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The impact of weaknesses in the Urban Councils Act on efficient and effective service delivery in urban local councils in Zimbabwe

KEW WORDS

Councils, efficient, effective, minister, powers, service delivery, urban areas, urban councils Act, weaknesses, Zimbabwe

Declaration

I hereby declare that this is my own work, and I have properly acknowledged all the sources which I have used by means of references. I further testify that it has not been submitted for other degree or to any other institution of higher learning.

Last Madzivanyika 17th of November 2011.

Signed.....



List of abbreviations

LGB	Local Government Board
Minister	Minister of Local Government, Rural and Urban Development
MLRUD	Ministry of Local Government, Rural and Urban Development
MDC-T	Movement for Democratic Change Tsvangirai
UCs	Urban Councils
UC Act	Urban Councils Act
ULG	Urban Local Government
ZESA	Zimbabwe Electricity Supply Authority
ZINWA	Zimbabwe National Water Authority
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme



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CHAPTER ONE

INTRODUCTION

1. Background to the study

Effective and efficient local government is widely recognized as essential to the economic, social, and cultural well-being of a community.¹ Local government is an important channel for delivering services that are connected with the alleviation of poverty and community development.² For instance, local government's delivery of essential physical infrastructure such as roads, recreational parks or social services such as education, housing, refuse removal and water affects the quality of people's lives. The services provided by local government also play an important part in establishing relations of accountability between government and communities.

Local governments confront varied challenges which inhibit their ability to provide services effectively and efficiently.³ One obstacle is uncertainty about the legal framework under which local government operate, in particular the status, powers and functions of local government in the state. The absence of an effective and certain legislative framework for local government is an obstacle to service delivery.⁴ Typical problems with the legislative framework include centralised bureaucratic or political control over local government by higher levels of government, limited revenue raising powers, and a lack of clarity on the responsibilities of local government. Local government in Zimbabwe is no exception to these challenges facing local government across the world. This paper examines four main weaknesses in the design of the legislative framework regulating urban councils (hereafter UCs). First, UCs lack constitutional protection. This means that UCs operate under a framework defined by the Urban Councils Act (hereafter UC Act).⁵ This legislative framework of UCs is subject to central government discretionary powers of regulation. Secondly, the UC Act vests unfettered powers in the minister responsible for local government,⁶ who can intervene in a wide range of operations of ULG. UCs can also only

¹ Mushamba S 'The powers and functions of local government' in De Visser J et al (eds.) *Local government reform in Zimbabwe: A policy dialogue* (2010) 101(hereafter *A policy dialogue*).

² Andrews M & Shah A 'Assessing local Government in developing countries' in Shah (ed.) *Public sector governance and accountability series: Public service delivery* (2005) 63 (hereafter Andrews M and Shah A).

³ De Vries MS et al (eds.) *Improving local government: Outcomes of comparative research* (2008) 1.

⁴ Mushamba S *A policy dialogue* (2010) 113.

⁵ Act No 25 of 1996

⁶ Minister of Local Government Rural and Urban Development (hereafter minister).

exercise their powers subject to approval by the minister. Thirdly, UCs lack fiscal autonomy to generate revenue as the same is controlled by the minister. Lastly, UCs lack the autonomy and independence to recruit own senior personnel. The recruitment of senior personnel is the responsibility of the local government board appointed by the minister (hereafter LGB). In most cases, the appointment of senior officials is not based on competency but partisan loyalty. For instance, it is alleged that the recruitment of the current senior officials of UCS like Mutare and Chinhoyi City Council among other local authorities was appointed on partisan loyalty as opposed to competence of officials.

This study examines the impact of these weaknesses in the legislation on the provision of basic services such as water supply, sanitation, primary health, and education. The argument advanced is that service delivery by UCs has been undermined due to a highly centralized bureaucracy and a legal framework that fails to protect and guarantee the powers of UCs.

2. Statement of the problem

This study focuses on the impact on service provision arising from uncertainties in the UC Act. There are serious problems with the delivery of basic services in urban areas: including frequent interruptions in water supply, persistent power cuts, uncollected refuse, poor health services and dilapidated infrastructure. The purpose of this study is to highlight specific weaknesses in the UC Act and examine how these contribute to poor service delivery. The specific weaknesses to be examined are the unfettered powers of the minister, lack of legal certainty on powers and functions of UCs, limited revenue generating powers and lack of autonomy in recruiting senior council administration. First, UCs exercise delegated powers from central government. The minister has powers to give directions on matters of policy, suspend, reverse, or rescind council resolutions. There is no legal authority to check and balance the unfettered powers of the minister. Poor service delivery may be attributed in part to the unfettered powers of the minister. Secondly, UCs do not have devolved fiscal powers. As agents of central government, UCs can only levy those taxes and borrow money as authorised by the minister. The limited capacities of UCs to generate own revenue impacts negatively on the capacity of UCs to respond to the needs of the communities they serve. Thirdly, the powers UCs exercise are not constitutionally protected and guaranteed. Central government can revoke the powers conferred on UCs. The lack of constitutional protection of their powers has the potential to inhibit the ability of UCs to function effectively in the provision of services. Lastly, UCs do not have autonomy and authority to recruit their own

senior staff; their authority is limited to formal appointment only. A local government board, appointed by the Minister is responsible for the recruitment of senior council staff. The chain of authority from the Minister to the LGB may potentially compromise the appointment of staff on the basis of merit by promoting patronage, especially in politically charged situations. The appointment of officials on the basis of political loyalty rather than on merit can compromise service delivery.

These four problems are due in part to problems with the design of the legislative framework for UCs. This study examines each of these weaknesses, their impact on service delivery, and recommends reforms to the UC Act in order to enhance service delivery?

3. Significance and Objective of the research

There is substantial literature on the design of the UC Act. This study addresses a gap in the literature, namely the linkage between weaknesses in the UC Act and poor service delivery.

4. Literature review

It is often said that local government is the level of government closest to the people because local government provides basic services that contribute to the well-being of individuals and communities.⁷ Local government can be described as a ‘set of recognized democratically elected institutions, lawfully created to offer a variety of quantified services to comparatively small geographic areas’.⁸ Academics generally agree that an effective regulatory framework is necessary to provide local government with sufficient powers, protect its autonomy, and enhance its capacities and administration.⁹ For instance, Muia argues that an appropriate legislative framework is necessary to ensure well-defined and clearly demarcated functions of local and higher levels of government.¹⁰ A well regulated environment protects the powers and independence of local government from interference by higher levels of government. De Visser also supports that view:

⁷ Council of Europe European Charter of local self-government adopted on 15 October 1995 and entered into force on 1 September 1988 available at http://www.coe.int/t/congress/sessions/18/Source/CharteEuropeenne_en.pdf (accessed 3 November 2011) (hereafter European charter).

⁸ Bratton M *Citizen perceptions of local government responsiveness in Sub-Saharan Africa* (2011) 2 (hereafter Bratton M).

⁹ Chatiza K ‘Can local government steer socio-economic transformation in Zimbabwe?’ in De Visser J et al (eds.) *Local government reform in Zimbabwe: A policy dialogue* (2010) 22 (hereafter *A policy dialogue*).

¹⁰ Muia DM ‘Devolution: Which way for local authorities’ in Kibua TN and Mwabu G (eds.) *Decentralisation and devolution in Kenya: New approaches* (2008) 163 (hereafter Kibua TN and Mwabu G).

‘If local government does not have sufficient and real powers, it cannot enlarge people’s choice by being responsive to their needs (and thereby improve their well-being). Instead, it is constrained in having to work within a limited mandate without room for initiative’.¹¹

The literature emphasises the importance of guaranteeing the operational framework of ULG with adequate regulatory legal systems that augment their abilities and autonomy.

In the context of Zimbabwe, there is disagreement amongst scholars about the adequacy of the legal framework that governs ULG. One school of thought views the legislative framework as adequate. Chakaipa argues that there is an effective legal framework that operationalises ULG.¹² Mushamba attributes poor service delivery to poor performance, ‘the law is very clear as to what the UCs are mandated to do...performance often lags behind the legislated intentions’.¹³ The other school of thought is that legislative reform is essential for local government to be able to provide services efficiently and effectively. For example, Chatiza argues that while other factors contribute to the decline in the capacities of UCs, ‘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’.¹⁴ There is evidence to suggest that many civil society bodies such as residents associations, civil society groups, research institutions and major political formations believe that the ‘legislation is written in a manner that renders it open to abuse’ since it gives the minister excessive powers.¹⁵

The literature on the UC Act identifies some of the weaknesses, but the link between the weaknesses in the UC Act and poor service delivery is a gap in the literature. This study examines in particular the impact of unfettered powers of the minister, lack of clarity on powers, a lack of autonomy to recruit senior administration and limited revenue raising powers.

5. Research Methodology

The research is based on documentary research. First, both print and electronic media were utilised in carrying out this study. Newspapers used include *The Herald* and *The Newsday*. Views expressed in these newspaper articles were taken to represent the perspectives of the person quoted in them especially for those whom the writer had no access to. Secondly, authoritative texts were used extensively in order to gain sight into the jurisprudence of ULG.

¹¹ De Visser J *Developmental local government: A case study of South Africa* (2005) 35 (hereafter De Visser J).

¹² Chakaipa S *A policy dialogue* (2010) 32.

¹³ Mushamba S *A policy dialogue* (2010) 109.

¹⁴ Chatiza K *A policy dialogue* (2010) 22.

¹⁵ Mushamba S *A policy dialogue* (2010) 119.

Lastly, the internet was extensively used in giving a comparative analysis with other jurisdictions and for researching international standards in regards to ULG institutions.

6. Structure of the study

The study consists of five chapters:

Chapter 1 provides a background to the study and outlines the problem statement, objectives and focus of the study, and the main arguments.

Chapter 2 examines the international literature on ULG and service delivery. The chapter discusses the importance attached to both ULG and service delivery in the international literature and identifies the key features for effective urban local government and service delivery.

Chapter 3 provides a brief historical background to the development of urban local government in Zimbabwe and describes the legal framework for UCs, focusing on those provisions that provide for the powers and function of urban councils, central government regulation, revenue raising powers, and the administration of council, to the extent of its link with service provision.

Chapter 4 analyses the inadequacies in the UC Act that inhibit service provision, drawing on the international normative framework on ULG and service delivery described in chapter 2. The analysis focuses on the unfettered powers of the minister, the powers of UCs, fiscal generating powers and the lack of UCs' autonomy in the hiring of UCs staff as the weaknesses in the UC Act which restrict service provision.

Chapter 5 synthesizes the findings from the analysis in the previous chapters and recommends ways to correct the legislative weaknesses in the UC Act for an effective and efficient provision of services.

CHAPTER TWO

URBAN LOCAL GOVERNMENT AND SERVICE DELIVERY

1. Introduction

Urban local government plays a pivotal role in providing services that enhance the well-being of urban citizens and development.¹⁶ These basic services include refuse and sewage disposal, water supply, primary health and education. This chapter examines the essential elements of the institutional framework for effective and efficient provision of services by ULG.

This chapter argues, although there is no universal model for ULG, the literature on ULG and service delivery suggests particular common institutional elements for effective ULG.¹⁷ The key elements the chapter focuses on are: democratically constituted ULG, administrative autonomy, well-defined and legally protected powers, adequate fiscal powers to sustain ULG functions and supervision from higher levels of government.

2. ULG and service delivery

Local government is referred to as government which does not have an order of government between it and the community it serves.¹⁸ ULG are lower level units whose geographical demarcation encompasses urban areas.¹⁹ These lower level units are variously referred to as cities, towns, cantons, boards, boroughs or municipalities, among others. The status, powers and functions of ULG will differ from country to country. The primary purpose of ULG is the delivery of a wide range of services that are financially supported from a variety of revenue sources.²⁰

¹⁶ Bhuiyan SH 'A crisis in governance: Urban solid waste management in Bangladesh' (2010) 34 *Habitat International* 125-133 125 (hereafter Bhuiyan SH).

¹⁷ De Vries M (2008) 171.

¹⁸ Steytler N 'Comparative Conclusions' in Steytler N (ed.) *Local government and metropolitan regions in federal systems: A global dialogue of federalism* (2009) 4.

¹⁹ UN-Habitat Quick guide for policy makers housing the poor in African cities *Local government: Addressing urban challenges in a participatory and integrated way* Available at <http://www.unhabitat.org/pms/searchResults.aspx?sort=relevance&page=search&searchField=all&searchstring=local+government&x=18&y=11> (accessed 27 October 2011)/(hereafter UN-Habitat *Quick guide for Policy Makers*).

²⁰ UN-Habitat *Quick guide for policy makers*.

ULG plays a significant role in providing services such as primary health care, housing, public transportation, education, effluent and refuse removal that contribute to the standards of living of urban populations.²¹ There are however major problems with urban service provision. In developing countries, ULG often either provides poor quality services or fail to meet citizens' needs of access to basic services.²² Shah draws the link between effective service provision and fighting poverty:

'[a]ll municipalities in the developing world play a major role in providing services that are critical for the poor, but that "The critical role of basic services in reducing poverty is often forgotten or dismissed"... and have drawn a stance of limited responsiveness'.²³

It is widely acknowledged that the provision of safe drinking water, inadequate sanitation and housing, poor health services and waste pollution has created unhealthy and unsafe environments for urban populations and reduced the quality of human life.²⁴ The poor and vulnerable in towns and cities suffer the worst effects of poor service delivery.²⁵

Rapid urbanisation has also increased the pressure on ULGs. Urban areas constitute almost 2.8 per cent of the earth's surface.²⁶ Urban population in African urban areas is growing at about 3.3 per cent a year.²⁷ It is estimated that by 2050 the population of developing countries alone will be approximately 5.3 billion due to urban growth and rural to urban migration.²⁸ This growth in urban populations requires the 're-evaluation of the economic significance of cities and the reaffirmation of the significance of local institution building for development'.²⁹ Rapid urban growth in developing countries is having a serious impact on the capacity of ULG to provide basic services to growing populations. The 'urban reality in

²¹ Stewart J (1983) 2.

²² Andrews M and Shah A (2005) 75.

²³ Andrews M and Shah A (2005) 74.

²⁴ Bhuiyan SH (2010) 34.

²⁵ For example in developing countries across the world, the number of urban residents without access to tap water in their home or within proximity has increased by 'an estimated 114 million, and the number of those who lack access to the most basic sanitation facilities has risen by 134 million. This 20 per cent increase has had a hugely detrimental impact on human health and on economic productivity: people are sick and unable to work' for these statistics see the UN-Habitat final report 'Water for cities: responding to urban challenges' *Water and urbanisation* World water day (2011) available at

<http://www.unhabitat.org/pms/searchResults.aspx?sort=relevance&page=search&searchField=all&searchstring=urban+government&x=23&y=5> (accessed 3 November 2011) (hereafter *water and urbanisation*).

²⁶ UN-Habitat *Urban world cities and land rights* (2011) 5(hereafter *Urban World Cities*).

²⁷ This is the combined outcome of an overall population growth rate of 2.2 per cent a year and an urbanisation rate of 1.1 percent a year for these statistics see McGranahan G et al 'Africa's urban transition and the role of regional urbanisation' Human settlements working paper series theme: Urban change 5 (2009) <http://pubs.iied.org/10571IIED.html> (accessed 23 November 2011).

²⁸ UN-Habitat *Urban world cities* (2011) 6.

²⁹ Strein R 'Urban management' in development assistance: An elusive concept (1992) 10 *Elsevier Ltd* 125-138 130.

much of Africa is that millions of people do not benefit from services due to ineffective urban local governments'.³⁰ As a result, large urban populations live in abject poverty with no or poor access to basic services, even as urbanization is creating a greater demand for basic public services.³¹ ULG are expected to adopt a legislative framework that enhances and guarantees feasible provision of basic urban services in urban areas.

3. International perspective on urban service provision

In urban areas, effective ULG is essential to provide basic services to urban populations. The centrality of effective and efficient urban service provision was emphasised in the 2009 International guidelines on decentralisation and access to basic service:

'Basic services contribute to human dignity, quality of life, sustainable livelihoods and the enjoyment of human rights. They are a prerequisite for the provision of other services and for the improvement of the potential of each person to engage in economic activity. Basic services must, therefore, be available, accessible, culturally acceptable, and affordable, of good quality and provided on a non-discriminatory basis'.³²

Most importantly are the actions of ULG institutions to deliver services in ways that are responsive to the needs and expectations of urban residents. There is a general consensus amongst literature on ULG that if one or more of these values is present: efficient service delivery, a fair and effective legal framework, participation, equity, responsiveness to civil society, accountability, inclusion, transparency, security, decentralisation, and sustainability then ULG would be considered efficient and effective.³³

Literature on ULG does not provide a universal accepted definition of service delivery. Harpham and Boateng offer the following definition:

'Service provision is when the organisation or institution involved is responsible for the quality and quantity of the services and ensures that it is financed and executed. Service production encompasses factors that go into delivering that service when the quantity and quality have been decided'.³⁴

The provision of services requires two pre-conditions namely: efficiency and effectiveness.³⁵

Shah defines efficiency and effectiveness in the following terms:

³⁰ Kessides C 'The urban transition in Sub-Saharan Africa: challenges and opportunities' (2007) 25 *Environment and planning government and policy* 466.

³¹ Bhuiyan SH (2010) 34.

³² UN- Habitat 'International guidelines on decentralisation and access to basic services for all' (2009) available at http://www.fondation-igd.org/pdf/CSE/ASE_guiding.pdf (accessed 27 October 2011).

³³ UN- Habitat 'International guidelines on decentralisation and access to basic services for all' (2009) available at http://www.fondation-igd.org/pdf/CSE/ASE_guiding.pdf (accessed 27 October 2011).

³⁴ Harpham T and Boateng KA (1997) 66.

³⁵ Andrews M & Shah A (2005) 197.

‘In the public service literature, *efficiency* is defined as the amount of output per unit of an input used in the process- for example, the number of road repairs per employee-days involved in the task. *Effectiveness* is the degree to which the outcomes achieve the goals set for the activity- for example, the percentage of roads maintained in good condition relative to policy goals’.³⁶

While the elements of effective and efficient urban service delivery are clear, the effectiveness of ULG will be determined by circumstances in a particular country. The United Nations Development Fund for instance emphasises that ‘effective delivery is situation-specific and requires tailored delivery arrangements that fuse the efforts of state and non-state actors.’³⁷ These delivery arrangements should ensure that fiscal resources match with the service provision needs of urban communities to enhance efficiency and effectiveness. Countries should through an appropriate legislative framework create an environment that facilitates effective and efficient service provision in ULG.

4. The institutional elements of effective and efficient urban local government

The literature on ULG identifies democratic ULG, administrative autonomy, fiscal generating powers, supervision and legally protected powers as essential elements of ULG. These elements are regarded as essential in ULG because they link in some way to effective and efficient service delivery. The chapter will discuss each of these essential elements and the crucial impact they have on the provision of services.³⁸

4.1 Democratically Instituted decision-making bodies

A link is often drawn in international literature between democracy and efficient and effective ULG. It is widely recognised that democratically instituted decision-making bodies are essential to the existence of ULG.³⁹ Democratic ULG allows residents to realise their

³⁶ Andrews M & Shah A (2005) 197.

³⁷ UNCDF Global forum on local development *Pursuing the MDGs through local government* available at http://www.uncdf.org/gfld/docs/session_2.pdf (accessed 27 October 2011).

³⁸ The purpose is to see whether or not in the UC Act confirms to these widely acknowledged essential elements. While ULG in Zimbabwe elects its councillors, the legislative environment created by the UC Act fails to embrace the importance of democratic local level institutions, for instance the UC Act empowers the minister to appoint special interest councillors in UCs, gives the minister unfettered powers over UCs decision-making, limits UCs’ capacity to generate revenue and interferes in the UCs’ administration of UCs. The chapter argues that a democratically constituted ULG, fiscal generating powers, supervision, administrative autonomy and legally protected powers has more successes stories in the provision of services for efficient and effective ULG.

³⁹ Stewart J (1983) 121.

expectations through representation by democratic and accountable entities, influencing decision-making processes through the ballot.⁴⁰

Elections are ‘central to urban local government because they legitimise the council’s right to independent action and provide the basis for urban local accountability’.⁴¹ An election also encourages societal involvement in urban governance. As recognised in the Preamble of the European Charter of Local Self Government, the involvement of citizens is a key element of democracy.⁴² Community involvement influences local choice. It provides urban residents with a platform to contribute and take part in urban council’s processes in between and during elections for accountability.⁴³ Public participation by other societal actors such as the private sector and non- governmental actors has the potential to enhance service provision.⁴⁴

Bratton identifies the importance of citizen participation:

‘Democratic elections do not reliably guarantee that elected leaders will subsequently be more responsive to their constituents. A principal challenge in deepening democratic governance is to strengthen procedures for ensuring that representatives listen to the populace and respond to their needs between elections’.⁴⁵

In order to strengthen democracy in ULG, countries should adopt regulatory mechanisms that facilitate accountability of politicians to the electorate.

4.2 Revenue raising powers

The literature on ULG identifies three distinct revenue generating sources namely local taxing⁴⁶ and surcharges,⁴⁷ borrowing and intergovernmental grants⁴⁸ as an essential element

⁴⁰ Stewart J (1983) 121.

⁴¹ Stewart J (1983) 121.

⁴² Europe European Charter 1988.

⁴³ De Visser J (2005) 38.

⁴⁴ United Nations Conference on Human Settlement ‘The Istanbul declaration and the habitat agenda with subject index’ http://www.un-habitat.org/downloads/docs/3570_62952_HS-441.pdf accessed 27 October 2011.

⁴⁵ Bratton M (2008) 16.

⁴⁶ Types of local taxes: resource rent tax, royalties, fees, charges, severance taxes, production, output and property taxes.

⁴⁷ A surcharge is an extra fee added onto another fee or charge on an existing tax..

⁴⁸ Intergovernmental transfers can either be conditional or unconditional grants. Unconditional grants are meant to undertake fiscal responsibilities such as maintaining macro stability and tax competition. Conditional grants usually reflect ‘national efficiency and equity concerns, and where there is a financial penalty associated with failure to comply with any of the conditions. Thus conditions will not be on the specific use of grant funds but attainment of standards in quality, access and level of services. Such grants do not affect local government incentives for cost efficiency but do encourage compliance with nationally specified standards for access and level of services. Properly designed conditional non-matching transfers can create incentives for innovative and competitive approaches to improved service delivery’ for this differentiation, see Shah A (2004) 26.

of ULG.⁴⁹ In 'Reforming governance in Dhaka, Bangladesh' Islam et al argue that local finance performs a 'crucial role in determining the autonomy or dependence of local government on central government and thereby operational freedom'.⁵⁰ Keating concurs with the above argument and points out that local taxing and surcharges, borrowing and intergovernmental grants are critical fiscal revenue sources for ULG.⁵¹ Scholars such as Shah argue that properly designed intergovernmental transfers can improve innovative and economical approaches to enhanced delivery of service.⁵² Revenue generated by ULG enables effective and predictable provision of goods and services. In place should be a legislative framework that gives ULG autonomy to generate sufficient revenue.⁵³

The available literature on ULG shows that limited fiscal-raising powers constrain and limit the capacity and responsiveness of ULG.⁵⁴ Fiscal autonomy and sufficient revenue is of critical importance for efficiency in the provision of service by ULG.⁵⁵ In order to enhance the service delivery, ULG should have access to fiscal resources so that ULG is able to utilise its spending powers for efficiency.⁵⁶

ULG does not only require devolved fiscal powers, the fiscal sources also need to align as close as possible to ULG expenditure to ensure accountability.⁵⁷ The requirement to make fiscal resource match with expenditure helps in promoting local ownership, oversight and interest over ULG service provision function. The expenditure of ULG is set out in a budget. ULG should operate within the confines of a budget, so that it does not expend excessively.⁵⁸ The World Bank, in its 2000 World Development Report, highlights the link between revenue powers and effective urban government:

⁴⁹ See for example Stewart J (1983), see also Kibua TN and Mwabu G (1991) and Keating M (1991).

⁵⁰ Islam N, Khan MM and Nazem NI 'Reforming governance in Dhaka, Bangladesh' in Islam N (ed.) *Urban governance in Asia: Sub-regional and city perspective Dhaka* (2000) 146.

⁵¹ Keating M *Comparative urban politics power and the city in the United States, Canada, Britain and France* (1991) 61 (hereafter Keating M).

⁵² Shah A *Fiscal decentralisation in developing and transition economies: Progress, problems and the promise* (2004) 26 (hereafter Shah A).

⁵³ De Visser J (2005) 42.

⁵⁴ Hilhorst JGM 'Industrialisation and local/regional development revisited' (1998) 29 *Development and change* 21. See also Keating M (1991).

⁵⁵ World Bank *Entering the 21st century: World development report 1999/2000* (2000) 117 (hereafter World Bank).

⁵⁶ Shah A (2004) 22.

⁵⁷ Shah A (2004) 17.

⁵⁸ World Bank (2000) 117.

The guiding principle of revenue assignment is straightforward: finance should follow function. This is not only because resources must be commensurate with what they fund, but also because the type of revenues used affects consumer behaviour and results in different patterns of incidence'.⁵⁹

A general trend can be deduced from the above literature; ULG should have legal certainty on the fiscal autonomy to generate sufficient revenue in particular powers to tax and impose surcharges, receive intergovernmental grants and borrow. The functions that require funding should be clear, so that ULG expends within its budget and proportionate to its revenue.

4.3 Legally protected and well-defined powers

The powers and structure of (urban) local governments should be defined in legislation.⁶⁰ Legal certainty enables ULGs to exercise their powers and functions.⁶¹ Legislation also protects the autonomy of ULG.⁶² A clear legislative framework should distinguish ULG role from higher levels of government.⁶³ The regulatory framework should be designed to realise that urban local institutions are 'sometimes agents of the central government and sometimes principals acting on their own'.⁶⁴ Kibua and Mwalibu argue that 'Constitutions, laws and regulations codify the formal rules...*by which a ULG system is supposed to function*'.⁶⁵ The constitutions, laws and regulations should provide for the powers of ULG in a clear and definite manner that allows ULG to provide for services effectively and efficiently.

4.4 Supervision of ULG

The literature emphasises the importance of effective supervision of ULG by higher levels of government (such as central government and provinces). Higher levels of government should monitor ULG to ensure uniformity and excellence in the provision of services.⁶⁶ For instance, regulation is important where ULG implements intergovernmental mandates.⁶⁷ The purpose is to ensure that national goals, interests and values are upheld.⁶⁸ In the same vein, mandates that are centrally funded necessitate implementation in line with central government guidelines where ULG exercises devolved powers.⁶⁹ Regulation may also play a pivotal role

⁵⁹ World Bank (2000) 117.

⁶⁰ Andrews M and Shah A (2005) 65.

⁶¹ Bhuiyan SH (2010) 127.

⁶² Biau D (2011).

⁶³ World Bank (2000) 117.

⁶⁴ World Bank (2000) 121.

⁶⁵ Kibua TN and Mwalibu G (2008) 130 (words in italics are the writer's emphasis).

⁶⁶ Kibua TN and Mwalibu G (2008) 163.

⁶⁷ World Bank (2000) 121.

⁶⁸ World Bank (2000) 121.

⁶⁹ World Bank (2000) 121.

in protecting ULG from macro-economic instability.⁷⁰ The argument is that ‘macroeconomic instability and lack of fiscal discipline and appropriate regulatory regimes’ inhibit the efficient and effective provision of services.⁷¹ Intergovernmental relations should have a coordinated and integrated approach to clearly realise the potential of ULG through an appropriate legislative framework.⁷² The framework for supervision should balance the need for an appropriate regulatory framework enabling environment that respects the autonomy and ability of ULG to be an independent decision maker in response to the interest of urban communities.

4.5 Administrative autonomy

Efficient service provision does not only require democratic institutions, devolved fiscal powers, supervision by higher levels of government and clearly defined and legally protected. It also requires ULG to have administrative autonomy. ULGs should have the powers to hire and dismiss employees without interference from higher levels of government.⁷³ ULG should have the powers to determine internal processes of implementing policies.⁷⁴ The autonomy of ULG to recruit local personnel renders local personnel responsive and accountable to the elected officials.⁷⁵ This means that local employees will implement local policies in a way that enhances efficient and effective provision of services. An appropriate regulatory framework should provide ULG with authority to recruit local personnel without interference from higher levels of government.

5. Conclusion

The chapter identified ULG as lower level units whose geographical demarcation encompasses urban areas. The functions of ULG are not uniform; rather, they differ from one country to the other. In most countries services provided by ULG in urban areas include water supply, health and sanitation. The chapter also identified five institutional elements for effective and efficient ULG from the literature on ULG namely: democratically instituted

⁷⁰ Keating M (1991) 56. Macroeconomic instability can be defined broadly to include high inflation, overvalued currency, unstable real exchange rate, balance of payment deficit or fiscal deficit see Azam JP ‘Inflation and Macroeconomic Instability in Madagascar’ available at www.csae.ox.ac.uk/workingpapers/pdfs/2001-02text.pdf accessed on 18 November 2011.

⁷¹ Shah A (2004) 29.

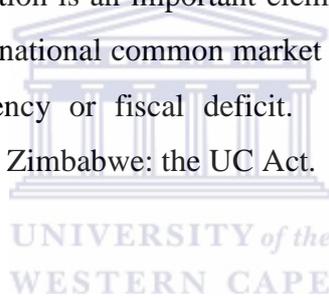
⁷² United Nations conference on Human Settlement ‘The Istanbul declaration and the habitat agenda with subject index’ available at http://www.un-habitat.org/downloads/docs/3570_62952_HS-441.pdf (accessed 27 October 2011)

⁷³ Shah A (2005) 5.

⁷⁴ Selznick P *TVA and the grassroots: A study in the sociology of formal organisation* (1949) 112.

⁷⁵ Shah A (2005) 5.

decision making bodies, administrative autonomy, well-defined and legally protected powers, fiscal generating powers and appropriate supervision of ULG by higher levels of government. While the implementation of these elements will differ from country to country, they are widely regarded as the institutional core for urban local accountability and service delivery. First, the role of ULG should be clearly defined and distinguished from higher levels of government in appropriate legislative regulatory frameworks. Legislative clarity enables ULG to realise its operational framework and improve on its effectiveness and efficiency. Secondly, democratically elected institutions legitimise ULG's right to independent action and provide the basis for urban local accountability. The right to self-determination improves the capacity of ULG in decisional-making and enhances service provision. Thirdly, devolved fiscal powers are an essential element that provides ULG with fiscal autonomy and independence in funding its service provision. Fourthly, ULG should have the autonomy to employ local administration for efficiency in the implementation of ULG functions. Finally, higher level governmental regulation is an important element for uniformity across all ULG institutions as well as preserving national common market against economic forces including high inflation, overvalued currency or fiscal deficit. The next Chapter examines the legislative framework for ULG in Zimbabwe: the UC Act.



CHAPTER THREE

THE URBAN COUNCILS ACT AND URBAN LOCAL GOVERNMENT IN ZIMBABWE

1. Introduction

Local government in Zimbabwe has evolved over a long period of time. Urban local government is the product of pre-independence and post-independence reforms which have changed the centre-local relationship.⁷⁶ This chapter briefly traces the historical evolution of urban local government and describes the current institutional structure, focusing on the powers and functions of the UCs, supervision, limited revenue-raising powers of UCs to extract revenue and the limited powers to appoint administration personnel.

2. A brief historical perspective of urban local government development (1890-1980)

ULG in Zimbabwe started with the creation of a sanitary board by the white settlers when they occupied Mashonaland and named it Salisbury (now Harare) in 1890. The growth in population in Harare caused, amongst other things, a sanitation crisis that threatened the early town. A sanitary board was established in Salisbury in 1891.⁷⁷ Yoshikuni describes the board as 'feeble and incompetent'.⁷⁸ In 1893 it only provided for the barest sanitary services for the town resulting in charges of 'open neglect of more or less every municipal sanitary regulation'.⁷⁹ The need to provide for sanitation, other basic services and local administration in towns and cities drove the evolution of ULG in Zimbabwe.⁸⁰

It was only until 1898 that the sanitary board was accorded revenue raising powers.⁸¹ The sanitary board's borrowing powers were the preserve of central government.⁸² In order to improve the provision of services, government created more town management boards in

⁷⁶ UNDP *Zimbabwe human development report* (2000) 63.

⁷⁷ Wekwete K 'Urban local government finance in Zimbabwe: the case of Harare city council' (1992) 12 *Public Administration and Development* 97-110 97 (hereafter Wekwete K).

⁷⁸ Yoshikuni T *African urban experiences in colonial Zimbabwe: A social history of Harare before 1925* (2007) 24 (hereafter Yoshikuni T).

⁷⁹ Yoshikuni T (2007) 24.

⁸⁰ Vosloo WB, Kotze DA & Jeppe WJO *Local government in Southern Africa* (1974) 184 (hereafter Vosloo WB).

⁸¹ Nhemachena GG and Matongo A *Review of the decentralisation policy and funding mechanisms for urban councils* (unpublished conference paper for a workshop organised by the Association of urban councils of Zimbabwe, Harare, ZADF/Pact Programme, 2000) 3 (hereafter Nhemachena GG and Matongo A).

⁸² Nhemachena GG and Matongo A (2000) 3, see also Vosloo WB (1974).

African townships, whose functions were funded and directed by central government.⁸³ At that time, most UCs had limited revenue raising powers and therefore had difficulties in satisfactorily meeting the growing demand for urban service provision.⁸⁴ Service delivery in settler dominated areas was thriving while service provision in African townships was inefficient and ineffective. In the urban areas the principle of separate development was adhered to, and took the form of separate institutions catering exclusively for the interests of the different races.⁸⁵ Service provision for the different races was funded from distinct accounts.⁸⁶ The argument is that such a discriminatory approach in the system of ULG was to be found in the legislative frameworks.

Closely linked to the concept of local government was colonial government control.⁸⁷ UCs were subservient to the colonial government, and subject to a hierarchical central government control.⁸⁸ The existence of central control is also present in the current ULG structure. Central control in the existing system of ULG gives a high moral purpose to an 'authoritarian and paternalistic' form of government of which is blamed on the historical developments of local government in Zimbabwe.⁸⁹ Centralisation of powers at independence was justified on the grounds that the pursuit for nation building and development necessitated central direction and national unity. This chapter argues that the current developments in ULG necessitate the transfer of decision-making powers and management of local affairs to sub-national entities to improve service delivery.⁹⁰ There is a general realisation that 'local governments also are more likely than higher-level governments to provide the right services, but also are more likely to provide these services in the right way'.⁹¹

At independence, it was 'clear to many nationalists during the colonial rule that gaining control of and changing the institutions, policies and procedures of local government was an essential step' that motivated transforming local government after independence.⁹² In 1980, in order to create a non-racial local government, which provided for effective and efficient

⁸³ Marumahoko S *Testing the boundaries of Zimbabwe's fiscal decentralisation for urban councils* (unpublished thesis, University of Western Cape, 2010) (hereafter Marumahoko S).

⁸⁴ Nhemachena GG & Matongo A (2000) 8.

⁸⁵ Murray DJ *The governmental system in Southern Rhodesia* (1970) 5.

⁸⁶ Wekwete K (1992) 98.

⁸⁷ Holleman JF *Chief, council and commissioner: come problems of government in Rhodesia* (1969) 11 (hereafter Holleman JF).

⁸⁸ Vosloo WB (1974) 203.

⁸⁹ Holleman JF (1969) 16.

⁹⁰ Report of the *Robinson commission of inquiry Salisbury* (1961) para 109 see also Kibua and Mwabu (2008).

⁹¹ Andrews M and Shah A (2005) 75. See also Arora C et al (1997) 4.

⁹² Hammar A 'The making and unmaking of local government in Zimbabwe' in Hammar A et al (eds.) *Zimbabwe's unfinished business: Rethinking land, state and nation in the context of crisis* (2003) 132.

services to all races, the UC Act reorganized the local government system. This resulted in the assimilation of local government areas into municipal areas and the inclusion of African Townships into already established councils. The argument is that UCs continue to be insensitive to urban needs and the provision of effective and efficient services as there is intermittent provision of services in most UCs.

3. The structure of urban local government

The UC Act provides the current structure of urban local authorities in Zimbabwe. The Act outlines the basic organization, powers and functions of urban councils in Zimbabwe. There are four categories of urban councils that constitute urban areas. Urban areas are categorized as city councils, municipalities, town councils or local boards, subject to urban density and development.⁹³ Presently there are within urban areas seven cities, nine municipalities, 12 (twelve) towns and four local boards. The powers and functions of city, municipality, town councils or local boards are derived from and restricted by central government through the UC Act. First, UCs perform only those functions which are expressly conferred upon them by the minister through the UC Act.⁹⁴ Finally, the minister may also through ministerial directives or statutory instruments confer functions upon individual UCs.⁹⁵ For instance while city councils and municipalities have been given the power to lease and sell land,⁹⁶ town councils and local boards' land belongs to the state.⁹⁷ A responsible state land department within the ministry for local government handles land request for town councils and local boards. The UC Act also provides UCs with among other things; making and upholding of by-laws, generation and collection of revenues and the provision of services. The legislative framework in areas such as service provision, budget process, revenue-raising duty, and central regulation provides the operational framework of UCs in Zimbabwe.

⁹³ schedule 1 to the UC Act.

⁹⁴ Mushamba S *A policy dialogue* (2010) 105.

⁹⁵ s 7 (1) - (4) of UC Act.

⁹⁶ Chakaipa S *The state of decentralisation and Local governance in Zimbabwe* Midlands State University 29.

⁹⁷ s 7 (4) (b) of UC Act.

4. General Powers of UCs

4.1 Competencies of UCs in relation to service delivery

The literature on ULG illustrated that powers of ULG vary from one country to another. In the context of ULG in Zimbabwe, UCs exercise delegated authority to provide services within their jurisdiction. Delegated powers are purposely defined functions transferred from higher levels to subordinate levels of government.⁹⁸ In the exercise of delegated powers, De Visser argues that ‘central government wields indirect control *over the delegated power and...*Central government is generally empowered to withdraw the delegation.’⁹⁹ The delegated powers exercised by UCs set the parameters of their operational framework provided in the UC Act and determined by central government. Diverse functions are listed in sections 157-205 and schedule two to the UC Act.¹⁰⁰ The UC Act confers discretionary powers on UCs to provide basic services such as water, sanitation, health, education, effluent and refuse removal.¹⁰¹ The minister is empowered to authorise a council to carry out or carry on any function whether or not that function is an extension of any power set out in the schedule two or any other provision in the UC Act.¹⁰²

The functions performed by UCs can be categorised into three distinct groups. The first group of functions are obligatory functions linked with ‘health and the maintenance of a healthy environment’.¹⁰³ UCs are compelled to perform obligatory functions.¹⁰⁴ The public is obliged to pay for the use of obligatory services including water supply, waste management and health facilities. The second group consists of optional functions that make life endurable, urban residents have an option not to make use of optional functions.¹⁰⁵ These can be services such as public transport, parking facilities or ambulances. The third group of services offered by UCs is referred to as amenities and includes services such as ‘passive open areas, parks, or beer gardens’.¹⁰⁶

⁹⁸ De Visser J (2005) 14.

⁹⁹ De Visser J (2005) 14.

¹⁰⁰ Read together with s 198 of UC Act.

¹⁰¹ Schedule 2 to the UC Act provides UCs with 54 competencies in relation to service delivery functions that UCs should carry out or undertake subject to the UC Act and any other law.

¹⁰² s 198 (2) of UC Act.

¹⁰³ Jordan JD *Local government in Zimbabwe* (1984) 70 (hereafter Jordan JD).

¹⁰⁴ Mushamba S (2010) *A policy dialogue* 105.

¹⁰⁵ Jordan JD (1984) 70.

¹⁰⁶ Jordan JD (1984) 70.

4.2 Powers of a council to make by-laws

The UC Act gives urban councils powers to make by-laws within their areas of functional jurisdiction.¹⁰⁷ UCs should follow procedures laid down by the central government, which must approve a by-law before it can come into force.¹⁰⁸ The minister may approve the proposed by-law or withhold his approval.¹⁰⁹ Schedule three to the Act provides that UCs can make by laws in the following areas: controls of property, sewerage, effluent, and removal of refuse and vegetation, food, food premises or vehicles and markets, nuisances, inspections, fees, electricity, roads, public places and traffic, water, amenities and facilities, control of any service, institution or thing, control of collections, offences and penalties, functions, performances, events and amusements, occupational trade and other activities, proceeding of council and financial matters including general matters. The minister may also make model by-laws providing for any purposes for which a council may make by-laws.¹¹⁰ The minister may at any time withdraw or amend any model by-laws so made.¹¹¹

By-laws usually address or aid a council to implement its specific operations of UCs such as the provision of services or budget formulation. By-laws can also criminalise certain acts such as noise nuisances. Other by-laws necessitate conformity with ‘technical values, and or the purchase by the public of an authority permit or licence from the council’.¹¹² This category requires the holder either to have a permit or licence such as vehicle, shop or dog licences. Regulatory services form a major part of the operation of a municipality, and a council in terms of its by-laws regulates the conduct of its affairs subject to relevant legislation.

5. Revenue raising powers

Chapter two has emphasised the importance of devolved fiscal generating powers to realise the provision of services. The UC Act provides UCs with revenue raising powers. The UC Act does not give UCs devolved fiscal powers. UCs thus have limited revenue raising

¹⁰⁷ s 227 (1)-(2) of UC Act.

¹⁰⁸ s 228 (3) of UC Act.

¹⁰⁹ s 229 (1) and (2) of UC Act.

¹¹⁰ s 230 (1) of UC Act.

¹¹¹ s 231 of UC Act.

¹¹² Jordan JD (1984) 71.

powers. For example UCs can levy only those taxes or borrow such loans as permitted by the minister. UCs have limited local taxing, borrowing powers or access to intergovernmental transfers and to approve its budget and other fees as may be necessarily to meet its expenditure subject to the approval of the minister. These limited sources of revenue subject to the approval of the minister are local taxes and tariffs, borrowing and intergovernmental transfers.

5.1 Revenue generated from local taxing and tariffs

UCs' revenue extracted through local taxing and tariffs can be extracted from levy charges for various competencies. These competencies can range from property rating, service delivery charges from water supply, refuse and sewage disposal or health services, fees charged against users of council amenities encompassing services like flea markets or cemeteries, penalties and fines against breach of council by-laws, licence fees, supplementary charges or revenue generating income projects for example breweries or beer halls.¹¹³ These are sources of local taxing revenue. For instance revenue can be raised from the sale or lease of land, which is passed subject to council resolution made by the majority of the total membership of the council at a meeting and approved by the minister.¹¹⁴ Property rates or taxes also provide councils with a source of own revenue.¹¹⁵ The UC Act exempts property owned by the state, council or government buildings.¹¹⁶ The minister may in terms of the UC Act also fix and impose a supplementary charge in respect of immovable property to recover any expenses incurred in the maintenance and administration of any area.¹¹⁷

A council may, by majority resolution, fix tariffs or charges for such services as the supply of electricity or water or of refuse removal services; or the conveyance of sewage or trade effluent in public sewers and its treatment at a sewage treatment works; charges to be payable in respect of certificates, licences or permits issued, inspections carried out, services rendered or any act, matter or thing done by the council in terms of the UC Act or any other services which a council may provide in terms of the Act.¹¹⁸ A council resolution to levy tariffs or charges for residential accommodation through a by-law¹¹⁹ and must be approved by the

¹¹³ Coutinho B 'Sources of local government funding' in De Visser J et al (eds.) *Local government in Zimbabwe: A policy dialogue* (2010) 73-7 (hereafter *A policy dialogue*).

¹¹⁴ s 151 of UC Act.

¹¹⁵ s 269 and s 272 (1) of UC Act

¹¹⁶ s 269 (1) (a) (b), s 270 (1) of UC Act.

¹¹⁷ s 235 (3) (r) of UC Act.

¹¹⁸ s 219 (1) (a) - (c) of UC Act.

¹¹⁹ s 219 (1) proviso (a) of UC Act.

minister. The minister may in terms of the UC Act also fix the charges against any services or facilities for certain premises or residential area.¹²⁰

5.2 Borrowing powers of UCs

Borrowing is another source of revenue available to UCs. UCs are subject to the procedure set in the UC Act permitted to borrow with the approval of the minister.¹²¹ Borrowing facilitates the ability of urban councils to supplement own generated revenue through local taxing. The UC Act therefore permits councils to borrow for specified purposes subject to approval by the Minister.¹²² UCs may only borrow for the acquisition of immovable property, or construction of permanent works or undertakings, payment of compensation or relief of general distress occasioned by some calamity of any previous loan.¹²³ The council must give public notice stating the general purpose for borrowing the money, amount or any information necessary for ratepayers and make an application to the minister for permission to borrow the money.¹²⁴ A council may borrow from the state, local authorities' pension fund, a municipal provident fund, a municipal medical aid society or local authority.¹²⁵ A council may also take bonds, debentures or bills subject to the approval of the minister and the minister of finance. Further with the approval of the minister a council may engage in any commercial, industrial, agricultural or other activity for the purpose of raising revenue¹²⁶ or the ability to invest in specified investment funds.¹²⁷

5.3 Intergovernmental fiscal transfers

The UC Act or any other legislative framework does not provide for vertical financial equalisation of resources to UCs. Vertical financial equalisation entails the sharing of resources generated nationally between central and local governments. These grants enable UCs to supplement own local taxing and borrowing sources in order to deliver on their functions. UCs are assumed to access central government transfers under the Public Sector Investment Programme and grants for public health.¹²⁸ The Reserve Bank of Zimbabwe in 2005 also created funding through its quasi-fiscal operations to assist the delivery of services

¹²⁰ s 235 (3) (q) of UC Act.

¹²¹ s 290 of UC Act read with s 234 (1) (g) of UC Act.

¹²² s 290 (1) (c) of UC Act.

¹²³ s 290 (1) (a)-(g) of UC Act.

¹²⁴ s 290 (3) of UC Act.

¹²⁵ s 290 (5) of UC Act.

¹²⁶ s 221(1) of UC Act.

¹²⁷ s 302 of UC Act.

¹²⁸ Mushamba S A *policy dialogue* (2010) 111.

in UCs.¹²⁹ Central government transfers are meant either to cover delegated functions from the centre for example road maintenance or compliment the resources of UCs for enhanced provision of services.

5.4 Budget making process of UCs

The allocation of resources amongst many competing demands within an urban local authority is done through an annual budget.¹³⁰ While urban councils are expected to make a large number of policy decisions, one of the most vital is policy determination on the adoption of council budgets. A budget allows relative emphasis among different programs and services carried within a local area and apportion the residents' resources to carry them out. A council budget serves as a guide to the local authority in estimating its needs and planning to raise the necessary funds to meet service provision. Before the expiry of any financial year, the finance committee of a council is obliged to draw up and present for the approval of the council, estimates in such detail as the council may require of the income and expenditure on revenue and capital accounts¹³¹ of the council for the next succeeding financial year. The council budget comprises of 'revenue estimates for the ensuing year, the capital estimates for the ensuing year and the capital development plan for the succeeding three years'.¹³² Copies of the estimates must be made available for inspection by the public forthwith.¹³³ A council shall not expend any moneys unless such expenditure has been approved in the budget or in a supplementary budget.¹³⁴

6. Central regulation of UCs

The minister plays a significant role in the operations and functions of the council. The minister among other powers approves council operations sets policies and gives directions on various matters affecting urban councils. Below is a summation of the powers of the minister in relation to the operations of UCs.

¹²⁹ Coutinho B *A policy Dialogue* (2010) 80. Quasi-fiscal operations refer to activities that entail implicit or explicit taxation or subsidisation and fall outside the budget of central bank undertaken for public policy reasons for this definition see Markiewicz M *Quasi-fiscal operations of central banks in transition economies* (2001) Bank of Finland Institute for Economies in Transition BOFIT discussion papers.

¹³⁰ s 288 (1) read with s 234 (1) (f) of UC Act.

¹³¹ It should be noted all public works and public amenities are funded through the capital account accessed usually through borrowing. Revenue from local taxing and surcharges funds things like maintenance and service delivery, central grants funds specific mandates.

¹³² Jordan JD (1984) 54.

¹³³ s 288 (2) of the UC Act.

¹³⁴ s 288 (7) of the UC Act.

The powers that the Minister has over UCs envisaged in the UC Act:

Section	Power exercised
s 4 (4) (b)	Minister has powers to authorize the council to suspend the operation of all or any of its by-laws within the whole or part of the local authority is being included within the council area or a separate council is being established for that area
s 4A	Power to appoint special interest councillors. Special interest councillors also hold office at the pleasure of the minister. He can by statutory instrument fix the number of the interest councillors.
s 7 (1)-(3)	The minister may by statutory instrument vest administration, control and management of local government area and the services provided by the state in a council or person. The minister has powers in respect thereof to give directions or impose conditions relating to the administration, control and management including the provision of services.
s 80 (1)-(3) & (5)	In the event that there are no elected councillors or have been suspended, imprisoned or otherwise, the minister has powers to appoint a caretaker to act as council and give directions on how the caretaker operates, and holds office at the pleasure of the minister (known as the appointed commission).
s 84 (1)	Determines and fixes the first date, place on which a council may hold its first meeting.
s 91 (1)-(2)	Unrestrictive access to all councils records, minutes and documentation under the care of a council relating to council meetings, resolutions and affairs
s 104 (3)	Appoint a councillor to act as an acting mayor or chairperson in the event of a vacant in the respective office and where such council has failed to appoint one.
s 112 (1)	Approves councillors' allowances
s 113 (1)-(3)	May approve, vary or withdraw any authority for a council to pay pensions to councillors or ex-councillors where special circumstances warrant a council to do so.
s 114 (1)-(3)	Have powers to suspend councillors or revoke suspension.
s 116 (2)-(5), s 117 (1), s 118 & s 120	Appoint a local government board, chairperson and vice-chair of the board, fix the terms and conditions and period of office for the LGB, fix their allowances, and remove a member from office.
s 124 & s 125 & s 129	Minister may give to the LGB directions as to the policy to be observed in the exercise of its functions. The LGB has to consult with the minister on the appointment

	of LGB staff, and by-laws made by the LGB are subject to the approval of the minister.
s 151 (2)-(3)	Council cannot expropriate land without minister approval; the minister may refuse approval or approval subject to conditions he may think fit.
s 198	The minister may delegate any function which in his opinion is necessary for a council to carry out or carry on whether or not the function is an extension of any power set out in the second schedule or in any provision of the UC Act.
s 206 (2)	Power to act on behalf of a council regarding estate development and to expropriate land in respect thereof in the name of the council.
s 210 (5), s 211 (3)	Make regulations to enable procurement board to discharge its functions, prescribe different amounts for different classes of councils relating to tender processes.
s 219 (1) (a) proviso (a), (b)	Minister approves levies in respect of residential accommodation or services provided specifically to or in connection with any residential accommodation, further a council needs approval of the minister fix in any lease or agreement entered by it levies payable by the lessee.
s 224 (5) & s 225 (1)	Approves joint committees initiated by a council and any other local authority. Also the minister may also make an order combining local authorities where it appears necessary to him.
s 228 (3) , s 229 (1) & s 233	Approves council by-laws including by-laws made in respect of charges, fees, etc s 219 proviso (a), can also make or adopt by laws on or behalf of a council,
s 234 (1)-(2)	Minister makes general regulations varying from conduct of elections for mayors, councillors or members of local boards, qualification, allowances for members of local board, procedures to be followed at meeting relating to councillors, preparation, expenditure and information to be set out in a budget, procedure to be followed in applying for borrowing powers by a council, and in respect of all matters for which he considers it necessary or expedient in terms of the Act.
s 235 (2), (3)	The minister may make such regulations as he considers necessary or desirable for the control, management and good government of a local government area. For example in ss (3) (q) and (r) the minister may fix the charges against any services, amenities or facilities provided by the state either for certain premises or residents; fix or impose in respect of immovable property a supplementary charge to cover the expenses incurred by the state in the maintenance and administration of the area.
s 241 (2), (4) (a), s	Minister appoints the valuation board that assess and values property for rating. One of the members is directly selected by him, member selected by the minister shall hold

242 (1) (a) & (2) (a)	office at his pleasure, and has powers to terminate office of appointed members.
s 290 (2) (c)	Minister approves borrowing powers of council.
s 304 (1)	The minister approves person/persons to be appointed as financial auditors by council
s 309	May require a council to furnish records of its proceedings and other documents or information he considers necessary.
s 313	Minister may give directions on matters of policy a council is to observe in the exercise of its functions.
s 314 (1)	May reverse, suspend, and rescind resolutions, decisions or action of councils.

These identified provisions that provide the powers exercised by the minister in practice are arbitrarily employed by the minister to undermine the competency of UCs as the study will show.¹³⁵

7. Centralised control of local senior personnel recruitment

The minister appoints a seven-member board to constitute the local government board.¹³⁶ The chair and vice-chair of the board are appointed by the minister from amongst the appointed members.¹³⁷ The board is responsible for the recruitment and discharge of senior officials of the council¹³⁸ to ensure the general well-being and good administration of council's staff and the maintenance of a high state of efficiency¹³⁹ as well as to conduct inquiries into the affairs and procedure of senior officials.¹⁴⁰ Further, the LGB has powers to make regulations stipulating the qualifications and procedures for senior officials of councils and to provide guidance for the general organisation and control of employees in the service of councils.¹⁴¹

The day-to-day administration and the implementation of UCs' policies is realised by salaried personnel. Senior council personnel are recruited by the LGB. The person recruited by the LGB shall be appointed as either the town clerk¹⁴² or secretary of the council.¹⁴³ The town

¹³⁵ Jonga and Chirisa (2009) 178.

¹³⁶ s 116 (1) of UC Act.

¹³⁷ s 116 (5) of UC Act.

¹³⁸ s 123 (1) (e) of UC Act.

¹³⁹ s 123 (1) (b) of UC Act.

¹⁴⁰ s 123 (1) (f) of UC Act.

¹⁴¹ s 123 (1) (a) of UC Act.

¹⁴² s 132 (1) of UC Act.

¹⁴³ s 132 (3) of UC Act.

clerk heads the executive arm of the council and is responsible for the proper administration and managing of operations of the local authority.¹⁴⁴

The employment of other officials other than senior officials is left to the council.¹⁴⁵ However, the appointment made in respect of a municipal council is on the recommendation of the town clerk¹⁴⁶ or secretary if it is a town council.¹⁴⁷ Salaries of permanent employees of council are met from revenue, unless the Minister has directed that the salaries are provided from capital or loan account.¹⁴⁸

8. Conclusion

This chapter provided a brief history of urban local government in Zimbabwe from 1890 to 1980. It spelt out that UCs have since time immemorial been creatures of statute, and subservient to central government. The powers to provide for services and generate revenue have been subject to central government approval. The challenges of poor service delivery faced by present day ULG have been in existence since the colonial era.

The provisions in the UC Act which provide for the structure, powers, finances and staffing matters of UCs were identified. The powers of UCs are not constitutionally guaranteed, the exercise of their powers are dependent on central government. Secondly, the chapter focussed on the powers to extract revenue by UCs and budget making process. The powers are limited and subject to central government approval. Lastly, the research made reference to central regulation and the appointment of UCs' administration. The central theme in the discussion is the over-arching powers of the minister and lack of protection of the powers of UCs. The next chapter examines specific weaknesses in the UC Act and how these weaknesses negatively impact the provision of services. Chapter four focuses on the inadequacies in the UC Act that relate to central regulation of UCs, powers of UCs and the central interference in the appointment of UCs staff that inhibit the effective and efficient delivery of service. The analysis will draw from international best practises set out in chapter two.

¹⁴⁴ s 136 (1) (a)-(c) & (3) of UC Act.

¹⁴⁵ s 141 (1) of UC Act.

¹⁴⁶ s 141 (1) (a) of UC Act.

¹⁴⁷ s 141 (1) (b) of UC Act.

¹⁴⁸ s 292 of UC Act.

CHAPTER FOUR

AN ANALYSIS OF THE WEAKNESSES IN THE URBAN COUNCILS ACT THAT IMPEDE SERVICE DELIVERY

1. Introduction

The services that UCs in Zimbabwe provide to urban residents must enhance their quality of life and contribute to urban development.¹⁴⁹ The literature on ULG illustrated the importance attached to effective and efficient provision of urban services. A key lesson from the literature is that supervision by higher levels of government, democracy, administrative autonomy, legislative certainty about the powers and fiscal health of ULG is essential for effective and efficient service provision. This chapter analyses the specific weaknesses in the UC Act namely: limited revenue generating powers, unfettered powers of the minister, lack of legal protection of powers, and centralised control over the recruitment of senior personnel. In analysing the weaknesses in the UC Act, the chapter makes use of essential elements for effective and efficient service delivery provided in chapter two.

2. Powers and Functions of UCs

2.1 Lack of legal protection for UCs' service delivery role

The UC Act does not conform to standards for legal certainty about powers and functions in the international literature discussed in Chapter two. First, UCs exercise delegated powers and do not have original powers, which reside with central government. Central government determines which powers and functions UCs will perform. This establishes a relationship of principal and an agent. The exercise of delegated powers has compromised the capacity of UCs to deliver services both efficiently and effectively. The argument is that the final decision over the provision of a particular service should lie with the level of government that can cover the cost of the provision of the service.¹⁵⁰ Secondly, the provision of services by UCs is generally poor and one of the causes is that efficient and effective provision of services is undermined by a high level of central interference in the decisions of UCs. For instance, in 2005, the minister issued a directive which revoked water management functions from UCs and transferred its management to the Zimbabwe National Water Authority

¹⁴⁹ Wekwete K (1992) 99.

¹⁵⁰ Oates W *The economic theory of federalism* (1972) 55.

(hereafter ZINWA).¹⁵¹ Arguably, the transfer of water to ZINWA without the necessary accountability mechanisms has led to regressed patterns in the provision of water supply and sanitation in urban areas. The transfer of the UCs' function to provide water also deprived UCs of local taxing sources of revenue thereby constraining their already weak revenue bases. This compromised their financial capacities to generate revenue to fund the provision of other services. In 2008, the minister issued another directive handing water provision back to councils.¹⁵² This illustrates the extent of instability caused by central interference in local government functions and the negative impact on service delivery.

The UC Act provides electricity as a competence of UCs. The generation and distribution of electricity was revoked in 1989 from UCs by central government.¹⁵³ The generation and supply of electricity is under the authority of Zimbabwe Electricity Supply Authority. This removed a potential revenue generating base from UCs. The law subjects UCs to the vagaries and prejudices of central government. Central government gives and takes powers from UCs as it chooses. The lack of protection afforded to UCs by the UC Act has resulted in an undermining of their revenue bases. Also the lack of constitutional protection undermines their sense of ownership of the functions they must perform, contributing to poor service delivery. The system is also wasteful and in some instances causes over concentration of resources on one service at the expense of other basic services.

2.2 Limited powers to make by-laws

The making of by-laws is another area where local authorities have been frustrated by central government. Council resolutions in respect of schedule three matters or any incidental matter thereof have authority only when approved.¹⁵⁴ The by-law has to be approved by the minister.¹⁵⁵ The law gives the minister the discretion either to approve or disapprove the by-law.¹⁵⁶ The discretion given to the minister potentially compromises the functions of UCs, because by-laws can only take effect after approval by the minister.¹⁵⁷ The fact that a by-law

¹⁵¹ For example central government revoked the function to provide water supply and sewage management from the city of Harare, Chitungwiza municipality, Norton town council, Epworth and Ruwa local boards for this argument see Musemwa M *The politics of water in post-colonial Zimbabwe 1980-2007* (unpublished seminar paper presented at the African studies centre, University of Leiden, the Netherlands, 2008) 12.

¹⁵² Mushamba S *A policy dialogue* (2010) 109.

¹⁵³ Colquhoun S 'Present problems facing the Harare city council' in Zinyama L et al (eds.) *Harare: the growth and problems of the city* (1993) 35-36.

¹⁵⁴ s 227 (1) of UC Act.

¹⁵⁵ s 228 (3) of UC Act.

¹⁵⁶ s 229 (2) of UC Act.

¹⁵⁷ s 229 (4) of UC Act.

has no force unless it gains the approval of the minister underlines the extent of control that the minister exercises over UCs in matters of decision making.

The power given to the minister in the UC Act undermines the power to make by-laws of UCs.¹⁵⁸ For instance, a council might respond to public demands for a service delivery implementation strategy by enacting a by-law, but the by-law is subjugated to central control and cannot be implemented unless it has been approved by the minister. A council thus finds itself ‘tied down by procedures in their decision making...even for routine decisions’.¹⁵⁹ A council owes its accountability to the urban citizens, so the decision of matters in the schedule three should lie with the end user and not the minister. A thriving ULG requires citizens to set the overall agenda on service provision.¹⁶⁰ The design of the UC Act compromises also the efficiency of UCs in the event that the minister fails to approve timeously or he disapproves the by-law. Unless and until the by-law has been approved there is nothing that UCs can do in respect of schedule three or any incidental matters thereto.

3. Limited fiscal generating powers

The purpose of making UCs’ powers to generate revenue subject to ministerial approval is to protect urban residents against market forces and macro-economic instability including high inflation. This power has been arbitrarily used to constrain the capacity of UCs to generate revenue without interference by central government. It is clear from the literature on the subject that revenue-raising powers are essential for effective and efficient provision of urban services. For ULG to be able to meet its primary purpose of service provision there should be a genuine devolution and sufficient fiscal powers. The chapter argues that design of the UC Act seriously constrains the capacity of ULG to generate resources that guarantee predictable service provision because the powers bestowed upon the minister inhibit the fiscal independence of urban local authorities. The argument is that the design of the legal framework impacts the extent to which ULG can generate revenue. Scholars such as Shah argue that ‘laws typically limit both the kinds of revenues that local governments can raise and different revenue types’.¹⁶¹ According to Marumahoko fiscal autonomy is essential for effective and efficient provision of services:

¹⁵⁸ Mushamba S *A policy dialogue* (2010) 107.

¹⁵⁹ Mushamba S *A policy dialogue* (2010)107.

¹⁶⁰ Bratton M (2011) 2.

¹⁶¹ Andrews M and Shah A (2005) 66.

‘Central government control on the usage of finances weakens the expenditure discretion of urban councils. The financial controls go to the core of the autonomy of urban local authorities and create a situation where the ability of urban councils to fulfil their mandates is paralysed’.¹⁶²

In the context of ULG in Zimbabwe, UCs can only levy those charges or taxes as permitted by the minister under the UC Act. The section points out that the design of the UC Act limits the capacity of UCs to raise taxes or tariffs, UCs can only raise for example property taxes, charges or borrow within limits set by the minister. For instance an urban council will require the approval of the minister to implement its funding arrangements on tariffs, borrowing, and expropriation of land or entering into any fiscal agreement that benefits the council.¹⁶³ As a result, UCs cannot autonomously exercise their fiscal powers.

The UC Act also does not provide urban councils with reliable systems for debt collection for the provision of services such as water supply, refuse and effluent removal or prescribe the process to be employed in debt collection. There is continued recurring failure by UCs to extract or enforce the urban populace to remit fees or charges for services provided such as water supply, rates and waste management. Consequently, councils lose out on revenue. For instance, at the time of writing the city of Harare is owed US\$273 million from government departments, private sector, and residents alone contributing close to US\$40 million of the total cost from unpaid water bills, rates and supplementary charges.¹⁶⁴ Urban residents argue that until UCs provide satisfactory services they are not going to pay for erratic services. UCs also lose revenue because they lack the capacity and mechanisms to trace debtors. The effect is that revenue declines, compromising services and facilities. For example, urban residents become susceptible to diseases such as typhoid and cholera because intermittent supply of water causes residents to make use of unprotected water sources which are sometimes exposed to the discharge of raw sewage, such as the Mukuvisi river in Harare.¹⁶⁵

The minister also has powers to set the policy framework that determines tariffs and residential rates. In some instances, the policies made by the minister concern matters of

¹⁶² Marumahoko S (2010) 44.

¹⁶³ s 221 (1) of UC Act.

¹⁶⁴ Share F ‘Council to attach defaulters’ property’ (*The Herald* 7 November 2011) available at http://www.herald.co.zw/index.php?option=com_content&view=article&id=25883:council-to-attach-defaulters-property&catid=37:top-stories&Itemid=130 (accessed 7 November 2011)

¹⁶⁵ For example, at least more than 20 people were hospitalised as a result of typhoid outbreak in Harare. In 2010, typhoid infected more than 300 people, and claimed lives for this argument see Gumbo Lloyd ‘21 hospitalised as typhoid outbreak hits Harare’ (*The Herald* 6 November 2011) Available at http://www.herald.co.zw/index.php?option=com_content&view=article&id=25789:21-hospitalised-as-typhoid-outbreak-hits-harare&catid=37:top-stories&Itemid=130 (accessed 7 November 2011)

general application across all UCs, with relatively few opportunities for individual councils to extract revenue in accordance with their individual expenditure. For instance in 2008, the ministry imposed tariffs and rates without consulting UCs.¹⁶⁶ The failure to generate revenue that is inter alia with council expenditure limits the capacity of UCs to provide for services on a continued basis. The section argues that these over-arching powers of the minister are protected by the UC Act, and are not alive to the realities of UCs purpose and challenges and constrains service provision.¹⁶⁷

Limited sources of own revenue compromise service provision by UCs resulting in waste left uncollected in the streets, blocking drainage channels or dumped in water courses, persistent water cuts or prolonged periods without water, pot-holed roads, and dysfunctional primary health centres.¹⁶⁸ Limited resources have not only compromised the independence of UCs, but have subjected them to central government control. It has 'created a situation in which urban councils increasingly look to central government to bail them out financially, strengthening the perception that central government is a superior order of government'.¹⁶⁹

3.1 Partial borrowing powers

The literature on ULG shows that borrowing is another important source of revenue for UCs. UCs may borrow but subject to the approval of the minister. The minister is empowered to approve¹⁷⁰ and cancel the borrowing powers of a council.¹⁷¹ The UC Act does not protect UCs since the decision of the minister is final. The section argues that the minister uses powers in the UC Act to compromise and subjugate UCs' reasonable access to other sources of revenue. The argument is that central government stifles borrowing powers especially in those UCs whose political views differ from the minister. This compromises service delivery, UCs possesses inadequate fiscal generating resources. UCs should be able to supplement local taxing revenue for efficient and enhanced service delivery through borrowing. Majority of these UCs are performing dismally as a result of insufficient fiscal resources.

¹⁶⁶ Jonga and Chirisa (2010) 174.

¹⁶⁷ Jonga and Chirisa (2010) 175.

¹⁶⁸ Coutinho B *A policy dialogue* (2010) 75.

¹⁶⁹ Nhemachena GG and Matongo A (2000) 5.

¹⁷⁰ s 290 (1) of UC Act.

¹⁷¹ s 290 (8) of UC Act.

3.2 Lack of legislative framework to regulate central government grants

In many jurisdictions grants from higher level government are an important source for the equitable 'local service provision and fiscal health' of ULG.¹⁷² In the context of Zimbabwe's ULG, neither the UC Act nor any other Act provides the legislative framework for a system of intergovernmental grants. The failure by the UC Act to expressly provide for intergovernmental transfers to UCs exposes the whole process to manipulation. In Zimbabwe, grants given to UCs are in most cases conditional grants for specific activities.¹⁷³ For instance grants are given to UCs to remunerate employees in health and education services or in some instances in times of emergency.¹⁷⁴ Central grants are channelled to UCs through the Public Sector Investment Programme. UCs also have limited discretion on the use and access of grants. The use of grants depends on conditions attached to the grant and the limitations on their use. The chapter argues that in ULG, central transfers in UCs are not distributed on the basis of the principle of equity, which distributes financial resources based on the capacity of individual UCs to generate revenue. Instead, grants are often distributed on the basis of political patronage, making UCs susceptible to the vagaries and prejudices of the national government. The section argues that absence of a system of transfers that takes account of the differing costs and needs of different areas negatively impacts the provision of services in UCs.

Central government grants are necessary to fund those functions that were originally central functions but subsequently delegated to UCs for efficiency purposes. UCs are forced within the limited resources to cater for delegated functions without central provision of additional revenue. While international literature provides that 'finance must follow function' in most UCs, central government has 'been assigning new responsibilities...including education and health, without providing sufficient additional resources'.¹⁷⁵ For UCs to be fiscally healthy, they should have reliable and sufficient revenue sources. Intergovernmental fiscal transfers are crucial for efficiency and the equitable distribution of services amongst UCs. The argument is that lack of an express regulatory framework that sets the allocation procedure of grants renders the process of intergovernmental transfer unpredictable. As a result, UCs are imbued with functions they cannot deliver because of fiscal inefficiency and inequity. The

¹⁷² Shah A (2004) 22.

¹⁷³ Coutinho B A *policy dialogue* (2010) 81.

¹⁷⁴ For example in 2008 central government made a fiscal transfer to the City of Harare for the management of sewerage and water reticulation to curb the spread of cholera epidemic for this argument see Coutinho B A *policy dialogue* (2010) 81.

¹⁷⁵ Wekwete K (1992) 109.

expenditure demands of UCs are not proportionate to the fiscal sources they generate. The argument is that the failure to provide for a legislative framework that guarantees the predictable flow of intergovernmental transfers compromises the ability of UCs to efficiently and effectively provide for services. UCs are forced to distribute insufficient limited revenue amongst the services they provide to accommodate central delegated functions.

3.3 Centrally restricted budget making process

A budget is a prerequisite for council expenditure for each year. The budget sets out a council's priorities and reflects the allocation of scarce resource among the service the council intends to provide. Central government determines the UCs budget guidelines showing the procedure of budget formulations in line with the Standardised Accounting Budgeting System, Procedures and Policies Manuals.¹⁷⁶ Central dominance constrains the independence of urban local government to spend revenue:

'The budgeting and planning processes for urban local government reflect a fundamental dependence on and control by central government. The budgets of urban councils are subject to a regulatory framework set by central government, watering down the authority of urban councils to structure their budgets to meet local preferences'.¹⁷⁷

Central interference has fiscal and monetary policy implications on UCs expenditure programmes and inhibits the processes that UCs should use to expedite the provision of services. Central government is too geographically and operationally detached to appreciate UCs expenditure that is in line with urban local preferences. UCs are best placed to determine how best to formulate its budgets.

As a result, more time is spent on budget processes going back and forth between council and central government impacting on the quality of services provided. For instance the budget for the city of Kwekwe had not been approved by May 2011.¹⁷⁸ This impinges on the financial plans of a council and hinders the provision of service to the public at large. UCs cannot do anything meaningful without a running budget; it impacts the delivery of services. The effect is that the service delivery becomes retarded, ineffective and inefficient.

¹⁷⁶ Marumahoko S (2010) 49.

¹⁷⁷ Wekwete K (1992) 101.

¹⁷⁸ Mhlanga B 'Kwekwe 2011 budget yet to be approved' (*News Day* 30 May 2011).

4. Centralised control over senior administration recruitment

The literature on ULG highlights the power of UCs to choose their own ‘staff is an essential ingredient for effective and efficient service delivery’.¹⁷⁹ This is quite important in a centralised system that urban councils operate under, because council resolutions are implemented by salaried staff. The LGB approves the appointment of senior staff as indicated in chapter three. Since the LGB is a structure that is influenced by the minister, experience shows that ‘higher-level...administrative appointments created a hierarchical structure...that made local governments more responsive to central...government demands than they were to the needs of local constituents’.¹⁸⁰ Central government links in the appointment of senior personnel dilutes the independence of UCs when it comes to the council’s employment choice of Senior Officers. Senior council officials encompass posts like that of the Town Clerk, Chamber Secretary, Director of Health, Engineer, Treasurer and all heads of departments and their deputies.¹⁸¹ The UC Act extends the role of the LGB to the general control of council workforce. The paper argues that most senior officials are appointed on political partisanship; this compromises the loyalty of staff. For example the town clerk of Harare, Mutare, Chegutu, Chitungwiza and Kwekwe identify with the minister’s political party. In most cases the appointments are not based on competency but partisanship and therefore impacts on the quality of services provided to the urban communities.

The appointment of council personnel by central government ‘impedes the responsiveness of local entities...it is apparent that local level responsiveness is enhanced where...administrators are appointed locally’.¹⁸² The mayor of Harare has repeatedly accused the Harare council administration of deliberately not implementing council resolutions thereby shrinking and blocking municipal services in a bid just to discredit his administration in the eyes of the public. The present mayor for Harare, Muchadeyi Masunda has publicly condemned the political loyalty of council administration on numerous occasions and stated that:

‘The threat to service delivery is mind-boggling lethargy on the part of the functionaries whose roles have been compromised almost beyond redemption because they are torn in between the interests of the stakeholders and those of the political parties’.¹⁸³

¹⁷⁹ Selznick P *TVA and the grassroots: A study in the sociology of formal organisation* (1949) 112.

¹⁸⁰ Andrews M and Shah A (2005) 72.

¹⁸¹ s 134 (1) of UC Act.

¹⁸² Andrews M and Shah A (2005) 72.

¹⁸³ Matenga M ‘Shape up or ship out’ (*News Day* 30 May 2011).

The mayor's outburst is a reflection of how political patronage can compromise service delivery. The influence of central government on staff appointment negatively impacts service delivery, in that the agenda of service delivery suffers neglect since the partisan officials direct their energies on differences than co-ordinate efforts that move the council to be an institution that provides services efficiently and effectively. The argument is that UCs should have the autonomy to recruit and dismiss senior officials. The section points out that the lack of autonomy in the recruitment of senior staff in most cases causes conflict that often exists amongst the town clerk, the mayor and councillors, meaning there is no collaboration and to an extent no accountability, affecting the capacity of a council to deliver services effectively and efficiently.

Council personnel are remunerated from council revenue.¹⁸⁴ The study identified that UCs are struggling within the limited fiscal powers to generate adequate revenue to meet their expenditures. The paper argues that the failure by UCs to raise adequate revenue also impacts its capacity to remunerate council employees lucratively. Council personnel are poorly remunerated and lack adequate incentives. This largely has contributed to the exodus of skilled and qualified personnel due to poor salaries and state of affairs. Absence of skilled and adequate personnel exacerbates the deterioration of delivery of services in UCs¹⁸⁵

5. Unfettered powers of the minister

The supervision of UCs by higher levels of government is an accepted element of effective urban government. Supervision is necessary for uniformity, the realisation of national goals and efficient service delivery in the country as a whole. However, the UC Act confers unfettered powers on the minister, as discussed in chapter three. The UC Act subjects UCs politically, organizationally and fiscally to centralised control. The relationship that exists between central and local authorities in Zimbabwe is one between a delegator-delegatee, with the central government as the delegator and local UCs as the delegates. This relationship is manifest in the manner in which the UC Act allocates power between the two. Anything which is not specifically mentioned is assumed to fall outside urban councils' functional jurisdiction. Even in those areas, in which they have been empowered to act, central government has powers to revoke UCs functions. Central government exerts stifling and inefficient bureaucratic control over many aspects of local authority operations for instance

¹⁸⁴ s 292 of UC Act.

¹⁸⁵ Coutinho B *A policy dialogue* (2010) 74.

setting of by-laws, service provision functions and fiscal generation. The minister decides whether a local board shall be constituted by appointed or elected members and their term of office¹⁸⁶ and suspension and dismissal of elected councillors. There is extensive political interference in the internal administration of UCs by the minister.¹⁸⁷ The section argues that the disadvantage lies in that the minister limits the capacity of elected officials, in most cases creates conflict. The minister is more concerned with maximising his own self-interests such as power and patronage against public interest and service provision.

The policies which govern urban councils are usually made at the centre by the minister in the form of directives or circulars. In most cases, the minister's directives or circulars are made without consulting UCs despite the impact they have on functions of UCs.¹⁸⁸ For instance, prior to the 2008 harmonised (national) elections¹⁸⁹ the minister abolished the office of the executive mayor. The argument is that abolishing the office of the executive mayor has created persistent contestation between the town clerk and mayor in most UCs. Stripping the mayor of his/her executive powers took away any meaningful powers to influence the provision of service delivery and quality. The design of the UC Act as it relates to fundamental features of council imposes constraints, and limits the autonomy of UCs in the provision of service.. The constant meddling in the activities of urban councils by the minister has brought nothing but poor service delivery and role confusion causing the populace to lose faith in the ULG's ability to deliver services optimally.

The chapter argues that the minister is geographically and operationally remote from the local people and thus less responsive to the local people's immediate needs. The extensive control of the minister over UCs cripples the powers of urban councils to provide services effectively and efficiently to meet local needs. The section argues that as a result, urban councils are caught up more in trying to please or at most fighting the minister at the expense of focusing on developmental goals that give the public satisfaction as is evidence in most UCs. The section concludes that the UC Act gives the minister over-arching powers.

5.1 Powers to suspend and dismiss elected officials

¹⁸⁶ s 6 (4) (a) - (f) of UC Act.

¹⁸⁷ Olowu D and Smoke P 'Determinants of success in African local governments: an overview' (1992) 12 *Public Administration and Development* 1-17 3 (hereafter Olowu D and Smoke P).

¹⁸⁸ Hetherington AC *The relationship between central and local government: an overall look in January 1980* (1980) 18.

¹⁸⁹ In 2008, the Zimbabwe presidential and parliamentary elections were harmonised.

Chapter two has shown the importance of ULG processes that realises urban local democracy. Literature on ULG usually draws a link between democracy and efficient and effective provision of services. The literature also attaches importance of democratically instituted decision-making bodies for the functioning of ULG.¹⁹⁰ In the context of Zimbabwean ULG, while the majority of councillors are elected, the UC Act gives the minister powers to suspend and dismiss elected officials and to appoint special interest councillors. The minister has powers to dismiss elected officials. The design of the UC Act does not guarantee the powers of the council. In recent years, the power of suspension has been used arbitrarily in order to weaken opposition in councils. The Minister is notorious for dismissing Movement for Democratic Change-Tsvangirai (hereafter MDC-T) mayors and councillors. For instance, he dismissed the Bindura mayor for alleged acts of misconduct.¹⁹¹ It has become common since 2003 for the minister to dismiss elected officials in most urban councils such as Harare, Mutare, Chitungwiza and Chegutu.¹⁹² This chapter argues that councillors and mayors are protected while in office but only if their policies reflect that of central government. What this does is centralising powers and creating institutions which do not enhance service delivery.

5.2 Powers to appoint special interest councillors

The minister is also empowered to appoint at ‘his pleasure’ special interest councillors in every municipal and town council not exceeding one –quarter of elected councillors, and even though they are entitled to benefits as those of the elected councillors and participate in the business of the council they have no veto powers.¹⁹³ As regards veto powers, unless their concerns are translated into votes in council meetings, there is no way they can influence service delivery. Consequently, the special interest councillors are unaccountable to local citizens largely because the decisions mechanisms that facilitate citizen influence are missing such as veto powers to influence service delivery.¹⁹⁴ So any meaningful contribution to effective and efficient service delivery is constrained by the fact that they cannot vote in council meetings. In addition, concerns have been raised that the minister abuses the

¹⁹⁰ Stewart J (1983) 121.

¹⁹¹ Columnists ‘Flaunting power will expose you, cde Chombo’ (*News Day* 28 October 2011) available at <http://www.newsday.co.zw/article/2011-10-28-flaunting-power-will-expose-you-cde-chombo> (accessed 28 October 2011).

¹⁹² Ncube X ‘Chombo fires Bindura mayor Madamombe’ (*Daily News* 23 October 2011) available at www.dailynews.co.zw (accessed 23 October 2011)

¹⁹³ s 4A (1) (b) and (2) of UC Act.

¹⁹⁴ Andrews M and Shah A (2005) 79.

institution of special interest councillors. The fact that special interest councillors hold office at the pleasure of the Minister compromises their independence, making it likely that they will align with his views. For instance, it is alleged that the minister appoints unsuccessful councillors at the general election.

Special interest councillors are meant to provide expertise to the UCs. As newly elected councillors come into council without experience so special interest councillors complement them in order to enhance service delivery.¹⁹⁵ On the contrary, the appointment process has been succeeded by primacy of patronage, as this has largely served partisan interests.¹⁹⁶ The section points out that appointed councillors will often oppose the decisions of democratically elected councillors even when it is not in the interest of the urban populace for them to do so.

The process for appointing councillors is a violation of citizen representation in decision making process because councillors are not democratically elected.¹⁹⁷ The elected officials are involved in the legislative business of UCs, and in practice elected councillors are outnumbered and always under the authority of the appointees. There is no criterion for controlling the Minister's use of the power to appoint special interest councillors. Harare lawyer Beatrice Mtetwa said the minister does as he pleases with council.¹⁹⁸ The appointment of special interest councillors is clearly against all 'democratic precepts and again causes developmental bottlenecks and general disgruntlement as constituents and residents see that their leaders of choice dis-empowered'.¹⁹⁹

6. Conclusion

The chapter analysed the specific weaknesses in the UC Act namely: unfettered powers of the minister, lack of devolved fiscal powers, lack of legally protected and clear powers and lack of autonomy to recruit senior personnel of UCs. The argument advanced is that the UC Act gives over-arching powers to the minister. The powers exercised by UCs are subject to ministerial approval in particular the delivery of service, setting of by-laws, fiscal generating powers, and recruitment of senior personnel, suspension and dismissal of councillors. The

¹⁹⁵ Matenga M 'MDC-T councillors eject Zanu PF appointees' (*Nottingham community Zimbabwean network* 2 June 2011) available at <http://nzcw.wordpress.com/2011/06/02/mdc-t-councillors-eject-zanu-pf-appointee/> (accessed 25 October 2011).

¹⁹⁶ Mushamba S *A policy dialogue* (2010) 104.

¹⁹⁷ Mushamba S *A policy dialogue* (2010) 104.

¹⁹⁸ Mangwende B 'Sekesai Makwarara's ouster' (*Financial Gazette* 3 June 2004) available at <http://allafrica.com/stories/200406030498.html> *Zimbabwe* (accessed 14 September 2011).

¹⁹⁹ Phulu KI and Nyathi M *Report on devolution and the Constitution* (unpublished article, 2009) 28.

chapter argued that the design of the UC Act stifles that capacity of UCs to effectively and efficiently provide for services and in some instances the minister recentralises powers and deprive UCs of fiscal raising resources and functions. The study illustrated that subjecting the operational framework of UCs to the vagaries and prejudices of the minister contributes to ineffective and inefficient provision of services in urban areas. The next chapter will suggest proposals that may address the identified weaknesses in the UC Act.



CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

UCs provide urban residents with basic services such as water supply, health services and waste management. Service delivery in urban areas is characterised by erratic water supply, poor waste management, and intermittent health services. The poor state of service delivery can be traced to various challenges facing UCs in the performance of their duties. This study has focused on one of these challenges, namely the extent to which weaknesses in the UC Act contribute to poor service delivery. The study was organised in five chapters. This chapter gives a summation of the findings in the study.

Chapter one gave a background to the study and identified in its statement of problem in particular, the unfettered powers of the minister, lack of clear and legally protected powers of UCs, limited fiscal powers and lack autonomy in the recruitment of senior officials as causing poor service delivery. In chapter two the study explored the available literature on ULG. It identified four essential elements recognised amongst international jurisdictions that enhance the effective and efficient delivery of services in ULG: democratically constituted institutions, administrative autonomy, well-defined and legally protected powers, adequate and devolved fiscal capacity and regulation by higher levels of government. These elements are universally acknowledged as benchmarks for creating an environment that enhances service provision in ULG effectively and efficiently.

Chapter three provided a brief overview of the historical development of ULG in Zimbabwe. Focus of the chapter was to give a description of the legal structure of UCs. The chapter focussed mainly on the weaknesses in the UC Act that inhibit the effective and efficient provisions of services. The weaknesses in the UC Act linked to poor service delivery centred on lack of legal protection and well-defined powers, limited fiscal raising powers, unfettered powers of the minister and centralised control over the recruitment of senior UCs personnel.

Chapter four analysed the specific gaps in the UC Act that relate to central regulation of UCs, powers of UCs to provide services, limited powers to generate revenue and the central interference in the appointment of UCs staff that inhibit the effective and efficient delivery of service. The chapter drew a link between the legislative gaps in the UC Act and their impact on the provision of services. The analysis relied on international benchmarks set out in

chapter two. The purpose was to see whether the ULG system in Zimbabwe meets the universally acclaimed ULG standards. The study shows that ULG in Zimbabwe falls short of meeting the universally recognised values: UCs lack sufficient and devolved fiscal powers, the powers UCs exercise to generate revenue such as local taxing, borrowing and central grants are subject to ministerial approval. The UC Act gives the minister unfettered powers over the operational framework of UCs. Again, the study shows that UCs cannot set by-laws, provide services or suspend councillors without the consent of the minister. The analysis examined that lack of legally protected and well-defined powers centralises the powers exercised by UCs. The minister may revoke UCs powers because the powers are exercised on a delegator-delegatee relationship. The study has also shown that UCs lack administrative autonomy in the recruitment of senior personnel. The lack of administrative autonomy has compromised the loyalty of senior employees to UCs.

The study examined the weaknesses in the UC Act and has shown the negative impact these weaknesses have on the efficient and effective provision of services in urban areas. The weaknesses include the lack of clear and legally protected powers of UCs, limited revenue raising powers, unfettered powers of the minister and centralised control over the recruitment of senior staff. These inadequacies impact negatively on the capacity of UCs to provide efficient and effective service provision. Of importance to acknowledge is the Constitution making process underway in Zimbabwe. It is hoped that it will adequately acknowledge the existence of local government as independent sphere of government. Also at the time of concluding this research a motion had been adopted in parliament to amend the UC Act. The rationale for initiating amendment by the legislature is to curtail the unfettered powers of the minister in order to make UCs more effective and efficient. The question then is how can these problems be addressed? There are four recommendations:

First, UCs should have constitutionally protected and well-defined powers. Constitutionally protected and well-defined powers are important in order to clarify UCs' roles for effective and efficient service provision.

Secondly, the legislative framework should guarantee UCs with sufficient revenue generating powers. Central to the continuity and efficient provision of services is the capacity of UCs to access adequate fiscal powers for revenue generation. The legislative framework should provide for both vertical and horizontal equalisation of revenue.

Thirdly, there should be a clear separation of UCs and central roles. Clarity on roles allows UCs and central government to know the extent of their powers so as to minimise interference in the UCs' functions. The role of the minister should assume a regulatory role rather than managerial one and the legislative framework should clarify the regulatory scope of central government.

Finally, UCs should have autonomy to recruit senior personnel. Local autonomy over personnel recruitment guards against central allegiance by senior personnel. Central role may be limited to the regulation of the qualification and salary scales of council's employees.



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