Councillors from March 2008.</li> <li>3. Citizens can attend full Council meetings, access minutes and view plans on public display.</li> </ol>
Internal organisation	<ol style="list-style-type: none"> <li>1. Based on a committee system. Councils relatively free to devise and implement own methods of discharging their duties.</li> <li>2. Powers and functions defined in the law with some expansion from 49 to 54 between the 1980 and 1996 Urban Councils Acts. Rural District Council Act (1996) First Schedule identifies 64 functions.</li> <li>3. Urban and rural local authority one-city and amalgamation processes. Territory based poverty pockets remain, i.e. high density or ex-African Townships for urban and communal areas for rural local government.</li> </ol>
Autonomy	<ol style="list-style-type: none"> <li>1. President and Minister responsible for local government have substantial powers and legally empowered to intervene to pursue public interest.</li> <li>2. Dissolution of Councils (Harare, Mutare, and Chegutu), among others, in recent years reflected the insecurity of local government.</li> <li>3. For urban local authorities the Local Government Board Act (1996) presents an institutional layer that takes away Council powers as bodies corporate that can hire and fire staff. Rural local authorities are shackled by line Ministries in regard to service provision. Ministry of Local Government also has functionaries at province and district levels whose work overlaps with that of Council.</li> <li>4. Traditional leadership institution presides over sub-district policy spaces (Ward and Village Assemblies) as part of harmonising elected and traditional leadership. The law has not resolved conflict between the two.</li> </ol>
Local government vs other structures and processes of government	<ol style="list-style-type: none"> <li>1. Reasonable institutional and legal transformation from 1980 (deracialisation).</li> <li>2. Capacity building (from 1993) and decentralisation (first in 1984 and then in 1996) gave profile and visibility to local government.</li> <li>3. Implementation of some national programmes through Councils.</li> <li>4. State owned Enterprises (e.g. ZINWA) often assigned Council functions.</li> </ol>
Decentralisation	<ol style="list-style-type: none"> <li>1. 1984 Prime Minister's Directive, Thirteen Principles of 1996, and Decentralisation Implementation Strategy in 2001, albeit without specific decentralisation law.</li> <li>2. Implementation has generally suffered 'start-stop-start' implementation.</li> </ol>

### 3.2 Constraints on, and inadequacies of, decentralisation

An area often ignored in local government legislative reform is natural resources, and how people relate to, and utilise them.<sup>41</sup> The decentralisation processes have not effectively addressed key fundamentals, prompting some to assert that ‘...decentralisation is not a panacea to problems constraining rural development’.<sup>42</sup> The ineffectiveness of Zimbabwe’s decentralisation has also been made worse by a general focus on rural local government, which has been seen as lacking capacity, partly to explain the inevitability, and perhaps desirability, of centralisation.<sup>43</sup>

Based on an analysis of major development programmes (CAMPFIRE, PDSP, RDCCBP and CAP) implemented in rural local authority areas, Chatiza concludes that they made significant contributions to participation, but failed to alter the underlying political economy that sustains poverty in Zimbabwe.<sup>44</sup> He further notes that this explains why most innovations introduced during the life of the programmes were discontinued when external funding stopped. The net result is shallow political representation and participation without real socio-economic transformation.

In October 1996 Provincial Heads of Ministries identified a number of inadequacies in Zimbabwe’s decentralisation.<sup>45</sup> These included a lack of consultation, communication, and information dissemination. The process was also affected by limited stakeholder commitment, especially by Parliament and the political party (ZANU-PF). Central government Ministries also lacked understanding of RDCs, which also lacked capacities and resources. The Heads also noted that the national decentralisation process was not synchronised with timeframes in individual Ministries, in part also affected by a lack of adequate resources to implement decentralisation, and absence of a national vision on the (desired) structure of government after decentralisation. This meant that Ministry programs were not tied to a common national institutional structure. Lack of progress in implementing decentralisation by the Ministry responsible for local government also discouraged other Ministries. The Heads of Ministries added that this lack of progress raised fears that the Ministry responsible for local government was going to be a super Ministry. Additionally, the exclusion of parastatals from the decentralisation process was seen as a source of problems in the future.

Some of the limits to the potential of local government in poverty reduction have been observed as lying in the law. A number of areas of local government law have been identified as in need of change. The main one has been the status of local government in the system of government institutions. Based on a history of central government interference, which has in some cases caused paralysis in local government, a call has been made since the mid-1990s for local government to be provided for in the Constitution.<sup>46</sup> A call has also been made for the harmonisation of existing legislation to come up with one local government law (see Mushumba’s contribution to this volume).

41 De Valk and Wekwete 1990.

42 Cormack 1992: 119; see also Chatiza 2008.

43 Chatiza 2008.

44 Chatiza 2008.

45 RDCCBP 1996.

46 Hlatshwayo 1998.

By 2007 the Ministry responsible for local government had come up with a framework for a single local government Act. The reasoning behind harmonisation flows from the desire to eliminate perceived disparities in levels of autonomy, and to provide for a uniform legal framework for rural and urban local authorities. Such a rationalisation flows from post-independence local government reform projects which saw amalgamation of small African Councils into more viable District Councils (1980 District Councils Act), amalgamation of Rural Councils and District Councils (1988 Rural District Councils Act), and the harmonisation of elected and traditional leadership structures (2000 Traditional Leaders Act).

An argument can, therefore, be made that the constitutionalisation of local government will decisively deal with the subjugation of local government to the form and political orientation of central government. In this way, the powers of the national executive will be limited in relation to the creation, functioning, and dissolution of local government units. A related advantage of constitutionalisation is addressing centre-local functional overlaps by providing for local government as a distinct sphere of government, rather than the current situation where central government defines it through ordinary legislation. At the same time, constitutionalising local government will ensure that local government law is not as subservient to other legislation as is the case at present. Constitutionalisation is also seen as critical to deepening the institution of local government as a space for citizens.

### 3.3 Local government structures

Zimbabwe is a unitary state<sup>47</sup> divided into 10 administrative provinces. Eight of the provinces are rural and two are urban. The urban provinces (Bulawayo and Harare) were only recently established in 2005. Rural provinces are made up of a number of Councils (urban and rural local authorities). Councils are divided into wards (and villages in rural, and neighbourhoods in urban areas), with each ward represented by a Councillor elected by a simple majority. Ward boundaries in rural areas do not always coincide with a mosaic of hereditary chieftainships, which are subdivided into areas governed by headmen and village heads. Unlike rural villages, urban neighbourhoods lack distinct social cohesion due to population diversity and more individualised socio-economic structures.

As a sphere of government, local government is not provided for in the Constitution of Zimbabwe. Curiously, however, the institutions of chiefs and Provincial Governors are provided for. Local government in Zimbabwe operates in a delegated capacity, performing functions conferred upon it by central government. The functions, while defined in law, are open to central government variation and re-assignment to other state agencies. Local government existence and sustenance is largely dependent on central government, which has historically operated more through field administration than Councils. Pre and post-independence policy and structural developments have sustained center-local relations that undermine the emergence of sound local governance.

Existing local government structures and their operation further illuminate the status of local government and its potential to address the development deficit. The main structures include a Ministry, a provincial layer, and local authorities (Councils

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47 Hlatshwayo 1998.

and Boards). The Ministry is responsible for administering local government legislation, which in practical terms entails co-ordinating policy formulation, implementation, and evaluation. The Ministry's functions entail leading the development and management of the local government sector, and representing the sector's interests at national and sub-national levels, in relation to other arms of government. For instance, at provincial and district levels Ministry staff (the Provincial and District Administrators) are the most senior representatives of central government, with a responsibility to co-ordinate multi-agency development planning and management through chairing PDCs/RDDCs.

Zimbabwe's provincial tier of government is headed by a Resident Minister (Provincial Governor) who is a presidential appointee. The institution of Governor was created under the Provincial Councils and Administration Act to perform co-ordinative, consultative, and political functions, seen as essential for the speedy and co-ordinated development of districts and provinces.<sup>48</sup> Governors chair Provincial Councils whose membership is drawn from Councils, parliamentarians and party leaders within a province. The PDC (chaired by a Provincial Administrator) is the technical arm of the Provincial Council, and is made up of heads of government departments. Civil society organisations and the private sector also take part in PDC and RDDC meetings, usually through the subcommittees that are aligned to, and headed by, sector Ministries relevant to the work they undertake.

Local authorities (Rural District and Urban Councils) form the local government structure closest to citizens. Zimbabwe currently has 60 rural and 31 urban local authorities<sup>49</sup>. Council areas are divided into wards, each represented by an elected councillor. Local authorities function by, and are structured on, a committee system. In rural local authorities policy making spaces are the village assemblies, ward assemblies, and full Council in ascending order. The ward assembly is made up of all headmen, village heads, and the Councillor for the ward. The ward assembly is chaired by a headman, and its technical work is undertaken by a ward development committee, which is chaired by the ward councillor, with representatives of development organisations operating at that level as members. Wards are made up of village assemblies whose boundaries coincide with those of traditional villages. The assemblies are chaired by village heads, and are based on universal participation (all villagers above 18 years). Technical matters of the assembly are handled by a committee that draws in the input of technical agents from within the village. The committee is chaired by the village head.

### 3.4 Traditional leadership and local government

Additional to the above local government structures is the institution of traditional leaders. This institution has been at the centre of rural local governance before and after independence. Between 1930 and 1980 traditional leaders became the anchor of rural local government, progressively being assigned tax collection, judicial and land allocation functions, and associated powers.

<sup>48</sup> GRZ 2002.

<sup>49</sup> The Department of National Parks and Wildlife Management is defined by law as a local authority for national parks, safari, and other categories of protected areas, while national monuments, like the Great Zimbabwe, fall under the purview of a different authority (National Monuments and Museums). This paper, though, does not discuss these authorities.



For instance, the 1967 Tribal Trust Lands Act restored their land allocation powers, the 1969 African and Tribal Courts Act restored their powers to try some cases, and the 1973 African Councils (Amendment) Act granted them executive and administrative powers. As noted elsewhere in this paper, their alignment and identification with unpopular policies of the colonial government resulted in their corruption, leading to a decision at independence to strip them of virtually all formal administrative and political powers. 220 African Councils were amalgamated into 55 District Councils to which land allocation powers were assigned, and at grassroots level Village Development Committees chaired by elected officials wrestled local administrative powers from them. Suffice it to note that Local Government Promotion Officers (LGPOs) tasked with creating the local government structures were mainly former wartime political commissars and ZANLA combatants.<sup>50</sup> This explains why the early village structures were adapted ZANU-PF structures.<sup>51</sup> Despite post-colonial loss of formal power, traditional leaders retained local influence that created operational anxieties for local government structures and processes.<sup>52</sup> Traditional leaders began lobbying for recognition, something that found sympathy from a number of analysts,<sup>53</sup> culminating in the enactment of the Traditional Leaders Act in 2000.

Traditional leaders exist at the village level (village heads), which is the basic organising unit of rural life in Zimbabwe outside commercial farming areas. Zimbabwe's Constitution recognises the institution, unlike local government. Traditional leadership is administered under the Traditional Leaders Act by the Ministry responsible for local government. The number of headmen in a ward and chiefs in a district or province largely depends on traditions in different parts of the country, as well as the influence of formal administrative boundaries. In some cases there are more headmen in a ward, while in other areas a headman chairs more than one ward. Some districts have one chief (e.g. Seke/Manyame), others two (Mutare), while yet others have more than four (Masvingo). In total, the country has 269 chieftainships,<sup>54</sup> which shows that about 49 chieftainships have either been revived or recognised since independence.

Chiefs are *ex officio* members of Councils, which in some areas has resulted in making their participation in local government at this level difficult. At provincial and national levels, traditional leaders have a forum (Council) which co-ordinates their activities and participation in national development processes. At district through to national levels, it appears that the relations between local government bodies and traditional leaders are difficult, partly because of different structures. Despite relevant legislation being administered by the same Ministry, there has been limited attention paid to harmonising the two. For instance, there is no evidence of effective participation of Councils at the annual conference of chiefs, on the one hand, nor also of chiefs at the biannual ARDCZ congresses, on the other hand.

50 Makumbe 1998; Zimbabwe Institute 2005.

51 Brand 1991; Chatiza 2008; Hammar 2003.

52 Chatiza 2008; Nugent 2004; Mukamuri; Campbell and Kowero 2003; Odotei 2005.

53 Government of Zimbabwe 1994; Ray, Sharma and May-Parker 1997; UNECA 2005; Zack-Williams 2002.

54 Interview with Ministry of Local Government official, 31 August 2009.

The institution of traditional leadership in Zimbabwe has gone through colonial and post-colonial acceptance, usage, and political corruption. It has also shown considerable resilience and clout in terms of influencing sub-national development processes and, increasingly, national political structures. There are inherent contradictions in terms of the functions of the institution that Zimbabwe's ruling elite has exploited,<sup>55</sup> capitalising on its continued legitimacy in the eyes of the majority of Zimbabweans.<sup>56</sup> The fact that it is provided for in the Constitution has been an additional source of strength if not endurance. As an institution, traditional leaders have been willing and coerced state partners in controlling, ordering, and developing spaces. Below I return to this point in the context of the potential of local government to lead development processes.

#### 4. Civil society organisations and local government

Organisations that are formed by citizens to pursue their social, political, and economic interests (associational life) are what have become generally known as civil society. Although regulated, they are neither formed nor controlled by the state or the private sector<sup>57</sup> from which they maintain operational independence tempered by strategic linkages and partnerships.<sup>58</sup> Globally the influence of civil society in national development became more noticeable from the 1990s.<sup>59</sup> In the context of Africa, such growth has been seen as a response to state failure,<sup>60</sup> while in the developed world, the growth has been focused on reforming the welfare state.<sup>61</sup> However, the importance of associational life generally, and in terms of participation in governance in Zimbabwe, is not an exclusive post-independence development. Kriger notes that social movements were mobilised to participate in the liberation struggle, reflecting not just their existence but activity before independence.<sup>62</sup> Civil society, as NGOs (but not donors), voluntary associations, groups, solidarity networks, faith-based organisations, membership and professional bodies, social movements, labour and farmers' unions, political parties and employers' groupings, had a long history in society.<sup>63</sup> Its diversity is seen in the nature and size of organisations, their interests, approaches and alliances within and across national boundaries.

In this section I explore the relationship between civil society and local government beyond the burial societies and women's clubs, which were commonplace in African townships before independence and essentially nurtured African nationalism. I include in the definition of civil society non-governmental development organisations of local and international extraction, of varying programme size and orientation.

55 CPIA 2005; Mbembe 2001; Mamdani 1996.

56 See also Nugent 2004; Ray, Sharma and May-Parker 1997.

57 Chatiza 2008.

58 Anheier 2004; Johnson and Wilson 2000; Schroeder 2000; Charlick 2001.

59 Clayton, Oakley and Taylor 2000.

60 Nyangoro 1999.

61 Clayton, Oakley and Taylor 2000.

62 Kriger 1992. See also Chatiza 2008; Yoshikuni 2006; Auret 1995.

63 Chatiza 2008.

I deliberately exclude political parties from this section because they directly participate in local government. The section is not necessarily concerned with the taxonomy of non-governmental development organisations, but rather the ways in which their growth and visibility have impacted upon local government in Zimbabwe. The intention is to show how, and whether, civil society has had a positive role with regards to constraining state excesses, articulating public opinion, and self-provisioning, as is often espoused in the literature,<sup>64</sup> particularly in the light of changes in the role of the state<sup>65</sup> and growing participation of social actors in traditional state activities<sup>66</sup>. Of concern in this analysis is illuminating whether civil society has aided or obstructed sound local governance in Zimbabwe.

Local government associations, namely, UCAZ and ARDCZ, are most relevant in relation to the debate in this section. UCAZ was established in 1923, while ARDCZ was established in 1993. The two have initiated a process of creating one local government association since 2005. ARDCZ and UCAZ facilitate consolidation of policy issues among their members, and engage stakeholders pursuant to the promotion of sound local governance. The work of these two associations has been directly supported by a number of local and international development organisations. On their own, non-governmental development organisations have come up with, and implement, activities in local authority areas. The activities they implement span a wide spectrum of social and economic sectors (see Table 3 below). Without necessarily detailing the size of their programs in terms of budgets and program reach, it can be argued that non-governmental development organisations have become more active in recent years than local government bodies. In some cases, they have become a de facto part of local public administration as some community requests for assistance are referred to them.<sup>67</sup> Some partner or materially support public sector organisations to enable them to deliver on their mandate.<sup>68</sup> For instance, Plan International (Manicaland) actively supported Mutare District Assembly as part of addressing conflicts between elected officials and traditional authorities in the District.<sup>69</sup> Table 3 shows examples from Mashonaland West Province.

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64 Pankhurst 2002; Bangura 1999; Berner and Phillips 2005; Krishna 2003; Tendler 1997; ZCBC, EFZ and ZCC 2006.

65 Chatiza 2008; Abrahamsen 2000; Bernstein 2007.

66 Ackerman 2004; Moyo, Raftopoulos and Makumbe 2000; Mungate 1993.

67 Chatiza 2008.

68 Chatiza 2008.

69 Chatiza 2008.

**Table 3: NGO activities in local authority areas, Mashonaland West**

<b>District</b>	<b>Number of active NGOs</b>	<b>Sectors in which NGOs are active</b>
Kadoma	4	Targeted food aid, home based care (HBC), school fees support, voluntary counseling and testing (VCT), agricultural input support.
Chegutu	4	School feeding, livelihood skills support, orphan and vulnerable children (OVC) support, water and sanitation.
Zvimba	6	Child protection, school fees, material and food aid to vulnerable groups, HIV and AIDS, income generating projects (IGP), gender awareness, VCT, OVC, support, nutrition gardens, agricultural inputs, water and sanitation.
Makonde	5	Material and food aid to vulnerable groups, OVC support, prevention of parent to child transition (PPCT) of HIV and AIDS, HBC and urban vulnerable feeding.
Hurungwe	4	Education support, water and sanitation, OVC support, support to girl children.
Kariba	6	Support to cultural activities, targeted food aid, livelihood programs, water and sanitation, HBC, OVC support and educational support.

*Source: Decoded from Mashonaland West Provincial Administrator's Report of 29 July 2009, Ministry of Local Government, Rural and Urban Development.*

The reality of non-governmental development organisations has been more evident for longer in rural than urban areas. The cholera outbreak of 2008 showed how non-governmental interventions have become critical to service provision and maintenance. Johnson and Wilson discuss the case of Environment Africa's waste management work in Bindura and Victoria Falls, among other sites, as evidence of non-governmental augmentation of local government performance.<sup>70</sup> In its work, Environment Africa has supported activities of youths and women's groups to engage with their local authorities. The partnership also enabled transfer of skills from the NGO to its partner Councils. The MDPEA has also promoted policy research and programme work on urban agriculture in Zimbabwe (among other countries). Its activities have allowed the bridging of household and community urban agricultural activities, on the one hand, and policy makers on the other (MDPEA and RUAF 2005), culminating in the development of a policy framework to guide integration and facilitation of urban agriculture in urban planning and management.

<sup>70</sup> Johnson and Wilson 2000.

World Vision Zimbabwe's Area Development Programs (ADPs) have also seen direct provision of social and economic infrastructure, as have Plan International, Care International, Christian Care, and a host of other NGOs in many local authority areas. What is also important is that most non-governmental development organisations also increasingly include advocacy and capacity building activities in their programs, i.e. becoming 'third generation NGOs'.<sup>71</sup> In the process, considerable investments have gone into social mobilisation into project committees. Some of these project committees have graduated into CBOs surviving beyond direct NGO support. Examples include, AIDS Service Organisations that have been established by volunteers trained by various NGOs.

The Organisation for Rural Associations for Progress (ORAP) in the western part of Zimbabwe, and the Manicaland Development Association (MDA), are often given as perhaps the earliest outside the HIV and AIDS sector.<sup>72</sup> However, there are other more localised as well as national organisations that work to articulate people's social and economic rights, promote access to decision making structures, and broadly work to foster democratisation. Basilizwi Trust in Binga District,<sup>73</sup> Lower Guruve Development Association in Mbire District, and the Africa Community Publishing and Development Trust, among others, engage in issues with a bearing on the development of sound local governance.

Farmer organisations (Unions and their substructures) have also acted to shape citizens' interaction with local government and traditional institutions around land, marketing, infrastructural development, and general governance of rural development processes. Councillors and traditional leaders often find themselves competing for citizen loyalty with leaders of farmers' groups. Such conflicts have strained local government capacity, exposing structural weaknesses in the system.

Civil society involvement in development activities generally, and local governance specifically, arises from a general concern with enhancing participation. The conception of participation based on the principle of subsidiarity<sup>74</sup> informs the focus of their work. A measure of siding with the poor, and a generalisable commitment to democratisation, resulted in central government considering civil society as oppositional, especially after the 2000 constitutional referendum when civil society sponsored the rejection of the draft Constitution. ZANU-PF's appropriation of civil society's agency for its benefit beyond War Veterans and other party structures, seemed to have come unstuck. Apart from the use of violence to disrupt NGO operations since then, one major policy response came in 2003 through the Policy on Operations of Non-Governmental Organisations in Humanitarian and Developmental Assistance in Zimbabwe.<sup>75</sup> The Policy defined NGO registration, NGO-local government interactions, the public works approach to food assistance, and reporting structures for NGOs. This was followed by a draft NGO Bill in 2004, which non-governmental development organisations, under the leadership of the National Association of NGOs (NANGO), robustly resisted.

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71 Korten 1987.

72 Nyoni 1987; Mararike 1995.

73 Conyers 2003.

74 ZCBC, EFZ and ZCC 2006.

75 Government of Zimbabwe 2003.

Like the rest of Zimbabwe, civil society has gone through a polarising and traumatic experience characterised by disruption of operations, harassment, blanket banning of activities (e.g. between June and September 2008), and centrally fettered engagement with local government.

This section has shown how civil society, broadly defined, has staked a claim in local government, contributing to its growth while also exposing its weaknesses. The dynamics of interaction have been played out in formal structures, like RDDCs and full Council. Conflict has arisen regarding reporting structures for development and humanitarian organisations, while central government has tended to resent those involved in human rights advocacy. Local government has, in the majority of instances, lacked capacity to nurture civil society, let alone define and protect citizen spaces from closure by central government. For instance, Residents Associations have suffered serious mistrust, lacked adequate funding and have often been denied access to information. As noted by Clayton, Oakley and Taylor, issues of performance, accountability, influence of trends towards decentralisation, and ability to do more than basic service provision and broaden their focus by adopting a rights based approach to development, have become important.<sup>76</sup> In Zimbabwe, civil society has undergone considerable growth in terms of size, focus, partnerships, and approaches.

## 5. Local government's developmental potential

Before and after independence, Councils were used to transform and/or 'develop' Zimbabwean society. This role is, therefore, a historical one, although the outcomes of such transformation have always fallen below public expectations; Councils have progressively failed<sup>77</sup> to effectively govern and develop their areas. That Councils can and should perform better in this role is not in doubt. Debate rages on whether the constraints to such transformative potential reside within individual Councils, the whole sector, central government, or in society. It is true that all factors hold true to varying degrees, and depending on a Council, Council type (rural or urban, new or old in terms of establishment), political culture, and resource endowment. From experience, local government's role in facilitating development relates to:

- Grooming of politicians, and facilitating sound political participation and local democratic processes. Most successful political actors are 'trained' at this level.
- Local government structures are also critical in terms of facilitating participation in decentralised development planning. In this way they allow the meeting of local needs from local resources, while also acting as a conduit for securing local access to national resources and participation in national programs.

<sup>76</sup> Clayton, Oakley and Taylor 2000.

<sup>77</sup> This is seen in serious service delivery slippages (uncollected rubbish, pot-holed roads, water shortage, etc) and disruptions to socio-economic relations of production while local government looks on (chaotic land reforms, violence, corruption, etc.).

- Nurturing citizenship and civic mindedness, particularly through levying/charging fees and taxes locally, which revenues are then used to meet local needs. Where collection of levies, rates and taxes is followed by participatory policy making, budgeting, and prioritisation of local needs, citizens develop a sense of belonging, essential for effective citizenship, which is critical for community and nation building.

Local authorities are the closest and locally accountable and accessible public institutions, with a role to represent local interests and deliver locally relevant services. Meeting community welfare needs and facilitating local economic development are essential municipal functions critical to development. The potential of local authorities is considerable but is presently not fully tapped.

In Zimbabwe's case, local authorities can also become more effective than currently in terms of monitoring and co-ordinating the work of other development organisations. This, as noted by Chatiza, can be through providing relevant information to their residents and implementing organisations to allow effective participation in development activities.<sup>78</sup>

Local authorities also have a role in facilitating community organisation. Good examples include, facilitating the formation of, and access to, land for housing co-operatives that was done by relevant departments in the Municipalities of Harare and Bulawayo, among other Councils. Urban and rural Councillors are also regularly involved in convening community meetings in their wards that are critical to development facilitation.

## 6. Key issues for law reform

One of the national development processes that is seizing Zimbabweans at present is Constitution making. The process is valorised as critical to systematically addressing the macro-governance problems of recent years. However, such hope in the supreme law and any subsidiary laws may be misplaced if the political culture in the country remains undemocratic. As noted by McGee et al, the law does not always provide sufficient safeguards for participation and democratic practice in general.<sup>79</sup> While acknowledging that the law is not an all conquering instrument on matters of political and social interaction, one cannot deny that some of the problems that local government grapples with in Zimbabwe could be addressed through careful and far reaching legal reforms. Suffice it to acknowledge that law reform in local government needs to be approached with an understanding of the debate on the role of the central state in development. Local government empowerment, informed by the debate on weakening state capacity and the demise of the model of state led development, has to acknowledge that state capacity is once again becoming critical in the development debate.<sup>80</sup> In this section I highlight some of the areas that are important in terms of reforming local government law, not in any order of importance.

Legal provisions for people's *participation* in governance generally, and local government affairs in particular, are weak in Zimbabwe. Decisions are supposed to be made after

<sup>78</sup> Chatiza 2008.

<sup>79</sup> McGee et al 2003.

<sup>80</sup> See Fritz and Menocal 2007; Lyons, Smuts and Stephens 2001; Ayttey 2005; Calderisi 2006 and Chatiza 2008.

consultation, but the existing law on participation does not adequately provide for recourse should objections to a Council decision be noted by citizens. The case where the Gwanda Rural District Council was taken to the High Court by residents who were objecting to levy proposals in the 2005 budget cycle reflects this weakness in the law. The Court ruled that section 76 of the Rural Districts Council Act does not make consultations with residents a legal requirement, but a forum where residents could lobby Council.<sup>81</sup> Generally, decisions are made with limited to no citizen consultation, rather than in consultation with residents. Council meetings are often inaccessible to the public, as dates and times are not known and minutes are rarely made public. Local government law provides that citizens can freely access minutes from Council at a cost, rather than compelling Councils to cause minutes or resolutions to be published or displayed in the community to improve public access to relevant information to aid informed participation. In a country with limited media plurality, it is only by compelling Councils to become transparent and accountable that citizens are able to utilise the democratic spaces provided through Councils. With the full knowledge that the Ministry responsible for local government is more important in terms of decision making, Councils tend to ignore citizens. The legal provisions for public participation, therefore, need to be strengthened as a way of reinforcing local democracy. Local government law needs to allow more recognition of civil society organisations in local governance than hitherto.<sup>82</sup>

As discussed in other parts of this paper, a case exists for using the law to rationalise the status of local government in relation to other public institutions. Debate on constitutionalising local government has been relatively exhaustive, and the reasons adequately grounded. First, is the fact that constitutionalisation raises the profile of local government, and protects it from central government 'bullying', particularly regarding existence and functions, access to resources, and general autonomy. Secondly, is ensuring that local government laws cease to be subordinated by other legislation. Thirdly, the notion of delegated and legislated powers will cease to weigh down local government, limiting it to central government dictates. An important factor associated with this is assuring direct and determinate resource transfers through the national budget to local government once it is defined as a sphere of government. In terms of local government law, improvements may be needed to complement such direct budget support through transparent and participatory budgeting processes.<sup>83</sup>

In both the Constitution and specific local government law, specific provisions about 'policing' local government will be needed. This is so because the assumption that designating local government a distinct sphere of government will be tantamount to unfettered devolution is a fallacy, considering what the Zimbabwe Institute notes as procedural and substantive failings.<sup>84</sup> Some structure and process will be needed to which complaints about local government failings can be brought for redress. This proposal for a body to oversee and resolve local government matters is premised on the inadequacies of accountability and self-regulation in the sector.

81 *The Standard*, 26 August 2007.

82 See Blackburn and De Toma 1998.

83 Houtzager, Lavalley and Acharya 2003.

84 Zimbabwe Institute 2005.



The experience of the NGO sector is instructive in this respect.<sup>85</sup> As such, while excessive ministerial and presidential interference are decidedly unwarranted, and will become inoperable when local government is constitutionalised, any law reform needs to clearly address how local authorities will be supervised and monitored to entrench good practice, i.e. stem corruption, underperformance, and irrelevance.

To extend the above argument, specific local government law will thus need to be articulate about local government management and accountability lines in ways that entrench a servant like leadership culture. Local government associations presently service their members, who equally lack mechanisms for engaging citizens effectively. Councillors lack basic leadership competences to steer good governance in their wards, and as a result lack effective power and influence in the Council. Once elected, the tendency is to disconnect from the electorate in terms of aspirations, priorities and positions on key issues. As noted by Porter and Onyach-Olaa, the socio-political distance between the elected and the electorate increases, and with it the public's access to technical decision making processes e.g. submission and approval of plans, and budgets.<sup>86</sup> The distance is what destroys the effectiveness of representative democracy.

Legal reforms are also needed in terms of district to national structures for development planning, financing, and stakeholder interaction. One area problematised in this paper relates to the lack of legal provision regarding how traditional institutions relate to local government beyond the ward. The specific structures, powers and functions, including relations with other state institutions, need to be clarified without necessarily packing them into some neat pigeon holes. In this case, therefore, reform needs to go beyond core local government law if institutional mutuality is to be fostered. Another related area deals with aligning functions of key state institutions in the light of constitutionalising local government. This is because constitutionalising local government will drastically reduce state flexibility in re-assigning local government functions. As such, relevant laws will have to be adjusted accordingly to give effect to a dispensation where local government status is elevated and therefore more enduring than hitherto.

An alternate point needs to be made about specific functions, which are defined in current local government legislation as though only Councils perform those functions. With the growing involvement of civil society organisations, and private sector provision of services hitherto defined as the preserve of local government, the law needs to recognise partnerships for service delivery, and provide for how they will be entered into and managed. Existing provisions speak to the permissibility of entering into partnerships, but based on the assumption that councils initiate the partnerships. Developments in the sector show cases where Councils are not proactive but rather reactive.

Zimbabwe's decentralisation programme or process has remained at the level of policy (Prime Minister's Directive) and principles (The Thirteen Principles). Giving legal effect to decentralisation reduces its vulnerability to central government's whims, particularly expressed through the interests of incumbent Ministers responsible for local government from time to time.

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<sup>85</sup> See Ebrahim 2003.

<sup>86</sup> Porter and Onyach-Olaa 1999.

Local government law reforms need to provide for decentralisation and to guide reconciliation of institutional arrangements or definition of the form of a decentralised governance system. Such legal clarity is bound to authenticate government commitment and allow easier implementation of decentralisation. Again, law reform in this case is not seen as the complete panacea, but as a safety valve of sorts that guarantees movement in a desired direction.

In this section of the paper, I have alluded to the areas that I see as critical in any process of local government law reform. I have steered clear of specific provisions, mainly because these will flow from the main ones. For instance, debate on Executive Mayors has re-surfaced, with some advocating for their return. Others have been categorical about the abolition of the Local Government Board and its replacement with a Local Government Commission provided for in the Constitution. By choosing to highlight critical areas like participation, constitutionalisation, monitoring and evaluation, giving legal effect to decentralisation, partnerships, and structures for development planning and financing, I hope to have contributed to refining the debate on legal reform. I also hope to have sufficiently problematised the oft uncritical, if not knee-jerk reaction, which goes: ‘empower local government and you will have democracy’. Experience proves otherwise and a lack of constitutionalisation is not the exclusive reason behind local government underachievement. The case of a number of South African local governments (provided for in the South African Constitution) which recently experienced service delivery strikes, and reflect lack of capacity to collect revenue while their staff demand and receive high salaries, proves that the law is not the only source of local governance problems. In fact, local government itself has serious problems in Zimbabwe and beyond. Just as local government needs constitutional and legislative protection, so, too, do citizens, specifically from the institution of local government. Extending the frontiers of the two critical anchors for local democracy is what an effective local government law reform ought to concern itself with.

## **7. Conclusion: Does the current political dispensation in Zimbabwe allow for change?**

The argument of this paper is essentially that local government has qualified potential to transform society generally, and in Zimbabwe particularly. The history of local government in Zimbabwe has been one of being used as an instrument of control and coercion by the central state from before, and since, independence. In the process, some of the bad practices have rubbed off from the user to the instrument. The empowerment of local government is undeniably critical to transforming society. However, the experience of Zimbabwe’s Executive Presidency has shown that empowerment of institutions without putting effective safeguards into place is problematic. This brings me to the question of whether the present political environment is suited to robust local government policy, and legislative and institutional reforms.

Substantial research will be needed to answer the above question comprehensively. However, drawing upon available anecdotal evidence, one can assert that both negative and positive signs exist. The negative signs include the die-hard and unrepentant culture of abusing public office, and log-jamming institutions to deliberately breed corruption and inefficiency. Local governments and their associations generally tend to be inward-looking and owe allegiance to the Ministry, since it is easier to 'please one stakeholder' than to respond to divergent views of many, including un-organised, barefooted, and hungry citizens. Also, there are still some dinosaurs in many public institutions such that the momentum for change is bound to suffer regression at critical stages. Politicized, polarised and at times privatised Councils, rising poverty, and weak civic-mindedness also militate against sound and sustained positive change.

That noted, there are positive signs inherent in society itself, as shown in the growing activity of citizens' organisations, NGO programs impacting on local governance, information and communication technologies, emergent political stability, and the growing realisation that without good macro governance local government constitutes a layer through which some social transformation may be sought in Zimbabwe. The Inclusive Government provides a window of opportunity, particularly its flagship (and highly controversial) Constitution making project. Sector stakeholders may do well to organise efforts at changing the course of local government history in the country by contributing to relevant processes, especially Constitution making. More detailed research may be needed, for instance, on aspects of community 'ownership' of Councils, center-local relations, the funding of local government in a changing context, and the state of service delivery in terms of variables and actual status. Such research will help inform debate on local government reform in terms of both policy and practice. This will allow movement beyond looking at law reform as a magic wand that will address all local government ills.

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- District Councils Act 1980.
- The Land Apportionment Act 1941.
- The Local Government Act 1961.
- Provincial Councils and Administration Act 1985.
- Regional Town and Country Planning Act 1996 [Chapter 29:12].
- Rural District Councils Act 1996 [Chapter 29:13].
- Urban Councils Act 1980.
- Urban Councils Act 1996.

# Local government institutions and elections

*Stephen Chakaipa\**

## 1. Introduction

There are many varying definitions of local government in the literature and in statutes. However, a number of features are commonly found. Local government is often –

- a decentralised level of government;
- democratically established;
- charged with a service delivery mandate;
- comprised of legal entities with defined powers;
- charged with jurisdiction over a particular area within the limits sets by national legislation; and
- largely self-financing.

The Government of Zimbabwe defines local government as the creation of participatory and democratically elected structures that can identify with the needs of the people at grassroots

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level and ensure the translation of those needs into actual provision and maintenance of essential services and infrastructure on a sustainable basis. Local government is viewed as ‘the establishment of a lower sphere of governance for the purpose of executing functions that central government is too far removed to carry out effectively.’<sup>1</sup> Local government, being the level closest to the people, is able to better articulate and respond to local needs. It is also better placed to harness both local knowledge and effort in the execution of its mandates. The competencies assigned to local government are not only local in nature but have a direct bearing on the day to day lives of local communities. Vosloo, Kotze and Jeppe define local government as a ‘decentralised, representative institution with general and specific powers, devolved upon it and delegated to it by central or regional government in respect of a restricted geographical area within a nation or state and in the exercise of which it is locally responsible and may to a certain degree act autonomously.’<sup>2</sup> Meyer 1999 defines local government as ‘local democratic units, within a democratic system, which are subordinate members of the government vested with prescribed, controlled governmental powers and sources of income to render specific local services and to control and regulate the geographic, social and economic development of defined local areas.’<sup>3</sup> The *raison d’être* for the establishment of local government by many governments is –

- the provision of services at affordable cost to local communities in a more responsive and efficient manner;
- the promotion of public participation in government as a means of enabling and encouraging people to exercise their rights and responsibilities as citizens;<sup>4</sup> and
- the regulation of the conduct of individuals and organizations in areas under their jurisdiction.<sup>5</sup>

This applies equally to Zimbabwe.

### 1.1 Legal framework of institutions of local government

Ikhide remarks that ‘[t]he extent to which any local government is able to provide services is highly related to the efficiency with which the political and administrative mechanisms are put in place.’<sup>6</sup> The government of Zimbabwe has put into place the necessary legal framework and institutional arrangements to operationalise a local government system.

In many countries, local government is enshrined in the Constitution. South Africa, Ghana and Uganda, among others, have taken this bold step. This, however, is not yet the case in Zimbabwe. Local government in Zimbabwe is established through Acts of Parliament. The relevant statutes establishing local government are –

- the Urban Councils Act (UCs Act) [Chapter 29:15];
- the Rural Development Councils Act (RDCs Act) [Chapter 29:13];

1 Government Of Zimbabwe 2004.

2 Vosloo, Kotze and Jeppe 1974.

3 Meyer 1999.

4 Government of Zimbabwe 1999.

5 Government of Zimbabwe 1999.

6 Ikhide 1999.

- Provincials Councils and Administration Act (PCAA) [Chapter 29:11]; and
- Traditional Leaders Act [Chapter 29:17].

It is pertinent to note though that sections 111 (1) and (2) of the Constitution provide for the appointment, by the President, of chiefs and a Council of Chiefs. Furthermore, section 111 A of the Constitution provides for the appointment of provincial, district and regional governors. Therefore, whilst local government is not in the Constitution, both the institution of chieftainship and the office of governor are provided for. Both of these institutions have a strong bearing on local governance. This alone may constitute a case for re-visiting the present constitutional arrangements at sub-national level, more so at this juncture when Zimbabwe is embarking on the drafting of a new Constitution.

## 1.2 Ministry responsible for local government

The Ministry charged by the Executive with the local government function stands at the apex of the local government system. It is the Ministry which has been assigned the various statutes that establish and operationalise local government in Zimbabwe. While local government may lobby for legislative changes, the preparation of enabling instruments is the Ministry's task. The Ministry is finally accountable to the Nation, Parliament and the Executive for the efficient operation of local government. Craythorne thus remarks that 'the ultimate control by central government over local authorities is through the law of the country, but government is also able to control the actions of council by negotiation, by instruction, by direction and by policy declaration'.<sup>7</sup>

The mission statement of the Ministry responsible for local government in Zimbabwe is "[t]o provide sound local governance and the sustainable management of the built environment through the provision of requisite planning and technical services in order to enhance socio economic development in Zimbabwe". In Zimbabwe, the UCs Act vests powers in the Minister to give directions on matter of policy and to reverse, suspend or rescind resolutions of council in terms of section 303 and section 314, respectively. Section 154 of the RDCs Act allows the Minister to investigate a council, and section 155 of the same Act allows the Minister to direct certain actions in council. The Minister furthermore approves high density tariffs and charges in urban areas and together with the Finance Minister approves borrowing powers. The Minister can also cause the suspension of councillors and even their dismissal. The powers of the Minister, therefore, have far reaching implications on the operation of council. For example, the late submission of tariffs and charges by council or late approval of submitted tariffs by the Minister can play havoc with a council budget as collections cannot be effected before approval. Similarly, the late approval of borrowing powers can make money more expensive or inadequate for what it was initially targeted. Over and above administering legislation on local government, the Ministry plays a number of roles including, but not limited to –

- facilitation;
- advice;
- monitoring;

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7 Craythorne 1993.

- oversight;
- directing;
- promotion; and
- capacity building.

The Ministry also has its offices at national, provincial and district levels providing certain competencies which may be scarce or unavailable in local councils. Physical planning and civil protection competencies are not available in RDCs who therefore rely on the centre. The deconcentrated offices of the Ministry at provincial and district levels provide for interface, facilitation and co-ordination of local government with central ministries. The civil protection function is an area where the Ministry supports local authority. The Ministry has been instrumental in sourcing plants and equipment, including ambulances and fire fighting equipment. In the event of an epidemic or a flood the Ministry co-ordinates the national effort in local government areas. The recent cholera outbreak is a case in point.

The internal audit section of the Ministry used to assist RDCs to prepare final and audited accounts. The withdrawal of that service has resulted in many RDCs lagging behind in terms of final accounts and audits. There is a renewed interest by RDCs for the reinstatement of this service in order to strengthen financial management systems.

Given the accountability of the Minister for the local government function, the Minister of necessity has to monitor what happens in the local government arena. At the same time, local government needs the space and resources to carry out its functions to the satisfaction of local communities. The centre and local level need to work together to satisfy their respective constituencies, recognising that in the end it is the local inhabitants in Mudzi, Lupane or Chivi who should have a better quality of life. The relationship between central government and local government needs to be grounded on professionalism, role clarity, transparency and integrity. These are all hallmarks of good corporate governance. Mistrust and negative perceptions of responsibilities tend to undermine sound centre-local relations.

## 2. Provincial councils

The Provincial Councils and Administration Act [Chapter 29:11] establishes Provincial Councils (PCs) in Zimbabwe. They are composed as follows:

- Provincial Governor (PG) or Resident Minister as Chairperson;
- mayors and one councillor from each municipality and city council in that province;
- chairperson and one councillor from Town Councils, Local Boards and Rural District Councils in that province; and
- representative from the Provincial Assembly of Chiefs.

The PC's main function is a co-ordinating one. The PCs receive technical and secretarial support from the Ministry responsible for local government in its day to day operations.

It is underpinned by the Provincial Development Council (PDC) in its co-ordination and development functions. The PDC is composed of –

- the Provincial Administrator (PA) as Chairperson;
- heads of line ministries in the province including security Ministries;
- district administrators in the province;
- town clerks, town secretaries and local board secretaries in the province;
- chief executive officers of RDCs;
- captains of commerce and industries in the province;
- heads of parastatals in the province; and
- heads of civil society organisations in the province.

The PDC consolidates plans from RDCs and UCs into the provincial development plan. The plan is discussed at a joint meeting of the PC and the PDC chaired by the PG. Ideally the plan should inform development programmes by sector ministries and local authorities in that province for the short and medium terms as a co-ordinated document capturing all players in that province. National ministries should draw their plans for sectors' funding from provincial plans. However, ministries tend to focus more on their sector Ministry plans thereby ignoring provincial inputs. Because of a lack of enforcement at sub-national level, officials from sector ministries tend to underplay the importance of planning activities in subcommittees of the PDC, resulting in substandard submissions. The PC does not have a budget of its own. The plans that it produces thus usually gather dust. For the PCs to become operationally effective, some funding needs to be channeled to them. The elaborate planning process developed since 1984 has largely come to a halt because of this shortcoming

### 3. Urban local government

#### 3.1 A brief history

Urban local government in Zimbabwe dates back to the time of colonisation in 1890. The coming of White settlers saw the sprouting of urban centres in various parts of the country. In 1891 a Board of Management was established to run the emerging town of Salisbury. The Board of Management was composed of four elected members and three members appointed by the British South Africa Company. The Board of Management was succeeded by a Sanitary Board in 1892. The Town Management Ordinance of 1894 gave legal effect to Sanitary Boards which were established in the main towns. The Municipal Ordinance of 1897 granted municipal status to Salisbury and Bulawayo, with wholly elected councils. The urban local government which was developing excluded Africans from urban governance. Successive pieces of legislation continued to deny Africans a say in cities and towns. Some attempt to include the growing African urban population in urban local government was made through the establishment of Advisory Boards. As this name suggests, these could only advise White officers on the concerns of Africans in townships.

The post-1980 period saw significant changes take place with the attainment of independence. Townships became part of the UCs, and Africans could now vote, and be

voted in as councillors and mayors. The UCs Act [Chapter 214] was repealed in 1995 and replaced by a new Urban Councils Act [Chapter 29:15].

### 3.2 Organisation of urban councils

UCs in Zimbabwe are hierarchically organised, based mainly on size and functions. At the lowest level are the Local Boards, of which there are four in total. At the next level are Town Councils, of which there are ten. Town Councils and Local Boards have chairpersons and secretaries as heads of the policy making body and management, respectively. There are nine municipalities and seven city councils at the highest level. Municipalities and city councils have mayors and Town Clerks. Municipalities own land within their boundaries, whereas Local Boards and Town Councils do not. The land owning councils can dispose of land to prospective developers and generate revenue.

**Table 1: Hierarchy of UCs in Zimbabwe**

<b>Level I Cities</b>	<b>Level II Municipalities</b>	<b>Level III Town councils</b>	<b>Level IV Local boards</b>	<b>Total</b>
Harare Bulawayo Gweru Masvingo Kadoma Kwekwe Mutare	Redcliff Chegutu Chitungwiza Victoria Falls Chinhoyi Gwanda Marondera Bindura	Chiredzi Norton Shurugwi Zvishavane Gokwe Beitbridge Rusape Karoi Chipinge	Ruwa Chirundu Epworth Hwange	
7	9	10	4	30

Sections 4 to 14 of the Urban Councils Act [Chapter 29:15] provide for the establishment and upgrading of UCs. Section 4(1) is especially relevant. Whenever the President considers it desirable, he may, subject to requirements of the Act, establish a municipality or town, establish a municipal council or town council and divide the council area into any number of wards. Section 14 (1) states: ‘A growth point, unincorporated urban area, local board or council may apply to the Minister in the form and manner prescribed for a change of its status’. This section allows local boards to be upgraded to town councils, town councils to municipalities and municipalities to city councils. Currently there are thirty UCs in Zimbabwe.

### 3.3 Municipalities applying for City Status

Section 14 (3) requires the Minister, on receipt of an application for city status from a municipal council, to appoint, at the expense of the municipal council concerned, a commission to consider the matter and make recommendations to him, provided that no member of the commission shall be a councillor or employee of the municipality concerned.

The commission will consider the matters, listed in the First Schedule of the Act. These includes matters such as –

1. the size and density of the population;
2. the extent to which the municipality provides employment opportunities;
3. the total valuation of property as shown in the valuation roll and the ratios of the values of industrial, commercial and residential property;
4. the extent to which the municipality caters for the requirements of the community by the provision of such local services as fire-fighting services, ambulance services, public parking, etc.;
5. the extent of the influence of the municipality as a national centre for
  - a. commercial purpose;
  - b. industrial purposes;
  - c. mining purposes;
  - d. agricultural purposes;
  - e. administrative purposes;
  - f. financial purposes;
6. the extent to which the municipality is a centre for –
  - a. State services, such as law courts, police stations, prisons, etc.;
  - b. road, rail and air communications;
  - c. postal and telecommunication services;
  - d. the dissemination of information by means of radio, television, newspapers and magazines;
  - e. tourism and tourist facilities, including hotels, motels and caravan parks.
7. the standard of marketing and shopping facilities and the range of specialist, professional, banking and other financial services provided;
8. the extent, quality and variety of –
  - a. cultural amenities;
  - b. educational facilities;
  - c. recreational facilities;
9. the historical associations, length of existence and geographical importance of the centre;
10. the armed forces stationed in or around the municipal area;
11. the religious significance of the centre; and
12. the growth rate of the municipality with reference to population, valuation of buildings, commercial and industrial facilities and other provisions.

Upon receipt of the commission's report, the Minister tables it in Parliament. When Parliament accedes to the recommendation, it is forwarded to the President who by proclamation in the *Gazette* alters the status of the Municipality to city status.

### 3.4 Powers of council

The Second Schedule of the text outlines the powers of UCs. They have 54 functions covering an array of activities. These range from the core business of council, which is service provision, to issues to do with allowances, mementoes, and orchestras and bands. Unlike their rural counterparts, UCs perform most of their functions because they command more resources, both human and financial. The economic challenges facing Zimbabwe today have, however, resulted into poor service provision. The cholera outbreak which claimed 4 300 lives bears testimony to this. The powers of UCs are arranged in the second schedule to the Act. They are grouped under the following headings:

1. Land, buildings and works.
2. Open spaces.
3. Recreational facilities.
4. Show grounds.
5. Trees.
6. Conservation of national resources.
7. Cultivation and farming
8. Grazing
9. Clearing of land.
10. Stock pens and dip tanks.
11. Slaughter-houses
12. Markets and agricultural produce.
13. Sale of products.
14. Conduct of liquor undertakings.
15. Manufacturing of mahewu
16. Application of controlled liquor moneys
17. Charges
18. Plant and machinery.
19. Roads, bridges, dams, etc.
20. Decorations and illuminations.
21. Advertising hoardings.
22. Public conveniences.
23. Effluent or refuse removal and treatment.
24. Control of pests.
25. Hospitals and clinics.
26. Ambulances.
27. Crèches.
28. Maternity and child welfare services.
29. Family planning services.
30. Charitable institutions.

31. Maintenance allowances.
32. Funerals.
33. Grants to charities, sports, etc.
34. Grants to local authorities.
35. Educational institutions.
36. Youth centres.
37. Employment bureaux.
38. Libraries, museums, theatres, public halls, botanical and zoological gardens.
39. Orchestras and bands.
40. Aerodromes and helicopter stations.
41. Boats.
42. Publicity.
43. Public entertainment.
44. Congresses.
45. Courses for councillors and employees.
46. Subscriptions to associations.
47. Travelling expenses.
48. Loans to employees for transport.
49. Insurance.
50. Mementoes.
51. Coats of arms and seal.
52. Freedom of the municipality.
53. Monuments, statues and relics.
54. General.

### 3.5 Committees of urban councils

To better transact their business, councils have committees provided for in sections 96 and 97 of the Act. The committee system allows all councillors to participate in decisions of their council, since all councillors are members of one or more committees of council. Given the smaller numbers in committees, every councillor gets an opportunity to participate, unlike full council where some councillors may feel intimidated by the numbers in full council which is also open to the public and the media. UCs have the following standing committees:

- Finance Committee – responsible for regulating the financial affairs of Council;
- Health and Housing Committee - responsible for health and housing matters; and
- Environmental Management Committee - responsible for environmental matters.

The Act allows a council to have as many committees as it deems fit.

Section 97 of the Act provides for the appointment of an Audit Committee whose functions, in terms of section 98, include:



*(a) to inquire into and report upon the manner in which the finances of the council, assets and human resources are being used; (b) to ascertain whether the funds and assets of the council are applied to the purpose intended ...'*

Section 210 provides for the appointment of a Municipal Procurement Board composed of not less than five members and not more than seven members, responsible for arranging tenders and for making recommendations to the council with regards to acceptance of tenders and the procurement of goods, materials and services.

### **3.6 Appointment of a commissioner or caretaker**

One of the most contentious issues in urban governance in Zimbabwe has been the appointment of one or more persons as commissioners by the Minister after elected councillors were suspended or dismissed. Section 80(5) of the Act allowed the Minister to re-appoint the commissioners if the Minister was 'satisfied that, after the termination of the office of a commissioner appointed ... there will be no councillors for the council area who will be able to exercise all their functions ...'. This provision gave the Minister discretionary power to perpetuate the continued existence of a commissioner.

The issue of commissioners and caretakers has been controversial ever since Mayor Patrick Kombai was dismissed in 1985. His council resigned in solidarity. The late Mayor Kombayi was then a ZANU-PF mayor leading a ZANU-PF dominated council. The Harare Mayor Solomon Tavengwa suffered the same fate. He was dismissed in 1998. His entire council was dismissed and replaced by the Chanakira Commission. Mayor Solomon Tavengwa was a ZANU-PF politburo member. The Thompson Commission appointed to investigate Mayor Tavengwa produced a scathing report highlighting gross dereliction of duty and mismanagement of the affairs of the city of Harare. Harare Mayor Engineer Mudzuri was dismissed in 2004 together with his MDC-dominated council, and replaced by the Makwavarara Commission. This dismissal caused outrage as it targeted a council dominated by the opposition. The continued renewal of the terms of office of the Makwavarara Commission with no elections being held did not go down well with the people of Harare. The other Mayors, that were dismissed were Kugurabadza of Mutare and Shoko of Chitungwiza. In all cases, instances of mismanagement were cited. The most recent casualty is Mayor Marange of Chitungwiza, who was dismissed in 2009 for corruption. Mayor Marange was convicted and sentenced to a prison term.

If applied fairly, such sanction is necessary to rid UCs of errant officials. However, the law should not allow for liberal interpretation which may then result in abuse by authorities. The 2008 amendment to the Urban Council Act seems to have addressed this problem. It now provides for the appointment of not more than three persons as caretakers to carry out the functions of councils if there are no elected councillors or the councillors have been suspended or are unable to exercise their functions. The caretaker shall terminate his or her office as soon as there are councillors elected for the area or ninety days after the date of appointment. The Act now requires the Zimbabwe Electoral Commission to cause an election to be held before the termination of office of the caretaker.

What is needed still is a provision to provide for the recall of elected officials by either the sponsoring parties or the public. The law should be such that elected officials are held to account for their actions even before the end of their terms of office. Mechanisms need to be put in place to weed out non-performers.

### 3.7 Departments and staff of urban councils

Aligned to committees of council, most UCs have the following departments:

- treasury/finance;
- health;
- engineering services;
- housing and community services;
- chamber secretary;
- human resources; and
- internal audit (usually a section under the town clerk).

UCs generally have professional qualified staff including engineers, doctors, lawyers and accountants. The Town Clerk/Secretary as chief advisor of council attends all committees and full council meetings to ensure that policies passed are consistent with legal requirements, and helps council to achieve its goals, especially with limited resources.

The UCs Act specifically provides for the office of Chamber Secretary in sections 133 and 137. The Chamber Secretary's department provides secretarial and legal services to council. This department is in charge of preparing and distributing council and committee agendas and minutes. Since council minutes become legal documents when passed they need to be meticulously prepared. The Chamber Secretary in terms of section 137 (2) acts as Town Clerk in the absence of the Town Clerk.

The internal audit section is important in ensuring that council resources are utilised for the intended purpose, and that value for money is being realised. Reporting to the Town Clerk, the Internal Auditor has a free hand in monitoring operations of all council departments.

In many councils, the engineering service department is the largest in terms of both staff complement and financial resources allocation. Functions, such as, planning, roads, water and sewage, street lighting, and plant and equipment maintenance are carried out in this department. The finance department is generally responsible for collection and disbursement of finances to council departments. This department has to produce bills timeously, monitor collections and plug any leakages for council to carry out its core business. The necessary control measures have to be in place including timeous production of financial statements and annual audits. Many councils fail to access money from funding windows which may be available because their books of accounts and audits are not up to date. Many failed to access funds made available by the Reserve Bank of Zimbabwe. Health departments in councils have suffered serious from a brain drain, with doctors and nurses leaving for greener pastures. Councils have to start re-building this essential

service. The housing function is no longer prominent in council as the housing stock under council control has dwindled. Councils concern themselves more with servicing of stands. Generally, individuals and the private sector are involved in the actual construction of houses. As resources become available, councils should focus on the provision of social housing as not all citizens can afford to build their own houses. Flats and low cost core houses provide shelter to those who may be unable to secure accommodation in the market. In the absence of adequate stocks of affordable social accommodation, people resort to slums and squatter camps, a feature of many developing countries.

In general, a concern is the fact that the brain drain of recent years, brought on by adverse macro-economic conditions, has considerably depleted the ranks of professional cadreship in local government.

UCs in Zimbabwe recruit their own staff. Sections 131 to 148 of the UCs Act provide for the recruitment, and setting of conditions of service of council staff. The appointment and discharge of senior officials, defined in section 131 as a town clerk, a chamber secretary, a head or deputy, head of a department or such other employee of a council as may be prescribed, requires the approval of the Local Government Board established in terms of section 116 of the Urban Councils Act.

### 3.8 Planning authority status

Section 10 of the Regional Town and Country Planning Act [Chapter 29:12] accords UCs and RDCs planning authority status. UCs prepare master plans and local plans for their areas. UCs approve building plans, and in terms of Part V of the Act control development in their areas.

**Table 2: Hierarchy and matrix of plans in Zimbabwe**

Type of plan	Territory covered	Key attribution	Time span	Responsibilities for preparation	Responsibilities for approval
Regional Plan	Natural; economic, metropolitan regions	Is long term in nature	Range; 10-15 or even 25 years	Regional Planning Council	President on the recommendation of the minister responsible
Master Plan	Local authority boundary and land that may be incorporated during the planning period	Is long term in nature	Between 10 – 15 years	Local Authority	-Municipalities -Local Board and Towns – Minister through director and Department of Physical Planning
Local Plans	Suburb areas, specific development zones, neighborhoods	Medium term	Medium in 5 years	Local Authority	-Municipalities -Local Board and Towns Minister through Director and Department of Physical Planning

(i)Local Development	Is a local plan Has more detail guides development in an area	Medium term	5 years	Local Authority	
(ii)Local Subject	Addresses specific issues	Medium term	5 years	Local Authority	
Town Planning Schemes	Not prepared under the new RTCP Act, inherited from the previous planning regime, replaced local plans – are historical	Were long term	Some still applicable today	Local Authority	
Strategic Plans	Institutional	Medium term 3 to 5 years institution and services focused		Local Authority	Local Authority
National Environmental Plan	National	Medium to long term		Minister for Environment and Tourism	
Local Environmental Actions	Local Authority	Short and medium term and long term		Local Authority	

*Source: IDAZIM 2008*

## 4. Rural local government

Section 8 of the RDCs Act [Chapter 29:13] provides for the establishment of RDCs by the President in the same manner as UCs. RDC boundaries coincide with boundaries of administrative districts minus UC land and land under national parks.

### 4.1 A brief history

Before colonisation, local government in the rural areas of Zimbabwe existed in the form of traditional leadership. As presently defined, however, rural local government can be traced to the Native Boards established in the 1920s. These were succeeded in 1927

by Native Councils established by the Native Councils Act. Native Councils had both elected councillors and traditional leaders. The position of chiefs in particular was further consolidated in 1957 through the African Councils Act, with chiefs as vice-presidents and the District Commissioner as president for all African Councils in his district. The chiefs and African Councils were further empowered, especially as African nationalism took root as a counterbalance to the emerging threat of nationalism. Chiefs were encouraged and enticed to have Native Councils in their areas and such Councils were named after the chief. By 1980 there were 241 African Councils. Many of these ceased to function or relocated to urban areas as the war of liberation intensified. The 241 African Councils were amalgamated into 55 District Councils through the District Councils Act of 1980.

Large scale commercial farms, mines and small urban centres were administered by Roads Councils. Road Councils were transformed into Rural Councils through the 1966 Rural Councils Act. These were under European control.

The Prime Minister's Directive of 1984 introduced Village and Ward Development Committees concerned with bottom-up planning and development. Rural Councils and District Councils were amalgamated through the RDCs Act of 1988, but the new RDCs only became operational in 1993. Challenges identified at amalgamation led to the RDCs capacity building programme aimed at developing the capacity of RDCs to plan, manage and implement their own development. The programme was largely donor driven and was affected by the withdrawal of donor support from 2003 onwards.

## 4.2 Committees of the Rural District Councils

RDCs are established in terms of section 8 of the RDCs Act [Chapter 29:13]. The Act also provided for the appointment of committees of councils. Of special note is a provision which allows for the establishment of committees to manage urban land under the RDC. Section 56 (1) provides for the appointment of an area committee to exercise any functions of the council within an area of urban land within the council area. Such a committee consists of –

- the councillor representing each ward which falls wholly or partly within the urban land;
- members of Village Development Committees or Neighborhood Development Committees in that area; and
- not more than two co – opted members for each ward in the area.

Section 57 of the Act provides for the appointment of a Town Board for each town area of the council composed of councillors for the town wards and such number of persons not exceeding one fewer than the ward councillors. The Town Board has no power to impose levies, special rates, rents or charges. It is first and foremost a committee of the RDC but can assume Town Council and Local Board status when it has grown in size. Gokwe and Beitbridge have now graduated to Town Council status from Area Committee and Town Board, respectively.

Other committees of the Rural District Council are: the Roads Committee, the Ward Development Committee and the Rural District Development Committee (RDDC). Road

Committees were incorporated into council. This was done to allay the fears of large scale farmers and miners who, at the time of the amalgamation, were worried about the road network. Section 58 (3) of the Act states that a Roads Committee ‘shall have such powers relating to the construction and maintenance of roads as are delegated to it by the council’. Section 59 provides for the establishment of a Ward Development Committee in each ward. The committee consists of the councillor for the ward and the chairman and secretary of every Village Development Committee and Neighbourhood Development Committee in the ward. Section 60 provides for the appointment of RDDC consisting of –

- the District administrator as chairman;
- the chairperson of every council committee;
- the Chief Executive Officer of council and other senior officials of council;
- senior officers of security ministries;
- district heads of ministries; and
- such other persons representing other organisations and interests as the Minister on the recommendation of the District Administrator may permit.

The RDDC puts critical resources in the district at the disposal of council to assist in planning and implementation of projects. However, councils have not been comfortable with them, mainly because of the role of the District Administrator as chairperson. This is a committee of council, chaired by a civil servant and dominated by civil servants. Thus, in such an arrangement the wishes and aspirations of the Council may not always carry the day. The staff of line ministries take instructions from their line superiors and are not subject to sanction by councillors. In many areas, this Committee has not produced the expected output. This is attributable to the non-attendance by key personnel, who instead delegate attendance to juniors with little or nothing to contribute. The plans prepared have tended more towards ministries funding requirements and the Public Sector Investment Programme and completely ignore councils’ own resources. In the process, because of the limited national cake, many projects included in such plans have not been implemented. This has created frustration at both the village and the ward levels, which forward their plans to the RDDC. Sub-district planning ends up as an exercise in futility.

### **4.3 Staff of the Rural District Council**

RDCs appoint their own staff. The appointment the Chief Executive Officer in terms of section 66 (1) specifically requires the approval of the Minister. The Minister may also appoint a Chief Executive Office from the ranks of the public service in terms of section 66 (2), if the office of Chief Executive Officer is vacant for any reason. Of note is that that DAs were Chief Executive Officers of council until 1993. Such officers do not always work in the best interest of council, as accountability for such an officer lies elsewhere.

Section 134 (1) specifies that the accounts of council shall be audited by a person appointed by the Urban Development Corporation. This also removes the power of council to act in areas within their responsibility.

#### 4.4. Powers of the Rural District Council

The Act allocates sixty four powers to RDCs in terms of section 71, and as detailed in the First Schedule. The powers range from acquisition, maintenance, development and disposal of property to statues (unclear). The powers of RDCs largely reflect the areas of operations of decentralised offices of national government, and, because of resources constraints, councils have normally taken a backseat and allowed sector ministries to operate as they see fit. The reluctance by sector ministries to lend support and embrace the decentralisation drive is rooted partially in this arrangement. Protection of turf and perception of becoming redundant have stalled decentralisation in Zimbabwe. The current resources limitations have largely removed decentralisation from the national agenda.

The powers of the RDCs are arranged in the First Schedule in paragraphs under the following headings:

1. Acquisition, maintenance, development and disposal of property.
2. Open spaces.
3. Recreational facilities.
4. Showground.
5. Trees.
6. Conservation of natural resources.
7. Bush fires.
8. Fences.
9. Clearing of land.
10. Cultivation and farming.
11. Grazing.
12. Agricultural and other services.
13. Animal diseases.
14. Facilities for animals.
15. Fisheries.
16. Slaughter – houses.
17. Markets and agricultural and other produce.
18. Sale of products.
19. Manufacture and sale of mahewu.
20. Roads, bridges, dams, etc.
21. Parking.
22. Omnibuses.
23. Ferries.
24. Lighting.
25. Decorations and illuminations.
26. Advertising hoardings.
27. Drains, sewers and sewage works.

28. Water.
29. Obstruction of water flow.
30. Pollution.
31. Public sanitary conveniences.
32. Effluent or refuse removal and treatment.
33. Control of pests.
34. Hospitals, clinics and health services.
35. Ambulances.
36. Fire brigades.
37. Crèches.
38. Maternity and child welfare service.
39. Family planning services.
40. Charitable institutions.
41. Maintenance allowances.
42. Funerals.
43. Grants to charities, sports etc.
44. Grants to other local authorities.
45. Educational institutions.
46. Youth centres.
47. Employment bureau.
48. Libraries, museums, theaters, public halls, botanical and zoological gardens.
49. Orchestras and bands.
50. Aerodromes and helicopter stations.
51. Boats.
52. Publicity.
53. Public entertainment.
54. Allowances for councillors and members of committees, officers and employees.
55. Acting allowances.
56. Travelling expenses.
57. Courses for councillors, members of committees, officers and employees.
58. Loans to officers and employees for transport.
59. Congresses.
60. Subscriptions to associations.
61. Insurance.
62. Mementoes.
63. Coats of arms and seal
64. Monuments, statues and relics.



## 5. Traditional leaders and local governance

Traditional leaders have had a role in rural local governance since before colonisation. Successive governments after colonisation have aligned rural local government with traditional leaders, namely, chiefs, headmen and village heads (VHs). Current legislation makes the same provisions, including chiefs on the RDC as *ex officio* members, and headmen and VHs in sub-district structures of RDCs. Chiefs are also members of the PC and are in one arm of the highest legislative bodies, the Senate. There are 271 chiefs in Zimbabwe and 400 headmen. In addition, there are 24 000 VHs. Their coverage is thus much more extensive than that of elected councilors. This has important effects on their influence.

### 5.1 Duties of traditional authorities

The Chiefs and Headmen Act [Chapter 29:01] of 1982 stripped traditional authorities of most powers they had prior to independence in 1980. Further, the Act excluded VHs from rural governance and allocated only three functions of a customary nature to Chiefs and headmen. Powers at district and sub-district levels were transferred to elected officials in the District Council and in Ward and Village Development Committees. This new arrangement created tension and role conflict in communal areas. Traditional leaders, despite being legally stripped of functions, such as allocation of land and resolving customary law disputes, continued to carry out these functions. Local people recognised them as community leaders and accorded them the status they had always had. Conflicts arose with the elected leadership on the control of turf. The Rukuni Commission on land tenure recommended the need to harmonise traditional and elective offices. The Traditional Leaders Act [Chapter 29:17] was a process of trying to harmonise structures at grassroots level. Chiefs functions were increased from three to 22 and headmen functions from three to 11. The Act also recognised VHs, allocating them 16 functions.

#### 5.1.1 Duties of chief

The duties of a chief are described in section 5(1) of the Act as follows:

1. *A Chief shall be responsible within his area for –*
  - a. *performing the functions pertaining to the office of a chief as the traditional head of the community under his jurisdiction; and*
  - b. *promoting and upholding cultural values among members of the community under his jurisdiction, particularly the preservation of the extended family and the promotion of traditional family life; and*
  - c. *carrying out, in accordance with Part IX, the functions of a chief in relation to provincial assemblies, the Council and the overall leadership of his area; and*
  - d. *supervising headmen and VHs in the performance of their duties; and*
  - e. *discharging any functions conferred upon him terms of the Customary Law and Local Courts Act [Chapter 7:05]; and*
  - f. *overseeing the collection by VHs of levies, taxes, rates and charges payable in terms of the RDCs Act [Chapter 29.13]; and*

- g. *ensuring that Communal Land is allocated in accordance with Part III of the Communal Land Act [Chapter 20:04] and ensure that the requirements of any enactment in force for the use and occupation of communal or resettlement land are observed; and*
- b. *preventing any authorised settlement or use of any land; and*
- i. *notifying the rural district council of any intended disposal of a homestead and the permanent departure of any inhabitant from his area, and, acting on the advice of the headmen, to approve the settlement of any new settler in his area; and*
- j. *nominating headmen for appointment in terms of this Act; and*
- k. *approving nominations by headmen of VHs for appointments in terms of this Act; and*
- l. *ensuring that the land and its natural resources are used and exploited in terms of the law and, in particular, controlling –*
  - i. *over-cultivation; and*
  - ii. *over-grazing; and*
  - iii. *the indiscriminate destruction of flora and fauna;*
  - iv. *and illegal settlements; and*
  - v. *generally preventing the degradation, abuse or misuse of land and natural resources in his area; and*
- m. *ensuring that public property, including roads and bridges, telephone and electricity lines, diptanks and animal health centres, clinics, churches, cattle-sale pens, schools and related establishments, is damaged, destroyed or misused by the inhabitants or their livestock; and*
- n. *adjudicating in and resolving disputes relating to land in his area; and*
- o. *notifying the rural district council for the area concerned, as soon as is reasonably practicable, of the outbreak of any epidemic or prevailing disease, flood or other natural or unnatural disaster affecting the inhabitants, livestock, crops, the land, flora or fauna in his area; and*
- p. *publishing such public orders, directions or notices as may be notified to him; and*
- q. *liaising with and assisting development committees established in terms of the RDCs Act [Chapter 29:13], in all matters relating to the planning and implementation of local development programmes; and*
- r. *taking charge of traditional and related administrative matters in resettlement areas, including nominating persons for appointment as headmen by the Minister; and*
- s. *maintaining up-to-date registers of names of villages, and their inhabitants and of land certificates; and*
- t. *under the direction of the district administrator and the rural district council, as the case may be, assisting drought and famine relief agencies in co-ordinating relief and related matters in his area; and*
- u. *promoting the maintenance of good standards of health and education in his area; and*
- v. *performing such other functions as may be prescribed or as may be assigned to him in terms of any law.*

### 5.1.2 Duties of headmen

The duties of a headman are detailed in section 9(1) of the Act as follows:

1. *It shall be the duty of the headmen –*
  - a. *to assist the chief to perform his duties; and*
  - b. *to report to the police as soon as is reasonable practicable-*
    - i. *the commission of any crime or offence in his area; and*
    - ii. *the presence of the corpse of any person who has died suddenly or was found dead or is suspected of having died violently or otherwise than in a natural way; and*
    - iii. *the suspicious disappearance of any person; and*
    - iv. *any actual or threatened public unrest likely to disturb the public peace; and*
  - c. *to carry out all lawful and reasonable orders given by his chief; and*
  - d. *to recommend to the chief persons for appointment as VHs and, where appropriate, to recommend their removal from office; and*
  - e. *to report all criminal acts, acts of misconduct and violations of customs and traditions to the chief and any other appropriate authority; and*
  - f. *to preside over a ward assembly when elected as chairman for that purpose in terms of this Act; and*
  - g. *to oversee, through the ward assembly, the disposal of settlement rights in communal Land and the admission of new settlers in the area under him; and*
  - h. *to keep an up-to-date register of the villages and the VHs under him and keep the chief and the rural district council informed of any changes to the register; and*
  - i. *generally, to mediate in local disputes involving customary law on matters such as lobola, elopement, burials, domestic dispute, disputes relating to the straying of livestock, the traditional aspects of incest, the performance of customary rites and any other inter-personal disagreements, but only to the extent that such matters are not subject to the general law of Zimbabwe; and*
  - j. *to discharge any functions conferred upon him in terms of the Customary Law and Local Courts Act [Chapter 7:05]; and*
  - k. *to enforce all environmental conservation and planning laws, including local field boundaries, on behalf of the chief, the rural district council and the State; and*
  - l. *to perform such other duties as may be prescribed.*

### 5.1.3 Duties of a village head

The duties of a VH are set out in section 12(1) of the Act as follows:

- It shall be the duty of a village head –*
- a. *to assist the chief and headmen in the performance of their duties; and*
  - b. *to carry out all lawful and reasonable orders of the chief or headmen; and*
  - c. *to lead his village in all traditional, customary and cultural matters; and*
  - d. *subject to the Communal Land Act [Chapter 20:04], to consider, in accordance with the customs and traditions of his community, requests for settlement by new settlers into the village and, in consultation with the village assembly, to make recommendations on the matter to the ward assembly; and*

- e. *to the extent that such matters are not subject to the general law of Zimbabwe, to settle disputes involving customary law and traditions, including matters relating to residential, grazing and agricultural land boundaries and, where necessary, to refer these matters for settlement by the headmen; and*
- f. *to preside over the village assembly; and*
- g. *to ensure that all land in his area is utilised in accordance with any enactment in force for the use and occupation of communal or resettlement land; and*
- h. *to produce, in consultation with the village assembly, village development plans for his area and to submit them to the ward assembly; and*
- i. *to preside over the Village Development Committee, to co-ordinate its work and to submit the resolution and plans of that committee to the village assembly for consideration, and where appropriate, implementation; and*
- j. *to collect levies, taxes and other charges payable in terms of the RDCs Act [Chapter 29:13]; and*
- k. *to ensure the security of schools, clinics, contour ridges, water points, roads, culverts, public fencing and any other public property and, where necessary, to report any damage or potential damage to any such property to the police; and*
- l. *to assist by all means in his power, in apprehending and securing offenders against the law and generally to ensure observance of the law by all inhabitants, and immediately to report any contravention of the law to the police; and*
- m. *to promote sound morals and good social conduct among members of his village;*
- n. *to maintain an up-to-date register of names of the inhabitants of his village, and their settlement permits; and*
- o. *to maintain an accurate outline plan in respect of which he holds a village registration certificate; and*
- p. *to perform such other duties as may be prescribed.*

The Traditional Leaders Act rationalised the roles at grassroots level by making the village head chairperson of the VA and Village Development Committee. The Village Development Committee was composed of six elected officials in terms of the 1984 Prime Minister's Directive. The new committee has five elected members, plus the village head as chairperson. This thus combines elected officials and the traditional authority. At ward level, a new structure, the WA, was created, composed of headmen, VHs and the councillor for the ward, chaired by one of the headmen of the ward. To assist the WA, a Ward Development Committee established in terms of section 59 of the Rural District Councils Act was also established. The ward councillor chairs the Ward Development Committee whose other members are chairpersons of Village Development Committees, that is VHs and their secretaries. The structure also brings together traditional authorities and elected authorities i.e. councillors and VHs.

## 5.2 Functions of the Ward Assembly

The functions of a Ward Assembly are described in section 18(3) of the Act as follows:

- a. *to supervise the activities of the village assemblies within its jurisdiction; and*
- b. *to review and approve development plans or proposals submitted by the village assembly and to submit such plans for incorporation into the rural district development plan; and*
- c. *generally to oversee the discharge of functions by village assemblies to ensure good government at the level; and*
- d. *to consider and report on any matter that is referred to it by -*
  - i. *the district administrator for the district concerned; or*
  - ii. *the chief for the area concerned; or*
  - iii. *the rural district council; or*
  - iv. *a member of the ward assembly; and*
- e. *to bring to the notice of the district administrator and the council any matter of local or national interest which affects the interest and well being of the inhabitants of the area for which the ward assembly has been established or any part of that area; and*
- f. *to make representations to any relevant authority on any matter that affects the interests or well-being of the inhabitants of the area for which the ward assembly has been established.*

## 5.3 Functions of the Village Assembly

The functions of a Village Assembly are detailed in section 15(1) of the Act as follows:

- a. *to consider all matters, including cultural matters, affecting the interests and we-being of all inhabitants of the village; and*
- b. *to ensure the good government of the village in compliance with this Act, the Communal Land Act [Chapter 20:04] and the RDCs Act [Chapter 29:13]; and*
- c. *to consider and resolve all issues relating to land, water and other natural resources within the area and to make appropriate recommendations in accordance with any approved layout or development plan of the village or ward; and*
- d. *to elect and supervise the Village Development Committee; and*
- e. *to review and approve any village development plan before its submission to the ward development committee for incorporation into the ward development plan; and*
- f. *to consider and report on any matter that is referred to it by -*
  - i. *the district administrator for the district concerned; or*
  - ii. *the rural district council; or*
  - iii. *the chief or headmen for the area concerned; or*
  - iv. *the ward assembly within whose area the village assembly falls; or*
  - v. *the Village Development Committee established for the village; or*
  - vi. *any member of the village assembly; and*
- g. *to bring to the notice of the headmen, the ward councillor and the ward assembly any matter of local or national interest which affects the inhabitants of the village; and*

- b. to consider reports from the Village Development Committee established for the village by the rural district council on any matter which affects the interests or well-being of the inhabitants or the village; and*
- i. to make representations to the headmen or ward assembly on any matter that affects the interests or well-being of the inhabitants of the village.*

## 5.4 Land allocation

Allocation of communal land has long been a contentious issue. Section 26 (1) of the Traditional Leaders Act states: ‘No land shall be allocated in terms of this Act except with the approval of the appropriate rural district council.’ Section 26 (4) states: ‘no inhabitant shall dispose of Communal Land used by him, or subdivide such land for any purpose, without the approval of the village head.’ Section 5 (19) and section 9 (19) provide for chiefs and headmen to have a role in land allocation.

In reality, VHS continue to allocate land, as has always been the case, while the role of the RDC is peripheral. The law needs to be revisited in order to more clearly define both land custody and allocation procedures. Many VHS have been accused of selling land or dispossessing legitimate claimants of land for personal gain. There is merit, however, in providing for the overall custody of communal land to the RDCs, yet allowing traditional leaders to actively participate in the allocation process. VHS in particular are closest to the resource and cannot be ignored in its allocation and sustainable utilisation. In the interim, provisions of the Communal Land Act [Chapter 20:04] should guide both council and traditional authorities.

## 5.5 Traditional leaders and political office

Section 45 of the Traditional Leaders Act [Chapter 29:17] deals with the election of traditional leaders to political office. Section 45 (1) states that no chief, headmen or village head shall be eligible for election as President, Member of Parliament or councillor whilst still holding office as chief, headmen or village head. Section 45 (2) goes further to state: that no chief, headmen or village head shall canvass, serve as an election agent, or nominate any candidate for election as state President, member of Parliament or councillor in any local authority. Chief, headmen or village heads may, however, exercise their right to vote in any national or local government election or referendum.

Politicians of all persuasions realise the substantial influence traditional leaders wield in rural Zimbabwe, most notably through mediums such as tribe, clan, totem, custom and tradition. Both before and after independence, politicians have sought the assistance of traditional leaders in order to influence both electoral and governance processes. Traditional leaders are also best positioned to communicate programmes and ensure community participation in such programmes. Parties in government have tended to have an edge in rallying traditional leaders to their cause, be it during elections or in delivery of government programmes. Traditional leaders are an effective communication tool given their hierarchical nature (chief, headmen, VH) and their spread. They are present in all parts of rural Zimbabwe, with the exception of commercial farming areas and mining regions. Their support is, therefore, invaluable. Though the law prevents them from

participating in politics or, more specifically, seeking elective office, they remain a major player in governance, especially at local level.

As the level of education of traditional leaders improves, it become more and more foolhardy to expect that they can be ignored. Some have first and second university degrees and cannot, therefore, just be taken for granted. This is demonstrated by their increased demands for a more prominent role in governance. Their annual meetings with the head of state and ministers have allowed them to highlight not only the importance of their role, but also press for better living conditions befitting of their status. They are now also better organised and focused and partner with other traditional governance institutions in the region. In the current Constitution making process, traditional leaders are demanding a more pronounced role in government at all levels.

## **6. National institutions supporting and regulating local government**

### **6.1 Parliamentary Portfolio Committee on Local Government**

Reforms which have taken place in Parliament in recent years introduced portfolio committees to perform some shadow role on ministries of government. Members of Parliament discuss issues related to the performance of ministries with members of the executive, their officials and the public. Such deliberations help call attention to public concerns about the ministries' performance. Moreover, the platform allows the ministries to articulate the challenges they are facing. This is especially useful when the Appropriation Bill is brought before Parliament and members have better insight as to why a ministry is requesting increased subventions to meet its mandate. Members of the portfolio committees may demand explanation from ministries if work, for which Parliament allocated funds, is not carried out. This enhances efficiency and effectiveness of sector ministries. With the normalisation of the political environment, the relevance and effectiveness of portfolio committees will become more apparent and visible. Against this background it is suggested that the Portfolio Committee on Local Government not only plays a shadow role but becomes a catalyst for revitalising local government.

### **6.2 Local Government Board**

The Local Government Board is an important institution in urban local government management. The Board is established in terms of section 116 of the Urban Councils Act [Chapter 29:15]. It is composed of seven members appointed by the Minister responsible for local government from the following categories:

- One member is appointed from a list of not less than three names submitted by the UCs Association of Zimbabwe.
- One member is chosen from a list of not less than three names submitted by Town Clerks.
- One from a list of not less than three submitted by the Municipal Workers Union.

- One shall be a member of the Public Service Commission chosen from a list (of not less than three) submitted by the Minister responsible for the public service.
- Two shall be appointed for their experience in public administration and will have been employed for not less than five years in a local authority or the public service.

The Minister appoints a chairman and vice chairman. Board members hold office for up to four years. The Local Government Board is independent of the Ministry and its functions are outlined in section 123 of the Act. Its task is to –

- provide of guidance for the general organisation and control of the employees in the service of council;
- ensure good general administration of council staff;
- make model conditions of service for council staff;
- make model regulations stipulating the qualifications and appointment procedures for senior officials of council;
- approve the appointment and discharge of senior officials; and
- conduct inquiries into the affairs and procedures of council.

Although the Urban Councils Act empowers the Local Government Board to make urban local government efficient and effective, its efficacy has been compromised by under-resourcing in both human and material terms. Section 127 provides for the funding of the Board from the money appropriated by Parliament. The financial resources so allocated have been insufficient for the Board to carry out its mandate. Over the years, the Board has been short staffed, making it difficult for the Board to be effective.

The only prominent role the Board has played is the approval of the appointment and dismissal of senior staff of council. However, properly resourced and managed, the Local Government Board can make a substantial difference in urban governance. For this reason, the Zimbabwe Local Government Association's submission to the Constitution making process envisaged the establishment of a Local Government Commission on similar lines to that of the current board incorporating both urban and RDCs under its umbrella.

### 6.3 Valuation Board

Property tax is a major source of revenue for UCs. The basis for the collection of this tax is a valuation roll compiled by council, and such roll is periodically reviewed to not only capture new development but to update the existing roll. Valuation is for residential and non-residential property and the land.

The Valuation Board, established in terms of section 241 of the Urban Councils Act [Chapter 29:15], ensures that the valuation process carried out by council meets prescribed standards. The Valuation Board deals with any objections which may be raised by property owners. In order to meet such challenges, which may be largely legal, the Valuation board, which is established by the Minister for each council area, is presided over by a president who holds the office of President of the Administrative Court. Two members of the Valuation Board, other than the President, are persons who are not councillors or council employees.



## 6.4 Urban Development Corporation

Established in terms of the Urban Development Corporation Act [Chapter 29:16], The Urban Development Corporation (UDCORP) was created to provide technical and professional services to councils. Areas of focus include auditing, planning and financial support services. From its inception, UDCORP has not made the desired impact. The major area in which it has provided service to council is auditing. Limited planning of new housing estates has also been carried out. Section 134 of the RDCs Act and sections 404 (4) and (4b) of the Urban Councils Act provide for the audit function of UDCORP.

UDCORP was meant to be decentralised to all provinces but now has only two operational offices, in Harare and Gweru, focusing on audit services. It is well known that many councils are lagging behind by two or three years in their audited accounts, an indication of poor financial management. Councils have often failed to pay private auditing firms the fees required and have had to rely on UDCORP for this service. In the absence of final accounts and up to date audited accounts, councils have missed out on periodically available funding, but whose prerequisite is audited accounts. UDCORP itself is short staffed, making the task harder. In the southern part of the country covered by the Gweru office, only Zvishavane, Redcliff, Gokwe and Plumtree have audited accounts for 2008 (Bulawayo has always used private audit firms). UDCORP is thus worth supporting, re-tooling and resuscitating countrywide. The UDCORP board, which has not been fully constituted and functional for some time, needs to become operational.

## 6.5 Local government associations

Local government associations have been a feature of both rural and urban governance for many years. The UCs Association of Zimbabwe traces its origins from the Local Government Association of Southern Rhodesia formed in 1923. Pre-1993 rural councils had their own association, as did district councils formed in 1980/81. Subsequently, these two merged, after the amalgamation of rural and district councils, to form the Association of RDCs. These organisations are voluntary member organisations. Councils apply for membership and then pay annual subscriptions. The associations can also seek funding from development partners to carry out programmes in their strategic business plans.

Functionally, however, local government associations are established to bring together councils to approach local government issues from a common point. Their main functions are to –

- lobby government, legislators and relevant organisations on local governance issues;
- conduct research in challenging and key policy areas;
- promote good management and organisational practices;
- initiate programmes in areas, such as, capacity building, gender mainstreaming, civic education, community participation, etc.;
- facilitate the development of partnership, networking and international co-operation (twinning arrangements, etc.); and
- represent members in national, regional and international local government fora.

Recently there have been efforts to form an umbrella organisation, the Zimbabwe Local Government Association (ZILGA). ZILGA has been beset with challenges from the outset, with some councils, like Bulawayo, opting out of it.

## 6.6 Tertiary institutions

Tertiary institutions in Zimbabwe have partnered with local government in human resources development for many years. The Domboshawa Institute of Manpower Development has been involved with the training of council staff since the period before independence when they were training council secretaries and treasurers for African Councils. In association with the University of Zimbabwe, Domboshawa now offers a Diploma in Local Government Administration. The diploma course draws participants from both Urban and RDCs. Domboshawa has since 2006 been offering a Diploma in Community Development in association with Midlands State University. The Zimbabwe Institute for Public Administration and Management has been running short courses for both elected and appointed officials. They have also launched a Masters Degree in Public Administration with the National University of Science and Technology. The University of Zimbabwe continues to offer a Bachelor's Degree in Politics and Administration and a Master's Degree in Public Administration. Africa University also has local governance related degree programmes. Midlands State University launched a Bachelor's Degree in Local Governance Studies. This degree programme has been further re-configured to include a block release programme to accommodate those already working in local governance related institutions. Efforts by tertiary institutions are geared towards creating the critical mass required for an effective and efficient local government system. Research in local governance is also carried out providing insights into governance challenges and homegrown solutions to such challenges.

## 6.7 Civil society organisations

The government of Zimbabwe defines local governance as 'a variety of institutions and processes of government and non-government which collectively determine the way political and administrative decisions are made and implemented within a locality'.<sup>8</sup> This definition acknowledges the role that civil society organizations, such as non-governmental organisations (NGOs), have in local governance.

Shoki defines civil society organisations as, 'a range of organised groupings that occupy the public space between the state and individual citizens'.<sup>9</sup> Although such organisations have their shortcomings, they have played positive roles in development, advocacy issues on democracy and governance, capacity building, civic education, human rights, policy, and legislative changes. They are important partners of local government by virtue of their provision of technical expertise and financial resources. Many induction programmes for new councillors after the March 2008 elections in Zimbabwe were resourced by NGOs.

In many urban areas, Resident and Ratepayers Associations are recognised as important players in urban governance. Such groups have pressured elected officials to

<sup>8</sup> Government of Zimbabwe (1999).

<sup>9</sup> Shoki (2009).

improve service delivery by pointing out services slippages and resources wastage. They have advocated for transparency, accountability and probity in the operations of local government. Residence and Ratepayers Associations in Zimbabwe now have an umbrella organisation, the Zimbabwe United Residents Association. Of note is that such groups can also distract council from more pressing issues by blowing issues out of proportion using the media or staging disruptive demonstrations at Town Houses. On a positive note, many councils now actively engage them in participatory budgeting. This not only brings them on board, but also enhances ownership, improves on transparency and resources utilisation and increases the budget yield.

Civil society organisations have played a key role in rural areas for many years. Many schools and hospitals in rural Zimbabwe were established by missionaries. NGOs continue to play an important role in rural livelihoods, ranging from water and sanitation, food aid and more recently in HIV/AIDS and poverty alleviation.

A considerable amount of financial resources has been mobilised for humanitarian support programmes, and have been channeled to needy areas. Civil society has also used traditional leaders as entry points into rural areas on the understanding of their role as community leaders of repute. Some organisations have, however, not always conformed to the letter and spirit of their mission, resulting in conflict with the authorities.

## **6.8 Community Areas Management Programme for Indigenous Resources**

The Parks and Wildlife Act [Chapter 20:14] accords appropriate authority status to Rural District Councils, giving them the power to conserve and dispose of wild animals in their area. The Community Areas Management Programme for Indigenous Resources (CAMPFIRE) was formed to promote community based natural resources management. It operates with the support of the Parks and Wildlife Management Authority, and brings together 56 RDCs with appropriate authority status. The focus is on sustainable utilisation of wildlife resources and preserving of cultural heritage. CAMPFIRE has diversified to include the management of other natural resources based activities, such as, eco tourism, beekeeping, timber and crafts by local communities.

Communities in resource rich areas like Guruve, Hwange and Binga have generated significant revenue to improve their livelihoods. Primary and secondary schools have been constructed, water points have been drilled, and agricultural inputs and tractors have been procured, among other benefits. RDCs have directly benefited from wildlife proceeds and timber logging.

CAMPFIRE programmes in RDCs have had their fair share of challenges, ranging from allocation of safari areas and quotas, timber logging, and failure to respond to problem animals and compensate affected families. On the whole, however, CAMPFIRE as a programme has generated interest among communities to manage their natural resources, and brought much needed revenue to RDCs.

In 2006 Mbire District (Guruve) generated ZWD64.5 million distributed as follows:

**Table 3: Revenue generation in Mbire District**

RDC	ZWD32.6 million
Communities	ZWD29.4 million
CAMPFIRE	ZWD2.3 million
Masoka Ward	ZWD17.6 million

*Source: CAMPFIRE 2000*

Communities in Mbire were encouraged to have their own bank accounts into which money was paid directly by safari operators. Such approaches improve revenue sharing and distribution challenges.<sup>10</sup> For 2009 it is anticipated that about USD3 million will be realised from CAMPFIRE related programmes in RDCs.<sup>11</sup>

## 7. Elections for local government

Elections for local government have been held regularly since the 1890s and the 1920s, for urban and rural areas, respectively. Since then, various reforms have taken place in the management of elections. In the past, local governments would run their own elections guided by their enabling legislations. Now, the management of all elections is under the Zimbabwe Electoral Commission (ZEC), established in terms of section 61 of the Constitution. Elections for local government are now conducted in terms of the Electoral Act [Chapter 2:13]. While in the past national and local elections were held separately, these were harmonised for the first time in the March 2008 elections. Local government elections are ward based, and for the March 2008 elections, the ZEC demarcated 1958 wards in both urban and rural areas attracting 3431 candidates. Out of these, 413 candidates stood unopposed after the sitting of nomination courts.

**Table 4: Results by political party 2008 election**

Political party	Seats won unopposed	Seats won in contested wards	Total
MDC	13	152	165
MDC-T	11	764	775
INDEPENDENT	-	3	3
UPP	-	1	1
ZANU-PF	389	612	1001
Total seats contested	413	1532	1945
No Elections			13
GRAND TOTAL			1958

*Source: ZEC 2008*

<sup>10</sup> CAMPFIRE 2006.

<sup>11</sup> CAMPFIRE Press Statement 2009.

The ZANU-PF has tended to dominate in rural areas with MDC-T and MDC taking most urban seats. In the 2008 elections, MDC-T won 27 UCs. MDC-M 2 and ZANU-PF 1 out of the 30 UCs. In rural areas MDC-T won 15 and MDC-M 2 and ZANU-PF 43 out of the 60 RDCs.

There has never been any requirement of academic qualifications for councillors in Zimbabwe. The onus for choosing credible candidates for public office at local and national levels rests on political parties. To be elected as a councillor, the only requirement is that the candidate must be 21 years of age and registered on the ward roll for the area which one is contesting.

Voter turnout for local government elections has also been generally low. The 2008 harmonised elections attracted a fair turnout, around 35% compared to 42.73% for the Presidential poll (ZEC 2008). The Table below indicates the turnout in some towns in Midlands Province.

**Table 5: Turnout in some towns in Midlands Province for local government elections in 2008**

Redcliff	41%
Kwekwe	37%
Gweru	35%
Gokwe	48%

*Source: ZEC 2008*

Section 4A of the Act also provides for appointed councillors representing special interests, who should not be more than 25% of the elected councillors. Appointed councillors can deliberate but have no vote at meetings.

Though the concept of appointed councillors may be new to urban governance, it has existed in rural areas for many years. Big mining locations, for example, have been represented on rural councils in the past. Shabanie Mine had a seat on Mberengwa Rural Council and Buchwa Mine on Mberengwa District Council in the Midlands Province.

## 7.1 Election of office-bearers

The elections of mayors, deputy mayor, chairpersons and deputy chairpersons of Town Councils is provided for in section 103 of the Urban Councils Act:

*At the first meeting of a council after it has been established and thereafter at the first meeting held after a general election, the councillors present at that meeting shall, under the chairmanship of the district administrator or in the case of Harare and Bulawayo municipal councils, the provincial administrator within whose province the municipal council lies elect:*

- (a) *in the case of a municipal council, one councillor or other person to be mayor and thereafter another councillor to be deputy mayor;*
- (b) *in the case of a town council, one councillor to be chairperson and another councillor to be deputy chairperson.*

The mayor presides over all meetings of council at which he/she is present. In the event of an equality of votes, he or she shall have an additional casting vote.<sup>12</sup> As noted above, the mayor is a member of the Provincial Council. The term of office for both mayors and councillors is now five years, an increase from the previous four-year term. Mayors do not necessarily have to be elected councillors. Any person considered suitable by councillors can be elected mayor (as was the case for Harare Mayor Masunda). There are no prescribed academic qualifications for mayors.

The Urban Councils Act of 1995 initially introduced directly executive mayors (EMs). EMs required some academic qualifications and were elected into full-time positions. The EMs were introduced in a bid to provide focus and accountability in municipal governance. They were charged with supervising and co-ordinating the affairs of the council as well as the development of the council area. Furthermore, they were responsible for controlling the activities of the employees of the council concerned, through the Town Clerk. The EMs were also responsible for, amongst other functions, presiding over council meetings. They were well-resourced with ministerial-type vehicles, mansions, good pay packages, and domestic servants. EMs were required to have at least five ordinary levels, including English, and two advanced level subjects, or a post-ordinary level qualification completed after at least two years. The Executive Committee was also introduced with the 1995 legislation. The Executive Committee comprised chairpersons of standing committees to assist the mayor carry out his functions.

The 2008 amendment removed the office of EM and the Executive Committee. The executive mayor was replaced by the current part-time mayor with reduced powers and functions. Perks, such as mayoral mansions and domestic workers, were moved along with the day-to-day monitoring of council business. Although many current mayors continue to operate in an almost executive fashion, the law does not assign them the powers they want to cling to. Any other functions the mayor now performs arise out of the civic office he occupies. The cost of running the executive mayoral office was cited as one of the reasons for their removal. The poor performance of some EMs was also a cause for concern. Whatever reasons were cited for re-visiting legislation in 2008, the debate about the merits and demerits of this office continues. Questions will be asked as to whether Zimbabwe has moved forward or backward in municipal governance.

The first meeting of council is also used to elect committee chairpersons and their deputies. The rest of the membership of committees is left to councillors to choose where they think they can make a better contribution, or the committee with which they are more comfortable. Appointed councillors also participate in committees of council.

The position of Town Clerk seems to have emerged stronger, as he/she has retained all the functions specified in section 136. These include being responsible for –

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12 S 104 UC Act.

- the proper administration of the council;
- managing the operations and property of the council; and
- supervising and controlling the activities of the employees of the council in the course of their employment.

## 7.2 Gender representation

Representation of women in local government is still very low. There were only 53 elected women councillors out of 359 members of UCs in 2008. The Table below gives an indication of the extent of their representation on UCs.

**Table 6: Midlands Province – number of women councillors on selected Urban Councils**

City/town	Total no. of councillors	Women councillors 2003	Women councillors 2008
Kwekwe	14	1	4
Shurugwi	12	4	0
Zvishavane	10	0	0
Gweru	18	2	2

## 8. Local government operational challenges and the way forward

Local government, as the level closest to the people, has a higher visibility than the more remote central government. Its performance has a direct bearing on the quality of life of local people. Clinics without drugs, pot-holed roads, erratic water supplies, burst sewer pipes, uncollected garbage, and non-functional street lights have an immediate impact on the wellbeing of inhabitants. This is the state of affairs in all the 90 local governments in Zimbabwe. However, for many years, the local government system in Zimbabwe and its performance was the envy of many countries, with Harare dubbed the ‘Sunshine City’. The local government system was robust, largely self-financing, and functional. In the late 1990s, UCs were being credit rated by international financial institutions to enable them to get to the stage where development finance could be secured from financial institutions, freeing them from reliance on ratepayers and central government. Lessons had been learnt from the Urban 1 and 11 Programmes co-funded by the World Bank and the Government of Zimbabwe, indicating the viability and sustainability of capital markets as a source of infrastructural development finance. Capacity building efforts through the RDC capacity building programme, pursuing a ‘learning by doing approach’, were in full swing in the 1990s. Under this programme, the focus was on capacitating institutions, developing human resources and capital projects. The decentralisation effort was riding on the back

of this capacity building programme. Thirteen principles on decentralisation were adopted by Government in 1996. Committees on decentralisation were established from cabinet to provincial level, backed by teams of technical facilitators. Resources from international development partners and donor agencies were available to support these efforts. The drying up of financing from the international donor community saw a gradual decline in effort on all fronts after 2000. The worsening macro-economic climate characterised by hyperinflation, shortage of foreign currency, high interest rates, dwindling national fiscus and accompanying brain drain resulted in the further decline in local government's capacity to deliver. It is this decline of service provision capacity and decaying infrastructure which local government institutions need to tackle.

## 8.1 Financing

With the introduction of multiple currencies in 2009, local governments were able to prepare more realistic budgets covering the whole financial year. The major challenge, though, was that most councils overpriced their services and residents are resisting paying. The transition from Zimbabwe dollars to other currencies was not accompanied by any studies on the cost of services in foreign currency, especially within the region. Many councils had to revise their budgets downwards. Up to the end of July 2009, the City of Gweru had only collected USD1 184 096 out of target of USD5 771 234. The City Council has now resolved to reduce its budget by 50% and hope that residents will respond. With most people in formal employment earning not more than USD150 per month, council charges are a very low priority on their list of needs. Councils need to be more realistic and innovative in their 2010 budgets if inflows are to improve. The UCs Association of Zimbabwe should liaise with sister associations in the region on charges in their respective countries in order to advise councils on more realistic pricing models.

For many types of council services timeous billing remains a challenge. Their bills come late after residents have spent their meagre resources on more pressing needs. Many councils' revenue halls where payments are made are not user friendly. Residents stand in long queues for hours on end with one or two counters operational. Some give up and go home with their money, never to return, as the money will be spent on other commitments. This area calls for two simple management techniques: organisation and supervision.

In RDCs revenue inflows are even lower than those of their urban counterparts. It is a known fact that rural councils had their own road-making equipment and health cash inflows. Their main source of revenue was the land development levy or unit tax. The RDCs Act provides scales for land development levies in sections 96 and 97, Third Schedule. But for money to be collected efficiently there is need for up to date registers of landowners and miners and for the calculation of the units and the amount per unit.

The land reform programme has changed landownership in commercial farming areas. Many RDCs have not kept pace with the changes by way of updating their registers and the units per new landowner. Many new farmers are not being billed by councils, resulting in diminishing inflow into council coffers.

It is imperative for councils, if they are to improve their revenue base, to liaise with officials in the Ministry of Lands to establish the new ownership, and the hectareage



structure of new owners. This will enable them to update their registers and collect revenue. Roads in rural areas are in a deplorable state because of lack of maintenance. For commercial farmers and miners, the only service they desire from council is well maintained roads to bring in inputs and take out their produce to markets. With improving inflows, councils should improve conditions of service, especially in critical areas. Professional experienced personnel left council for greener pastures. With better conditions and also many contracts coming to an end in South Africa as construction for the 2010 World Cup infrastructure nears completion, some can come back.

Councils have to start providing better services as this also makes people pay bills. People cannot pay for erratic water supplies or refuse which is not being collected.

Although the Urban Councils Act stipulates that councils should have their final accounts for previous budgets within 120 days, and audited accounts before the end of the year for the previous years' budgets, many councils are lagging behind. Many are four or five years behind in their audits and final accounts. Now that councils are operating with more stable currencies, it is prudent to have interim audits before the end of 2009 for 2009, to see how they are performing. The final audit in 2010 for 2009 will not only be easier, but they will have a clear picture of how they are performing. Maybe many councils can also have up to date audits for the first time in years.

The improving national environment has brought with it positive signs of support for the country. Some inflows are being experienced making it possible for Treasury to disburse some funds to resuscitate collapsed services. Water and sanitation is one such area. Local governments are getting some assistance. Harare got about USD17 million and Gweru got USD93 000. These transfers have to be utilised and accounted for properly. Proper tender procedures have to be followed. The Municipal Procurement Board should be involved. It is very easy for corruption to occur. Officials should realise the suffering that people are experiencing, and operate professionally. Senior managers should ensure systems are in place and that they are being followed.

## 8.2 Institutional capacity

Local government capacity to deliver requires harmonious co-existence, complementarity, and trust between the elected leadership and the staff of council. A major challenge, experienced especially after general elections and the coming on board of new policymakers, is the issue of mistrust. Bruising battles which are time consuming and divisive normally occur. It is important, therefore, that induction programmes clarify the roles to be carried out, as a lot of the challenges arise from the lack of appreciation and understanding of who does what. It is not uncommon for senior officers to be accused of incompetence by councillors who may be barely three months in council. Senior staff have not made the situation any better by failing to implement resolutions of council.

Some senior staff have not afforded elected officials the respect they deserve. The recent change from EM to part-time mayor saw many mayors relegated to the Mayor's Parlour as their office, with Town Clerks taking over the former EM's offices. Some Town Clerks adopted a literal interpretation of the Act which allocates the Mayor the function of chairing meetings. Such a narrow interpretation ignores the fact that mayors still have civic

responsibilities, are leaders of council and receive visitors on behalf of council. Mayors also represent council locally, nationally and beyond.

The other challenge emerging is between councillors and mayors. Not long after electing a mayor many councillors wanted them out. Such tendencies result in the organizations losing focus and splitting into camps and detract from the core business of council. Training programmes for councillors and senior staff together should not be confined to induction training, but instead should be ongoing. With more and more interaction in the presence of outside facilitators, it is possible to overcome some of these challenges.

Disciplinary procedures in council should be guided by the law and the facts devoid of other considerations. It is not in the interest of council to dismiss an official and then have the official cleared of transgression by the Local Government Board or the courts. Cases abound of officers who have been dismissed by council against the advice of the Local Government Board, who then win their cases in the High Court and have to be reinstated at great cost to council. Such actions can have a detrimental effect on the smooth operation of council.

Resources permitting, councils should fill key posts timeously. Many councils have senior positions vacant for long periods of time. This affects the smooth operation of council as acting incumbents may not take bold decisions when such decisions may be required. The driver of the strategic vision of council in the department is the head of department, indicating the need to have substantive officials in place.

### 8.3 Planning

Elaborate planning systems exist in local government. Strategic plans, local plans, master plans, rolling plans, and annual plans are prepared meticulously. Many gather dust in drawers and shelves. The link between planning and budgeting is weak, especially in RDCs. Since its inception in the 1980's, the current planning system raised expectations, as it is participatory and bottom up. The lack of funds to meet shopping lists of needs from grassroots levels has dampened enthusiasm. It is important for council to plan within the limits of available resources, and not rely on the centre as the source of all development finance. Strategic plans which are being prepared with elaborate visions and missions should be participatory and realistic. Many are crafted by a few technocrats and thus lack ownership and a shared vision, making them inoperative from the start. Development plans from villages and neighborhoods end up at a PC, where a province development plan is consolidated. The planning process would become more meaningful if some funding was available for development at the provincial level. Some form of equalisation grant to a Province would be a useful starting point with the PC focusing on marginalised and deprived communities. With some funding, the PC will become more relevant beyond its current co-ordination function.

### 8.4 Centre/local relations

The legislative and policy environment in which local government operates is largely set at the national level. In that regard national politicians have a direct interest in what transpires

at the local level, and would want to exert their influence and shape the outcomes.<sup>13</sup> Reforms by successive governments in Zimbabwe, particularly since 1980, lend credence to this assertion. The interest stems mainly from the way government is arranged and the political process which results in the formation of national governments. Translation of political party ideologies and elections promises into meaningful policies and programmes creates this dichotomy. The situation is more precarious when the political party in control at the national level is different from that at the local level. The issues of control and autonomy then arise. This has been the case in urban governance in Zimbabwe since 2000. Mhlahlo remarks that '[i]n Zimbabwe, the fact of different levels of government occupying common space has inevitably resulted in tension in the relationship in some UCs'.<sup>14</sup> A generous interpretation of laws that empower the Minister to appoint investigators where he considers it desirable have serious implications for local government. Yet, at the end of the day, the performance of the local government function nationally has been assigned to a member of the Executive who is then accountable to Parliament, the Executive and the nation. This is where the issue of role clarity and responsibilities at centre and local levels becomes fundamental. The application of provisions that allow the Minister to give directions on matters of policy or to reverse, suspend, or rescind resolutions, decisions etc. should be in the public interest. Misinterpretation of the Minister's intentions can create tension. Reasons for such actions should be in the public domain. The fact that some elected leadership at local level has not performed to expectations is well known. Corrupt practices with regard to the allocation of stands, and abuse of council property and authority are documented, and have been before the courts. The appointment of commissions to take over from errant councils is a phenomenon that dates back to the mid 1980s in Gweru. Harare has had its fair share of commissions. The net result of frosty centre-local relations is a loss of focus on council's core business. Tensions arising need to be handled constructively as polarisation serves only to worsen the situation. Polarised relations have been known to permeate to council staff levels, and this can adversely affect the relationship between sections of council staff and councilors, compromising services provision. In sum, the centre – local relations need to be anchored on:

- role clarity;
- transparency;
- respect;
- integrity;
- accountability; and
- sound judgment

## 8.5 Legal framework

The current situation in Zimbabwe presents an opportunity for a major facelift of local government, as the country is currently in the process of coming up with a new Constitution. Local government is presently not constitutionalised. The Zimbabwe Local

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13 Mhlahlo 2007.

14 Mhlahlo 2007.

Government Association has circulated a draft to councils for their input in the Constitution making process. Enshrining local government in the Constitution would need to define and clarify –

- principles of local governments including the principle of decentralisation;
- objectives of local governments;
- competence of local governments;
- funding of local governments; and
- types of local governments and their levels.

Local government presently does not receive a direct allocation of funding through the Appropriation Act. Whatever funds are destined for local government, pass through sector ministries. The release of such funds then depends on the efficiency of systems in ministries. This arrangement does not guarantee any allocation to local government. In some countries where local government is catered for in the Constitution, a certain percentage of national income is allocated to local government, which means that such allocation is assured, guaranteed, and predictable. Local government budgets thus become more realistic. In addition, changing constitutional provisions would require two-thirds of the members of Parliament to accede. This is different from an amendment to an Act of Parliament, which requires a simple majority. This guarantees some degree of stability in local government operations. For this reason, all stakeholders in local government need to give serious thought at this crucial time as regards aspects to be included in the Constitution.

The ZILGA draft has also included a section on qualifications for elected leaders. There is need to at least have some minimum academic attainment to ensure a meaningful contribution by councillors to council business. Four years' secondary education would equip a councillor to communicate, understand reports and contribute to council business. This is the provision in the ZILGA submission which appears to be reasonable. Age produces wisdom. The present age of 21 years for councillors appears to be on the youthful side. The ZILGA proposal is 30 years. This again seems reasonable.

In terms of section 46 of the Rural District Councils, Act full council meets at least once in three months. The business of council is done through resolutions of full council after committees have made recommendations. A lot of work accumulates in three months and has to be kept in abeyance until council convenes. This militates against the effectiveness of council. RDCs, like their urban counterparts, need to meet at least once a month, because the present arrangements leave the decision making in council to officials of council. The cost implications cited for quarterly meetings can be managed through more innovative approaches, given that the headquarters of most RDCs have moved to urban centres with easier transport modes.

The representation of women in local government is low. Some countries have opted for quota systems. Zimbabwe may have to consider this route to ensure policies developed in councils are gender sensitive. Urban Councils meetings start after 1630 hours and these meetings continue until late at night. This is particularly difficult for women councillors. Legislation needs amending to accommodate aspiring women councillors.

Tariffs and charges for high density areas need ministerial approval, whereas for the rest of town, council approves them by resolution. This section of the Act is paternalistic and has outlived its usefulness. Delays by either party result in delays in collections by council. The Ministry has requested councils to submit their '2009 budgets' by 30 November, after consulting residents. Whilst the participatory aspect by residents is highly recommended, if the residents and council agree then the role of the Ministry in the process becomes academic. The approval has by default been extended to approval of the whole UC budget. This section should be repealed.

The Provincial Council in its current form has not achieved much. An equivalent predecessor, the Provincial Authority, had a budget and was involved with the education and health functions in African Councils. The Provincial Authority played a major role in reconstruction of war damaged infrastructure in the 1980s. The PC, if resourced, can play a role in development, particularly in problem areas.

The present Local Government Board only deals with UCs. An all embracing Local Government Board covering both Urban and Rural District Councils would completely remove council staff issues from the Ministry. This will allow the Ministry to focus on its core business of policy formulation. Such a body could be best established through the Constitution. Over and above mandates given to the present Board, the new Board could also have the capacity building function for both council staff and elected officials. There are presently too many unco-ordinated players providing training for councillors. Such a body will develop a standardised curriculum which addresses the needs of local government practitioners in Zimbabwe.

## 9. Conclusion

Zimbabwe has a generally robust local government system with institutions and structures in place. The system needs to be properly nurtured through the current challenges, through a combination of legislative reforms, capacity building, institutional strengthening, and injection of financial resources. Strategies have to be put in place to regain lost ground and ensure quality services are delivered to communities.

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# Sources of local government financing

*Boniface Coutinho\**

## 1. Introduction

This paper on local government financing is informed by the author's practical experience as independent auditor of most urban local authorities (90 percent) and also as auditor of a significant number of rural local authorities.

Overall, the observation is that almost all local authorities have been facing insurmountable challenges in raising sufficient funding to ensure effective service delivery ever since independence in 1980. Most of these challenges revolve around a failure to ensure effective financial management systems, that results in the levying of sub-economic tariffs, failure to ensure cost recovery on essential services, such as, water and sewer provision, failure to recover debts owed in a hyperinflationary environment, lack of skilled and qualified staff due to skills flight to the private sector and to the diaspora, and generally poor financial accounting systems.

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The Zimbabwean economy has been characterised by a continuous decline in Gross Domestic Product for the period since the year 2000, being a result of various factors, chief among them being the fast-track land re-distribution program that resulted in huge declines in agricultural production, among other things. This has resulted in a very volatile macro-economic environment that manifested itself in hyperinflation reaching more than a billion percent by December 2008. There were widespread shortages of basic commodities, and even a shortage of the Zimbabwean currency and foreign currency, that resulted in disruption of business and closing of factories and businesses in the formal economy. This state of affairs impacted very negatively on the operations of local authorities, especially given that they needed to follow certain procedures in order to increase tariffs in an environment where other players were changing prices practically on an hourly basis.

In February 2009 the Zimbabwean government introduced a new multi-currency monetary system wherein the United States dollar and the South African rand became the main functional currencies. This stabilised the operating environment by eliminating hyperinflation and increasing business confidence through adoption of more prudent economic policies by the inclusive government. However, this new dispensation brought with it new challenges for local authorities and other players in the economy. The high unemployment rate of around 80 percent, and liquidity shortages brought about by the adoption of multi-currencies, meant that most ratepayers could not afford the charges that local authorities were demanding. As a result most councils could not collect the monies that they bill their customers. In many instances the councils tended to set tariffs at very high and unaffordable levels, and, therefore, the problems of poor service delivery continued into the year 2009.

## **2. How do local authorities finance their activities?**

Urban local authorities, which encompass City Councils, Municipalities, Town Councils, and Local Boards, are governed by the Urban Councils Act [29:15], while rural councils fall under the Rural District Councils Act [29:13]. These Acts empower the councils to enact by-laws that allow the authority to raise revenue through various 'service charges made for any services, amenities or facilities provided by council' and the 'fixing and imposition of a supplementary charge' on immovable property in its area to 'cover the expenses incurred by the council in the administration of the area concerned' and to impose fines and penalties for any breach of council by-laws.

Section 96 of the Rural District Councils Act provides for the imposition of a 'land development levy' on owners of rural land within the council area, or on owners of 'mining locations situated on rural land within the council area', or on 'licensed dealers who carry on the business on rural land within the council area', as well as the imposition of a 'development levy upon all persons who ... are heads of household within any communal or resettlement ward of the council'. The development levy is commonly referred to as the 'Unit Tax'.

The Act in terms of Section 97 also empowers the council to impose 'special levies in rural areas' to cover expenses incurred as a result of any 'development project or service within the council area' or for expenses occasioned by 'unusual circumstances or conditions

or from an unequal demand on services provided by the council’.

Section 98 of the Act empowers the council to impose rates on any rateable property in any urban land within the council area or to impose special rates on owners of rateable property within the council area. The Act in Section 108 also empowers the council to impose an interest charge on any amounts due to it that remain unpaid after a period of thirty days from the fixed date relating to the charge at a rate fixed by the council.

Part XIX of the Urban Councils Act provides for the imposition of rates on any rateable property within a council area, or the imposition of special rates.

Section 221 provides for the council to ‘engage in any commercial, industrial, agricultural, or other activity for the purpose of raising revenue for the council’.

In this part of the paper, we will specify the various ways in which local governments finance their activities, and distinguish the main differences between rural and urban local authorities since their main sources of finance are largely different.

We will seek to itemise the main sources of funding and explain the nature and significance of each revenue head.

## 2.1 Rates on property and land

Rates on property and land is the main source of funding for most urban local authorities. An analysis of a number of urban councils reveals that rates on property and land constitute between 20 percent and 30 percent of total revenue (including supplementary rates on high density properties). However, there are inefficiencies that prevent the effective and proper raising of revenue from this source. Most of the issues revolve around poor databases and poor financial accounting systems. In some cases councils are using outdated valuation rolls as a basis for determining rates.

A council is required to undertake a general valuation of all non-residential property within its area, and a general assessment of all residential property within its area for rating purposes. State land and government buildings are, however, not charged any rates. Different tariffs are applied to land and to improvements when calculating the rates due. Supplementary valuations and assessments are done to capture those properties not on the general valuation roll or those whose values have been materially affected by alterations, additions or demolitions.

Often, the councils fail to capture new properties onto their valuation rolls through supplementary valuations, thus losing a lot of revenue in the process. In other cases only the land is charged rates, while the improvements are not captured or the valuations are grossly understated.

While the Act requires councils to establish ‘rating zones’ and ‘rating units to be assigned to residential properties’ for rating purposes, almost all urban local authorities have failed to comply, and continue to base their rates for residential properties on valuations on their rolls, as if they were non-residential properties.

It is noted that when Zimbabwe adopted the use of multi-currencies and demonetised the Zimbabwe dollar in February 2009, not a single council in Zimbabwe regularised its valuation roll to base the valuations on the new functional currencies, thus making the imposition of rates in United States dollars illegal.

## 2.2 Revenue from service delivery

Revenue from service delivery includes income from activities, such as, provision of water, refuse removal, sewer and affluent removal, provision of health services at various hospitals and clinics operated by councils, etc.

Water provision has always been an important source of revenue for most urban local authorities since independence in 1980, but this vital source of revenue was taken away by government in 2001 when the Zimbabwe National Water Authority (ZINWA) was given the mandate to manage and distribute water in all urban and rural centres. It deprived local authorities of an important source of revenue and constrained their ability to collect other council debts since they could no longer cut off water in order to encourage payments by ratepayers. In 2009 government reversed the decision to give water and sewer services management to ZINWA, and this has now been given back to the various local authorities.

Water income can constitute as much as 40 percent of council revenues. A case in point is Harare City Council that has budgeted to raise about 44 percent of its 2010 revenues from water income. Masvingo Municipality raised about 24 percent of its 2007 total income through water sales (See Table 3 below). Sewerage charges and refuse removal fees constitute between 5 percent and 10 percent of total revenue. By contrast, the rural councils do not receive any significant income from water; refuse fees, or sewer disposal fees, due to the absence of large and densely populated settlements.

Health services fees are derived from fixed consultation fees for adults and a low charge for children under the age of 12 years (ordinarily about 50 percent of the adult rate). It also includes charges for any drugs that are dispensed, usually at cost. Old-aged patients are normally treated for free at most council hospitals and clinics. Income from health fees constitute between 1 percent and 5 percent of total revenues. Rural councils do not receive significant income from health fees since the clientele is mostly low income and not covered by health insurance.

Again, numerous inefficiencies have been noted in the collection and levying of charges related to service provision that has resulted in the inability of councils to sustain provision of these services. These include the loss of revenue on water provision due to the inability of councils to repair water meters, and the use of estimates of, instead of actual, water consumption.

Of particular concern is the fact that most councils lack the ability to properly determine the cost of providing these services by setting appropriate tariffs that are based on cost recovery plus a reasonable mark-up. As a result sub-economic tariffs are set, resulting in a subsequent lack of investment in the infrastructure needed to continue providing quality services. There is an alarming deterioration of water services, refuse removal services, the quality of sewer, roads and other infrastructure. This has resulted in health crises, such as, the cholera epidemic witnessed in 2008 when close to 100 000 people were infected and 4000 lost their lives.

In addition, there has been a huge skills flight that has seen qualified and experienced personnel leaving the public sector due to poor remuneration and conditions of service. This has further resulted in the deterioration of service provision by all urban and rural local authorities.

### 2.3 Fees charged

These fees include fees on various users of council amenities, such as, schools, flea markets, bus termini, caravan parks, cemeteries and crematoria, parkades and street parking, swimming pools, etc. Bus entry fees are earned by both rural and urban councils and for a council like that of Masvingo it constituted about 4 percent of total revenues in 2007 (see Table 2 below). Harare City Council expects to raise about 2.6 percent of its 2010 revenue from parking fees, and vehicle clamping and towing operations.

It is noted that generally there is lack of proper setting of fees charged, and poor enforcement of by-laws governing the use of council amenities, such as, the parkades and caravan parks. As a result the councils are failing to maximise revenue generated from these sources.

### 2.4 Penalties and fines

These relate to penalties for breaches of council by-laws, such as, unapproved developments, illegal parking, pollution of the environment, etc. However, often there are no efficient and effective systems to enforce council by-laws and maximise collection of fines and penalties. A case in point is the inability of councils to effectively police the street parking areas, with the result that there is endemic violation of street parking by-laws and the Municipal Traffic Laws Enforcement Act [29:10], and revenue is lost in the process.

### 2.5 Licence fees

These relate to license fees for items, such as, vehicle licenses, dog licenses, hawkers' licenses, shop licenses, etc. Again there are challenges relating to poor enforcement and poor databases to ensure that all those who should pay for licenses actually do so.

### 2.6 Supplementary charges

These are charges levied on property owners in high density areas in lieu of property rates. The issues discussed above relating to rates apply equally to supplementary charges.

### 2.7 Plan approval and development fees

Councils derive income from approving any developments within their areas of jurisdiction, and these are pegged against the estimated values of proposed developments.

The funds raised through this source are normally credited to an Endowment Fund which is used for the development of on-site and off-site infrastructure within the council area.

### 2.8 Revenue generating projects

Income generating projects may be an important source of income for some councils. Most councils have set up income generating projects, such as, beer halls, breweries, farming, brick moulding, etc., in order to raise revenue as a means to reduce reliance on tariffs on ratepayers.

However, they are often poorly funded, poorly managed and devoid of adequate accountability systems. These projects then generally perform poorly, and in some cases are subsidised from other council operations instead of them being a source of income for councils.

The beer halls and breweries are mostly operated as independent operations with an independent board of directors and management. They are then expected to pay a dividend to the council on a yearly basis. Unfortunately most of these ventures have seriously underperformed, and have failed to contribute anything to council. An example is the liquor marketing operations of the Harare City Council (Rufaro Marketing) that has failed to pay any dividend to the council in the last decade.

The Kwekwe City Council operates the Kwekwe breweries and the Dandaro liquor marketing entities, but both have failed to declare any dividends to council since 2006 since they are not generating enough profits.

## **2.9 Lease of land and sale of land**

This is an important source of funding for most councils. The land is either leased to various organisations or individuals, or is sold for residential or commercial development to private individuals or organisations.

There is no proper database of council-owned land under lease. In most cases the lease rentals are sub-economic. Leases are often not reviewed when they are due for review, and there is generally poor debt management.

The raising of revenue through the sale of council owned land is increasingly becoming a significant source of income for councils. The funds raised are normally credited to the Estates Account of the council.

## **2.10 Rentals on council properties**

Most councils own properties, such as, houses and flats, as well as commercial buildings, which are rented out.

The issues discussed above on leases apply to council owned properties that are rented out. In numerous cases the rentals are not reviewed regularly or when reviews are due as per the lease agreements. The rentals are often sub-economic, resulting in councils failing to properly maintain the leased properties.

## **2.11 Proceeds from natural resources**

This is an important source of revenue for most rural authorities and relates to natural resources, such as, royalties on minerals within their areas of jurisdiction or hunting concessions within their areas.

This is of particular importance to rural councils where most of the country's natural resources are found. These natural resources include, minerals, whether precious or base minerals, wildlife, woodlands, sand, etc., and are often exploited by private individuals and corporates, while council imposes royalties or permit fees for their exploitation.

## 2.12 Interest on investments

Section 131(1) of the Act requires that where a council has in any account or fund moneys that are not immediately required to meet expenditure payable from that account or fund, the council must hold such moneys as balances on current account with a commercial bank or invest them “in various interest earning instruments with registered financial institutions, in treasury bills, locally registered securities issued by the state or municipalities or statutory bodies, etc”. However, councils cannot invest in riskier investment vehicles, such as quoted and unquoted stocks, without the approval of the Ministers responsible for local government and finance.

Income from investments can thus be an important source of income for councils, but because of lack of liquidity within the councils the contribution from investment income is very minimal.

## 3. Significance of the various revenue sources

The importance of the various revenue sources to the various local authorities varies from council to council depending on a number of factors such as the demography, nature and size of main economic activities within the council area, the extent of industrialisation, the size of the council, etc. For example we would expect the major urban councils to rely more on rates and supplementary charges as well as water and sewer income while rural councils such as Chipinge Rural District Council and Binga Rural District Councils derive most of their income from hunting concessions due to the wildlife resources within their areas.

The 2010 budgets of some of the councils are analysed below to determine the expected main sources of revenue. In addition, past financial statements of some of the councils are reviewed for the same purpose.

The Harare City Council has a total revenue budget of US\$ 230 million is broken down in table 1 on the following page.

**Table 1: Harare City Council 2010 budget**

<b>Revenue source</b>	<b>Amount in US\$ millions</b>	<b>Percentage</b>
Supplementary charges	13.53	5.9
Water income	77.33	33.6
Rates	47.96	20.8
Sewerage charges	14.69	6.4
Refuse collection and sewer	24.87	10.8
Quarry station (income gen. project)	8.39	3.6
Street signs/advertising	1.65	0.7
Vehicle licences	4.85	2.1
Cemetery fees	1.35	0.58
Parking fees and vehicle fines	4.75	2.1
Rentals – council properties	2.39	1.0
Fees – schools	1.07	0.5
Health fees	4.93	2.1
Shop licences	2.44	1.1
Licences – other	1.24	0.5
Hire of stadiums	0.58	0.3
Other income	18.07	7.85
<b>TOTAL</b>	<b>230.09</b>	<b>100</b>

The Council expects to spend a further USD 275.3 million on capital projects. The expenditure is expected to be funded as follows:

**Table 2: Harare City Council expenditure: funding**

	<b>Amount in US\$ millions</b>	<b>Percentage</b>
Internal loans (CDF)	208.93	75.8
Contributions from Revenue	1.24	0.45
Government loans	50.0	18.16
Joint ventures	2.49	0.75
Other (bank loans)	12.97	4.71
<b>TOTAL</b>	<b>275.63</b>	<b>100</b>

Given that the Council's financials have not been audited since 2005, it will be very difficult for it to raise the amount of USD 12 million on the open market as planned.

**Table 3: Masvingo City Council 2007 historical outturn**

<b>Revenue source</b>	<b>Amount in US\$ millions</b>	<b>Percentage</b>
Rates and supplementary charges	23 247 032	15.92
Licences – Shop/Business	4 304 854	2.94
Vehicle	420 405	0.29
Fines	1 345 893	0.92
Rent – Council properties	13 899 655	9.48
Sale of land	22 012 821	15.02
Hire of hall/stadiums	1 634 413	1.11
Refuse removal	8 728 541	5.95
Sewerage removal	16 619 560	11.34
Water income	34 583 877	23.59
Health fees	10 827 677	7.38
Cemetery fees	271 206	0.19
Plan approval fees	372 461	0.25
Sands/plant and brick sales	675 617	0.46
Unit tax (peri-urban)	343 947	0.24
Bus entry fees	5 923 298	4.04
Liquor undertaking	289 987	0.20
Other	988 151	0.68
<b>TOTAL</b>	<b>146 589 395</b>	<b>100.00</b>

As can be seen from the above, the main source of income for the urban councils include, water sales, rates and supplementary charges, sewerage removal fees, and the sale of land. The Harare City Council budget for 2010 also shows that water income is the single largest source of income, contributing about 33.6 percent of total revenue, while rates and supplementary charges are expected to contribute about 26.7 percent of total revenue.



**Table 4: Chipinge Rural District council: 2008 historical performance**

<b>Revenue source</b>	<b>Amount in ZWD millions</b>	<b>Percentage</b>
Development levy (rural rates)	8 840 256 816	16.4
Leases (land)	8 338 559 684	15.4
Property development levy	45 704 342	0.08
Office rentals	1 203 223	0.01
Stand servicing fees	19 705 067 069	36.5
Shops development fees	8 370 745 103	15.5
Shop licences	8 320 745 047	15.4
Small-scale far tax	2 433 057	0.01
Stand application fees	6 347 630	0.01
Sand royalties	4 004 167	0.01
vehicle licences	43 948 131	0.08
income project (kitchen)	52 254 425	0.09
bus entry fees	73 146 140	0.14
hunting fees	22 437 626	0.04
foreign exchange gain	21 082 216	0.04
other income	148 942 055	0.29
<b>Total income</b>	<b>53 996 876 731</b>	<b>100</b>

The sources of revenue for rural councils differ widely, but the main sources include the development levy, unit tax, and stand sales. For Chipinge Rural District Council another major source of funding is hunting concessions income. The amounts reflected above for hunting fees are significantly understated since the foreign currency earnings were converted at the fixed official exchange rates instead of the widely used 'black' market rates.

The analysis of the capital accounts of a number of councils reveals that capital assets are mostly financed from either borrowings from government or from internally generated revenues.

The degree of funding from self-generated revenues as opposed to borrowings varies from one council to the other, but from the early 1990s to around the year 2005, government loans constituted about 50 percent of the funds for long term asset acquisitions, while the balance came from internal revenues.

From 2005 the government was finding it difficult to fund the councils and the responsibility was given to the Reserve Bank of Zimbabwe, which provided loans for infrastructure through its quasi-fiscal operations. However, the level of funding from internal resources has progressively increased in the three years to the year 2008.

The review of the 2010 budgets for some of the councils show that they expect to fund capital expenditure from borrowings and grants from external sources such as the

government of China, and from multilateral organisations, such as, the United Nations Procurement Division and the United Nations Children’s Fund for water and sewer rehabilitation projects.

## 4. Sources of funding of local authorities

Local authorities have been receiving direct funding from central government in various forms over the years. They have also been receiving funding from the Reserve Bank of Zimbabwe in order to assist in ensuring that there is continued service delivery especially on water and sewerage provision. The funding is provided by central government in the form of long term loans and grants

Long term loans have been extended to councils ever since independence, and generally are concessionary and have generous terms, such as, low interest rates and long repayment periods. They are meant to support long term asset acquisitions. Up to 50 percent of assets purchased between 1980 and 2005 were financed through government loans, but a lack of funds and failure to repay previous loans resulted in a drastic reduction in new loans from government in the period 2006 to 2008.

Government has also been providing direct grants to councils, and these may be for short term operations or for long term asset acquisitions. Grants are mostly in the form of support for services, such as, health and education through salary grants. Grants are also extended for long term projects, and a case in point is the recent grant extended to the City of Harare for sewerage and water reticulation upgrading of USD 17.1 million. This was, however, a ‘crisis’ grant due to the cholera epidemic of 2008, and the funds were advanced from monies provided by the UNPD and other multilateral agencies.

Grants are mostly in relation to the payment of salaries and allowances for health personnel as well as for schoolteachers. The government usually pays all teachers directly through its payroll, while a salary grant is paid to the council for the payment of salaries of health professionals. The grant is usually 100 percent of the cost. There is no consistency in the payment of grants for long term asset purchases, and there were no significant grants extended in the past few years due to lack of funds.

In most cases the long term loans received from government have not been properly accounted for by both the government and the councils. There are no properly documented loan agreements and there is no strict monitoring of the use of funds by central government. In most cases both the principal and interest is never paid back by councils. Grants are provided to councils through the Public Sector Investment Programme and councils make bids to central government based on their needs and circumstances. It seems there is no consistency in the way councils are provided with such assistance.

### 4.1 Loans from other non-government sources

Local authorities have in the past received funding from sources, such as, the World Bank (Urban II Programme) for infrastructure (water and sewerage) and for equipment, such as, computers and vehicles. At times funding has been provided on a government

to government basis (e.g. sewerage works for Chitungwiza Municipality funded by the Government of Japan).

Councils have also been receiving direct assistance from organisations, such as, UNICEF and the UNDP to mitigate the effects of the recent cholera outbreak that has affected almost all urban centres and many rural centres in Zimbabwe.

## 4.2 Borrowing powers

The Urban Councils Act and the Rural District Councils Act set conditions to be met where councils seek to borrow from any source. They may only borrow for –

1. the acquisition or construction of permanent works or undertakings;
2. the acquisition of immovable property or any interest therein;
3. the making of advances authorised by the Act;
4. the payment of compensation;
5. the liquidation of the principal monies owing on account of previous borrowings;
6. the relief of general distress occasioned by some calamity in the council area; or
7. the acquisition of plant, equipment, vehicles and the like.

All borrowings should be authorised by the Minister responsible for local government. The council is also required to insert a public notice of its intention to borrow in a newspaper stating the reasons for the borrowing and the amount thereof. The ratepayers are entitled to object, and the council shall take those objections into account when submitting their application to the Minister.

In addition to borrowing from the state, the Local Authority Pension Fund, a Municipal Provident Fund, a Municipal Medical Aid Fund, or a local authority, a council may also, with the consent of the Minister responsible for finance, issue stock, bonds, debentures, or bills, or borrow from any other source including, registered financial institutions, foreign governments, institutions or individuals.

The council may also make short term borrowings by means of a ‘bank overdraft or short term loans from any person for the purpose of temporary financial accommodation’, provided the borrowing is not applied towards the payment of salaries ‘of any permanent employee of the council unless the Minister has authorised’ the council to do so.

Where a council borrows illegally, the Act makes “all councilors who otherwise purport to have authorised the borrowing” to be “jointly and severally liable to repay the money so borrowed and the interest payable thereon”.

Both urban and rural councils may borrow, and use the assets of the council to secure the loans. The government only stands as a guarantor when council raises municipal bonds, or where the Minister responsible for finance has issued any such guarantee. Banks are generally reluctant to provide long term finance to councils due to the perceived high risk associated with local authorities. However, short term bridging finance through bank overdrafts is generally available to most councils.

## 5. The main expenditure drivers

### 5.1 Salaries

The government has prescribed that salaries and wages should constitute not more than 32 percent of total recurrent expenditure. However, councils have been spending most of their income on salaries and wages with some of them spending as much as 75 percent of total expenditure as salaries and wages. Harare City Council has budgeted salaries and wages to make up 34 percent of total revenue but in practice this will be difficult to achieve.

There is no effective monitoring by government to ensure compliance by the councils and as a result there has been a progressive deterioration in service delivery by the councils.

### 5.2 Water chemicals

The water account generates the most income for most urban councils, and besides the salaries bill for this account the other main cost item is water chemicals. The raw water of cities, such as that of the City of Harare, is so poor that they have to spend heavily on water chemicals, some of which are imported.

The water account does show a surplus in most urban councils and it normally supports expenditure on social services, such as, schools, clinics, and public amenities. In the case of Harare City Council it is expected that water chemicals will account for USD 26.68 million of that account's total expenditure of USD 98.29 million, or 27 percent, in 2010.

### 5.3 Repairs and maintenance

Repairs and maintenance are key cost drivers for most councils given the fact that most of them are operating with very old equipment and plant. The sewerage and water reticulation systems of most councils are now very old, having been installed before independence in 1980. There are constant breakdowns at the water and sewerage plants, which drives up the repair bills.

The road network is also in a sorry state and there is need for continuous repairs and maintenance. The Harare City Council's budget for 2010 shows that it expects repairs and maintenance to constitute about 14.47 percent of total expenditure for the year. About 44 percent of the repairs and maintenance bill will be on roads and public lighting, while 30 percent will be for water and sewer reticulation and plant repairs.

### 5.4 Electricity

Electricity is a major expense for most councils, especially the urban councils, that need to use it at their water works and at the sewerage works. Harare City Council expects to spend USD 21.55 million in 2010 on electricity for both the sewer and water works. The cost of electricity and water chemicals will constitute about 20 percent of total expenditure for the council in 2010.

## 6. Do local governments adopt their own budgets?

Local authorities are required by law to craft their own budgets, and are required to follow certain procedures in accordance with the relevant laws. The procedures to be followed on the crafting of budgets or estimates are provided for under section 288 of the Urban Councils Act and section 121 of the Rural District Councils Act.

Rural councils as well as urban local authorities are required to ‘make available three copies of such estimates within two months of their approval by council to the Minister for his information’.

While the legislation does not require that the budget is approved by the responsible Minister, the Minister through various circulars prohibits urban local authorities from applying certain levies, such as, supplementary charges without his approval. This inhibits the efficient collection of revenue by the urban councils, especially given the delays experienced in the approval process.

The legislation does not, however, prescribe the process to be followed in crafting the budget, and leaves the entire responsibility of preparing the budget in the hands of the council’s finance committee and approval by the council. The public and all other stakeholders are allowed to ‘inspect’ the estimates, but there is no provision for them to make their input in the budget formulation process. The Minister has, however, directed that, in the interest of participatory democracy, the councils should hold consultation meetings with ratepayers, and take into account their concerns when formulating the budget. The ratepayers are also allowed to make objections to the budget that is approved by council, and council should take into account those objections before tabling the final budget estimates.

It is, therefore, illegal for any council to operate without an approved budget or supplementary budget. A council may not incur any expenditure that is not budgeted and expected council revenues should cover all expenditure.

Due to poor financial and accounting systems there is often no proper monitoring of budgets, and cost overruns are often not properly regularised through supplementary budgets as required by law. The council is prohibited from expending any monies “unless such expenditure has been covered by estimates or supplementary estimates approved in terms of the Act”.

At a practical level the deficiencies identified above result in –

1. poor service delivery due to lack of funding. e.g. poor or non-existent provision of portable water and poor refuse removal and sewer systems resulting in disease;
2. lack of adherence to the relevant laws and poor accountability at the local level. Very often the councils do not present audited financial statements to the Minister as required by law, and can be several years behind with audits without any sanctions from the relevant authorities. In many instances councils violate the Act by borrowing without the necessary borrowing powers;
3. loss of skilled personnel due to poor remuneration, resulting in poor service delivery and poor financial accounting systems. (Very often the councils are not audited in time and issues raised by audits are never rectified due to poor accountability regimes); and

4. because of the poor financial reporting regimes and poor corporate governance structures that result in weak internal control systems, many cases of fraud, theft of council property, and abuse of council assets within councils in Zimbabwe.

## 7. Need for policy or law reforms

There is clearly a need for law reform and also a need to enhance accountability regimes between councils and the relevant Minister and Parliament. The reforms may include amending the Urban Councils Act [Chapter 29:15] and the Rural District Councils Act [Chapter 29:13] to meet the concerns identified below:

The current legislation does not impose a requirement for councils to report in terms of any recognised financial reporting framework, or to adhere to best practice in terms of financial reporting. There is clearly a need to require that financial reporting be in terms of International Financial Reporting Standards/International Public Sector Financial Reporting Standards.

This will encourage better reporting standards and ensure increased credibility of the financial statements, as well as ensuring that there is increased comparability of the financials of different entities both within Zimbabwe and internationally. Lenders and international investors will have greater faith in financial statements that are compiled in terms of internationally recognised financial reporting standards.

While the legislation requires councils to craft a budget at the beginning of each financial year, it does not impose a requirement for them to use the budget as a management tool in order to control the use of limited resources. No penalties are imposed for failure to adhere to the budget or to regularise cost overruns through a supplementary budget. As a result, in most instances there is no effort to monitor budgets on a continuous basis, and the budgeting process is done because it is a statutory requirement.

The section of the Act dealing with budget formulation does not impose a requirement for the councils to consult with the key stakeholders before presenting the final budget estimates to the Minister. There is clearly a need for the legislation to make the ratepayers an important participant in formulating the budget, and to accord them the right to object to the proposed budget.

There may be a need for specific constitutional provisions that recognise the role of local authorities and their relationship with central government, as well as how fiscal support can be extended to the various councils. At present the Minister determines the quantum and distribution of fiscal support at his discretion.

This will ensure that there is clarity on how national revenue from taxation as collected by central government can be shared, so that councils can deliver on decentralised functions, such as, the provision of health care and education.

There is also a need to decentralise the powers of central government to enable local authorities to levy taxation as a way to raise funding.

While the Act requires the councils to present audited financial statements to the Minister not more than six months after the end of each financial year, most councils are several years behind with their audits. There is no clear penalty imposed by the Act for

failure to present audited financial statements within the prescribed period and more often than not the responsible Minister does not seem to be following up on those councils that fail to have their financials audited on time.

The Act should require that audited financial statements be transmitted to Parliament through the relevant portfolio committee, and that the council make written responses to the auditor's report and management report, and appear before the parliamentary committee to give reasons for the failure to present audited accounts within the prescribed period. There should also be a requirement for councils to publish their audited financials in a newspaper circulating within their area of jurisdiction. This will encourage more transparency and accountability.

### **References: Zimbabwe legislation**

Rural District Councils Act 1996 [Chapter 29:13].

Urban Councils Act 1996 [Chapter 29:15].

# Local authorities and traditional leadership

*John Makumbe\**

## 1. Introduction

There are various levels of traditional leaders in Zimbabwe. Traditional chiefs and headmen are the commonest ones, but only the chiefs will be discussed in this paper since headmen have very little, if anything, to do with local government. Chiefs have been part of the African cultural system for hundreds of years in Zimbabwe.<sup>1</sup> As long ago as 1910, traditional chiefs began to be appointed by governors and then later by presidents in accordance with the law. Today chiefs are appointed by the President in accordance with section 111 of the Constitution of Zimbabwe, and section 3 of the Chiefs and Headmen Act.<sup>2</sup> The President also has the power to remove a chief from office. Part of the Chiefs and Headmen Act reads:

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1 Linington 2001: 207.

2 Linington 2001: 208.

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- (1) *The President shall appoint chiefs to preside over communities.*
- (2) *In appointing a chief in terms of subsection (1) the President shall give due consideration to the customary principles of succession, if any, applicable to the community over which such chief is to preside.*
- (3) *The President may, where he is of the opinion that good cause exists, remove a chief appointed in terms of subsection (1) from office.<sup>3</sup>*

Further, chiefs that have been so appointed are entitled to be paid by the State an allowance or salary that is decided by the government through an Act of Parliament. Section 4 of the Chiefs and Headman Act states: ‘Subject to this Act, a chief appointed in terms of subsection (1) shall be paid such allowances as may from time to time be prescribed from moneys appropriated for the purpose by Act of Parliament.’<sup>4</sup> These constitutional and statutory provisions have had a significant impact upon the relationship between successive regimes in Zimbabwe and traditional authorities. The present paper will, however, focus on the relationship, if any, between chiefs and local government units in Zimbabwe.

## 2. Relationships between local and traditional authorities

Both the Constitution of Zimbabwe and the Chiefs and Headmen Act provide for various forms of relationships between traditional authorities, particularly chiefs, and local authorities. The rationale behind this arrangement is essentially that traditional leaders play a significant role in the lives of the majority of the African people of Zimbabwe. Traditional leaders are generally accepted as the custodians of customary law and practice, and their support has always been sought by successive regimes since Zimbabwe was colonised. Colonial governments, for example, made effective use of chiefs to mobilise the African people to participate in selected government programmes largely aimed at ensuring the people’s compliance with colonial rules. This eventually resulted in the alienation of some chiefs from their people during the liberation struggle for the decolonisation of Zimbabwe. Traditional leaders that were reluctant to co-operate with the colonial regimes were often penalised or dethroned, and new leaders installed in their places. The post-colonial Government of Zimbabwe has also sought to make use of traditional authorities to generate and sustain popular political support for Zanu-PF. The following are some of the various governmental structures within which traditional authorities interface with local authorities.

### 2.1 Powers and responsibilities of chiefs

The primary responsibility of chiefs is to provide traditional leadership to their communities, as well as to perform the duties assigned to them under customary law and the Chiefs and Headmen Act. Under customary law traditional leaders have custody of communal land.

<sup>3</sup> S 3 Chiefs and Headmen Act No. 7, 1992.

<sup>4</sup> S 4 Chiefs and Headmen Act No. 7, 1992.

They can allocate that land to local residents for both residential and agricultural purposes. They also play a minor role in the settling of disputes among their people. These are mainly cases of a civil rather than a criminal nature. Apart from settling disputes among the people of their communities, chiefs also have responsibilities in relation to the Council of Chiefs, which is created under the Chiefs and Headmen Act. Each province in Zimbabwe has an assembly of chiefs generally referred to as a Provincial Assembly.<sup>5</sup> All the chiefs in each province qualify as members of this Assembly, and one of the chiefs is normally elected by the chiefs themselves to preside over the meetings. Although the Provincial Assembly is generally regarded as a local government structure, there is little evidence that the substance of its proceedings has any bearing on how the province is governed. For example, unlike Rural District Councils and Urban Councils, Provincial Assemblies do not make by-laws and they do not provide any goods and services to the communities in their respective provinces. It is this author's view that the relevance of Provincial Assemblies to local governance is more imagined than real.

## 2.2 Role and functions of provincial assemblies

Operating within the Provincial Assemblies, chiefs have two major functions, namely, to elect from among themselves, representatives to serve on the national Council of Chiefs, and to bring to the Provincial Assembly and to the Minister of Local Government matters of a local or national interest for consideration. The Minister of Local Government may also bring issues of national or local interest to the Provincial Assembly for consideration. In most cases these would be matters that have a bearing on persons living in the provinces concerned.<sup>6</sup> An example of this would be the displacement of some people from the area of the traditional leader's jurisdiction for economic reasons, such as mining, or for military and security purposes. There is always resistance to re-location among the people, and the traditional leaders will be tasked with persuading their people to agree to re-location. They may demand to be compensated by the central government or by a private company for their losses and inconvenience. A major weakness of the Provincial Assemblies is that they only meet when the Minister of Local Government directs them to do so, or when one-third of the membership requests the Minister to call a meeting. Here again there is little evidence that the outcomes of their meetings contribute in any meaningful manner to provincial governance. In fact, the Minister of local Government rarely ever calls for these meetings since there are likely to be costs to his ministry as a result.

## 2.3 The Council of Chiefs

Section 1 of the Chiefs and Headmen Act provides for the election of some chiefs to sit on the Council of Chiefs, as has already been noted earlier. Because of the need to ensure a certain degree of ethnic accommodation, the Constitution of Zimbabwe provides for the creation of two councils of chiefs, but to date, only one such council has been created.<sup>7</sup> The initial assumption may have been that each of the two major ethnic groups – Ndebele and Shona

<sup>5</sup> Linington 2001: 209.

<sup>6</sup> S 17 (c)(ii), Chiefs and Headmen Act.

<sup>7</sup> Linington 2001: 209.

– may have preferred to have its own council of chiefs instead of combining with the other group whose customary principles and practices may be different. The primary function of the Council of Chiefs is to make representations to the Minister of Local Government in respect of the interests of the people that live on communal land.<sup>8</sup> In most cases this relates to the central government’s proposed infrastructural development in the respective areas, some of which may disrupt the lives of the people in the communal areas. The building of dams, for example, has always resulted in the need for some serious adjustments to the living patterns of some of the communities in communal areas. Traditional leaders play the role of mediating between the government and the people in their areas. The Council also considers the reports submitted to it by Provincial Assemblies.<sup>9</sup> A third function of the Council of Chiefs is to sit as an Electoral College to elect some 18 chiefs to sit in the Senate. The Constitution of Zimbabwe (as amended 2005) makes provision for the inclusion of 18 chiefs in the Senate.<sup>10</sup> They have voting powers and they deliberate fully on all matters that reach the Upper House of the legislature. There is little evidence that whatever the Council of Chiefs deliberates upon impacts in any significant manner on either local or national governance in Zimbabwe. The Council of Chiefs does not make any by-laws, nor does it engage in the provision of any goods and services to the public.

## 2.4 Rural district councils

RDCs cover the areas that are designated as communal land in Zimbabwe. There are 58 RDCs throughout the country, and they exercise devolved power in theory, but in practice virtually all they seek to do has to be approved by the central government through the Minister of Local Government, who is accorded enormous power by the Rural District Councils Act. The Minister of Local Government appoints a maximum of three chiefs onto each of the RDCs:

*All Rural District Councils have been divided into wards for the purpose of electing councillors. These Councils are headed by a chairman who is elected from among the councillors, by the councillors at their first meeting following a general election which is held every four years. In addition to the elected councillors the Minister also appoints up to three Chiefs from within any given Council area for the purposes of representation of the traditional leaders.<sup>11</sup>*

Since chiefs are not elected onto the RDCs, they can only sit in the Council as ex officio members of their respective Councils. They do not have voting rights but they can participate in the deliberations of the Council. Traditionally chiefs had the power and authority to allocate land to the people in their areas. In doing this they were assisted by headmen and village heads who serve under the chiefs. The Communal Land Act, however, changed this arrangement and transferred the land allocation responsibility to the RDCs:

*Rural District Councils are also the land allocating authorities within their respective areas of jurisdiction. In terms of the Communal Land Act, Rural District Councils are the land authorities*

<sup>8</sup> Linington 2001: 209.

<sup>9</sup> Ss 20 (a) and (b) Chiefs and Headmen Act.

<sup>10</sup> S 34.1 (c) and (d) Constitution of Zimbabwe.

<sup>11</sup> S 6 Rural District Councils Act No. 8, 1988.

*and are therefore responsible for the allocation of land within their areas of responsibility. However, this allocation is carried out within the confines or provisions of traditions and customs of which it is commonly accepted that the traditional leadership are the custodians. This in essence means that whilst the local authority is the land authority, land allocation is carried out hand in hand with the traditional leadership whose role is acknowledged and appreciated.<sup>12</sup>*

As custodians of communal lands, chiefs and headmen do allocate land to their people for residential and agricultural purposes, as noted earlier, except land that is located in business centres or land to be used for commercial farming. This means that there is some convergence in the implementation of the land policy since both the local authorities and the traditional leaders play clearly specified roles.

From the foregoing it is clear that there are institutionalised relationships between traditional and local authorities at the district, provincial, and national levels in Zimbabwe. The various structures noted above share some functions, but they each have their responsibilities clearly defined under the law. It must be stated, however, that traditional authorities are allocated very limited service delivery responsibilities compared to those allocated to local authorities. For example, traditional leaders can be asked to officiate at community functions, such as, funerals and weddings, as well as at rain-makers' and other customary rituals.

There is good co-operation between traditional and local authorities in most cases, although the former have sometimes expressed fears that considerable amounts of their power and authority have been whittled away from them and given to local authorities, particularly at the district level. Part of the reason for this is the role that traditional leaders have played during the liberation struggle, as has already been stated. But a further reason was the demand for democratic governance by the people. This essentially meant that undemocratic institutions of governance would be weakened while democratic ones would be strengthened after the attainment of national independence.

## 2.5 Criticism of traditional authorities

As noted above, traditional authorities were generally viewed as collaborating with the colonial and settler regimes against the interests and welfare of the African people of Zimbabwe. To reward them and to ensure that they would be effective instruments for the settler regime of Ian Smith, for example, the Rhodesian Government made provision for various benefits targeted at the traditional leaders:

*During the frightening years of the Rhodesian Front, the country's traditional leaders and the white regime became strange bedfellows. The illegal regime did not need much effort towards this endeavour. They just saw to it that the chiefs were given salaries and the Council of Chiefs was government-funded. They were also given radios so they could listen to and pass on lies that were peddled by the national broadcaster to their subjects.*

*Appreciating the generosity of the rulers, the chiefs were reluctant to question the status quo. They became active participants in a plan to win the hearts and minds of the rural people. It was because of this reason that others such as Chief Jeremiah Chakandimwa Chirau became 'analysts' overnight specialising in denouncing 'terrorism'.*

<sup>12</sup> S 11 Communal Land Act No. 4, 1987.

*Then, as now, the chiefs chose to side with people who were facing rising unpopularity due to the style of their rule. The Minister of information of that day, P.K. van der Byl, was later to remark that "chiefs were necessary for preventing the rural black people from stepping out of line and getting subversive".<sup>13</sup>*

Ironically, the post-independence Zanu-PF government began to lose popular political support in the early 1990s as a result of its inappropriate policies and poor economic management systems. The poor performance of the Zimbabwe economy was generally blamed on Mugabe and his party's socialist policies. Realising the general acceptance of traditional leaders by the majority of the citizens, the Mugabe regime decided to harness this component of customary governance for its political ends. Various schemes were devised to ensure that traditional leaders would not only support Zanu-PF and Mugabe, but would also ensure that their people in the rural communities would also do the same. This author remembers attending a chiefs' meeting where one of the chiefs ignorantly stated: 'We are President Mugabe's representatives in our areas.' Writing in the *Financial Gazette*, Manyukwe captures more of these political distortions more succinctly thus:

*Today, Smith's manipulation of tribal leaders has come full circle. Faced with the same fate of having to deal with a restive population, the ruling party has decided to turn back the clock by revisiting a classic case of how those who were expected to stand with the people decided to sell out. Sensing imminent defeat in the last parliamentary election, the party suddenly remembered the chiefs. By awarding them allowances, by subsequently installing electricity in their homes, by periodically increasing their allowances without them having lifted a finger, history began repeating itself. Again grateful of this generosity, chiefs have since helped in making rural areas a no go area for the opposition. The rural areas have become places for political purges and retribution, flashpoints for those considered not loyal to the 'revolution'. In a recent bizarre case, Chief Chimeshe allegedly barred the burial of a National Constitutional Assembly member from his home area.<sup>14</sup>*

During this year's annual meeting of the Zimbabwe Council of Chiefs held at Bulawayo's opulent Rainbow Hotel, promises and demands were made. The government promised to drill boreholes, and give chiefs cars. Chiefs also requested phones. It was at the same meeting that Chief Serima of Gutu said: 'VaMugabe rambai muchitonga kusvikira madhongi ava nenyanga' ('Mr Mugabe, continue to rule until donkeys have horns'), to howls of misguided approval. It is scary to imagine what such men will do when they get what was promised. It is not far-fetched that they are sure to shut out the opposition from their areas, regardless of the fact that the winds of change cannot be confined to the towns any longer.

This should not be taken to mean that all the traditional leaders in Zimbabwe cooperated with the settler regime during Smith's time. There were a few chiefs, for example, who strenuously resisted and opposed the Rhodesian Government, especially for its policies of land alienation against Africans. Chiefs Tangwena and Mangwende are good examples, as Manyukwe aptly notes:

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13 Manyukwe 2003.

14 Manyukwe 2003.

*It is also heart-rending to note that we do not have a chief who is prepared to distinguish himself the same way Chief Reikai Tangvena did in the face of Smith's tyrannical rule. Not a single one is like Chief Mangwende who was deposed in 1960 for "insubordination". Then, Chief Mangwende said: "If the government is honest about its claims they should leave me on my father's land. I cannot be bought." Chief Mangwende did not allow any offers to distract him from issues at hand.*

*He stuck to his guns and his actions made a lasting significance to us all. Unlike Chief Tangvena and Chief Mangwende, our chiefs today have remained silent in the face of violence, torture and human rights abuses by the government.<sup>15</sup>*

Apart from making it extremely difficult for opposition political parties to operate in their rural areas, traditional chiefs that sat in Parliament have always voted in support of Zanu-PF regardless of the merits and demerits of the issue. Because they are appointed by the President, and they are paid monthly allowances by the state, chiefs feel obliged to politically support the President's party at all times. It remains to be seen whether this situation will change now that there is an inclusive government comprising both the MDC and Zanu-PF. We note, however, that the Ministry responsible for local government under the inclusive government is still headed by a Zanu-PF Minister, and that the President is still responsible for the appointment of chiefs. These two factors are likely to mean that the chiefs will still feel obliged to politically support Zanu-PF as opposed to the MDC. Indeed, this alone highlights the need for legislative and other related reforms in relation to the role and functions of traditional leaders in Zimbabwe.

Another way that traditional leaders have been compromised by Zanu-PF has been frequently demonstrated during election campaigns. State agents have often been accused of urging traditional leaders to ensure that their subjects vote for Mugabe and Zanu-PF. Both threats and incentives have been employed in relation to traditional leaders in this regard:

*As the June 27 presidential run-off approaches, opposition officials say the ruling party, ZANU-PF, is targeting village chiefs in an effort to reverse the losses suffered by President Robert Mugabe in the first round of voting in areas previously considered his stronghold. Abednico Bhebhe, deputy spokesperson for the Movement of Democratic Change, MDC, faction led by Arthur Mutambara, said the politicisation of villagers by headmen is in full swing ahead of the crucial second round. "They are calling meetings disguised as genuine village gatherings with nothing to do with politics. But once the villagers congregate, the gospel of Zanu-PF is preached," Bhebhe told IWPR. In Zimbabwe – as elsewhere in Africa – traditional leaders have always commanded profound respect among rural communities, where they preside over everything from the resolution of disputes to the sharing of resources. Some chiefs and headmen are still revered within some political circles for having worked with nationalists and freedom fighters in the 1960s and 1970s during the bloody and protracted guerrilla war against Ian Smith's white minority government. As noted earlier, there were many chiefs who also worked closely with and supported the colonial regimes prior to the advent of national independence. There were, therefore two groups of traditional leaders during that time, but the situation has become more monolithic now, with the majority of chiefs politically supporting Mugabe's Zanu-PF.<sup>16</sup>*

<sup>15</sup> Manyukwe 2003.

<sup>16</sup> Manyukwe 2003.

However, critics and analysts say that, with the emergence of a powerful opposition in 2000, the traditional leaders have been blatantly threatened, bribed, politicised, and used by Zanu-PF to rally villagers behind the party. Traditional leaders receive a generous monthly government stipend as part of Mugabe's brazen strategy to keep them at his beck and call. In the run-up to the March 29 general and presidential elections, they were also recipients of the bulk of the 200 off-road vehicles doled out by the Mugabe government. But bribery is not the only method of inducement used by Mugabe's supporters.

In its regular pre-election monitoring updates before the March 29 poll, the Zimbabwe Election Support Network, ZESN, observed that chiefs who had given the MDC permission to hold campaign rallies in their locality had been harassed by state security agents, who threatened to withdraw government support if they continued to do so. These rural communities, which, according to aid agencies, are bearing the brunt of the country's economic decline, constitute a bloc that could swing the vote in favour of the opposition. The MDC, formerly Zimbabwe's major opposition political party, but, since the March elections, now the majority party in Parliament, claims that in remote rural areas, ravaged by hunger and poor harvests and far from the probing eyes of the outside world, freedom of choice has been infringed, with villagers too frightened to vote for the candidates of their choice. According to Bhebe, those villagers who have shunned the recent village meetings, recognising them as Zanu-PF gatherings, have suffered dire consequences.<sup>17</sup>

The denial of food to starving villagers simply because they are alleged to be supporters of political parties other than Zanu-PF is the height of hypocrisy. Mwando aptly notes: 'At the same time, human rights groups, aid agencies and the MDC allege that traditional leaders are denying starving villagers food aid, accusing them of working against government efforts because they support parties other than ZANU-PF'.<sup>18</sup> In some extreme cases villagers have been threatened with 'deportation' or expulsion from their traditional rural homes because they were alleged to support the MDC or other opposition political parties. What is perhaps even more unfortunate is that there have never been actual cases where the traditional leaders have proved beyond doubt that the specified villagers had in any way been disloyal to their traditional leaders. This mixing of political and traditional roles and allegiances has caused some people in modern day Zimbabwe to view traditional leaders as necessarily a negation of democracy. Here, again, the need for well thought out reforms cannot be overemphasised.

### 3. Trends in other African countries

The role and functions of traditional authorities have been both varied and controversial in most of post-colonial Africa. Pasteur<sup>19</sup> cites a report on Traditional Leadership in Africa prepared for the Commonwealth Local Government Forum in 1995, which suggests the following conclusions:

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<sup>17</sup> Mwando 2008.

<sup>18</sup> Mwando 2008.

<sup>19</sup> Pasteur 1999.

- *Traditional leadership is playing a role beyond its function in customary and tribal affairs...and that role is expanding rather than declining.*
- *Modern democratic or appointive structures have resulted in the removal of chiefs from political and administrative roles (except for limited representation on councils and committees), but in some cases they retain judicial and land administration roles. The essence of the traditional leadership role is leadership of rural communities at grassroots level, based on tradition, respect and community solidarity.*
- *At the same time it has to be recognised that traditional leadership is not necessarily politically neutral, and chiefs have been drawn into alignment with political parties.*
- *Traditional leaders operate side by side with various forms of non-traditional grassroots or community based structures and/or activities, such as, village meetings, committees, and civic associations. Both enjoy a degree of legitimacy and support, and they need to be seen as complementary rather than competitive.*
- *The area in which the role of traditional leadership seems to have the greatest potential is in building a bridge for two-way communication between the community and the governmental system at central and local levels for the purpose of promoting development and change. This area could include the following:*
  - *Facilitating the consultation and bottom-up planning process in the formulation and implementation of public policies, district and area development plans, and rural development projects.*
  - *Mobilising public opinion to support policies of economic and social development, and mediating the change process.*
  - *Mobilising labour and financial resources for the provision, and possibly also management of services and projects at community level, drawing on traditional self-help practices.*
  - *Maintaining family and community bonds in rural society in order to promote social cohesion and prevent delinquency and crime.*
  - *Assisting in the process of community education, for example, in primary health care.*
- *A variety of structural arrangements have been used to support the institutions of traditional leadership:*
  - *Recognition of the institution and definition of roles in either the Constitution or a parliamentary Act.*
  - *Creation of a national house of chiefs with a consultative role.*
  - *Representation of chiefs in local government councils and district or area development committees.*
  - *Creation of consultative forums bringing together civic and traditional leaders at local and community level.*
  - *Provision of training and logistical support for chiefs.<sup>20</sup>*

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20 Pasteur 1999.



Needless to state, only some of the foregoing conclusions would be relevant to the Zimbabwe situation given the special circumstances in which the southern African country finds itself. Perhaps these special circumstances are the very reason why Zimbabwe may need to learn from other African countries in relation to the role and functions of traditional authorities and local authorities. Some effort in this regard has already been taken by the relevant authorities. When opening the Fourth Parliament of Zimbabwe on 2<sup>nd</sup> May 1995, President Mugabe informed the House that both the Rural District Councils Act and the Chiefs and Headmen Act were to be amended, ‘...to provide for the restoration of administration and traditional powers to chiefs, headmen and village heads.’<sup>21</sup> Subsequent to this announcement, the then Speaker of Parliament, The Hon. Cyril Ndebele, authorised a Parliamentary Study Tour (PST) by four MPs to Botswana, Namibia and Zambia. We summarise below some of the recommendations made by the parliamentary delegation at the conclusion of its tour. The Government of Zimbabwe has largely ignored most of the recommendations contained in this report.

### **3.1 Select recommendations of the parliamentary delegation to Botswana, Namibia and Zambia**

The PST was able to identify four approaches to the handling of the relationship between traditional and local authorities in the three countries they visited. Non-regulated dualism occurs where elected structures exist side by side with traditional authorities, and either one or both are not comprehensively governed by legislation. This usually leads to struggles for power between traditional and elected structures, and this can be inimical to local governance and development. The second approach is termed parallelism or regulated dualism. This is where both traditional structures and elected councils exist side by side, by law, and are equal to, and independent of, each other. They operate parallel to each other.<sup>22</sup> The major problem with this arrangement is that it can easily lead to unhealthy competition for power, duplication of effort, and wastage of scarce resources.

The third approach is subordination, where either traditional authorities or the elected local authorities are made subordinate, and answerable, to the other. Usually it is the traditional authorities that are forced to be subordinate to elected authorities. The most likely problem under this arrangement is that the subordinate authority may be reluctant to give up its autonomy, or may be unco-operative. The harmonisation approach recognises that although the two types of authorities each have their specific and specialised roles and objectives, they also have common ones that must be harmonised for the benefit of the local area in which they operate.<sup>23</sup> It differs from integration in that it does not seek to merge traditional and elected local authorities, but aims at involving all the role players in institutions that deal with issues of common interest. Once decisions have been made, they are binding on all those concerned. The PST report aptly states: ‘Thus, traditional authorities would be represented in council and would argue the traditional point of view... but would be bound by the decisions reached.’<sup>24</sup> The PST recommended as follows:

21 Parliament of Zimbabwe 1995: 1.

22 Parliament of Zimbabwe 1995: 4.

23 Parliament of Zimbabwe 1995: 4-5.

24 Parliament of Zimbabwe 1995: 5.

- Zimbabwe should adopt the approach of harmonising traditional and elected structures by legislatively stipulating a quota of traditional leaders in all local government structures as well as at the national level. The traditional leaders would be appointed, presumably by the president, on a rotational basis, and the process would be managed, in terms of who gets in or out, by the Provincial Assembly and the Chiefs' Council.
- The quota for traditional leaders at the local level should be 10%, while that at the national level should be retained at the current level (i.e. ten chiefs in Parliament at that time). The traditional leaders would be appointed to the local council by rotation if there are more of them than the stipulated 10%.
- A House of Traditional Leaders should be created at the national level to provide advice to the government and to the national legislature on matters concerning tradition and culture.
- Traditional leaders should not be allowed to compete for elections on the open or unreserved roll of institutions in which they have a reserved quota.<sup>25</sup>

We note that Zimbabwe has utilised the harmonised approach for a long time, although there may be need for a closer examination of the benefits that may have accrued as a result, and the disadvantages that may have been experienced under that approach. With regard to the creation of a house of traditional leaders at the national level, it is this author's view that the existing Council of Chiefs can be tasked to provide whatever traditional or cultural advice that may be needed by democratic governance structures. Such advice may pertain to sacred sites, traditional customs and practices, as well as issues relating to taboos. Creating another national institution will obviously cost the nation considerable amounts of money which could be used for more urgently needed development. In addition to the recommendations pertaining specifically to the relationship between traditional and local authorities, the PST also made interesting recommendations in relation to matters, such as, affirmative action, the land, party politics, and the remuneration of traditional authorities. The following are selected recommendations that are pertinent to this study:

- Traditional authorities should be required by law to promote affirmative action in relation to the historically and socially disadvantaged in their communities, in particular by promoting women to positions of leadership.
- That the current position with regard to communal land, where the RDC is the land authority, be maintained as long as the role of the traditional chief in council is well defined.
- Alternatively, Land Boards, which are created under the Land Acquisition Act for the purpose of managing all issues relating to land re-settlement, should be harmonised with other relevant authorities and institutions by including representatives from all interested parties, such as, traditional leaders, women, and youth groups.
- Traditional leaders should not participate in party politics and should not hold any party political office, nor should they stand for elections as candidates for any party, nor as independent candidates. This would entail the amendment of the current

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<sup>25</sup> Parliament of Zimbabwe 1995: 5.

Constitution of Zimbabwe, which allows all citizens the freedom to form or join a political party of their choice.

- Legislation should be passed prohibiting traditional leaders from influencing members of their communities in the direction of their own party political opinions or allegiance.
- The remuneration of traditional leaders should be a state function which should be discharged through the local government agents of the state.<sup>26</sup>

These are all plausible recommendations, but there will be need for in-depth study of possible implications of some of them on the operations of local authorities.

## 4. Vision

The view of this paper is that traditional chiefs should actually play no role in local governance. Zimbabwe's history is replete with examples of how traditional authorities have been used as political instruments by incumbent ruling parties for their own ends. Chiefs have often been victimised for being suspected of providing political support to opposition political parties. Some chiefs have even threatened to 'deport' supporters of opposition political parties from their areas of jurisdiction. Exclusion of traditional chiefs from governance structures would eliminate problems of this nature. The paper proposes the creation of a parallel structure for chiefs, as opposed to the current local government structure. At the apex of the chiefs' structure would be the existing Council of Chiefs, and this structure would have responsibility for national issues. It would also deal with matters referred to it by the next lower level, the Provincial Assembly, which already exists in Zimbabwe. Below the Provincial Assembly would be created a District Assembly whose membership would be all the chiefs and selected headmen from that district. The functions of these structures of traditional leaders would include providing the democratic structures of governance with advice on traditional and cultural matters.

It is against this backdrop that this paper wishes to make the following recommendations with regard to possible policy reforms in Zimbabwe:

1. Chiefs should not be appointed by the President but by the Council of Chiefs through a standing or select committee of that Council, after consultations with the elders in the chieftaincy concerned, and in accordance with the customary practices and traditions of the area.
2. Closely related to this recommendation is that the President should not have the power to remove a chief from office. This should only be done by the Council of Chiefs, and only for proven cases of misconduct.
3. Traditional leaders should form a parallel structure extending from the village to the national level, but that structure should be limited to handling only matters of a customary or traditional nature. At the apex of that structure should be the Council of Chiefs, and below it should be the Provincial Assembly, the District Assembly, and the Village Assembly. Both the District and the Village Assemblies currently do not exist in Zimbabwe. These would, therefore, be new structures.

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<sup>26</sup> Parliament of Zimbabwe 1995: 6-12.

4. Chiefs should not be involved in party politics at any level whatsoever as long as they are in office. A chief who decides to run for political office should first step down from his/her position as a traditional leader.
5. Chiefs should not be represented in either the House of Assembly or the Senate. They should have no role to play in the democratic governance of Zimbabwe, except the role of advising democratic structures on issues of tradition and customary law.
6. Chiefs should not be represented in the RDCs, and should only attend Council meetings on special invitation by the chairman of the RDC. They, therefore, should have no voting powers in Council.
7. The issue of whether to allow women to become chiefs, headmen or village heads should be left to the various ethnic groups to decide specifically for their own areas.

## 5. Conclusion

The role of traditional leaders in local governance has persistently been controversial in Zimbabwe. The experiences of other countries in Africa and in the southern African region are varied, but a lot can be learnt from these experiences that can benefit Zimbabwe in the long run. There is no doubt that the demand for democratic governance in Zimbabwe, as elsewhere in Africa, effectively places the issue of the role of traditional leaders on the table. It is an issue that has to be resolved in the interests of both democracy and good governance. This paper has outlined several areas that can be considered when formulating legislative reforms in this regard. Further study and debate will be needed before any serious policy reforms can be proposed.

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# The powers and functions of local government authorities

*Shingirayi Mushamba\**

## 1. Introduction

This paper explores the most important powers, roles and functions of local governments (LGs) or councils in Zimbabwe. It identifies the sources of these powers and assesses the level of discretion in exercising such powers. Discretion is defined in relation to the ability of local governments to exercise their powers without central government intervention. Further, the paper assesses the extent of stakeholder agreement on the mandate and broad functions of local governments. The issues discussed in the paper are concluded with some reference to areas considered critical for local government policy or law reform. The local government powers and functions discussed in the paper are those bestowed through national statutes. The import of the statutes relates to creating LGs that provide services such as roads, water, sewerage, and waste disposal. Over many years existence, councils have become widely involved in the social, economic and cultural development of their

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communities. Such involvement has also brought with it some council powers born out of traditions of service. While characteristically checkered, the relations of service provision between councils and citizens have had an imprint on the public image of councils.

## 2. Defining local government in Zimbabwe

Local government refers to the sub-national level of government. In Zimbabwe the main institutions at this level are Urban Councils (UCs) and Rural District Councils (RDCs). This level of government is separate from, yet operationally interconnected, with provincial and district levels of government. Councils are separate to the extent that they are elected, while provincial and district governments are not. As such, for purposes of this paper provincial and district layers of government are not classified as LGs. The country is divided into ten provinces. These provinces are headed at the political level by a Governor and Resident Minister who is appointed by the President. At the technical level, the provinces are administered by a Provincial Administrator, who is a senior civil servant within the Ministry responsible for local government. Provinces do not have local revenues to support the implementation of programmes but, instead, are a coordination mechanism for sector ministry and local authority programmes. The paper will return to the issue of operationalisation of the concept of local government in later sections.

## 3. Organisation of local government in Zimbabwe

Zimbabwe has 60 RDCs and 31 UCs, whose jurisdiction, however, excludes wildlife areas and game reserves, national parks, and military and mining areas. The government ministries and departments that are responsible for these areas act as the local authorities, performing planning and service provision functions, i.e. they exercise powers and perform development functions in designated areas. For instance, in terms of sections 10 (1) (c and d) of the Regional Town and Country Planning Act [Chapter 29:12], the Minister responsible for the environment, is the Local Planning Authority for purposes of making master plans in parks and wildlife areas and forest land.<sup>1</sup>

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1 The parks and wildlife lands include, Bangala, Manjirenji, Mbaze Pan, Manjinji Pan, Umzingwane Dam and forest lands, namely – Gwaai and Fuller. The areas for which the Minister of Environment and Tourism is the Local Planning Authority for purposes of local plans are: parks and wildlife lands, namely – Chimanimani, Chipinge A, Kyle/ Mutirikwi, Mushandike, Ngezi, Rhodes Nyanga, Robert Mcllwaine/ Lake Chivero, Sebakwe, Zambezi portion in Kariba. In exercising his powers the Minister responsible for the environment may do so directly or he may constitute a Local Planning Authority for the area. The forest estates for which the Minister is the responsible authority are described in detail in the Third Schedule of the Forest Act [Chapter 19:05].

### 3.1 Urban councils

There are 31 UCs which have been established by the President throughout the country.<sup>2</sup> UCs are established in terms of section 4 of the Urban Councils Act [Chapter 29:15]. While all of them are established under the same Act, they are accorded different status. At the top are city councils, followed by municipal councils, town councils and local boards. Section 14 of the Urban Councils Act provides that a council may apply for a change of status, from a lower to a higher status. There is, however, no provision for a change of status, from a higher to a lower order. Once obtained, the status granted is held in perpetuity. It appears that provision is necessary for the status of councils to be reviewed from time to time as an incentive to improve, or at the very least maintain, standards.

### 3.2 Rural district councils

Currently, there are 60 RDCs. Like UCs, RDCs are declared and named by the President.<sup>3</sup> RDCs were formed after the amalgamation of the former district councils and the rural councils in 1993 based on a 1988 Rural District Councils (Amalgamation) Act. The district councils themselves had been established in 1980 in former Tribal Trust Lands (renamed Communal Lands) through the consolidation of African Councils, while in former European commercial farming areas rural councils were retained through to 1993. The amalgamation brought together 45 rural councils and 55 district councils which have since increased to 60 through the creation of new councils.

Both UCs and RDCs are divided into wards. In total there are 1958, according to the last elections held in March 2008. Each ward is represented by a councillor elected by a simple majority through universal suffrage. The political heads of bigger UCs are (ceremonial) Mayors while rural councils and local boards are headed by Chairpersons. Prior to the March 2008 elections, Mayors had executive powers and were elected directly by the electorate. Chairpersons have always been ceremonial and non-executive. In terms of section 22(c) of the Local Government Laws Amendment Number 1 of 2008, a Mayor is elected by fellow councillors from two possible pools. One is from amongst the group of elected councillors and the other is directly from the community. Of note is that the Mayor can be chosen from non-councillors, whereas a Deputy Mayor and Chairpersons are elected from amongst elected councillors.

Section 7 (b) of the Urban Councils Act allows the Minister of Local Government to appoint special interest councillors to serve on council alongside elected councillors. The number of special interest councillors shall not exceed 25% of the elected councillors. These special interest councillors participate in the business of the council, and perform the same functions, and are entitled to the same benefits, as elected councillors, except that they do not vote at meetings.

<sup>2</sup> In terms of Section, 4 (1) it is the President of Zimbabwe who establishes councils. The President is granted powers to establish councils, be they municipal, town, city or local board status. Further, the President is bestowed powers to alter the boundaries of any council and even to abolish it.

<sup>3</sup> S 6 Rural District Councils Act [Chapter 29:13].



However, the situation is different in RDCs as special interest councillors have voting rights. The issue of special interest councillors and the ceremonial Mayor are viewed as a violation of citizen representation in the decision making process since they are not directly elected by the citizens.

In terms of structures, councils have two sections or ‘units.’ One is made up of elected councillors, and serves as the policy making unit or legislature. This is what is technically referred to as council, and makes decisions, passes by-laws and approves budgets. The other is the executive or technical arm of council, responsible for the day to day running of council i.e. implementing council decisions. The head of the appointed staff in UCs is a Town Clerk (TC), and in RDCs, the Chief Executive Officer (CEO). Both UCs and RDCs operate through a committee system.

**Table 1: Local councils and their categories**

Category	#	Names
Local Boards	4	Ruwa, Chirundu, Epworth, Hwange
Town Councils	11	Karoi, Chipinge, Gokwe, Plum Tree, Norton, Zvishavane, Rusape, Shurugwi, Chiredzi, Lupane, Beitbridge
Municipalities	9	Kariba, Victoria Falls, Gwanda, Chitungwiza, Redcliff, Marondera, Bindura, Chegutu, Chinhoyi
Cities	7	Harare, Bulawayo, Gweru, Mutare, Kwekwe, Kadoma and Masvingo
Rural District Councils	60	Beitbridge, Bikita, Bindura, Binga, Bubi, Buhera, Bulilima, Chaminuka, Chegutu, Chikomba, Chimanimani, Chipinge, Chirumanzu, Chiredzi, Chivi, Gokwe North, Gokwe South, Goromonzi, Guruve, Gwanda, Gutu, Hurungwe, Hwange, Hwedza, Insiza, Kadoma, Kusil, Makonde, Makoni, Manyame, Marondera, Masvingo, Mazowe, Mbire, Mhondoro, Mberengwa, Mudzi, Murewa, Mutare, Mutasa, Mutoko, Muzarabani, Mwenezi, Ngezi, Nkayi, Nyaminyami, Nyanga, Pfura, Runde, Rushinga, Sanyati, Tongogara, Tsholotsho, Umguza, Umzingwane, Uzumba-Maramba-Pfungwe, Vungu, Zaka, Zivagwe and Zvimba.

*Source: Association of Rural District Councils (ARDCZ) 2009; Urban Councils Association of Zimbabwe (UCAZ) 2009.*

## 4. Powers and functions of local government in Zimbabwe

There are slight variations in the functions performed by UCs and RDCs. Some differences also exist in the powers and functions of the different levels of UCs. These variations will be discussed later in the paper. Generally, local government powers can be classified into legislative and executive categories. Legislative powers refer to the lawmaking role (for local laws or by-laws). The executive powers refer to the powers to implement, which enable councils to –

- i. make, adopt and implement policies;
- ii. administer local government areas; and
- iii. enforce local laws (by-laws).

Local government functions can be divided into mandatory and permissive. Mandatory functions are those that are compulsory for councils to perform. Permissive functions include the provision of social services and community development. However, councils are permitted to perform any functions other than those specified, provided they are not beyond their areas of jurisdiction. Thus, the main categories of local government functions include –

- i. development functions;
- ii. forward planning functions;
- iii. financial functions;
- iv. governance functions; and
- v. regulatory functions.

Local government powers and functions are bestowed through various pieces of legislation. As noted above, some of the functions have emerged over the years of local government existence but are not necessarily legislated for. Examples include the co-ordinating and leadership functions on addressing HIV and AIDS, which the LGs have assumed since the early 1990's. The legislative powers and functions of councils are mainly derived from three principal pieces of legislation, namely –

1. the Urban Councils Act [Chapter 29:15] for UCs;
2. the Rural District Councils Act [Chapter 29:13] for RDCs; and
3. the Regional Town and Country Planning Act [Chapter 29:12], for both UCs and RDCs.

These Acts are administered by the Minister responsible for local government. However, there are other pieces of legislation not administered by the Ministry responsible for local government, which define local government powers and functions. The Annexure to this paper outlines the powers and functions of LGs as defined by the different laws. The important non-local government legislation that impact on or define the powers and functions of councils include –

- the Environmental Management Act [Chapter 20:27];
- the Public Health Act [Chapter 15:09];
- the Shop Licences Act [Chapter 14:17];
- the Vehicle Registration and Licensing Act [Chapter 13:14];
- the Education Act [Chapter 25:04];
- the Roads Act [Chapter 13:18];
- the Communal Land Act [Chapter 20:04];
- the Road Traffic Act [Chapter 13:11];
- the Traditional Leaders Act [Chapter 29:17]; and
- the Water Act [Chapter 20:24].

#### 4.1 Analysis of the powers and functions of urban councils and rural district councils

Apart from the general powers of UCs listed above, more specific powers are provided in section 198 of the Act (Second Schedule). These powers relate to 54 developmental, regulatory and service provision issues. Generally, similar powers are bestowed on RDCs. Section 71 of the Rural District Councils Act provides for 61 functions, 10 functions more than those for UCs. Table 2 outlines the areas where councils can make by-laws.

**Table 2: Areas where LGs have powers to make by-laws**

<b>Main areas for by-laws UCs and RDCs</b>
General issues.
Council proceedings and financial matters.
Controls over property.
Planning, construction and use of buildings and structures.
Roads, public places and traffic.
Amenities and facilities.
Water.
Electricity.
Sewerage, effluent and the removal of refuse and vegetation.
Animals.
Food, food premises, vehicles and, markets.
Trades, occupations and other activities.
Nuisances.
Functions, performances and amusements.
Fires, combustible materials and explosives.
<b>Additional areas for RDCs</b>
Bush fires.
Fences.
Agricultural and other services.
Animal diseases.
Facilities for animals.
Fisheries.
Obstruction of water flow.

The main areas where councils are assigned powers can be roughly categorised into the following –

- environment related;
- farming and animal husbandry;
- commerce;
- infrastructure and physical developments;
- entertainment;
- financial matters;
- plant and equipment;
- services; and
- institution building.

The passing of by-laws is subject to the approval of the Minister of Local Government. The Minister can, after consultation with the LGs, amend or modify the by-laws. Where a local government is directed by the Minister to make by-laws and fails to do so, the Minister may institute proceedings to make and adopt by-laws on behalf of the sub-national government. It has, however, been argued that in most cases the overarching supervisory powers of the Minister prevent due exercise of this discretion. LGs find themselves tied down by procedures in their decision making processes, which require them to seek the Minister's approval even for routine decisions. The Urban Councils Act and the Rural District Councils Act have too many sections that vest powers in the Minister of Local Government.

Councils are empowered to develop their areas of jurisdiction. Part X to Part XV as well as the Second Schedule of the Urban Councils Act provide for a wide range of developmental functions. For RDCs, developmental functions are spelt out in Part X and in the First Schedule of the Act. Section 74 (1) of the Rural District Councils Act defines the developmental functions as –

- promoting the development of the council area;
- formulating policies, both long term and short term, for the council area;
- preparing annual development and other plans for the council area;
- monitoring the implementation of development plans and policies within the council area; and
- exercising any other functions in relation to development that may be conferred upon it by or in terms of the Act or any other enactment.

Developmental functions of councils are reducible to delivery of services to citizens, both institutional (public and corporate) and individual/household. Councils deliver services directly or indirectly. The latter is achieved through external service providers, which may be public, community based, or private. Specific service areas, such as, health, education and water<sup>4</sup> are often defined as sectors.

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<sup>4</sup> Others include housing services, sewerage, electricity, roads, transport, and emergency services.

In terms of the family of public institutions responsible for standard setting, planning, delivery and evaluation, specific central government agencies preside over specific sectors and liaise with local government and other non-state providers of services. The sector approach enhances policy and legislative alignment across spheres of government, but at times creates ‘silos’ that are not horizontally connected, making integrated planning and co-ordination of implementation difficult.

#### **4.2 Council mandates: The case of health, education, water and sewerage**

Section 96 (3) of the Urban Councils Act states: ‘Every council shall appoint a health and housing committee which shall be responsible for health and housing matters relating to the councils’. Sections 25 of the Second Schedule and 34 of the First Schedule of the Rural District Councils Act oblige council –

*subject to any other law, to provide and operate hospitals, clinics and dispensaries and to take any measures or provide any facilities which are considered necessary for the maintenance of health, including dental health.*

Pursuant to the above legislative provisions councils have established hospitals, clinics, dispensaries, as well as mortuaries, to fulfil this mandate. The major problem faced by LGs in fulfilling the health services function is funding. Local governments are supposed to receive grants for public health from the central government. However, most LGs are no longer receiving this grant. Health accounts in most LGs have consistently displayed large accumulated deficits eroding surpluses in other accounts.

With respect to education services, sections 35 of the Second Schedule of the Urban Councils Act and 45 of the First Schedule of the Rural District Councils Act oblige councils –

*[s]ubject to any other enactment, to provide, operate and maintain schools and other educational institutions, facilities and amenities connected therewith and for such purposes to levy and collect fees and other charges.*

Essentially, councils have the mandate to establish and run/administer schools. However, the performance of the full range of functions involved in running education in a decentralised fashion have never been fully established in Zimbabwe, as central government through the Ministry responsible for education has traditionally retained strategic functions, such as, curriculum development, and educator employment and supervision, while leaving the infrastructural development and maintenance to councils and communities. In RDCs, for example, teachers who were formerly selected, recruited and paid through the district council were in 1987 placed under a National Unified Teaching Service administered by the Ministry of Education.

The water and sewerage sector has attracted a lot of controversy in recent years. Section 34 of the Second Schedule of the Rural District Councils Act gives rural district councils the mandate to provide suitable and adequate supplies of water. Similarly, Part VIII of the Urban Councils Act gives councils the powers to provide and maintain a supply of water within or outside the council area. Current legislation separates ownership, with raw water belonging to the state (owners of major water reservoirs) and treated water for urban

use (from water works to domestic meter) being the domain of major local authorities.<sup>5</sup> Councils thus buy raw water from the state through the Zimbabwe National Water Authority (ZINWA), treat it, and sell to users. The provision of treated water has been a source of considerable revenue, especially to UCs.

However, in 2005 the Minister of Local Government issued a directive for the takeover by ZINWA of water and sewerage management. The Minister cited lack of capacity on the part of LGs as the major reason to transfer this function to ZINWA. However, local authorities viewed this as a deliberate ploy by the Minister to deprive the LGs of their traditional source of revenue. This directive was met with a lot of resistance as local authorities argued that ZINWA was not in a better position to manage water and sewerage. The power play between ZINWA and LGs denied the LGs the opportunity to voice their concerns regarding water problems that affect them, such as, water pollution, supply and sanitation. During the period 2006 to 2008 when water and sewerage management was under ZINWA there were no improvements in the supply of water. This led to another directive from the Minister handing back the responsibility to LGs.

It can be argued that for most functions the law is very clear as to what Councils are mandated to do. However, performance often lags behind the legislated intentions. A number of factors explain this anomaly. In the above section institutional overlaps have been cited as one of these factors that have affected full and effective performance of council functions. Below, the paper touches on one function that critically ‘breathes life’ into the other functions. This is the function related to council finances.

### 4.3 The financing of council: A catalytic function

Sections 284 to 307 of the Urban Councils Act, as well as the Schedules to the Act, provide for a wide range of powers to mobilise local resources. For RDCs, the financial functions are provided for in Part XIII of the Rural District Councils Act. Councils’ financial functions are further alluded to in other Acts which are not directly under the supervision of the Ministry of Local Government such as the Water Act [Chapter 20:22], the Public Health Act [Chapter 15:09], the Education Act [Chapter 20:04], the Land Survey Act [Chapter 20:12], the Electricity Act [Chapter 13:05], the Roads and Road Traffic Act [Chapter 13:11], the Liquor Licensing Act; the Communal Land Forest Produce Act [Chapter 19:04]; and the Parks and Wild Life Act [Chapter 20:14]. These functions which are stated in other Acts are not singularly performed by Councils. For instance, the responsibility to collect, and thus manage, revenues from relevant streams or sources is largely shared, and is subject to intergovernmental transfers. This has at times resulted in delays in transferring what is due to councils causing immense financial difficulties.

Intergovernmental transfers notwithstanding, councils in Zimbabwe are largely self-financed. The common sources of funds for LGs are –

- sale of land;
- property tax;

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<sup>5</sup> Water systems for smaller councils and some emerging urban settlements are managed by the state.

- levies, rates, and rents;
- service charges paid to council in respect of any services provided by it;
- revenue received from income generating projects, such as, commercial, industrial, agricultural, or any other, activity meant to raise revenue for the council; and
- grants, loans and other transfers from central government.

Most UCs derive a greater proportion of their revenue from the sale of municipal land, and from property tax when it is transferred to the purchaser and the latter has developed the land. Property tax in urban areas is levied as a percentage of the value of the land and improvements with the rate per unit being generally similar for a given zone, i.e. either low density residential, commercial or industrial stands. In high density residential areas, councils levy a supplementary charge not related to the value of the property. Property tax is an assured and a predictable source of revenue for UCs which contributes the greatest proportion of revenue for most LGs. For instance, 43% of the City of Harare's total revenue from January to August 2009 came from rates.<sup>6</sup>

The ability of a local authority to efficiently collect property tax is predicated on the completeness of the valuation roll. Where these are out of date in terms of properties captured and values assigned, a local authority is unlikely to realise the full potential of the revenue source. Valuation rolls in most local authorities in Zimbabwe are in need of updating. It has also been noted that meaningful increases in property taxes and service charges are sometimes delayed by central government for fear of eroding political support among the urban populace. In order to generate more revenue from property tax in a way that is equitable, technical expertise, the application of GIS, and institutional tax administration must be improved.

Unlike the case with UCs, RDCs do not derive much revenue from the sale of land and property tax. On average RDCs in Zimbabwe raise only 15% of total revenue through the sale of land, taxes, rates, and charges. The remainder comes in the form of transfers from the centre, all of which are tied to particular activities, approved centrally.<sup>7</sup> RDCs have very limited powers of taxation. They collect a small amount of revenue from the development levy, from fees, licences, and income generating activities.

Both urban and rural local governments in Zimbabwe collect service charges for some services, such as, sewerage, refuse removal, and planning services. Service charges are designed to generate revenue to cover operating and investment costs. If well managed, the system provides for more efficient municipal services and infrastructure, and enables rates to be set and adjusted at levels which reflect real capital costs and inflation. A general problem affecting a number of services provided by local authorities is undercharging. Further, rates are infrequently revised, rendering charging services as a source of local income inelastic. These charges also need approval of the central government in some instances. Inefficient billing exacerbates the problem. The successful application of user fees requires a convenient way to measure individual consumption. Increasing user fees to economically efficient levels should be the first priority of an infrastructure strategy.

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<sup>6</sup> City of Harare, Management Accounts Report for the Period Ending 31 August 2009.

<sup>7</sup> Stewart 1994.

The Government of Zimbabwe, through the Urban Councils Act and the Rural District Councils Act, has emphasised the need for LGs to engage in income generating activities for the purpose of raising revenue for the council. These include the sale of beer, rearing of livestock, growing of crops, grinding mills, and other activities. Virtually all councils in Zimbabwe had liquor outlets, the proceeds of which went towards social services. However, some of these functions are now being commercialised or rented out following persistent losses.

Sections 290 of the Urban Councils Act and 124 of the Rural District Councils Act give councils powers to borrow money from the state or any other source with the consent of the Minister responsible for local government and the Minister responsible for finance. Both UCs and RDCs may borrow money for the following purposes:

- the acquisition or construction of permanent works or undertakings;
- the acquisition of immovable property and any interest therein;
- the making of advances authorised by the Acts;
- the payment of compensation;
- the liquidation of the principal moneys owing on account or any previous loan;
- the relief of general distress occasioned by some calamity in the council area; and
- the acquisition of plant, equipment and vehicles.

In executing their financial functions LGs are required by law to draw up council estimates of the income and expenditure on revenue and capital accounts for the next financial year. Councils are not allowed to expend any funds not outlined in these estimates, except in cases of unforeseen expenditures, which need the Mayor or Chairperson's authorisation.

In Zimbabwe, LGs largely depend on income derived from property taxation and other service charges, while other more lucrative sources, such as, income tax, sales tax, and business tax are monopolised by central government. However, most revenue streams are not robustly managed and thus lack the capacity to yield additional revenue in proportional response to inflation, growth of personal incomes, and population growth. In a number of cases the Ministry of Local Government in Zimbabwe has blamed LGs for poor financial management. The Ministry attributes this to shortfalls in the technical expertise of LGs to handle expenditure responsibilities to generate revenue.

#### 4.4 Transfer of funds from central government

In addition to their own sources of revenue, LGs in Zimbabwe receive transfers from the central government. The main forms of transfers from central government are loans under the Public Sector Investment Programme and grants for public health. While there are formulae for calculating the central transfers, they have not been followed or funded in full, resulting in operating deficits on the part of local authorities. Local authorities complain that disbursements are neither predictable nor transparent. Most of the transfers from the centre have traditionally been re-imbursments of costs already incurred.

Transfers from the central government in Zimbabwe have steadily declined since 2003 as the national economy has continued to underperform. In the case of the health grants, councils now subsidise this mandate, creating a classic case of unfunded mandates.



Councils are supposed to focus on primary health, spend upfront, and recoup 50% of such expenditure from central government. This has been a problematic mandate where council now subsidises a central government competence. Roads are also a decentralised function, and councils receive some allocation for road maintenance through the road fund.

Since 2004 the central government through the Central Bank has made some funding available to councils through the Parastatals and Local Authorities Programme in an attempt to offset the impacts of the economic meltdown. The ultimate objective of this Programme was to enhance and capacitate local authorities in their service delivery during a period when local resources were difficult to mobilise. Between 2005 and 2007, 26 local authorities received funds from the Central Bank to carry out various activities. Of the total amount disbursed, 7.3% was in respect of housing projects, 67.6% for water and sewage augmentation projects, 15.5% for income generating projects, 2.1% for debt settlement, 6.2% for computerisation projects, and 1.3% for procurement of equipment.<sup>8</sup>

Transfers from central government have been a source of conflict between local authorities and the central government. A number of mandates have been devolved to local authorities without proper assignment of dedicated revenues. Some critics have argued that all central transfers should be pooled under the Ministry of Local Government which understands the requirements of local authorities.

#### 4.5 Governance functions

The governance function refers to how the LGs organise themselves internally and externally in relation to constituents and service providers. This function refers to the powers that the LGs use to manage their functions, which include decision making and legislation through by-laws. Good governance is built upon an effective interface between councillors and officials, strong links between financial and technical divisions, and an appropriate organisational structure.

LGs in Zimbabwe are corporate bodies who may sue or can be sued in their own right. Sections 227 to 232 of the Urban Councils Act and Part XI of the Rural District Councils Act provide for councils to make by-laws, regulations and resolutions to deal with a wide range of local planning, development, and control concerns of the area under their jurisdiction. Other than Parliament, councils are the only other institution which can make laws binding on local residents. These laws have to be adopted within the national legislative framework.

The governance function of LGs in Zimbabwe has been met with a myriad of challenges. One of the major problems that has often been cited is limited citizen participation in decision making in the planning and budgetary processes at the local government level. LGs rely to a large extent on the following instruments for public consultation:

- the *Government Gazette*;
- newspaper notices in more than one issue calling for objections;
- public notices at council offices;
- Ministerial commissions;

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<sup>8</sup> Reserve Bank of Zimbabwe 2007.

- consultation with the local government;
- ward development committees; and
- attending council meetings.

Some critics argue that these instruments assume a high degree of literacy and interest in civic matters by the ordinary members of the community and are consistent with a top down approach. Zimbabwe has a high literacy rate but these instruments are not as widely used as envisaged. Both the Urban Councils Act and the Rural District Councils Act focus more on consultation, and not participation *per se*. Consultation signifies the entrenched representative democracy outlined in the Local Governments Acts. Once elected, the legitimate representatives make decisions on behalf of the community and confirm the appropriateness of those decisions by seeking any objections.

Another critical issue that has been raised regarding the governance function of local governments relates to the powers of the Minister responsible for local government. The heading to section 314 of the Urban Councils Act states: *Minister may reverse, suspend, rescind resolutions, decisions, etc. of councils*. For example, at one stage when the City of Harare was under a commission the Minister issued a circular reversing the Harare City Council's decision to re-instate the Director of Housing, Director of Engineering, and City Treasurer. This directive has proved to be costly as a lot of revenue was wasted paying suspended staff. The issue of institutional responsibility over water and sewerage services discussed above is yet another example where the Minister's decision encroached onto council mandates and performance of core service functions.

It has been argued that, for the governance function to be effectively fulfilled, local government should be seen as a sphere of government on its own without undue interference from the central government and the provincial spheres of government. The provision of local government as a distinct sphere of government will elevate councils amongst the family of public institutions. Once this has been done central government can neither unilaterally abolish LGs nor change the nature of a particular local authority.

#### 4.6 Regulatory functions

Local governments need to apply certain controls on the activities of their citizens to ensure that their developmental objectives are achieved. Regulatory functions include land, building and works regulations, liquor licensing regulations, trading regulations, billboards, cemeteries and traffic and parking regulations. These regulations are made through by-laws and regulations which are subject to approval by the Minister of Local Government.

## 5. Discretion: Assessing local government powers versus the Presidency and the Minister

While the foregoing demonstrates that indeed LGs have many powers, these powers are matched by even more powers that bestowed on the Minister responsible for local government. In an interview with an Acting Director of Urban Councils in the Ministry

responsible for local government in November 2009, Mrs. Mudzingo pointed out that often there is unnecessary confusion about the powers of the Minister in Zimbabwe’s local government sector, ‘to the point where others have coined expletives such as interference’. She was of the opinion that this is based on a misunderstanding of the type and nature of the local government system. The local government system is based on a delegatee and delegator relationship. The central government delegates powers to LGs. The Minister responsible for local government has the authority bestowed on him by the Act and by the President to manage the local government sector.

The main legal instruments of local government vest in the President and in the Minister of Local Government. They often concern powers to suspend or act in place of a local authority or the power to nullify decisions of LGs. For instance, among RDCs alone, there are over 250 instances where the Minister can intervene in the day to day running of RDCs.<sup>9</sup> There is simply too much of the ‘Minister shall’ concept in the legislation, and in the practice of local government, too. This has entrenched excessive central executive intervention.<sup>10</sup> Similarly, throughout the various pieces of legislation, the President is empowered to intervene in a variety of cases, the ultimate being the dissolution of a council and dismissal of councillors. Under the Rural District Councils Act, for instance, the President is empowered to declare, name, alter or abolish a district.

It, therefore, appears that the powers bestowed on LGs are principally checked by the Minister and by the President (on whose behalf the Minister often acts). As such, the democratisation of local government, ideally located in the electorate, largely gets curtailed by the ‘Minister shall’ concept. In a way, the Minister and the President act and often justify their interventions in the public interest, but recent local government history is replete with political manipulation of the well-intentioned legislative provisions.

**Table 3: Instances where there is reference to powers of the Minister**

<b>Number</b>	<b>Reference</b>	<b>Intervention</b>
RDC Act	S 53	Minister’s approval is required for certain resolutions. The Minister may by notice in writing to the council concerned, direct that any resolution of a council dealing with such matters or such class of matters as are specified in the notice shall be submitted to him for approval.
UC Act	s 91	Minister has right of access to records of council. The Minister has unrestricted access to all council records, minutes, and any documents in the possession of any council which relate to the council’s meetings, resolutions and affairs, and if required to do so by the Minister or any person so authorised by the Minister, the council shall, without delay submit to the Minister or that person a copy of the record, minute or document as requested.

9 Zimbabwe Institute 2005: 5.

10 Zimbabwe Institute 2005; Hlatshwayo 1998.

RTCP Act1	s 10	RDCs and Local Boards not Local Planning Authorities for Parts IV and VI unless Minister has authorised them as such by statutory instrument.
	s 16 (1)	Submission and determination of master plan – Local Planning Authority shall submit to the Minister the draft master plan, report of the study, etc.
RDC Act	s 94	Minister's powers to make bylaws on behalf of councils.
	s 87	Bestows powers on the Minister to act on behalf of Council in estate development. This power is also granted in s 206 Urban Council Act s 206.
	s 90	Minister approves by-laws of RDCs.
UC Act	s 233	Minister's powers to make by-laws on behalf of councils. Also provided for in s 94 of the RDC Act.
	s 309	Minister may from time to time require a council to submit to him certified copies of records of its proceedings, statistics and documents and such other information as he may require
RDC Act		Minister may require RDC to furnish him with reports as above.
UC Act	s 116	Local Government Board whose members are appointed by the Minister to provide guidance on the senior employees of councils, and conduct inquiries into affairs and procedures of councils.
RDC Act	s 124	RDCs require the Minister to approve their borrowing powers. Same power is granted to the Minister by s 290 of the Urban Council Act. In the case where council borrows money illegally in the case of urban councils then the councillors become liable for the money borrowed and interest payable in their individual capacities (s 294 of the Urban Councils Act).
RDC Act	s 138	Gives powers to the Minister to conduct financial inquiry of any council.
UC Act	s 311	Inquiries by Minister and appointment of investigators. Minister may, if he considers it necessary, appoint one or more persons as investigators, to inquire into any matter which relates to good government, failure of council to undertake any function or matters related to municipal partnerships and relationships and intergovernmental relations. Similar powers are granted to the Minister in s 154 of the RDC Act. The costs of such investigations are borne by the council investigated.

	s 314	Minister may reverse, suspend, rescind resolutions, decisions etc of councils where he feels that it is not in the interest of the inhabitants of the area or not in national or public interest.
RDC Act	s 155	Minister may direct certain actions. The Minister may from time to time give a council such directions as he considers appropriate to ensure that the council, when constructing or repairing roads, dams or waterworks, or carrying out any other activity, makes use of service provided by the state, any statutory corporation, the District Development Fund or any other agency of the government.
RDC Act	s 157	Suspension of councillors. If at any time he considers it necessary or desirable to do so in the public interest or in the interest of the inhabitants of the council area, the Minister may, by statutory instrument, suspend all or any of the councillors, and if the suspension is not lifted within thirty days, then the seats of the councillors shall become vacant and the councillor removed from office is disqualified from being nominated for election as a councillor until such time that the Minister, by statutory instrument, has removed the disqualification.
	s 158	Minister may appoint a caretaker to act as a council if there are no councillors or where the councillors have been dismissed from office.
	S 161	Refusal to obey orders, requirements or directions of the Minister: any person who contravenes any order, requirement or direction which is given, made or issued by the Minister in terms of the Act shall be guilty of an offence and liable to a fine not exceeding 500 dollars or imprisonment for a period not exceeding six months or both the fine and the imprisonment.

Thus, it can be seen from the foregoing that although LGs are bodies corporate, they owe their existence to statutes and central government, which define their powers, functions and responsibilities. The local government system is based on a delegatee and delegator relationship, with so many powers vested in the Minister to intervene in local government whenever necessary. In practice the LGs governments confine their operations to that which is stipulated in the statutes. Anything that is not specifically permitted by statutes is considered *ultra vires*.

## 6. Stakeholders' consensus on powers and functions of local government

It is imperative to unpack the concept of stakeholders in the local government sector. This is important before discussing whether there is consensus amongst them with regard to the powers and functions of local government. Key stakeholders can be defined as those supervising or regulating, working in, for, with and expecting benefits from, local government, affected by and affecting local government activities, and those living in local government areas. They constitute a mosaic of actors and individuals that include, the Ministry responsible for local government, councils, local government associations, residents, central government, business, labour, and civil society groupings. Others include, the major political parties, the Local Government Board, the Council of Chiefs, and academic and research institutions working on local government issues.

At the centre of policy making and monitoring of the local government sector is the Ministry responsible for local government. The Ministry is responsible for administering the relevant legislation that guides LGs, including the Urban Councils Act, the Rural District Councils Act, the Traditional Leaders Act, the Provincial Councils and Administration Act and the Regional, Town and Country Planning Act. The Ministry sets policies and gives direction on various matters affecting LGs. Functionally it is supposed to play a facilitative role, although in practice it has played a core controlling and directive role. It is important to note here that the manner in which legislation on local government is couched is such that the Minister is bestowed with powers to intervene in almost all aspects of the local government sector.

Another critical Ministry in the functioning of local governments is the Ministry of Finance. The Ministry has a direct interest and input in the development planning and public finance through the public sector investment program. In some instances the Treasury has provided funding for LGs, in particular to bail out RDCs.

A further critical stakeholder is the office of the President. The President is the custodian of rural land in terms of the Communal Land Act, and he is the one who establishes councils and the system of local governance. He also has powers to dissolve an entire council when it is necessary.

The Local Government Board is also a key stakeholder. This Board is established under the Urban Councils Act, with a mandate to oversee the operations of UCs. The Board, however, has perennially been underfunded, and its major input into local government visible to the other stakeholders is the appointment and dismissal of senior council employees. Its broader mandate, however, is to provide guidance on the organisation, administration and personnel issues of local government.

Another important institution that is gaining even increasing importance is the Council of Chiefs. The institution of traditional chiefs, unlike local government, is recognised in the Constitution of Zimbabwe. The Council of Chiefs is provided for in the Traditional Leaders Act. The institution of traditional leaders is now entrenched into the governance of rural Zimbabwe. The institution has structures from village level to ward level chairing

assemblies, and at district level where chiefs are ex-officio members of RDCs. At province level chiefs have provincial councils that participate in provincial development committees and in the Senate, where representatives of chiefs selected by provinces sit as non-constituency members of Parliament.

Local government associations, as represented by the Association of Rural District Councils of Zimbabwe (ARDCZ) and the Urban Councils Association of Zimbabwe (UCAZ) also play important roles in influencing policy and speaking as local government voices on various matters of concern.

Another important stakeholder is the Parliamentary Portfolio Committee on Local Government. The Committee oversees the entire local government sector. It convenes public discussions on pertinent issues that emanate from, or are of concern to the public, and reports its findings to Parliament.

The question, amongst these key stakeholders, now is: is a consensus emerging with regard to the broad mandate, powers and functions of local government? To the author's knowledge there has never been an *Indaba* where all these key stakeholders were brought together at once to discuss the vision or future of local government that is desired. Scattered efforts have been made by local government associations and various non-governmental organisations (NGOs) to facilitate sessions focused on building consensus around some of the issues affecting the local government sector. Such NGOs include, the Combined Harare Residents Association (CHRA), the Parliamentary Support Trust, and the voluntary local government associations, UCAZ and ARDCZ.

The analysis in this section is based on reviews of the 2000 Draft Constitution, the Kariba Draft Constitution, the ARDC and UCAZ joint submission to the 2000 Constitutional Review Commission, and the manifestos of the major political parties, namely, ZANU-PF and the MDC formations.

Indeed, there are some broad ideas around which there seems to be consensus amongst key stakeholders, not necessarily on powers and functions of LGs. One such issue is the constitutionalisation of local government. Inspired by the SADC Forum of Local Government Ministers which has recognised the necessity of enshrining local government in the constitution, it is more and more widely accepted that local government will be constitutionalised. In the 2000 Draft Constitution which was rejected in a referendum, local government had been constitutionalised. The manifesto of the MDC favours a constitutionalised local government sector.<sup>11</sup> The Draft Constitution which was produced by the National Constitutional Assembly also speaks to a local government system that is constitutionalised.

However, opinions differ on the reason for constitutionalising local government. Some stakeholders support it as a means to enable better funding for local government through sharing of the national fiscus. Others feel constitutionalising will make LGs more stable and less vulnerable to the whims of central government. They advocate for local revenue sources for LGs and shun any transfers from central government, which they argue will reduce the autonomy of the LGs.

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11 Movement for Democratic Change 2008.

Another important issue on which there are divergent views is on the principle of decentralisation. The Ministry of Local Government is of the view that Zimbabwe has a very advanced form of decentralisation, especially as it applies to urban local authorities. It is for this reason that the decentralisation process that was initiated in the 1990s was focused on decentralisation to rural local governments. It crystallised into 13 principles to guide how the transfer of functions from central to local government was to be done, including issues of funding. The principles were premised on an assumption that decentralisation already existed in UCs. It is for that reason that, by and large, the 13 principles of decentralisation referred to rural district councils only. Other stakeholders are of the view that, if anything, Zimbabwe has experienced re-centralisation moments in the past decade. They point to an all-powerful central government, which was less comfortable with the executive mayoral system which seemed to strengthen the powers of LGs; hence the Local Government Laws Amendment Act Number 1 of 2008, which replaced executive mayors with ceremonial mayors. Other examples include the central government's interference in the running of councils through appointed commissions (now called caretaker councils) in the period 2000 to 2008 (see Machingauta's contribution to this volume). What is clear is that there are divergent views on the principle of decentralisation as it is defined and applied in the local government sector.

There are also divergent views amongst key stakeholders on the forms of governance of local government, whether there should be executive or ceremonial systems. Further, there is no agreement on the provision for special interest councillors. Some support the idea as a means to bridge the skills gap that may be evident in some councils after elections. Others argue that the appointment of councillors in a democratic system makes a mockery of democracy.

There are also divergent views on the powers bestowed on the Minister to intervene. Some stakeholders are of the view that the Minister wields excessive powers, and that the legislation is written in a manner that renders it open to abuse. The system of local government, therefore, becomes dependent on the individual Minister's ability to exercise restraint. Others argue that the powers to 'intervene' (and not the politically incorrect reference to 'interference') are necessary to rein in incompetent and corrupt councils. These stakeholders place emphasis on the supervisory and monitoring role and function of the Minister.

There are also divergent views on the vision of a future local government in respect of the existence and the powers of the provincial level of government. Some stakeholders see a stronger provincial level of government as a necessary part of the process of decentralisation. The National Constitutional Assembly (NCA) provides for a local government system that is constitutionalised. There are others who are outrightly opposed to a provincial level of government, arguing that Zimbabwe is too small a country to have a provincial tier of government. They argue that comparisons with South Africa, with its nine provinces, are misplaced. They argue that in terms of land size and population, Zimbabwe would be but a province in South Africa. They base their argument on the country's capacity to support a central government system, provincial government system and local government system. They point out that some provinces have no financial base to support such a system. However, it seems that, based on the manner in which political life in Zimbabwe



is organised, both ZANU-PF and the MDCs are organised at provincial levels within their respective party systems. It is, therefore, difficult to fathom why the political formations will support proposals for a future local government that does not provide for provincial local government structure, when they themselves are organised in such a fashion. It would thus appear that provincial local government will be a permanent feature of the future of local government. What may be tinkered with are its powers and functions.

The last major point of divergence about the future local government is on the role of the traditional leadership system in a democratic set-up. Some stakeholders argue that it is not possible to fuse the democratic local government system with the traditional hereditary system. They further argue that traditional leaders should stand outside the local government system, and have parallel structures of their own, responsible for traditional matters, outside the domain of local government (see Makumbe's contribution in this volume). Other stakeholders are of the view that LGs can co-exist side by side with traditional leaders. The Council of Chiefs is lobbying for an increased role for traditional chiefs in the local government system.

In this section, the paper has described the major stakeholders in local government. It has also discussed the major issues around which there is consensus and divergence. It has emerged that there do not seem to be major issues on the powers and functions of local governments.

## **7. Areas for policy and legislative reform**

The stakeholders in the local government sector should express their keenness and commitment to contribute to the current constitution making process. There are policy and legislative issues that deserve review. Some of these are discussed in the sections below.

### **7.1 Constitutionalising local government**

It is critical to ensure that local government is enshrined and attains a permanent and guaranteed status in the Constitution of Zimbabwe. Constitutionalising local government is preferred as a means to secure constitutional tenure for LGs which currently exist through Acts of Parliament which can be amended at any time by a simple majority. In addition, the Constitution will provide for a division of revenue between the central government and local government, thus guaranteeing a steady flow of financial resources to local government.

### **7.2 Single piece of legislation for the local government sector**

Currently there is a myriad of legislative provisions for LGs as was shown in the foregoing analysis. The Acts are also administered by different Ministers (Minister of Health, Minister of Water, Minister of Environment, Minister of Education, Minister of Roads, etc). For the convenience of the sector, and to facilitate efficiency and effectiveness, a single piece of legislation for local government would be desirable.

Potentially, the single piece of legislation could avoid some of the conflicts and

redundancy that is associated with the current legislative provisions. Currently, there is duplication of powers granted by various pieces of legislation on the same issues.

### **7.3 Powers and functions of local governments**

There should be certainty as regards the powers and functions of LGs flowing from the principal enabling statute. Such powers and functions should be clearly classified into mandatory functions and permissive functions. Further, the principal legislation should seek to develop partnership in governance among the various institutions that are involved, namely, central government, provincial local government, and LGs. These partners need to recognise each other's existence and complement each other in the performance of governance functions, without undue interference in each other's domain. While central government can still retain its powers to supervise LGs, the central government function should emphasise powers to build capacity and set policy direction within a co-operative framework where citizens take a distinct part. This goes to demonstrate that the development of legislation foresees non-performance by councils, and immediately provides a remedy in the form of powers to act directly, and not to compel the council to perform.

### **7.4 Setting up a Local Government Commission**

The view of the author is that powers should be vested in a Local Government Commission, and not in the Minister. Such a Local Government Commission will have broad oversight powers over local authorities to ensure that the latter discharge their constitutional and statutory mandate properly. Among other things, such a Local Government Commission should play a role in capacitating the councils and compel them to perform, as opposed to the current situation where the Minister can execute work on behalf of the councils and hand them a bill to pay.

### **7.5 Ensuring adequate revenue resources for local governments**

The sources of revenue for the performance of functions and responsibilities bestowed on LGs are very limited. A number of the functions, roles and obligations imposed on local government are only partially funded or there are no clear funding sources at all. For instance, in terms of sections 45 and 46 of the Public Health Act, local authorities can be refunded for expenses incurred in the operation of epidemic emergencies and the quarantine of those affected, up to two-thirds of the net costs. It is not clear where the balance should come from. The assumption is that the balance comes from reserve funds of the LG.

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- Environmental Management Act 2002 [Chapter 20:27].
- Local Government Laws Amendment Act 1 of 2008.
- Liquor Act 1996 [Chapter 14:12].
- Public Health Act 1996 [Chapter 15:09].
- Regional, Town and Country Planning Act 1996 [Chapter 29:12].
- Rural District Councils Act 1996 [Chapter 29:13].
- Shop Licences Act 1996 [Chapter 14:17].
- Traditional Leaders Act 1998 [Chapter 29:17].
- Urban Councils Act 1996 [Chapter 29:15].
- Vehicle Registration and Licensing Act 1996 [Chapter 13:14].
- Water Act 1998 [Chapter 20:24].

**Annexure: Powers and functions of local governments**

#	Legislation	Sections	Powers and functions	LGs Applicable
1.	Rural District Councils Act [Chapter 29:13]	s 12	Establishes RDCs as bodies corporate, with perpetual succession and powers to sue and to be sued, and generally doing all things which they are empowered to do in terms of the RDC Act and other laws.	RDCs
2.		s 46	Powers to regulate meetings and special meetings of council.	RDCs
3.		Part VIII	Powers to set up committees. There are standing committees, such as, Finance, Area Committees for land in RDC areas, or where the area is large enough a Town Board, Roads Committee, Ward Development Committees, Rural District Development Committee.	RDCs
4.		s 62	Empowers councils to set up ad hoc or special committees as they deem fit, or when so directed by the Minister.	RDCs
5.		s 64	Empowers councils to set up sub-committees of parent committees.	RDCs
6.		s 65	Empowers RDCs to employ staff and to determine their conditions of service.	RDCs
7.		s 69	Empowers councils to delegate powers of council to officers of the council.	RDCs
8.		s 70	Empowers the council to deal with corrupt members of staff. The penalty is such that the employee may be dismissed from the council and may never be employed by any local authority ever again, unless the Minister pardons the corrupt employee and permits such employment.	RDCs
9.		Part X	Specifically deals with powers of RDCs.	RDCs
10.		s 71	Powers to do anything listed in the First Schedule, or powers given by other laws, or anything that may be authorised by the Minister which in his opinion is incidental to the functions of the council or is necessary or desirable in the interest of the public.	RDCs

11.		s 72-74	Specific powers are listed below as follows; s 72 – Sewerage and drainage s 73 – Enforcement of conditions of title s 74 – Development functions in the local area including preparation of development plans, implementation and M&E.	RDCs
12.		s 75	Financial Powers s 75 Owners and occupiers of land may be charged for services made available, even if not necessarily consumed s 76 Powers to determine charges, rents and deposits by way of council resolution.	RDCs
13.		s 77	Powers of entry and inspection.	RDCs
14.		s 78	Powers to compulsorily acquire land and property, with the consent of the Minister.	RDCs
15.		s 79	Powers to enter into contracts and invite tenders in the exercise of its functions.	RDCs
16.		s 80	Powers to engage in income generating projects, although subject to approval of the Minister.	RDCs
17.		s 81	Powers to facilitate the emergence of co-operatives, with written approval of the Minister.	RDCs
18.		s 82	Powers to co-operate with the state, other local authorities and other persons for the better or more economic carrying out its mandate.	RDCs
19.		s 83	Powers to establish joint committees by agreement.	RDCs
20.		s 86	Powers to do estate development (ie lay out and service state land or council land for residential, commercial or industrial purposes, construct buildings and sell, lease or dispose the property).	RDCs
21.		s 88	Powers to make by-laws for the rural areas, and also powers to make bylaws in relation to certain urban areas under its jurisdiction in terms of s 89.	RDCs

22.		s 96	Empowers council to charge levies in rural areas. Incomes of RDCs include levies on and charges from owners of rural land; owners of mining locations; licensed dealers; business operators; holders of permits of occupation of rural land; heads of households may be required to pay development levy; land development levy; special levies; property rates in urban areas in the RDC area; interest on unpaid charges; charges in respect of property transfers; sales and leases of land; revenues from wildlife and parks areas (Parks and Wildlife Act [Chapter 20:14]) Amounts received from Communal Land Forest Produce Act [Chapter 19:04]	RDCs
23.		s 121	Powers to prepare annual budgets.	RDCs
24.		s 124	Powers to borrow money from the state or such other sources as the Minister, with the consent of the Minister of Finance, may approve.	RDCs
25.	Urban Councils Act [Chapter 29:15]	s 4 (8)	LG established shall be a body corporate with perpetual succession and shall be capable of suing or being sued.	All UCs
26.		s 14	Powers to apply for change of its status (Local Board – Town Council – Municipal Council – City Council).	All UCs
27.		s 87	Powers to resolve into committee and exclude the public and the press.	All UCs
28.		s 90	Power to rescind council decisions.	All UCs
29.		s 96 (1)	Powers to set up committees of council through which council business is conducted. These are standing committees and special/ ad hoc committees. Standing committees of council include: finance committee, health and housing committee, environmental management committee, audit committee and procurement board.	All UCs

30.	s 210	Powers to set up a municipal procurement board. Every municipal council shall appoint a municipal procurement board of not less than five and not more than seven members, which is responsible for arranging tenders and making recommendations to council.	All municipal councils
31.	s 102 (1 – 3)	Powers to make standing orders and rescind or suspend them when necessary.	All councils
32.	s 106 (1)	Powers to appoint Alderman.	(Municipalities and Cities)
33.	s 132/ 133 & 134	Powers to appoint senior staff of councils.	All UCs
34.	s 139 (1) & s 140	Powers to discharge, discipline or suspend a Town Clerk and senior officials.	All UCs
35.	s 141	Powers to appoint and determine conditions of all other employees.	All UCs
36.	s 142	Powers to employ uniformed employees to assist the police (parks and traffic).	All UCs
37.	s 145	Power to delegate powers to employees.	
38.	s 150	Power to acquire land or interest in land in an area under its jurisdiction or outside – by way of purchase, lease, expropriation.	All UCs
39.	s 157	Powers to construct sidewalks and recover costs from owners of land.	All UCs
40.	s 168, s 178 & s 180	Powers to install sewerage and drainage and recover costs from beneficiaries and compel owners of properties to connect into the system. Powers to finance waterborne sanitation and powers to protect these facilities.	All UCs
41.	s 183 & 184, s 187	Powers to provide and maintain a supply of water within or outside its area of jurisdiction, treat the water and require connection into the water distribution network, powers to ration or restrict use of water.	All UCs

42.		s 189, s 192	Powers to provide and maintain parking garages, parking spaces and install parking meters for use by citizens etc.	All UCs
43.		s 193 & s 196	Powers to provide transport services and determine routes and stop points, etc.	All UCs
44.		s 195	Powers to prohibit (regulation) certain public vehicles (more than seven passengers) unless licensed.	All UCs
45.		s 198	Council shall have power to undertake, carry out, or carry on, any or all acts and things set out in the Second Schedule, or anything authorised by the Minister which is deemed necessary or desirable to do or is an extension of the powers granted in Second Schedule, or anything that is necessary to give effect to its by-laws of the council.	All UCs
46.		s 199	Enforce conditions of title to any land, prohibit use, or execute works required in fulfilment of a condition of title and recover costs from owner.	All UCs
47.		s 200	Powers to provide and maintain fire and emergency services for use inside or outside the council area for protecting humans and property.	All UCs
48.		s 204	Powers to construct and maintain railway sidings.	All UCs
49.		s 205	Power to service land, whether state land, council land or land vested in the council, construct buildings, and sell the land or buildings.	All UCs
50.		s 207	Powers to borrow and repay money for estate development.	All UCs
51.		s 209	Powers to enter into contracts for any purpose.	All UCs
52.		s 212	Powers in relation to numbering houses and naming of roads.	All UCs
53.		s 214	Powers to close or deviate roads	All UCs
54.		s 216	Subject to Electricity Act, power to own or operate a public electricity supply undertaking.	All UCs



55.	s 217	Power to place, erect, install, provide, maintain and operate street lighting inside or outside the council area.	All UCs
56.	s 218	Power to charge for a service provided by council, even if one's property is not actually connected.	All UCs
57.	s 219	Powers to fix charges by resolution.	All UCs
58.	s 220	Powers to enter property and use land for municipal services.	All UCs
59.	s 221	Powers to implement income generating projects (subject to Ministerial approval).	All UCs
60.	s 222	Power to foster co-operatives (subject to ministerial approval).	All UCs
61.	s 223	Powers to co-operate with i) other councils, ii) the state and iii) other persons through a deed of agreement.	All UCs
62.	s 227 & s 228	Powers to make by-laws and the matters on which council may make by-laws (Third Schedule) – subject to Minister's approval.	All UCs
63.	s 237 & s 241 & 269	Powers to employ a valuation officer and prepare valuation rolls, establish a Valuation Board all as the basis for property taxation.	All UCs
64.	s 273	Powers to fix and levy a rate on property for council expenses in executing, maintaining or operating any works.	All UCs
65.	s 282	Powers to issue rates clearance certificates for the transfer of property.	All UCs
66.	s 283 & s 303	Powers to write off irrecoverable rates and bad debts.	All UCs
67.	s 288	Powers to prepare annual estimates (financial budget).	All UCs
68.	s 290 & s 295	Powers to borrow money (subject to Ministerial approval) and to repay the loans.	All UCs
69.	s 298, 299, 300 & 301	Powers to establish capital development fund, revenue reserves, estate account, housing accounts.	All UCs

70.		s 302	Powers to invest moneys.	All UCs
71.		s 304	Powers to appoint auditors and implement audits.	All UCs
72.	Regional Town and Country Planning Act: [Chapter 29:12]	s 10, 14 & 17	Power as a full Local Planning Authority to prepare and implement master plans, local plans and approved schemes, alteration of those plans, repeal or replacement.	City, municipality, town council
73.			Power as a partial Local Planning Authority (excluding preparation of master, local Plans and subdivisions and consolidations of property) unless authorised as such by Minister.	district council and local boards
74.		s 11	Powers to LPA to do anything which is necessary to implement an operative master plan, local plan or approved scheme.	All councils
75.		s 12	Powers of LPA to establish committees of not less than three and delegate to it powers, duties and responsibilities imposed on the LPA.	All councils
76.		s 19	Powers of LPA to consider objections to their plans.	All councils
77.		s 24	Powers to control development.	All councils
78.		s 27	Powers to regularise buildings, uses or operations.	All councils
79.		s 30	Powers to issue orders for preservation of buildings of special architectural merit or historical value.	All councils
80.		s 31	Powers to preserve trees and woodlands.	All councils
81.		s 32 & s 34	Powers to issue enforcement orders and prohibition orders.	All councils
82.	s 35	Powers to remove, demolish or alter existing buildings or discontinue or modify uses or operations or require abatement of injury.	All councils	
83.	s 36	Powers of LPA to enter into agreements with owners of existing developments.	All councils	

84.		s 39	Powers over subdivisions and consolidations and powers to impose conditions of development, including that land be set aside for roads purposes, public uses, payment to the authority the prescribed percentage of the value of each subdivision.	All councils
85.		s 45	Powers to acquire land required for development, redevelopment, improvement, contained in an operative master plan or local plan or an approved scheme.	All councils
86.		s 46	Powers to expropriate land (subject to provisions in the land Acquisition Act [Chapter 20:10].	All councils
87.		s 48	Powers to acquire buildings that have preservation orders.	All councils
88.		s 49	Powers to use and dispose land acquired by the LPA.	All councils
89.		s 50	Powers to pay compensation.	All councils
90.		s 55	Powers bestowed on councils as Roads Authorities.	All councils
91.	The Shop Licences Act Chapter 14:17	s 7 (1) & (2)	Recognises municipalities, town councils, local boards and district councils as 'licensing authorities' and powers to further delegate to employees or committees.	All councils
92.		s 11, 12 & 13, s 23	Powers of councils as licensing authorities to issue licences, limit the duration of the licence, and fix fees for licence, and power to renew or not to renew licence.	All councils
93.		s 29 & s 34	Power to issue permits upon payment of fees, and power to cancel the permit for non-compliance.	All councils
94.	Public Health Act Chapter 15:09	s 2 (1) (a)	Recognises municipal councils, town councils, local boards and rural district councils as public health authorities (PHA).	All councils
95.		s 7	Powers of LGs as PHA to appoint medical officers of health with duties as spelt out in s 8.	All councils

96.	s 10	Powers on LGs to appoint health inspectors.	All councils
97.	s 14	Powers of LGs as PHAs to take lawful and necessary precautions for the prevention of the occurrence or for dealing with the outbreak or prevalence of any infectious or communicable disease.	All councils
98.	s 15	Powers to establish committees known as health committees.	All councils
99.	s 22	Power to inspect premises and examine persons suffering from infectious diseases.	All councils
100.	s 23	Responsibilities to provide isolation hospitals, mortuaries, disinfecting stations and ambulances provide.	All councils
101.	s 25	Power of one LA to levy/ charge another LA for treatment in hospital or place of isolation, maintenance, nursing and treatment of persons referred from the other LA.	All councils
102.	s 27	Responsibility to carry out disinfection.	All councils
103.	s 28	Responsibility to remove to cleansing stations of dirty and verminous persons.	All councils
104.	s 39	Responsibility to report formidable epidemic diseases.	All councils
105.	s 41	Powers on PHAs to requisition buildings, equipment or other articles during an outbreak of any formidable epidemic disease (subject to Ministerial approval).	All councils
106.	s 45	LGs as PHAs , subject to Ministerial approval, may received advances for dealing with outbreaks of infectious diseases.	All councils
107.	s 46	Minister may authorise the refund of half (50%) of costs incurred by a LG in providing and equipping an isolation hospital or accommodation for persons suffering from infectious diseases or detailed for investigation, or two-thirds the cost of an epidemic committee.	All councils

108.	s 64	Responsibility of LGs to furnish adequate and sufficient water supplies for drinking and domestic purposes and powers granted to acquire any land, waterworks, springs, fountains, water rights etc necessary for this purpose, also power to compel the owners of properties to connect and fix a minimum charge whether used or not (2).	All councils
109.	s 66	Responsibility to maintain existing water supplies in good order.	All councils
110.	s 67	Powers to inspect water supplies.	All councils
111.	s 68	Powers to make regulations regarding use of water resources – prohibit bathing in, erection of dwellings, sanitary conveniences etc that are likely to pollute water sources.	All councils
112.	s 76, s79	Powers to license slaughter houses and where necessary cancel them.	All councils
113.	s 83	Powers bestowed on LGs to maintain cleanliness and prevent nuisances in the district or town.	All councils
114.	s 84	Power to prevent or remedy danger to health arising from unsuitable dwellings.	All councils
115.	s 89	Power to enter and inspect any buildings or premises for purposes of investigating any nuisances.	All councils
116.	s 92	Power to demolish unfit dwellings that are so dilapidated, or so defectively constructed or situated that repairs or alterations of same are not likely to remove the nuisance (subject to court satisfaction).	All councils
117.	s 93	Powers to prevent construction of back to back properties or erect any room for sleeping without sufficient lighting through a window or windows (size of one-twelfth of floor space).	All councils

118.	Environmental Management Act [Chapter 20:27]	s 2 (c)	Recognises RDCs as the appropriate authorities in relation to Communal land and resettlement land which is assigned environmental management functions in terms of s 133. It also recognises the environmental committee of RDCs.	RDCs
119.		s 59	Power to issue licences for discharge of effluent and pollutants into the sewerage system at a prescribed fee.	RDCs and UCs
120.		S 95	Responsibility to prepare Local Authority Environmental Action plans for the area under its jurisdiction.	RDCs and UCs
121.		s 125	Powers on LGs to make by-laws compelling occupiers of land within a local authority area to keep their land free from invasive alien species.	
122.		Roads Act [Chapter 13:18]	s 2	Recognises rural district councils as roads authorities for tertiary roads.
123.	Recognises municipalities and district councils as Roads Authorities for Urban Roads.			RDCs and UCs
124.	s 4		Bestow powers on LGs as Roads Authorities to plan, design, construct, maintain, rehabilitate and manage roads, prioritise, award contracts, prepare annual budgets, ensure compliance with environmental standards, establish and maintain facilities on roads, fence, plant trees, shrubs or other plants, information management, exchange knowledge and expertise.	RDCs and UCs
125.		s 30	Power to close a road as a Roads Authority.	RDCs and UCs

126.		s 32	Power to appoint a board of inquiry in regard to any proposed declaration, diversion or closure of a road.	RDCs and UCs
127.		s 39 & s 40	Power to construct storm water drainage on land adjoining roads and power to compensate for any loss of land or damage caused.	RDCs and UCs
128.		s 41	Power as a Road Authority to make roads, temporary deviations through one's property, and taking materials for making or repairing roads.	RDCs and UCs
129.		s 42	Power to sink boreholes or wells for water for primary purposes.	RDCs and UCs
130.		s 43	Powers to make entrances through fences.	RDCs and UCs
131.		s 45	Powers of RAs to make temporary encampments.	RDCs and UCs
132.		s 48	Regulation of trading on roads on in restricted areas.	RDCs and UCs
133.		s 50, 51 & 52	Preliminary reservation of land for roads construction, or withdrawal of reservation or its modification.	RDCs and UCs
134.		s 57	Powers to restrict any construction alongside restricted roads.	RDCs and UCs
135.	Road Traffic Act	s 40	Local Authority, by placing notice boards or traffic signs, may prohibit passage of traffic or impose conditions or restrictions relating to use of road by traffic or limit kind or mass of traffic (be it animal, pedestrian or vehicular traffic) on roads other than state roads, within the area for which it is the authority.	RDCs and UCs
136.		s 47	Control of advertisements visible from roads: RDCs may exercise delegated powers and functions that are performed by the Minister responsible for roads, if so delegated in relation to control of advertisements visible from the road. s 47 (a) Minister may delegate powers to RDCs in respect of roads in the area for which an RDC is a local authority, in writing.	RDCs

137.		s 82	Regulations, by-laws and resolutions relating to speed limits. s (2) gives powers to local authorities other than local boards to make by-laws in terms of the Urban Councils Act Part XVII or Part XI of the RDC Act providing for general speed limits in respect of the whole of the urban area under its jurisdiction or any part specified, including maximum speed limit of all vehicles or any class of vehicles. Such bylaws however do not apply on state roads unless if the council making them is a municipality or city. In exercising these powers, a council may simply pass a resolution instead of making a by-law. When the councils limit is made by way of a resolution such resolution shall be published in the Government Gazette.	Local Authorities other than local boards
138.	Vehicle Registration and Licensing Act	s 31	Powers on LGs to impose fees in respect of vehicles ordinarily kept at night within the area under the control of the LG, to be paid licences, temporary licences, temporary identification cards, garage licences, exemption certificates for the benefit of the road fund after deducting the administration costs of the LG.	RDCs and UCs
139.	Education Act Chapter 25:04	s 8	Puts responsibility on local authorities to establish and maintain such primary schools as may be necessary for all children under its jurisdiction.	RDCs and UCs



140.	Liquor Act Chapter 14:12	s 22	<p>Recognises local authorities as agents in the processing of liquor licenses. Note that licenses are issued by the Liquor Licensing Board. However the procedure requires that local authorities inspect and approve the premises in which the business of liquor selling will take place.<sup>2</sup></p> <p>S 22 (6) provides that a person to whom authority for the issue or renewal of a Part II licence has been granted may obtain the issue or renewal of such licence by submitting the relevant certificate and prescribed fee to the local authority where the premises are located, and the local authority shall issue or renew the licence as appropriate.</p> <p>S 22 (7) requires that where a local authority has issued or renewed a licence, it shall submit a copy to the Secretary of the liquor Licensing Board.</p>	RDCs and Urban Councils
141.	Water Act Chapter 20:04	s 60	<p>Powers to Act as a Water Catchment Council : the Minister responsible for water may confer powers of a Catchment Council on UCs. The functions and powers of Catchment Councils are elaborated in s 21 and s 22 of the Water Act. They include the preparation of outline plans, the regulation and supervision of water resources and water rights in a given river system.</p>	UCs only
142.		s 66	<p>Powers to regulate the use of water in Water Shortage Areas. The Minister responsible for water may, after consultation with the Minister responsible for local government and the council concerned, delegate the powers of a Catchment Council in relation to use of water in Water Shortage Areas.</p>	RDCs and UCs
143.		s 71	<p>Powers to prevent water pollution. The Secretary in the Ministry of Water may confer powers of a catchment council on a council for purposes of controlling or preventing the pollution of water.</p>	RDCs and UCs

144.	Traditional Leaders Act Chapter 29:17	s 24 (2)	Requires RDCs to comply with the provision in the RDC Act to prepare a land use plan for the village and to issue a settlement permit to the head of each household in the village concerned.	RDCs
145.		s 24 (3)	Requires RDCs and the District Administrator to keep accurate records of all settlement permits issued to each household.	RDCs
146.		s 26 (1)	Reinforces the fact that RDCs are the authorities over Communal Land. Allocation of land in communal areas (by chiefs and headman and village heads) should not be done without the approval of the appropriate RDCs, which are the administrative authorities with overall control over the use and allocation of all Communal Land.	RDCs
147.	Communal Land Act Chapter 20:04	s 8 (1)	Requires that occupation of Communal Land for agricultural purposes or residential purposes be with the consent of RDCs established for the area, which are the responsible local authorities.	RDCs
148.		s 8 (3)	Provides for officers and employees of RDCs that they can occupy and use Communal Land within the council area for the purpose of their employment.	RDCs
149.		s 9 (1)	Empowers a RDC to issue [permits, with the consent of the Minister responsible for local government, to any person to occupy and use any portion of Communal Land within its area of jurisdiction for purposes of administration, religious or educational purposes, hospitals or clinics, hotels, shops or other businesses, or any other use which will benefit the inhabitants of the area.	RDCs
150.		s 9 (2)	The RDC is also empowered, in performing the functions listed in s 9 (1) above, to impose such conditions on the permit and when need arises to cancel the permit.	RDCs

151.		s 13	Powers to make by-laws for Communal Lands: empowers RDCs to make by-laws as provided for in the RDC Act 29:13 for the control and regulation of occupation and use of Communal Land within its area.	RDCs
152.		s 14 (2)	In the performance of making by-laws for the occupation and use of Communal Land, the RDC is empowered in s 14 (2) to simply adopt model by-laws.	RDCs

# Supervision of local government

*Naison Machingauta\**

## 1. Introduction

Zimbabwe is a unitary state divided into ten administrative provinces.<sup>1</sup> Except for Harare and Bulawayo metropolitan provinces, they are a mixture of rural and urban areas. Each province is under the political leadership of the provincial governor, appointed in terms of section 4 (1) of the Provincial Councils and Administration Act (PCAA).<sup>2</sup> The provinces are each divided into districts which are further divided into council areas made up of several wards. Councils are run by a combination of elected and appointed councillors. There is, therefore, hierarchical government at two levels, i.e. at the national and local levels. Local government falls under the Ministry of Local Government, Rural and Urban Development which is responsible for the administration of all local government legislation.<sup>3</sup>

- 1 The ten provinces are: Mashonaland Central, Mashonaland East, Mashonaland West, Manicaland, Masvingo, Midlands, Matabeleland North, Matabeleland South, Harare, and Bulawayo.
- 2 Chapter 29:11.
- 3 See for example, section 2 of the Urban Councils Act [Chapter 29:15], the Rural District Councils Act [Chapter 29:13] and the Regional, Town and Country Planning Act [Chapter 29:12].

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The hierarchical nature of the relationship between central and local government allows central government to supervise local government with a view to bringing it into harmony with national policies. This kind of supervision is intended to enable the supervising authorities to prevent the unlawful use of the funds and other property of local authorities, to prevent corruption, or to improve the performance of local authorities, among other things. In South Africa where there are three spheres of government,<sup>4</sup> supervision of local government is largely done by the provincial government and to some extent by the national government.<sup>5</sup>

The supervision of local government takes various forms. First, it can be in the establishment of local government institutions and regulating their institutional framework. Secondly, national governments exercise a regulatory role in streamlining local government functions through the laws that establish local government, and others that have a functional relationship with local government. The third method of supervision is the continuous monitoring of local government functions through requests for information and access to local government records, as well as investigations into allegations of corruption and other forms of improper conduct. In this regard, supervision may involve the suspension and/or dismissal of elected councillors for improper conduct or poor performance. Lastly, in some cases where local authorities have been found wanting in the provision of services or failing to respond adequately to crises, central governments have intervened by appointing administrators, commissioners or caretakers. These would act as the local government council pending investigations, following the suspension or dismissal of councillors or until the crises have been managed to their satisfaction.

In Zimbabwe, the Urban Councils Act (UCA) [Chapter 29:15] and the Rural District Councils Act (RDCA) [Chapter 29:13] establish urban and rural local authorities respectively and provide for the manner of their operation. The legislation provides for the supervisory and monitoring roles of national government in the running of local authorities. The central question is whether there is an appropriate balance between the need for oversight and the need for local discretion. What checks and balances exist to guard against undue interference by central government in the affairs of local authorities? Are these checks and balances working? This paper seeks to critically analyse the supervisory role of national government in local authorities in Zimbabwe with a view to establishing whether the necessary balance exists between the need for oversight and local discretion. It is submitted that the existing legal framework for the monitoring and supervision of local government allows for the unfettered interference in local authorities by the central government. The paper will make suggestions for policy and law reform for the supervision of local authorities to provide the necessary balance that must exist between the need for oversight and the need for local discretion. In this paper the terms 'local authorities' and 'local government' will be used interchangeably to refer to all local authorities.

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4 S 40 of Constitution of South Africa Act 108 of 1996.

5 S 155 (6) and (7) of Constitution of South Africa Act 108 of 1996.

## 2. The legal status and role of local government in Zimbabwe

At independence in 1980, the new government sought to introduce wide-ranging reforms aimed at removing some of the racial overtones in the local government system.<sup>6</sup> These reforms included the removal of restrictions based on race, the participation of all races in local government elections, and the re-distribution of resources, among other things. Although they are bodies corporate,<sup>7</sup> local authorities are creatures of statute with no constitutional recognition of their existence. The main pieces of local government legislation are the UCA, the RDCA, the PCAA,<sup>8</sup> and the Traditional Leaders Act (TLA)<sup>9</sup>. The UCA establishes municipalities, towns and local boards, municipal and town councils, as well as their administration, powers and functions. The RDCA establishes districts and rural district councils and confers their powers and functions. The PCAA provides for the division of Zimbabwe into provinces, the appointment of provincial governors for these provinces as well as the establishment and functions of provincial councils. Provincial councils are made up of mayors, chairpersons of town councils and rural district councils and representatives of chiefs. Their main role is to approve provincial development plans prepared by a committee of heads of ministries in the province, district administrators, town clerks and the Chief Executive Officers of rural district councils.<sup>10</sup> Lastly the TLA provides for the appointment of village heads, headmen and chiefs, the establishment of the Council of Chiefs and village, ward and provincial assemblies and provides for their functions.

Local government is divided into rural local authorities and urban local authorities. The most significant changes to rural local government were introduced by the 1984 and 1985 Prime Minister's Directives on decentralisation and development.<sup>11</sup> These Directives and the pieces of legislation that followed (RDCA, PCAA etc.) created the office of the governor, the provincial councils, the district development councils, and ward and village development committees meant to bring about the democratic participation of rural communities in the decision-making processes for development planning and implementation in their areas.

It has been suggested that the definition of local government at a national level has been confused. According to Chatiza, central government vacillates between a devolution thrust (administering local affairs by locally elected officials) and a delegation one (performing tasks transferred from or assigned by the centre).<sup>12</sup> It is against this background that the supervision of local authorities by the national government must be understood. There are three broad forms of supervision, namely regulation, monitoring or evaluation, and intervention.

6 See generally Makumbe 1998: 23.

7 S 4 (8) UCA and s 4 RDCA.

8 Chapter 29:11.

9 Chapter 29:17.

10 Ss 12 and 13 PCAA.

11 Makumbe 1998: 27.

12 See Chatiza's contribution elsewhere in this volume.

This paper will concentrate on monitoring or evaluation and intervention as there is a separate paper that deals with the regulation of local government institutions.<sup>13</sup>

### 3. Monitoring

There is a close relationship between the monitoring and supervision of local government. Monitoring relates to the establishment of mechanisms aimed at continuously looking into the general performance of local government and to see whether there is compliance with the relevant legislation. It is an ongoing exercise done by national government, through the Minister, to test, now and again, local government compliance with legislation and national government policies. On the other hand, in its simple form, supervision refers to national government watching over local authorities in order to ensure appropriate behaviour. However it may be more than just watching over, as in national government giving directions to local government on how things should be done. Both the UCA and the RDCA provide for the monitoring of local government by the Minister. There are several of these monitoring mechanisms which include the right of access to council records, self-reporting, reporting at the request of the Minister and the power to order investigations into the conduct of councillors.

#### 3.1 Right of access to records of council

The UCA allows the Minister of Local Government unrestricted access to all records, minutes and any documents in the possession of any council which relate to the council's meetings, resolutions and affairs. This access by the Minister enables him to keep abreast of what is happening in councils. The councils are obliged to allow the Minister this unrestricted access.<sup>14</sup> There is no corresponding right of access to council records in the RDCA although section 51 (8) requires the council to submit to the Minister minutes of council proceedings.

#### 3.2 Self-reporting

Local authorities are required by law to report to the Minister on occasions as defined in the legislation. The most significant reports are the financial estimates on expenditure and income,<sup>15</sup> the audited accounts of a rural district council,<sup>16</sup> and the auditor's report,<sup>17</sup> all of which must be submitted to the Minister. The financial estimates are essentially the councils' proposed budgets for the next financial year. Their submission to the Minister will enable the Minister to see how local authorities intend to finance their operations and to see if their estimates have taken into account concerns of the marginalised and underprivileged groups in the community, including the elderly, orphans, women and children as well as poor households.

13 See Chakaipa's contribution on page 31.

14 S 91 (1) UCA.

15 S 288 (2) UCA.

16 S 137 (6) (a) RDCA.

17 S 311 UCA and s 154 RDCA.

The audited accounts from the rural district councils enable the Minister to see how the councils used the money collected or allocated to them by government, as well as to determine compliance with RDCA financial regulations. This is particularly important for rural district councils whose finances are largely grants from central government. The auditor's report in terms of section 306 (2) (b) of the UCA contains the auditor's views on the explanations and information extracted by the auditor from a councillor or employee of the council during a council audit. If there is evidence of financial irregularities from the explanations given and these are highlighted by the auditor, the Minister will be able to pick this up.

### 3.3 Requests for information

There are provisions in both the UCA and the RDCA that require local authorities to report to the Minister on certain occasions. Sections 309 and 153 of the UCA and RDCA, respectively provide as follows:

*The Minister may from time to time require a council to submit to him certified copies of records of its proceedings, statistics and other documents, and such other information as he may consider necessary for the effective discharge of his duties and responsibilities in terms of this Act or for any other purpose, and the council shall comply with any such requirement.*

The above is an indication of the kind of relationship that local government legislation envisages between the Minister and local authorities. The law is silent on how the information may be sought and seems to accept that a simple letter requesting the information from the Minister may suffice. It would appear that the request for information may relate to any records of council proceedings or transactions and any other information, which, in the Minister's opinion will enable the Minister to discharge the duties assigned to the Ministry.

### 3.4 Investigations

The power to monitor the performance of local government must be coupled with the power to cause investigations into suspected acts of misconduct and non-compliance. Both the UCA and the RDCA allow the Minister to appoint investigators into council affairs if the Minister considers it 'necessary or desirable in the public interest' to appoint the investigators to look into any matter which-

- relates to the good government of a council area or local government area or arises out of the government of a council area or local government area; or
- relates to a failure by a council to undertake any function or provide any facilities for which it has the necessary power in terms of the law, which power it has failed to exercise; or
- relates to or arises out of the affairs or conduct of –
  - a council [or any of its committees].<sup>18</sup>

<sup>18</sup> S 311(2) UCA and s 154(1) RDCA.



The investigations will no doubt be prompted by problems in local authorities. What is difficult to gauge, however, is the basis upon which it will be claimed that the investigations are desirable, or that they are in the public interest as these are relative concepts. These concepts are not capable of a precise definition and may very well be influenced by other motives. Whatever may be the motive for the investigations, it appears that there is no limit to what the Minister can cause to be investigated.

## 4. Intervention in local government

As a result of the hierarchical nature of government in Zimbabwe, central government often intervenes in the affairs of local authorities. Depending on the nature of their scope some of the interventions may be so intrusive as to substitute council decisions with those of the Minister while others may not be so intrusive. In its current form, local government legislation treats local government as an extension of central government rather than as a separate sphere of government. By definition, an intervention is the next step when all the other monitoring mechanisms discussed above show a serious failure to fulfil statutory obligations or where other monitoring mechanisms have failed to bring about the desired result. The act of intervention means ‘to involve oneself in a situation, especially for the purpose of influencing or altering a situation’.<sup>19</sup> In this regard national government will be involving itself in the affairs of local government in order to correct identified shortcomings.

In Zimbabwe the power to intervene in the operations of local authorities is provided for in both the UCA and the RDCA. It consists of the powers to issue ministerial directives, to make or adopt by-laws on behalf of councils, to reverse, suspend or rescind council resolutions and decisions, and to suspend and or dismiss councillors and the appointment of caretakers to act as council. Each one is dealt with separately below.

### 4.1 Ministerial directives

The UCA gives the Minister the right to give certain directions to council. In terms of section 313 of the UCA, the Minister may give councils directions of a general nature on policy which the Minister deems to be in the national interest. While the councils are required to respond to the directions from the Minister may give their views on the possible implications of the directions on the financial or other resources of the council, the directions are binding and must be complied with expeditiously, notwithstanding that the councillors may have reasonable grounds of apprehension about the directives. The difficulty with such directions arises when there is no shared view between the Minister and the councils on what is in the national interest, particularly in those councils controlled by political parties other than the one to which the Minister belongs. Where there is a divergence of views, it is easy for councils to look at the directions as a means to undermine their governance of the council.

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<sup>19</sup> Collins Paperback Dictionary (5th ed).

For the rural council, the Minister may give directions from time to time to ensure that the council, when constructing or repairing roads, dams or water works, makes use of the services provided by the state, any state corporation, the District Development Fund (DDF), or any other government agency.

The Minister may also give directions to councils where (a) a council has failed to give effect to any of its obligations in terms of legislation or (b) the final accounts show a deficit and the council has not made any provision for its reduction to the satisfaction of the Minister.<sup>20</sup>

If the council's affairs are as described in (a) and (b) above, the Minister may direct the council to take such action as the Minister considers necessary to address the issues, failing which the Minister may carry out the directions and recover the costs thereof from council.<sup>21</sup>

## 4.2 The making or adoption of by-laws on behalf of councils

In carrying out its duty to govern its council area, a council may adopt by-laws to control certain activities. However, in certain circumstances, the Minister may direct councils to make or adopt model by-laws on behalf of the council such as where (a) council has not made by-laws for any matter in respect of which it may make by-laws or (b) the Minister considers that the matter should be controlled or regulated by by-laws.<sup>22</sup>

It is submitted that although the exercise of this power is consistent with current legislation, the provision is in conflict with section 30 of the UCA which places the governance of a council area in the council as opposed to the Minister.

## 4.3 The power to reverse, suspend and rescind council resolutions and decisions

In the exercise of his many powers, the Minister may direct a council to reverse, suspend or rescind any of its resolutions or decisions if the Minister considers that the resolutions or decisions are not in the interest of the inhabitants of the area, or in the national or public interest.<sup>23</sup> In addition, the Minister may also direct that certain resolutions shall require the Minister's approval,<sup>24</sup> failing which any such resolutions are invalid. The same argument made above about what would be in the public or national interest or the interest of the inhabitants of the area applies here with equal force. Further this provision takes away the power of the council to govern its council area. These are classic examples of the imbalance between the need to provide oversight and the need for local discretion.

The cumulative effect of the Minister's powers to act on behalf of councils or to adopt by-laws or rescind council resolutions and decisions may undermine the council's ability to provide local solutions to local problems.

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20 S 315 (1) UCA.

21 S 315 (2) UCA.

22 S 233 (1) (a), (b)(i) and (b)(ii) UCA and s 94 (1) (a), (b)(i) and (b)(ii) RDCA.

23 S 314 UCA and 52 (3) RDCA.

24 S 53 (1) and (2) RDCA.

#### 4.4 The suspension of councillors

The UCA allows the Minister to suspend a councillor, if the Minister has reasonable grounds for suspecting that the councillor –

- has contravened any provision of the Prevention of Corruption Act [Chapter 9:16];
- has contravened sections one hundred and seven, section one hundred and eight or section one hundred and nine; or
- has committed any offence involving dishonesty in connection with the funds or other property of the council.<sup>25</sup>

In the field of criminal law, the concept of ‘reasonable grounds’ is commonly used to denote a ‘set of facts or circumstances which would cause a person of ordinary and prudent judgment to believe beyond a mere suspicion that an offence has been committed’.<sup>26</sup> This formulation of reasonable grounds is applicable to section 114 of the UCA. The grounds upon which a councillor may be suspended are dealt with separately below.

##### 4.4.1 Contravention of the Prevention of Corruption Act

The Prevention of Corruption Act (PCA) sets out corrupt activities for which a person may be prosecuted. Section 3(1) of the PCA spells out corrupt practices by private persons for which they can be prosecuted. For public officials it is an offence if, in the course of their employment they (a) do anything that is contrary to or inconsistent with their duties as public officers; or (b) they omit to do anything which it is their duty as public officers to do.

These acts or omissions must be done for the purpose of showing favour or disfavour to any person.<sup>27</sup> The Minister may suspend any councillor who is reasonably suspected of contravening any provision of the PCA.

##### 4.4.2 Contravention of sections 107, 108 and 109 of the Urban Councils Act

Councillors may not conduct themselves in a manner that compromises their positions as councillors. It is an offence for a mayor or councillor to vote in a matter in which the mayor or councillor has any pecuniary interest.<sup>28</sup> An example of this contravention is where a councillor in the finance committee takes part in the award of a tender to a company controlled by his family. A mayor or councillor is not allowed to provide professional services for reward for or against council or against any person who has been charged with contravening any by-laws of the council.<sup>29</sup> Furthermore, a mayor or councillor is not allowed to act as a medical practitioner, veterinary surgeon, architect, surveyor, accountant, auditor, estate agent, auctioneer, valuer or appraiser or in any other professional capacity on behalf of council.<sup>30</sup>

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25 S 114 (1) (a), (b) and (c).

26 Du Toit, 5-10.

27 S 4 PCA.

28 S 107 UCA.

29 S 108 (1) (a) UCA.

30 S 108 (1) (b) UCA.

This prohibition prevents councillors with an obvious conflict of interest from taking part in those decisions of council in which their judgment may be influenced by improper considerations. In addition, it is an offence for any mayor or councillor, acting as an agent, to appear before the valuation board or other boards of council, or before council's licensing authorities.<sup>31</sup> Again the same considerations of conflict of interest apply in this regard.

Lastly, a councillor may be suspended on suspicion of the commission of an offence involving dishonesty in connection with any funds or property of council.<sup>32</sup> This seems to imply the commission of fraud against the council as a result of which council suffers or stands to suffer prejudice. It would follow that where the councillor has been suspended on any of the above grounds, the suspension would be followed by an investigation into the allegations and the possible institution of criminal proceedings against the councillor. Unless the Minister lifts the suspension, it shall lapse after 60 days.<sup>33</sup>

The most prominent suspension in recent history is that of the first executive mayor of the City of Harare in 2003. Relying on the now repealed section 54 of the UCA, the Minister suspended the mayor for, amongst other things –

- (a) alleged failure to produce a strategic service delivery plan, and refusal to accept assistance from the parent Ministry;
- (b) alleged arbitrary suspension and dismissal of senior management;
- (c) alleged arbitrary suspension and dismissal of other categories of staff;
- (d) alleged withdrawal of retention allowances to manpower which had resulted in low staff morale; and
- (e) alleged abuse of authority.

The impression created by the suspension and subsequent dismissal was that the suspension and subsequent dismissal had nothing to do with service delivery but was meant to frustrate local councils controlled by the opposition political party. In the main, poor service delivery was a result of the general economic decline in the country and in respect of which the councils alone could do nothing. All local councils, including those controlled by the then ruling party were failing to address the economic downturn. It was impossible to accuse the councils of failing to run councils profitably without pointing an accusing finger at the government's disastrous macro-economic policies.

#### **4.4.3 Suspension and dismissal of councillors under the Rural District Councils Act**

The RDCA provides for the suspension of a councillor by the President. Section 157 of the RDCA provides for the suspension by the President of all or any of the councillors from exercising all or any of their functions, if he considers it necessary or desirable to do so in the public interest or in the interests of the inhabitants of the area. The President may also amend or revoke the suspension but where the President has not done so within 30 days the seat becomes vacant. A councillor whose suspension is not lifted is barred from being

<sup>31</sup> S 109 (a), (b), (c) UCA.

<sup>32</sup> S 114 (1) (c) UCA.

<sup>33</sup> S 114 (4).

nominated for election as a councillor until the President has lifted the disqualification.

This provision raises interesting legal questions. For instance, when is it in the public interest to suspend a councillor? When is it in the interests of the inhabitants of the area for the President to suspend a councillor? Is the President obliged to consult the inhabitants of the area before suspending the councillor?

What would be in the public interest appears to be that which is for the common good, common well-being or which is good for the inhabitants of the area. There is an assumption in the section that the inhabitants' views on the councillor will be sought before the councillor is suspended on this ground. It stands to reason that if the suspension is on the ground that it is in the interests of the inhabitants of the area to do so, then they must be consulted first. Again, being in the public interest or in the interests of the inhabitants of the area are not concepts capable of precise definition and therefore difficult to apply. While the President is not obliged to give reasons for the suspension, it is contrary to the notions of administrative justice that a public officer can be suspended from his or her position without any explanation or investigation. Consulting the inhabitants and giving reasons for the suspension will allay any fears that the suspension is not based on ulterior motives.

#### **4.4.4 The appointment of commissioners or caretakers to act as council**

One of the most significant supervisory powers of the Minister is the power to appoint caretakers or commissioners in certain circumstances, to act as council. In terms of sections 80 and 158 of the UCA and RDCA, respectively, the Minister may appoint caretakers or commissioners, to act as council. Until the Local Government Laws Amendment Act,<sup>34</sup> the two sections were almost the same in their wording and content. In terms of the new section 80(i), the Minister may appoint not more than three people to act as council where (a) there are no elected councillors for a council area; or (b) where all the elected councillors for a council area have been suspended or imprisoned or are otherwise unable to exercise all or some of their functions as councillors.

On the other hand, section 158 simply refers to 'councillors' and not 'elected councillors'. In terms of the UCA, caretakers will be appointed if there are no elected councillors or if they have been suspended or are, for some reason unable to exercise all or some of their functions as councillors. The councillors referred to in the RDCA include special interest councillors.<sup>35</sup>

##### **4.4.4.1 The functions of commissioners or caretakers**

The caretakers or commissioners shall function under the direction of the Minister. While in office they shall exercise (a) all the functions of council where there are no elected councillors for the council area; or (b) such of the functions of the elected councillors as they are not able to exercise, where there are any elected councillors.<sup>36</sup>

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34 Act 1 of 2008.

35 For special interest councillors, see Chakaipa's contribution to this volume.

36 S 80 (2) (a) and (b) UCA.

Some of the functions will be exercised with the approval of the Minister.<sup>37</sup> While the caretakers are obliged to consult the remaining councillors, there is no indication in the law as to how much weight will be given to the views of the remaining councillors. It is submitted that since the Minister will have taken over the council through the caretakers, the remaining councillors, too, shall exercise their functions under the direction of the Minister.

#### 4.4.4.2 Term of the commissioner or caretaker

In terms of the RDCA, the commissioner shall hold office until there are councillors able to exercise all their functions as councillors, or their term of office expires at the end of six months, whichever occurs first. If the six months expire within three months before the date of the next general election, the commissioner shall hold office until the general election.<sup>38</sup> However, if the Minister is satisfied that at the end of the term of office of the commissioner there will be no councillors able to exercise all their functions, the commissioners may be re-appointed for another term.<sup>39</sup>

In the past the Minister has used a similar provision in the UCA to re-appoint commissioners in a manner that was interpreted by the court as an illegal method of using what was clearly meant to be a stop-gap measure to deny the citizens of the city the right to elect their own council.<sup>40</sup> The new section 80 has not retained the Minister's power to re-appoint caretakers.

## 5. Assessment

The above examination of the supervision of local government shows that there is too much supervision of local authorities by the central government. Supervision of local government exists even in countries where local government is a sphere of government with some degree of autonomy. However, the questions to be asked are first, whether there is an appropriate balance between the need for oversight and the need for local discretion and second, whether there are any checks and balances in place to guard against undue interference by national government, and if so, whether these checks and balances are working. In terms of the current legislation, the balance tilts very much in favour of the Minister. The position is exacerbated by the lack of a clear system of checks and balances to counter the excesses abundant in politics.

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37 S 80 (2) (b) (i) and (ii) UCA and 158 (2) (b) (i) and (ii) RDCA.

38 S 158 (3) (b) RDCA.

39 S 158 (5) RDCA.

40 *Stevenson v Minister of Local Government and National Housing and Others* SC 38/02.

## 6. Recommendations for policy and law reform

The ultimate aim in reforming the supervision system in local government must be to make it open, accountable, and responsive as well as to improve on service delivery. There must, therefore, be an appropriate balance between the need for oversight and the need for local discretion. This may be achieved by putting in place appropriate checks and balances to guard against the excessive use of the power of oversight as well as the exercise of local discretion. It is in light of this that the following recommendations are made:

### 6.1 Harmonising local government legislation

There are currently more than four Acts of Parliament providing for local government, the most notable ones being the UCA, the RDCA, the Electoral Act and the TLA. The first two provide for urban and rural local government, respectively. The third provides for the conduct of elections for the Head of State, House of Assembly and Senate, as well as local government elections, while the fourth provides for chiefs and headmen and their role in local government. It is submitted that the fragmented set of local government laws is replaced by a single set of laws that provides for both urban and rural local government, including the manner of election into office, and the role, if any, of traditional leaders in local government. There is no logical basis why there should be provisions providing differently for the same issue.

### 6.2 Providing for local government in the Constitution

As indicated earlier, local government in Zimbabwe is a creature of statute. Essentially this means that it requires only a simple majority vote in Parliament to amend local government laws. In the past, the ability to amend laws at will has been used to achieve narrow political ends. Providing for local government in the Constitution will mean that it will require more than a simple majority to amend the Constitution, thereby giving a measure of protection and stability to local government.

### 6.3 Rationalising the role of the Ministry of Local Government

The current legislation on local government grants unfettered power to the Minister of Local Government. This power includes, the right to reverse or rescind council resolutions, and the need to seek the Minister's approval before certain acts may be done. The Minister is empowered to interfere in a local authority if 'it is in the national interest to do so' or if it is 'in the interests of the inhabitants of the area to do so', concepts which are fluid and subjective. In this regard it is recommended that the Minister's primary role be limited to policy formulation and supervision.

## 7. Conclusion

The current local government legislation was designed to allow the Minister of Local Government absolute control over local authorities. Granting so much power to the

Minister takes the initiative away from local authorities, and opens them up to manipulation. Perhaps the constitutional review process currently under way may resolve some of the current challenges.

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