

UNIVERSITY OF THE WESTERN CAPE



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CONSTITUTION

KEYWORDS: Zambia's 2016 Constitution, Local Government, Local Government Finance,
Fiscal Decentralisation, Financial Capacity, Financial Autonomy, Financial Management.

DECLARATION

I, Vivien Nyawa Mithi, do hereby declare that ‘The Analysis of Local Government Finance under Zambia’s 2016 Constitution’ is my original 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 another degree or to any other institution of higher learning.

Signed.....

Date.....

Supervisor: Professor Nico Steytler

Signature.....

Date.....



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Dedication

This work is dedicated to my parents and brothers, who have always believed in me and motivated me to work hard and not give up!



Abbreviation and Acronyms

CDF Constituency Development Fund

LA Local Authority

LG Local Government

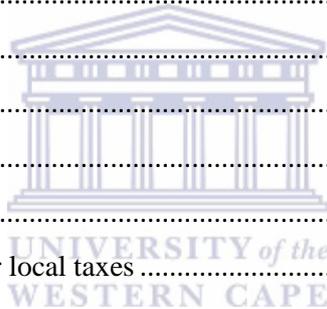
LGEF Local Government Equalisation Fund

LGES Local Government Equitable Share

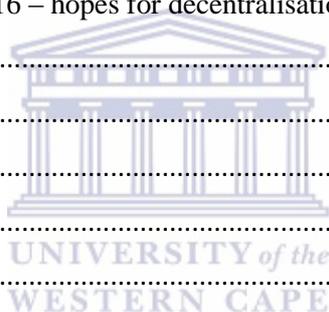
MP Member of Parliament



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CHAPTER 1

Introduction

1. PROBLEM STATEMENT

When Zambia got its independence in 1964, there was neither a constitutional reference to local government nor constitutional provisions for local government finance. However, the new Zambian government inherited a relatively stable local government finance system.¹ One year after Independence, councils operated under a new effected Local Government Act of 1965. The period 1965 to 1973 was a period of great success for local government, as it continued to enjoy stable and strong fiscal resources. Councils raised adequate own revenues from sources such as local electricity, water, housing and motor vehicle licensing.² Local government also received adequate grants from the central government which were targeted for the development of each Council.³

During the period 1973 to 1980, the financial bases of councils began to deteriorate as a result of central government decisions.⁴ Such decisions included the withdrawal of the housing grant, police grant, health grant and fire grant, among others; the 1974 Rent (Amendment) Act which restricted councils from evicting defaulting tenants, the declaration that undeveloped land had no value and was not rateable; the transfer of electricity distribution from Councils to the Zambia Electricity Supply Corporation (ZESCO), without transferring the liabilities that related to those services; and the withdrawal of long term capital funding all impacted negatively on the councils' abilities to deliver services.⁵ Local government was faced with financial inadequacy and over reliance on central government, whilst mismanagement of funds by local authorities was also rampant.⁶

¹Mung'omba Constitution Review Commission (2005) available at <http://kbwhighway.wordpress.com> (accessed on 3 June 2017).

²Chulu J 'Local Government Financing Framework: A Perspective Review of Zambian Local Governments' (2014) 1 (4) *Journal of Local Government Studies* 1-12.

³Chulu (2014) 4.

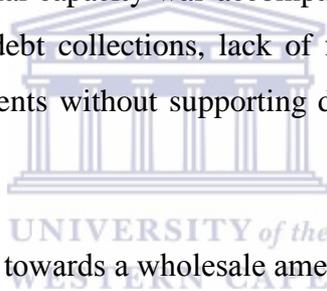
⁴Chulu (2014) 4.

⁵Chulu (2014) 5.

⁶UN-HABITAT 'Fiscal Decentralisation in Zambia' (2012) available at <http://unhabitat.org> (accessed 5 June 2017).

In 1980, the Local Administration Act of 1965 was revised.⁷ However, the financial capacity for local government continued to decline. Various central government policies and pieces of legislation were passed that either reduced the revenue base or imposed additional expenditure on the councils without corresponding measures to compensate for the revenue loss.⁸ As a result, councils faced financial difficulties and service provision also deteriorated.

The 1991 Constitution finally recognised and provided for a system of local government with a democratically elected leadership.⁹ However, it did not provide for local government finance. The Local Administration Act of 1980 was replaced by the Local Government Act (Cap 281) of 1991, and although different in some aspects the financial arrangements and provisions of the 1991 Act did not effect any change in the state of local government finance.¹⁰ Local authorities continued to undergo a significant erosion of financial capacity such that their revenue sources were inadequate to enable effective delivery of their mandated services.¹¹ The erosion in financial capacity was accompanied by financial mismanagement by the local authorities.¹² Poor debt collections, lack of financial control, purchases made without tender procedures, payments without supporting documents are all part of the poor state of financial management.¹³



In 2013, the government's efforts towards a wholesale amendment of the Constitution relived hopes for an improved system of local government finance.¹⁴ As of 2016, Zambia adopted a new Constitution which provides for a system of devolved governance, and for the first time in Zambian history local government finance was constitutionally entrenched. However, there is no assessment yet what the new constitution will mean for local government finances and the good governance of municipalities as a whole.

⁷UN-HABITAT (2012) 23.

⁸UN-HABITAT (2012) 23.

⁹Art 109 Constitution of Zambia (Amendment) Act (No.18 of 1996).

¹⁰Mukwena R 'Local Government Finance in Zambia in the Third Republic: Future and Prospects.'(2009) 24 (2) *Africanus: Journal for Development Alternatives* 58-64.

¹¹Zambian Economist 'Fiscal Decentralisation in Zambia' (2014) available at <http://www.zambian-economist.com> (accessed on 2 June 2017).

¹²Mukwena (2009) 58.

¹³Mukwena (2009) 63.

¹⁴Zambian Economist (2014).

2. SIGNIFICANCE OF THE PROBLEM

It is a fact that over the last three decades, the financial viability of local authorities in Zambia has undergone significant erosion. Poor service delivery, debt accumulation by most councils, unpaid salaries and wages, are all part of the poor state of local government.¹⁵ Although coupled with other factors, the local government financial challenges in the past can be mainly attributed to the non-existence of a sound local government financing framework.

Fifty two years after independence, local government finance has finally been provided for in the Constitution. However, it must be noted that the Constitution is only a framing document which provides direction on a range of matters, its provisions seldom give detail. Without critical interpretation of the provisions on local government finance, implications of the 2016 Constitution on local government financial matters will be difficult to translate for non-legal experts.

3. RESEARCH QUESTION

The problem statement above highlights the fact that before the 2016 Constitution, local government finance in Zambia was never provided for in the Constitution. Any issues relating to local finances were provided for in policies and legislation passed by central government. Therefore, the main research question which this study seeks to answer is ‘What will be the impact of the 2016 Constitution on the financial matters of local government?’

In seeking to answer this question, the paper will provide answers to the following sub-questions:

- What is the best practice of financial revenue and expenditure?
- What has been the practice in Zambia until now?
- What does the new Constitution say on local government financial matters and what does it mean?
- What are the implications for fiscal decentralisation?
- How does the Constitution affect current legislation and practice?

¹⁵Chulu (2014) 9.

4. ARGUMENT FOR THE RESEARCH QUESTION

The research paper argues that revenue raising responsibilities for local authorities must be matched as closely as possible to spending responsibilities so that there are better links between the benefits and burdens of public expenditure.

Before the 2016 Constitution of Zambia, various central government policies and pieces of legislation either reduced the revenue base or imposed additional expenditure on the councils without compensation for the revenue loss.¹⁶ Local authorities depended largely on central government transfers for their revenue, and in retrospect, these transfers were not predictable. The 2016 Constitution can then be said to have redeemed local government finance. It suggests a local government finance system with adequate revenue and a measure of expenditure autonomy. The significance attached to this is that the Constitution guarantees local government original and protected powers which cannot be easily removed or amended. Additionally, the constitutional provisions on local government finance are a big step towards the promotion of fiscal decentralisation because the financial responsibility for local authorities provided for in the Constitution will enhance local autonomy.

However, the 'text' of the Constitution lacks some detail and leaves room for discretion by the national government. The implications for such ambiguity may be counterproductive to local government finances and the good governance of municipalities as a whole. Further, there is no doubt that amendments have to be made to the current Local Government Act because the Constitution provides only a broad framework for local finances, to be filled in by Acts of Parliament. Through the revised Local Government Act, Parliament will give concrete shape to local government finance.

5. LITERATURE REVIEW

There is vast literature on local government finance. The leading texts focus on constitutional recognition of local government finance with regards to the shape and consequences of recognition or non-recognition. Bird *et al* note that constitutions and legislation regulate local finances along a spectrum from primarily own-source revenue to mostly transfers from the central government.¹⁷

¹⁶UN-HABITAT (2012) 33.

¹⁷Bird, R, Daflon B, Jeanrenaud C and Kirchgassner G 'Assignment of Responsibilities and Fiscal Federalism' in Blindenbacher R (ed) *Federalism in a Changing World: Learning from Each Other* (2002) 47.

In the publication on the place and role of local government in federal systems, Lazar and Seal address the place and role of municipalities in the Canadian federal system. They state that local government in Canada does not have any constitutionally based revenue-raising authority, any authority it has to raise its own revenues comes by provincial legislation.¹⁸ As a consequence, Canadian municipalities are highly tied to transfers from provinces and have limited sources of own revenue.¹⁹ Fesha and Kirkby in their article write about local government finance in African States. They note that, with the possible exception of South Africa, most local governments in Africa are hampered by limited revenue-raising powers and often miniscule tax bases.²⁰ Further, according to the UN-HABITAT most local governments in Africa have revenue-generating capacity that does not meet their decentralised spending responsibilities.²¹

In his paper on decentralisation and constitutionalism, Chigwata looks at local government finance under the 2013 Constitution of Zimbabwe. The paper discusses among other things the decentralisation of powers and responsibilities to local governments and how the Constitution envisages a sound financial base for each local government unit.²² He concludes that the Constitution guarantees local government constitutionally protected revenue-raising powers which adversely affect their ability to act independently of the centre.²³ Madhekeni also analyses local government finance in Botswana, Namibia and Zambia. However the focus in the paper is on how decentralisation has promoted constitutionalism in the three countries and not specifically an interpretation of local government financial matters.²⁴ There also exists some writing on local government finance in the South African Constitution, the principles of which influenced the Zambian constitutional text. Simeon *et al* writes about the

¹⁸Lazar H and Seal A 'Local Government: Still a Junior Government? The Place of Municipalities within the Canadian Federation' in Steytler N (ed) *The Place and Role of Local Government in Federal Systems* (2005) 27-46.

¹⁹Lazar and Seal (2005) 28.

²⁰Fesha Y and Kirkby C 'A Critical Survey of Subnational Autonomy in African States' (2008) 38 (2) *Publius: The Journal of Federalism* 248-271, 253.

²¹UN-HABITAT 'The Challenge of Local Government Financing in Developing Countries' (2015) available at <http://unhabitat.org> (accessed on 15 June 2017).

²²Chigwata TC 'Decentralisation and Constitutionalism in Zimbabwe: Can the Leviathan be Tamed?' *Paper Presented at the Fourth Stellenbosch Annual Seminar on Constitutionalism in Africa 7-9 September 2016*.

²³Chigwata (2016) 17.

²⁴Madhekeni A, 'Local Multiparty Democracy with no Right to Govern: The Conundrum of Constitutionalism in Namibia, Botswana, and Zambia' (2016) *Paper Presented at the Fourth Stellenbosch Annual Seminar on Constitutionalism in Africa 7-9 September 2016*.

South African Constitution, and how it addresses the issue of local government finance with provisions that are detailed, specific and reflective of the commitment to decentralisation.²⁵

De Visser argues that listed powers give rise to a seemingly endless range of interpretational challenges. However, laws that are incompatible with the local government's constitutional power are valid and operative for as long as they have not been set aside by the Constitutional Court.²⁶ In addition, Steytler states that the constitutional entrenchment of local government finance in the South African Constitution means that municipalities have the original revenue-raising powers of imposing rates on property and surcharges on fees for services provided by or on behalf of it.²⁷ He further adds that the significant competencies are bestowed on municipalities and protected from full encroachment by the other two spheres of government.²⁸

There is limited literature on local government finance in Zambia, with most studies focusing on the issues of local government reforms and the challenges facing local authorities. Chikulo writes about challenges of local government, how raising sufficient revenue has been and is still one of the most intractable problems facing most local authorities.²⁹ Mukwena in his paper focuses on local government legislation in Zambia. He observes that although the 1991 Local Government Act has given councils some powers to raise and generate their own revenues, few are able to take advantage of this provision due the fact that their resource base is too small to sustain their operations.³⁰ Chulu, in his articles examines the historical background of declining local government revenue in Zambia, from the time of independence in 1964 to date. He observes that generally from 1964 local government enjoyed stable strong fiscal resources and the financial position only started to deteriorate after 1972.³¹

Whilst there is vast and comprehensive literature on local government finance, there are no writings on the 2016 Constitution. Specifically, there is no writing concerning the

²⁵Simeon R and Murray C 'Reforming Multi-level Government in South Africa' (2008) 43 *Canadian Journal of African studies* 1-45.

²⁶De Visser J *Developmental Local Government: A Case Study of South Africa* (2005). 23.

²⁷Steytler N, 'Republic of South Africa' in Kincaid J and Tarr A (eds) *Constitutional Origins, Structure and Change in Federal Countries* (2005) 56.

²⁸Steytler N, (2005) 56.

²⁹Chikulo BC 'Local Government in the Third Republic' in Sichone O and Chikulo BC (eds) *Democracy in Zambia: Challenges for the Third Republic* (1996) 81-92.

³⁰Mukwena (2009) 61.

³¹Chulu (2014) 13.

entrenchment of local government finance in Zambia's 2016 Constitution and what this means. Therefore, this research aims to address a new area yet unexplored.

6. CHAPTER OUTLINE

The study will be divided into five chapters including the introductory chapter. Chapter two is a theoretical discussion of local government finance. In the discussion, reference is made to international literature on the best practice of financial revenue and expenditure, with regards to local government. Chapter three discusses the state of local government finance in Zambia before the 2016 Constitution came into effect. Chapter four discusses local government finance in the 2016 Constitution. What the provisions on local government finance say and what they mean (as interpreted by South Africa and Kenyan courts). A further analysis is done on how the Constitution affects current legislation on local government and what needs to be done to ensure that legislation is in line with the letter and spirit of Constitution. Then finally chapter five concludes the research study by providing recommendations to be instituted in order to facilitate a positive change towards the financial viability of local government in Zambia.

7. RESEARCH METHODOLOGY

This research is going to be a desktop study. Data will be gathered through a desktop methodology research where primary and secondary documents will be analysed. Primary documents will include the 2016 Constitution of Zambia, the 1991 Constitution of Zambia, Zambia's Local Government Act and other local government legislation. Secondary documents will include journal articles, books, newspaper articles and internet materials. This methodology has been chosen because the focus of the research is analysing the 2016 Constitution and its implications against best practice from different studies and current legislation.

CHAPTER 2

Local Government Finances: A Theoretical Framework

1. INTRODUCTION

Local governments around the world increasingly play key roles in the delivery of basic public services and in the provision of public infrastructure necessary for business development.³² In order to fulfil their mandate in a fiscally responsible manner, local authorities must have significant sources of own tax revenues as well as non-tax revenues collected from user charges, fees as well as borrowing which is important for financing capital infrastructure.³³ This chapter provides a framework of analysis for the concept of local government finances and further explains how they should be comprehended with regards to principles and best practices. The chapter is organised in four main parts; the first part reviews own revenue sources for local government, with specific reference to the best-suited sources of tax revenues, charges for trading services as well as borrowing for local authorities. The second part reviews the most desirable properties of intergovernmental transfers to facilitate financial adequacy. The third part describes local government expenditure and the appropriate expenditure controls. Then the last part gives conclusions.

Adequacy of own revenues is the key to both a municipality's improved ability to deliver necessary goods and services, as well as to better accountability of local officials to their constituents. Own revenues need to be complemented by intergovernmental transfers to address differences in expenditure needs and fiscal capacity across municipalities, and also for local authorities to support the implementation of central government programmes.³⁴ Local authorities also are responsible for ensuring that available revenues are collected, that resources are allocated appropriately and that procurement and service delivery processes are economical, efficient, effective and equitable.³⁵

³²Reddy S, Sing D and Moodley S *Local Government Financing and Development* (2003) 23.

³³Local Governance and Decentralisation 'Fiscal Decentralisation and Options for Donor Harmonisation' (2009) available at <http://www.u4.no> (accessed 31 August 2017).

³⁴Kee J *et al* 'Intergovernmental Revenues' in Petersen J and Strachota D (eds) *Local Government Finance: Concepts and Practices* (1991) 153-176.

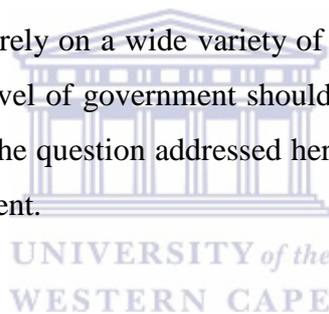
³⁵Steytler N and De Visser J *Local Government Law of South Africa* (2016) ch 14, 5-58.

2. OWN REVENUE

Tax and non-tax instruments such as charges and loans, provide a good source of own revenue for local government. The key concept is that own revenues finance services provided, enhance local discretion and uniquely offer an element of horizontal accountability of public officials to their constituents.³⁶ This accountability is fundamental to create a fiscal culture of expenditure efficiency of not wasting resources and fiscal responsibility by providing limits to an otherwise uncontrolled appetite for public spending with continuous pressure for more central transfers and/or public debt.³⁷ The international experience also shows that higher levels of fiscal autonomy at the local level is associated with improved macroeconomic stability, overall better governance and lower corruption levels.³⁸ The question, then, is which revenue sources can and should be assigned to local government, and how are the assignments to be effected.

2.1 Taxes

Different spheres of government rely on a wide variety of tax instruments available for their revenue needs. Therefore each level of government should be assigned taxes that are related to the benefits of its spending. The question addressed here is which types of taxes are most suitable for use by local government.



2.1.1 Property taxes

A property tax, based on the assessed value of all properties located in a given area, is generally regarded an appropriate tax for local authorities.³⁹ The Anglo-Saxon countries like Canada, the USA and the United Kingdom provide their local authorities with a very extensive system of property taxation.⁴⁰ A local property tax has the advantage that its base is obviously localised; there is no room for argument where the revenue should accrue; there are clear connections between the value of real estate and the municipal expenditure on local infrastructure.⁴¹

³⁶Rafuse R 'Financing Local Government' in Petersen J and Strachota D (eds) *Local Government Finance: Concepts and Practices* (1991) 9-29.

³⁷Yilmaz S *et al* Social Development Working Paper on 'Local Government Discretion and Accountability: A Diagnostic Framework for Local Governance' (July 2008) 41.

³⁸Musgrave R *The Theory of Public Finance* (1959) 117.

³⁹Musgrave R *The Theory of Public Finance* (1959) 151.

⁴⁰Martinez-Vazquez J 'Mobilizing Financial Resources for Public Service Delivery and Urban Development' in Weliwita A and Howells I (eds) *The Challenge of Local Government Financing in Developing Countries* (2015)19.

⁴¹Martinez-Vazquez (2015) 21.

Several other features make property taxes especially attractive as a local government tax like their revenue potential and stability.⁴² In addition, property tax is a visible tax and thus conducive to political accountability.⁴³ The main drawback of property tax is that, perhaps due to its visibility, it is often unpopular with taxpayers, the tax has to be collected directly from the taxpayer, making it more politically sensitive than other levies paid indirectly or deducted from salaries.⁴⁴ However, almost without exception, revenues from property tax are assigned to local governments as opposed to intermediate level or regional governments.⁴⁵ Local governments may be given some degree of discretion to vary this tax, but the agreement that this tax belongs to local governments seems well entrenched.⁴⁶

2.1.2 Betterment levies

This is another form of property taxation that takes the form of lump-sum payments exacted upfront by local government from land and housing developers and also from homeowners as a charge for public service improvements.⁴⁷ Betterment levies can be useful in providing local authorities with liquidity to invest in needed infrastructure; they also have the advantage of being more directly contractual than property taxes, therefore reinforcing the benefit effect.⁴⁸

2.1.3 Local business taxes

Best practice suggests that resident taxes should pay for services to residents and business taxes should pay for services to businesses.⁴⁹ Business taxes and business license fees are justified levies for local authorities as an indirect but administratively easier way to tax income of business owners, but acting as a benefit tax for the services and infrastructure provided by local government.⁵⁰ These levies range from several forms of broad-based taxes to operation licenses and charges.

⁴²Kee *et al* (1991) 163.

⁴³Martinez-Vazquez (2015) 22.

⁴⁴Martinez-Vazquez (2015) 22.

⁴⁵Oates W *Fiscal Federalism* (1972) 37.

⁴⁶Oates (1972) 37.

⁴⁷Bahl R and Schroeder L 'Intergovernmental Fiscal Relations' in Bahl R and Miller B (eds) *Local Government Finance in the Third World: A Case Study of the Philippines*, (1983) 83.

⁴⁸Bahl and Schroeder (1983) 83.

⁴⁹Mawhood P *Local Government in the Third World* (1983) 46.

⁵⁰Mawhood (1983) 47.

2.1.4 Rate setting authority over local taxes

Although there is no set of prescribed rules in revenue assignment, local government should at least have rate-setting authority over locally assigned taxes. To claim autonomy, local governments need to have discretion in setting the tax rate, defining the tax base, and administering the revenue collection.⁵¹ A completely local tax is one that is assessed and collected by local governments, at rates decided by and with proceeds accruing to local governments.⁵² Khumalo *et al* state that provinces and municipalities in South Africa do have some control over the tax rate they charge.⁵³ The authors state that the greater flexibility on the rate of municipal taxes allows a municipality to structure the rate of tax instruments to support social policies, cross subsidisation arrangements and unique changes in local economic conditions.⁵⁴ Nonetheless, it is important that local decisions on taxes do not compromise greater macroeconomic policies and stability or create unnecessary and destructive regional tax competition.⁵⁵

2.2 Charges for trading services

There is ample consensus that user charges and fees are also an appropriate source of revenue for local governments. A considerable array of services are amenable to being financed with user charges and fees, including water and sewerage, electricity, parking, garbage collection and parks.⁵⁶ Additionally, user fees can be charged to cover the public costs of registration and monitoring of a wide range of activities including business establishment, real estate titling and registration, and driving permits.⁵⁷ Apart from economic efficiency of charges, from a political economy perspective they also offer the advantage of not directly competing for any tax base with central governments; and therefore central authorities tend to be much more generous in granting autonomy to local government to set charges and fees.⁵⁸

⁵¹World Bank, Local Government Discretion and Accountability: A Local Governance Framework. Economic and Sector Work Report No. 40153(2008) 51.

⁵²World Bank (2008) 51.

⁵³Khumalo B, Dawood G and Mahabir J 'South Africa's Intergovernmental Fiscal Relation' in Steytler N and Ghai YP (eds) *Kenya-South Africa Dialogue on Devolution* (2015) 201- 226.

⁵⁴Khumalo *et al* (2015) 207.

⁵⁵Khumalo *et al* (2015) 207.

⁵⁶Bird R 'Intergovernmental Fiscal Relations: Universal Principles, Local Applications' Working Paper 00-02 (2000) 26.

⁵⁷Bird (2000) 26.

⁵⁸Rafuse (1991) 19.

2.3 Borrowing

Local authorities that have the capacity to repay loans should be authorised to raise revenue through borrowing.⁵⁹ Borrowing assists local authorities/councils that may usually face difficulties in raising sufficient revenue to meet their obligations and development needs.⁶⁰ However, Mawhood suggests that extreme caution should be taken when designing the fiscal aspects of local government borrowing so as to avoid any negative implications on macro-economic stability.⁶¹

2.3.1 Importance of access to financial markets

There are three primary reasons why access to financial markets is considered important for local government: First, local authorities often have responsibility for public investments that are lumpy in nature, financing such capital investment through increases in current taxes would be inefficient.⁶² Secondly, within a particular fiscal year, expenditures incurred and tax intake may not be fully in synchrony, therefore access to financial markets offers an opportunity to smooth out such mismatches.⁶³ Then finally, for fostering political accountability: The pricing of capital by markets may provide an independent mechanism for fostering political accountability.⁶⁴ Markets may signal the poor performance of councils or local authorities through increases in interest rates or simply by blocking access.⁶⁵

2.3.2 Mechanisms for accessing capital markets

The main channels that exist for access to capital markets for local government includes: Direct borrowing by central government and on-lending to local government; through a public intermediary, a state-owned financial institution, then finally via direct borrowing from capital markets, banks and other private sources.⁶⁶ Khumalo *et al* argue that to have true autonomy local government should have the flexibility to seek debt financing from the most appropriate sources, including the private sector as their first choice.⁶⁷ Loans from the national government should be preferred only if private lenders are not able to provide better financing.⁶⁸

⁵⁹Bahl (1983) 48.

⁶⁰Bahl (1983) 48.

⁶¹Mawhood P *Local Government in the Third World: The Experience of Tropical Africa* (1983) 33.

⁶²Musgrave (1959) 54.

⁶³Musgrave (1959) 54.

⁶⁴Musgrave (1959) 55.

⁶⁵Musgrave (1959) 55.

⁶⁶Bahl (1983) 63.

⁶⁷Khumalo *et al* (2015) 209.

⁶⁸Khumalo *et al* (2015) 209.

2.3.3 Regulatory framework for local government borrowing

Many central governments limit, control, or even prohibit the issuance of debt by local governments, however, such restrictions on borrowing limit local discretion in addressing investment needs.⁶⁹ Literature suggests that local borrowing should not be prohibited entirely, but instead measures can be implemented to limit excessive borrowing. Some of the rules used in international practice to limit borrowing at the subnational level include: The Golden Rule, which states that borrowing proceeds can be used only for capital investment purposes, or put differently: no borrowing or credit proceeds can be used to finance current expenditures.⁷⁰ Also, borrowing in any year cannot exceed a certain per cent of local revenues in that year.⁷¹ Further, expenditures on debt service (interest and repayment of principal) must not exceed a certain percentage of local revenues in any year.⁷²

Conversely, limiting borrowing by local spheres of government ensures that the national government is in a better position to maintain macroeconomic stability.⁷³ It also reduces the risk that national government may fail to bail out municipalities should they default on their debts. Overall, a well-designed regulatory framework is necessary to ensure that the decentralisation of borrowing does not provide unreasonable incentives for excessive lending by markets and excessive borrowing by subnational governments which may eventually end up as liabilities of central authorities.⁷⁴

2.3.4 Foreign borrowing

Many studies have shown that countries with a local government system do not grant local authorities access to international markets but rather limit their borrowing to local markets.⁷⁵ The inflows and outflows of foreign capital in and out of an economy significantly affect the appreciation and depreciation of a country's currency as foreign exchange reserves are affected.⁷⁶ Therefore, borrowing by local government from foreign sources is prohibited in order to limit instabilities created by capital flows.

⁶⁹Local Governance and Decentralisation (2009).

⁷⁰Local Governance and Decentralisation (2009).

⁷¹Local Governance and Decentralisation (2009).

⁷²Public Expenditure and Financial Accountability 'Public Financial Management Performance Measurement Framework' (2005) available at <http://www.pefa.org> (accessed on 31 August 2017).

⁷³Smith B 'The Measurement of Decentralisation' (1979) 45 (3) *International Review of Administrative Sciences* 214-222.

⁷⁴World Bank (2008) 63.

⁷⁵Martinez-Vazquez (2015) 31.

⁷⁶Martinez-Vazquez (2015) 61.

3. INTERGOVERNMENTAL TRANSFERS

In many fiscally devolved systems, the sharing of taxing powers is unlikely to result in local government raising enough revenue to fund their operations.⁷⁷ National government will mobilise significant revenue as it usually controls high yielding taxes. Local government on the other hand is unlikely to raise an equal amount of financial resources due to varying levels of fiscal capacity and efficiency, among other reasons.⁷⁸ A balanced system of intergovernmental transfers to complement local revenue-raising efforts is therefore required for a number of reasons, namely to: Equalise; ensure financial sustainability at the local level, influence local priorities in areas of high national but low local prioritisation, compensate benefit spill-overs and address equity concerns.⁷⁹

3.1 Characteristics and design of intergovernmental fiscal transfers

According to Bahl and Schroeder, the most appropriate form of transfers depends in large part upon its objective.⁸⁰ Regardless of the particular design, however, experience demonstrates that good intergovernmental transfer programs have certain characteristics in common. These characteristics are explained below.

3.1.1 Transparency

The manner in which fiscal resources are shared and distributed vertically and horizontally should be and should be seen to be transparent.⁸¹ Transparency in financial equalisation may be promoted by creating simple predetermined rules of sharing resources across and within levels of government.⁸² Formula-based allocations both for the vertical and horizontal dimensions are often regarded as the most appropriate component of a transparent intergovernmental fiscal system.⁸³

3.1.2 Predictability

A sound system of intergovernmental relations requires that intergovernmental fiscal transfers, especially unconditional grants, be predictable.⁸⁴ Conditional grants should be kept reasonably stable from year to year so that local authorities can properly plan their budgets.⁸⁵

⁷⁷Shah A *Fiscal Decentralisation in Developing and Transition Economies: Progress, Problems and the Promise* (2004) 22.

⁷⁸Shah (2004) 23.

⁷⁹Shah (2004) 25.

⁸⁰Bahl (1983) 52.

⁸¹Shah A *The Reform of Intergovernmental Fiscal Relations in Developing and Emerging Market Economies* (1994) 45.

⁸²Shah (1994) 45.

⁸³Shah (1994) 45.

⁸⁴Litvack J, Ahmad J and Bird R *Rethinking Decentralisation in Developing Countries* (1998) 13.

3.1.3 Equity

Intergovernmental fiscal transfers have two main dimensions: namely, horizontal and vertical equalisation. Horizontal imbalances can be caused by differences in local economic activity, wealth or resource endowments; or due to differences in expenditure needs.⁸⁶ Vertical imbalances on the other hand arise when the revenue sources assigned to each level of government do not broadly correspond to their assigned expenditure responsibilities.⁸⁷ Therefore, the design of the intergovernmental grants should ensure that funds which are allocated and distributed to local government vary directly with fiscal need factors and inversely with the taxable capacity of each jurisdiction to advance equity.⁸⁸ This will result in poor jurisdictions receiving more discretion to spend intergovernmental grants relative to wealthier jurisdictions.

3.1.4 Flexibility

It is necessary to balance the competing principles of transparency, predictability, simplicity and equitability, on the one hand, and flexibility, on the other. An intergovernmental fiscal system ought to be flexible to accommodate changes in the political and socio-economic environment.⁸⁹ Conversely, creating a completely ad hoc system of intergovernmental fiscal relations undermines transparency. Flexibility may be achieved if basic components of the intergovernmental system as opposed to the actual division of revenue are constitutionally recognised, then detailed provisions relating to actual division of revenue should be captured in ordinary legislation.⁹⁰

3.1.5 Participation of local government

The sharing of revenue between the national and local government has significant implications for local government. Therefore, the question of how much scope local government has to influence revenue sharing is vital. The UN-Habitat suggests that national legislation and, where possible, the constitution, should guarantee the participation of local government in framing the rules governing the general sharing of nationally generated

⁸⁵Litvack *et al* (1998) 13.

⁸⁶Kee *et al* (1991) 167.

⁸⁷Bird (2000) 34.

⁸⁸Litvack *et al* (1998) 14.

⁸⁹Shah (1994) 46.

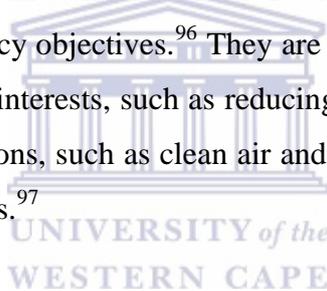
⁹⁰Shah (1994) 46.

financial resources, including vertical and horizontal equalisation.⁹¹ This allows local government to influence the vertical and horizontal sharing of financial resources.⁹²

Without its involvement in the executive processes that determine revenue sharing, the interests of local government are likely to be alienated or receive secondary attention.⁹³ Local government may influence revenue sharing if it is represented in executive intergovernmental structures that determine revenue sharing or in the legislative arm which passes the revenue and expenditure bills, or both structures.⁹⁴

3.2 Other transfers

Central governments typically also play a supporting role for local government through the implementation of conditional grants, which are funds transferred with strings attached.⁹⁵ Local authorities can only use the funds according to the conditions attached to them, thus limiting their autonomy. Tied or specific grants, as they are also called, are used for example to ensure the provision of minimum standards of service for delegated functions and also to achieve national government policy objectives.⁹⁶ They are also used for other specific needs, in some ways reflecting national interests, such as reducing poverty or addressing significant spill over effects across jurisdictions, such as clean air and water, inducing local government to increase spending in those areas.⁹⁷



4. EXPENDITURE

The decentralisation of resource-raising powers by itself is unlikely to be enough for local government to assist in the realisation of development, democracy and sustainable peace. In addition to resource-raising powers, local government should be given the power to spend revenue. Fiscal decentralization requires assigning public services that have high local-public-good characteristics to local government.⁹⁸ Devolving expenditure responsibilities to local government is an important step in increasing the participation of citizens in local

⁹¹United Nations Human Settlement Programme (UN-Habitat) 'International Guidelines on Decentralisation and the Strengthening of Local Authorities' (2007) 9.

⁹²UN-Habitat (2007) 9.

⁹³UN-Habitat (2007) 9.

⁹⁴Shah (1994) 51.

⁹⁵Kee *et al* (1991) 168.

⁹⁶Kee *et al* (1991) 170.

⁹⁷Kee *et al* (1991) 170.

⁹⁸Litvack *et al* (1998) 23.

decision-making.⁹⁹ However, national government should retain the power to set expenditure frameworks to influence local spending to achieve national goals such as equity.¹⁰⁰

4.1 Expenditure assignment

It is important to clarify where local governments can determine the allocation of expenditures themselves versus those where the centre mandates expenditures and local levels simply execute those expenditures.¹⁰¹ In practice, however, the extent and nature of decision-making power exercised by lower tiers varies widely from country to country.¹⁰² Despite the complexity of the existing situation in many countries, both theory and experience suggest strongly that it is important to state expenditure responsibilities as clearly as possible in order to enhance accountability and reduce unproductive overlap, duplication of authority, and legal challenges.¹⁰³

4.1.1 Expenditure autonomy

In very general terms, the sense of expenditure autonomy is the right and the ability of local governments to manage public property and funds in the interest of the local community.¹⁰⁴ Therefore, first, local expenditure autonomy means budget autonomy, which is the freedom to decide which goods and services shall be financed from the local public budget and how much money shall be spent on each of them.¹⁰⁵ Local government budgets should not be subjected to the approval of higher levels of government before they are considered final. The threat of rejection of local budgets diminishes budget autonomy of local decision-makers. Second, expenditure autonomy also includes the freedom to decide how these goods and services shall be produced or delivered.¹⁰⁶ Autonomy also implies the ability of the local government to implement the decisions. Fessha and Kirkby state that detailed central control over local use of funds is seldom appropriate; instead, what is needed is transparency and accountability to local constituencies supported by strengthened higher level monitoring and reporting of local fiscal performance.¹⁰⁷

⁹⁹Local Governance and Decentralisation (2009).

¹⁰⁰Local Governance and Decentralisation (2009).

¹⁰¹Martinez-Vazquez (2015) 34.

¹⁰²Martinez-Vazquez (2015) 34.

¹⁰³Martinez-Vazquez (2015) 36.

¹⁰⁴Martinez-Vazquez (2015) 51.

¹⁰⁵Fessha (2008) 26.

¹⁰⁶Fessha (2008) 26.

¹⁰⁷Fessha (2008) 27.

4.1.2 Expenditure controls

In their book on *Local Government Law of South Africa*, Steytler and De Visser state that local government has a mandate to ensure the provision of services to communities in a sustainable manner, therefore, the prudent use of its financial resources is imperative.¹⁰⁸ Without careful management of municipal funds the delivery of services is unlikely to be sustainable. The authors explain that best practice would be for the Constitution and national legislation to prescribe measures of ensuring both transparency and expenditure control for local authorities.¹⁰⁹ This can be achieved by introducing generally recognized accounting practices, uniform expenditure classifications and uniform treasury norms and standards. The authors further describe the basic principles of sound government expenditure in accordance with national legislation. Firstly, expenditure must be planned and authorized in the municipal budget.¹¹⁰ Secondly expenditure must be incurred following the correct procedures, then thirdly, financial resources must be productively applied, eschewing wasteful and fruitless expenditure.¹¹¹ Overall, a detailed procedural framework is inevitable to ensure that appropriate and sound decisions are made with regard to expenditure.

4.2 Budget process

With regard to the budget process for local government, Sprecher explains that the structure of the budget law needs to be consistent with the preferred structure of fiscal decentralisation in the country.¹¹² Where local governments are to be given greater autonomy, greater accountability is often a prerequisite.

Budget laws can prescribe transparent procedures for budget formulation and discussion at the local level. Posting budgets, voting on or public debate of budgets, and periodic budget reviews at the local level are usually important aspects of this type of law.¹¹³ Sprecher further states that the budget law may prescribe how, within central government regulations, local budgets will be developed, presented to central government authorities, and included in the central-government budget yet giving local authorities a level of autonomy in the actual budget process.¹¹⁴

¹⁰⁸Steytler N and De Visser J *Local Government Law of South Africa* (2016) ch 14, 5.

¹⁰⁹Steytler and De Visser (2016) ch 14, 5.

¹¹⁰Steytler and De Visser (2016) ch 14,11.

¹¹¹Steytler and De Visser (2016) ch 14,10.

¹¹²Sprecher L 'Operating Budgets' in Petersen J and Strachota D (eds) *Local Government Finance: Concepts and Practices* (1991) 45-65.

¹¹³Sprecher (1991) 48.

¹¹⁴Sprecher (1991) 50.

Budget autonomy means that local government has a certain measure of discretion to determine expenditure choices.¹¹⁵ The degree to which local authorities have control over their own revenues and intergovernmental grants is important for development and, in particular, for adjusting the mixture of services to closely match local preferences. Local budgets should not be subjected to the approval of higher levels of government before they are considered final.¹¹⁶ The threat of rejection of local budgets diminishes budget autonomy of local decision-makers. Budget autonomy may be enhanced if a significant amount of transfers from higher levels of government is unconditional, although the achievement of certain national goals such as equity may require substantial conditional transfers.¹¹⁷

4.3 Procurement

The council collects money from the public to provide public goods and services. In order to provide the public goods and services, the council would (normally) also procure vast amounts of goods and services such as stationery, bitumen, electrical fittings, medicines, consultancy, motor vehicle spares. In line with concepts of value for money, optimising the value obtained for the money used and transparency, procedures are normally put in place for standardising the processes of procuring the goods and services.¹¹⁸ Normally these procedures would have limits, with different levels of authority to procure given to different offices and groups.¹¹⁹ A major purpose for elaborating these procedures is to protect public resources and public officers in the pursuance of their functions by establishing the necessary framework for conducting the activity of purchasing goods and services for the councils.¹²⁰

Expanded mandates and responsibilities for new services require that local governments be endowed with discretion over processes for procuring goods and services, including service or management contracts, leases, concessions, or joint ventures.¹²¹ This in turn requires flexibility in the procurement laws and regulations and high-quality employees well trained in public procurement, ethics, and contract management.¹²²

¹¹⁵Bahl R 'Fiscal Decentralisation as a Development Policy' *Public Budgeting and Finance* (1999) 59-75.

¹¹⁶Bahl (1999) 61.

¹¹⁷Bahl (1999) 61.

¹¹⁸Steytler and De Visser (2016) ch 14, 10.

¹¹⁹Steytler and De Visser (2016) ch 14, 11.

¹²⁰Steytler and De Visser (2016) ch 14, 11.

¹²¹Yilmaz (2008) 61.

¹²²Yilmaz (2008) 61.

Such flexibility and discretion imply that, under national standards and guidance, local governments can develop procurement strategies, identify associated processes, and issue contracts for goods and services.¹²³ Discretion in procurement processes requires clearly stipulated rules set by national laws and regulations mandating that all local governments adopt an annual procurement policy defining how local governments manage purchases and contracts.¹²⁴

5. CONCLUSION

From a theoretical perspective local governments must have available significant sources of own tax revenues with the most appropriate being property taxes, and non-tax revenues in the form of user charges and fees. Adequacy of own revenues is the key to an improved ability to deliver needed goods and services and to a better accountability of local officials to their constituents. In addition, the most desirable form of autonomy for local government is to allow elected authorities to set the tax rates of the selected taxes. Further, borrowing is an appropriate source for financing subnational government capital investment responsibilities. Disciplined access to borrowing should be controlled through strict borrowing regulations. Furthermore, no design of a decentralized finance system ever reaches a perfect balance between expenditure assignments and revenue assignments, thus the need for intergovernmental fiscal transfers. However, intergovernmental transfers should be based on the prescribed good principles for transfers. Finally, given that local government has the mandate of providing services to the community, the prudent use of its financial resources is imperative. Best practice would be the existence of constitutional laws or national legislation that prescribes measures to ensure both transparency and expenditure control for local authorities.

¹²³Local Governance and Decentralisation (2009).

¹²⁴Local Governance and Decentralisation (2009).

CHAPTER 3

Local Government Finance in Zambia before the 2016 Constitution

1. INTRODUCTION

The problem statement highlighted the fact that it has taken so many years to undertake a comprehensive assignment of revenues and expenditures to local authorities in Zambia because of non-existence of a sound local government financing framework. However, as of 2016, Zambia adopted a new Constitution which provides for local government finance. Before the discussion on how the 2016 Constitution of Zambia has provided for local finances, this chapter seeks to appreciate the background of local government financing in Zambia and to provide a picture of the different stages it has passed through from 1964 to when the 2016 Constitution came into effect.

The first part gives an overview of own revenue sources for local authorities and how they gradually deteriorated with the passing of various central government policies during the different political periods. The second part elaborates the development of erratic central government transfers to local authorities. The third part focuses on local government expenditure. It highlights the challenges faced by local authorities with regards to: fiscal imbalances; financial mismanagement; lack of budget approving powers; and procurement. Then finally the chapter ends with conclusions.

1.1 Local government reforms

Since independence in 1964, local government in Zambia has undergone several reforms, and these can be divided into four main political periods: from 1964 to 1972; 1973 to 1980; 1981 to 1990 and 1991 to 2016. The different periods will now be elaborated in detail below so as to give an understanding of what transpired with local government finances during each political era.

1.1.1 First period: 1964-1972 – in the aftermath of independence

When Zambia got its independence in 1964, there was neither a constitutional reference to local government nor constitutional provisions for local government finance. However, the new Zambian government under the United National Independence Party (UNIP) inherited a

relatively stable local government finance system.¹²⁵ One year after Independence, councils operated under a new enacted Local Government Act of 1965, which provided for a system of local government in a multi-party environment. The period 1965 to 1973 was a period of great success for local government, as it continued to enjoy stable and strong fiscal resources. Councils raised adequate own revenues from sources such as local electricity, water, housing and motor vehicle licensing.¹²⁶ Local government also received adequate grants from the central government which were targeted for the development of each Council.¹²⁷ However, Zambia's new government UNIP found the inherited local government structures unsuitable for meeting its political and economic objectives, and concluded that administrative reforms were necessary.¹²⁸ In 1972, Zambia was declared a one-party state, which meant that no other party apart from UNIP, could exist, and the UNIP government retained power in the 1973 elections.¹²⁹

1.1.2 Second period: 1973-1980 – one party rule

During the period 1973 to 1980, the first years after the establishment of one party rule, the financial bases of councils began to deteriorate as a result of central government decisions which will be later explained in detail. However, such decisions included: the withdrawal of the housing grant; the health grant; the Rent Act which restricted councils from evicting defaulting tenants; and the transfer of electricity distribution away from Councils. These decisions impacted negatively on the councils' ability to deliver services.¹³⁰

1.1.3 Third period: 1980-1990 – local government become local administrations

In 1980, the Local Government Act of 1965 was revised and replaced by the Local Administration Act of 1980. The change from Local Government to Local Administration in 1980 was intended to be a focus on the supremacy of the 'One Party State' of the country.¹³¹ Under this Act, party and government functions were merged and additional offices created

¹²⁵The Mung'omba Constitution Review Commission (2005) available at <http://kbwhighway.wordpress.com> (accessed on 3 June 2017).

¹²⁶Chitembo A 'Local Government Finance' in Local Government Association of Zambia (ed) *50 Years of Local Government in Zambia* (2014) 33.

¹²⁷Chitembo (2014) 33.

¹²⁸Chulu J 'Local Government Financing Framework: A Perspective Review of Zambian Local Governments' (2014) 1 (4) *Journal of Local Government Studies* 1-12.

¹²⁹Chulu (2014) 9.

¹³⁰UN-HABITAT 'Fiscal Decentralisation in Zambia' (2012) available at <http://unhabitat.org> (accessed on 5 June 2017)

¹³¹Chulu (2014) 6.

in councils without additional financing.¹³² The 1980 Act allowed central government to transfer functions to local government, but these responsibilities were not accompanied by matching resources.¹³³ As a result, councils faced financial difficulties and service provision also deteriorated.¹³⁴ However, because of political and economic pressure following the end of the cold war, in 1990 the UNIP government was forced to reintroduce multi-party politics in Zambia.¹³⁵

1.1.4 Fourth period: 1991 to 2016 – hopes for decentralisation under multi-party rule

Following the reintroduction of multi-party democracy in 1990, UNIP lost the 1991 elections to the opposition Movement for Multiparty Democracy (MMD). The MMD amended the Constitution, making provision for a system of democratically elected local government.¹³⁶ However, the Constitution did not specify the elected councils' powers and functions. Local government was thus democratically guaranteed but its powers and functions had to be determined by an Act of Parliament. The Local Administration Act of 1980 was then replaced by the Local Government Act (Cap 281) of 1991 and it is the Act that has governed local government in Zambia up until 2016. The enactment of the Act initiated the process to de-link local administration from the central government and convert it into a fully-fledged autonomous local government.¹³⁷ However, although different in some aspects the financial arrangements and provisions of the 1991 Act did not effect any change in the state of local government finance. Under this Act, local authorities continued to undergo a significant erosion of financial capacity. This included: the transfer of motor vehicle licensing function from councils to the Road Traffic Commission (RTC) and the presidential directive for sale of council housing units to sitting tenants.¹³⁸ The erosion in financial capacity was accompanied by financial mismanagement by the local authorities. Poor debt collections, lack of financial control, purchases made without tender procedures and payments without supporting documents were all part of the poor state of financial management.¹³⁹ In 2011 the MMD lost national elections to the opposition Patriotic Front (PF). In 2016, the PF Government adopted a new constitution which provides for a system of devolved

¹³²Zambian Economist 'Fiscal Decentralisation in Zambia' (2014) available at <http://www.zambian-economist.com> (accessed on 2 June 2017).

¹³³Zambian Economist (2014)9.

¹³⁴Zambian Economist (2014) 11.

¹³⁵UN-HABITAT (2012) 21.

¹³⁶Art 109 Constitution of Zambia (Amendment) Act (No.18 of 1996).

¹³⁷Zambian Economist (2014) 15.

¹³⁸Mukwena R 'Local Government Finance in Zambia in the Third Republic: Future and Prospects.'(2009) 24 (2) *Africanus: Journal for Development Alternatives* 58-64.

¹³⁹Mukwena (2009) 63.

governance, and for the first time in Zambian history local government finance is constitutionally entrenched.

2. OWN REVENUE SOURCES

As alluded to, over the past years, local authorities in Zambia have undergone significant erosion of financial capacity, such that their revenue sources are inadequate to enable the effective delivery of their mandated services. The decline in the councils' revenue generation capacity is mainly attributed to central government's decisions or actions over the different political periods as will be elaborated below.

2.1 Taxes

During the first period after independence (1964-1972), the main taxes collected by local authorities came from property and land rates (property tax). This revenue covered about 90 per cent of own revenue sources for most councils,¹⁴⁰

2.1.1 Property rates

Property rates were local taxes charged on property and land by local authorities to pay for services they provided within the boundaries of the city or town. From 1965 rates ranked as top sources of own revenue for most local authorities in Zambia.¹⁴¹ However in 1975 after the declaration of a 'One Party State' by UNIP, central government implemented a zero rating of land;¹⁴² land was declared as having no value and therefore could not be rated.¹⁴³ This was a considerable amount of revenue loss considering that rates represented the biggest source of local revenue for most councils. In addition to the zero rating land policy, a Rating Act was passed in 1976 which exempted government from paying rates; instead local councils would be given grants in lieu of rates.¹⁴⁴ The problem arose when the government decided what to pay and many a times paid less than what was expected by local councils.¹⁴⁵

This trend continued after the reintroduction of multiparty democracy. During the MMD era, the Rating Act of 1997 was passed which increased the categories of 'exempt' property and

¹⁴⁰UN-HABITAT (2012) 16.

¹⁴¹Chitembo (2014) 74.

¹⁴²Chitembo (2014) 74.

¹⁴³Chitembo (2014) 83.

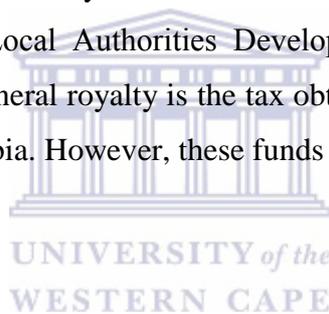
¹⁴⁴Hoffman B and Gibson C 'Fiscal Governance and Public Services: Evidence from Tanzania and Zambia' (2005) available at <http://www.sscnet.ucla.edu> (accessed on 23 June 2017).

¹⁴⁵Hoffman and Gibson (2005)21.

therefore reduced the number of properties on which rates could be levied.¹⁴⁶ The Rating Act reduced categories of rateable properties and exemptions were given to many institutions. After this decision, the MMD government, like UNIP did before, indicated that grants would be given to local government to compensate for the revenue lost as a consequence of the Act.¹⁴⁷ However, councils rarely received the grants in lieu of such rates, and their revenue was thus reduced.¹⁴⁸

2.1.2 Local shares tax share

In 1987, government under UNIP made a policy announcement in terms of which the local sales tax (which initially was 100 per cent central government tax) was to be shared between central government and local government at the rate of 65 per cent to 35 per cent, respectively.¹⁴⁹ However this policy had not been implemented from the time it was enacted. The Local Government Association of Zambia (LGAZ) periodically followed up on the matter without much result until the year 2013 under the PF government when central government provided for the ‘Local Authorities Development Fund’ which is a mineral royalty tax sharing system.¹⁵⁰ Mineral royalty is the tax obtained by central government from all the mining companies in Zambia. However, these funds were disbursed at the discretion of central government.



2.1.3 Flat rate tax

For rates to be determined and collected on any property, the property had to be registered on the valuation roll. However, the property valuation process, prescribed by the Rating Act of 1997 and done by a central government department, was cumbersome and took years to be updated. Therefore in the year 2000, local authorities introduced a flat rate tax to capture new properties which were not yet on the valuation roll pending their subsequent inclusion on the rolls.¹⁵¹ After approving the flat rate tax by-laws for several local authorities, the Ministry in 2004 declared the by-laws illegal claiming that they were a derogation (not consistent with) of the Rating Act of 1997.¹⁵² Even after declaring the flat rate tax illegal, there was no

¹⁴⁶Rating Act No. 12 of 1997.

¹⁴⁷Chulu (2014) 5.

¹⁴⁸Chulu (2014) 6.

¹⁴⁹Chulu (2014) 8.

¹⁵⁰Chulu (2014) 8.

¹⁵¹UN-HABITAT (2012)19.

¹⁵²UN-HABITAT (2012) 21.

solution offered by central government to address the issue of out-dated valuation rolls which the flat rate tax had been introduced to resolve.¹⁵³

2.1.4 Rate setting authority

While the revenue sources for local government kept diminishing over the different political periods, there was also little local autonomy in administering them as each single one of them required approval by the Minister responsible for local government.¹⁵⁴ This approval however, as demonstrated above, was sometimes late or withdrawn after approval.

2.2 User charges and fees

From 1965 during the course of the first period, councils could impose various user charges and fees on the recipients of service from the councils.¹⁵⁵ These fees and charges were meant to at least, recover the cost of providing such services. However, just like taxes, charges on local services were equally affected by central government policies and decisions to take over local functions, as will be discussed below.

2.2.1 Rent Act

During the first period after independence, local authorities owned homes and properties which they rented out to individuals, organisations even central government.¹⁵⁶ Rent was a major source of income for local authorities. In 1972 however, the UNIP government amended the Rent Act forbidding councils to evict rent defaulters without a court order, and the consequence of this decision was an increase in default rents for many tenants.¹⁵⁷

The collection of rents by local authorities continued to be affected even after the reintroduction of the new multiparty system. In 1992 during the MMD era, central government and national politicians became reluctant in allowing councils to charge rents that were based on market values or close to those values.¹⁵⁸ This reluctance was mostly attributed to political considerations. Other problems associated with the rents were poor debt collection and reluctance (or inability) by central government ministries and departments to

¹⁵³UN-HABITAT (2012) 21.

¹⁵⁴Chitembo (2014) 83.

¹⁵⁵Zambian Economist (2014) 13.

¹⁵⁶Chikulo B C 'Decentralization Reforms in Zambia' (2014) 40(1) *Journal of Social Sciences* 26.

¹⁵⁷Chikulo (2014) 27.

¹⁵⁸Local Government Association of Zambia (LGAZ) 'Local Government in Zambia – Assessing Opportunities and Needs' 1997, available at <http://www.lgazambia.org.zm> (accessed on 17 September 2017).

pay the rents due to local authorities promptly.¹⁵⁹ The default in rent payment reduced the revenue and made it difficult for councils to offer good services to the residents.¹⁶⁰

2.2.2 Electricity undertakings

Between the period 1973 to 1980 under the UNIP government, electricity undertakings, previously managed by local authorities within their areas of jurisdictions, were transferred to the national supplier, ZESCO, without compensation to councils.¹⁶¹ This resulted in a substantive loss of revenue for local authorities, as they could not charge electricity fees and cross subsidize other services.

2.2.3 Motor vehicle licensing

From about 1978, motor vehicle licensing was an activity then carried out by local authorities on behalf of central government, which served as a good and stable revenue stream for local authorities.¹⁶² In 1993, the Ministry of Finance under the MMD government transferred the motor vehicle licensing function from councils to the Road Traffic and Safety Agency (RTSA), while the responsibility of maintaining roads remained with Councils.¹⁶³ This action resulted in loss of revenue by the councils and increased costs on the responsibility of road maintenance.

2.2.4 Sale of council houses

In March 1996, central government under the new multiparty system (MMD) directed the sale of council houses to sitting tenants at prices below the market rates.¹⁶⁴ No major assets could be created by the use of the realised funds as they were too little. The difficulties in the operating circumstances of the councils meant that most of these funds went into covering operating expenses instead of new capital acquisitions.¹⁶⁵

While the houses were sold, the establishment of housing staff were still on the payrolls of the local authorities as no financial provision was made for the separation of the staff whose functions had disappeared with the sale of houses.¹⁶⁶ Overall, the sale of council houses gave

¹⁵⁹LGAZ (1997).

¹⁶⁰LGAZ (1997).

¹⁶¹Chikulo BC 'Local Government in the Third Republic' in Sichone O and Chikulo BC (eds.) *Democracy in Zambia: Challenges for the Third Republic* (1996) 81.

¹⁶²Chikulo (1996) 81.

¹⁶³Chikulo (1996) 81.

¹⁶⁴Chikulo (1996) 41.

¹⁶⁵Chikulo (1996) 41.

¹⁶⁶Chulu (2014) 7.

rise to the loss of rent income and loss of potential capital income, which could have been raised had houses been sold near market rates, required to replace the sold property.

2.2.5 Water utilities

Just like electricity undertakings mentioned above, in 2000 in the MMD era, local authorities' water utility undertakings were transferred to commercial utilities.¹⁶⁷ The transfer was done without any compensation to councils; councils thus lost another substantive source of revenue because the transfer of the function meant that they could not collect water charges.¹⁶⁸

2.2.6 Levies

In order to survive the reduction of revenue sources, between the year 2000 to 2008 under the MMD government, business levies were introduced by councils on local business activities of all types.¹⁶⁹ These include: levies on agricultural produce of various types (crop and grain levies for instance); on collection of natural resources (caterpillar and sand levies); on types of business operations (bicycle levy in a district where bicycle taxis were the norm); and on some types of commercial infrastructure (on cellular phone communication and ZESCO electricity poles).¹⁷⁰ However, these levies were sometimes approved and then, after a while suspended by the Minister of local government.¹⁷¹ The Ministers actions were counterproductive and affected the revenue loss recovery plan for local authorities.

2.3 Borrowing

Up to the end of the 1970s under UNIP, councils were able to borrow from local financial intuitions.¹⁷² However, the developing weak financial status of most councils over the years made this source of funding rather problematic as the various lending institutions were reluctant to take the risk. After the 1991 Local Government Act, borrowing by councils was restricted to recurrent and capital budget funding at a percentage limit determined by the Minister.¹⁷³ In addition, councils were not allowed to borrow from foreign institutions unless this is done through the central government.¹⁷⁴

¹⁶⁷Statutory Instrument (SI) No. 55 of 2000.

¹⁶⁸Chikulo (1996) 53.

¹⁶⁹Chitembo (2014) 79.

¹⁷⁰Chitembo (2014) 79.

¹⁷¹Chitembo (2014) 79.

¹⁷²Hoffman and Gibson (2005) 19.

¹⁷³Hoffman and Gibson (2005) 19.

¹⁷⁴Mukwena (2009) 67.

Municipal Bonds were provided for in the various local government Acts. The Bonds have never been seriously utilised by councils in Zambia basically because central government has itself used bonds to finance its activities to the extent that there was no capacity in the economy to accommodate municipal bonds.¹⁷⁵ Further, the financial management of councils was not up to the required standard to enable investors to lend money to councils by way of bonds as most of them did not have audited accounts for considerable periods of time.¹⁷⁶

2.4 Conclusion on own revenue

After independence local government enjoyed stable and strong fiscal resources; local authorities raised 70 per cent of their income from own revenue sources and this was complimented by grants from the central government. By 2016, 90 per cent of income for local authorities depended on central government grants (equalisation fund) to support their operations. A small per cent was generated from own revenue sources such as fees from markets and buses, parking fees, trading and liquor licences and rates on property. Revenue collection from rates was poor and could not be maximised because valuation rolls for most councils are out-dated and most properties were exempted from paying rates.

3. TRANSFERS

The period 1960 to 1972 was one of the most successful for Zambian local governments with regards to transfers. During this period, they received funds from national government for support of various services, however there was little reliance on transfers as most local authorities were largely self-sufficient. The transfers were usually predictable and based on a predetermined formula.¹⁷⁷ However, after 1972 transfers to local authorities over the different political periods became sporadic. Funds released were in a few cases less than budgeted, or in a lot of cases late, and in some cases not sufficient to cover central government imposed expenses.¹⁷⁸ The bottom line, however, is that over the years local authorities have bemoaned the insufficient and unpredictable funding by central government particularly in the wake of the inability of these local councils to raise local revenue, as will be demonstrated below.

¹⁷⁵Zambian Economist 'Municipal Bonds' available at <http://www.zambian-economist.com> (accessed on 6 September 2017) 5.

¹⁷⁶Zambian Economist 'Municipal Bonds' 5.

¹⁷⁷Chulu (2014) 9.

¹⁷⁸Maipose G 'Local Government Financing in Zambia: Challenges of Decremental Budgeting, Local Capacity Building and Unfunded Mandates' in Reddy S *et al* (eds) *Local Government Financing and Development* (2003) 258.

3.1 Transfers to support basic services

As part of the 1992 budget policy measures, central government under the MMD withdrew the transfer of funds to city and municipal councils.¹⁷⁹ This was not accompanied by either a reduction in expenditure responsibilities or the allocation of new local revenue sources.¹⁸⁰ The decline in intergovernmental transfers continued post 1992. For instance, in the year 1994, aggregate transfers from the central government to local authorities amounted to K1.5 billion, which constituted only 6.7 per cent of all local authority total revenue.¹⁸¹ By the end of 1995, the transfers declined to less than 4 per cent of aggregate local authority revenues, largely as a consequence of central government's shifting of priorities.¹⁸² In 1997, the aggregate grants declined to K1.3 billion representing 3.4 per cent of all local authorities revenues.¹⁸³ By the year 2002 the transfers were down to 3 per cent of aggregate revenues of local authorities.¹⁸⁴ In addition, not only were the transfers reducing, but their disbursement also remained erratic.

3.2 Local Government Equalisation Fund

The introduction of the local government equalisation fund in 2014 by the PF government was aimed at taking care of wide variations among councils in terms of their relative local resource base and capacity to generate their own revenues.¹⁸⁵ The equalisation fund had attached conditions and was financed annually from a percentage of the total annual national revenues.¹⁸⁶ The condition attached to the grant was that 20 per cent of the funds should be invested in development projects like boreholes, market structures and fee-paying toilets, among others.¹⁸⁷ From its introduction, K587.0 million was allocated for 2015, which constituted 0.01 per cent of the total national revenue of K47.0 billion.¹⁸⁸ In 2016, K717.0 million was appropriated to the fund and this constituted 1.35 per cent of total national revenue of K53.0 billion.¹⁸⁹

¹⁷⁹Maipose (2003) 262.

¹⁸⁰Maipose (2003)262.

¹⁸¹Lolojih P K *Local Government Administration and Service Delivery in the Third Republic: A Case Study of Lusaka City Council, Choma Municipal Council and Luwingu District Council* (Unpublished PhD Thesis, University of Zambia, (2008) 51.

¹⁸²Lolojih (2008) 51.

¹⁸³Lolojih (2008) 51.

¹⁸⁴Lolojih (2008) 52.

¹⁸⁵LGAZ (1997).

¹⁸⁶LGAZ (1997).

¹⁸⁷LGAZ (1997).

¹⁸⁸National Assembly of Zambia '2015 National Budget' available at <http://www.parliament.gov.zm> (accessed on 08 November 2017).

¹⁸⁹National Assembly of Zambia '2016 National Budget'.

The disbursement of the fund to local authorities was put on hold in 2016 following failures by various local authorities to account for its use. It has been alleged that councils were imprudent in the use of the equalisation funds and failed to account for their allocated funds.¹⁹⁰ It was further alleged that the stopping of funds was because councils were using the whole amount on emoluments and not on projects that should benefit the people.¹⁹¹ Some concerns raised indicated that the stopping of funds resulted in the non-payment of salaries for council workers, as some councils entirely depended on transfers for their operations.¹⁹²

3.3 Other transfers

Central government under UNIP allocated specific grants to local councils to make it possible for them to provide certain services and to fund capital projects such as the development of new housing areas, cemeteries and so on.¹⁹³ Over the year, these have suffered the same fate as other revenue sources.

3.3.1 Housing unit grant

In 1964 just after independence, government under UNIP had undertaken to pay a unit grant per house per annum to local authorities.¹⁹⁴ The grant was introduced to be ‘utilised solely as a rent subsidy’ to cover LAs for implementing government policy of charging sub-economical rentals in their low cost housing estates.¹⁹⁵ In 1973 however, the grants were withdrawn but the rentals were not allowed to rise to compensate.¹⁹⁶

3.3.2 Health grant

The health grant existed during the first period of the UNIP era. The grant was paid for certain preventive health schemes that councils were expected to carry out, such as infectious disease control and health education.¹⁹⁷ This grant was paid on condition that the council applies to the provincial medical officer, indicating the details of expenditure that has already been spent on certain preventive health schemes.¹⁹⁸ However, this was a strain on the resources of councils in that payment was made to them after they have incurred the expenditure. The health grant was withdrawn in 1973 when the incidence of preventable

¹⁹⁰Lusaka Times ‘Government Stops Disbursement of Equalisation Fund’ August 17, 2017 available at <http://www.lusakatimes.com> (accessed on 17 September 2017).

¹⁹¹Lusaka Times (2017).

¹⁹²Lusaka Times (2017).

¹⁹³Chikulo (2014) 111.

¹⁹⁴Chikulo (2014) 112.

¹⁹⁵Chikulo (2014) 112.

¹⁹⁶Chikulo (2014) 112.

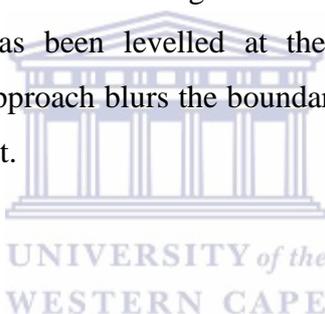
¹⁹⁷Zambian Economist (2014).

¹⁹⁸Zambian Economist (2014).

diseases was increasing, which meant that these services could not be adequately provided anymore by local authorities.¹⁹⁹

3.4 Constituency Development Fund

In 1995 the MMD government introduced a Constituency Development Fund (CDF), the purpose of which was to finance micro-community projects under the direction and auspicious of the local Member of Parliament (MP). Under the CDF, government allocates development funds on an annual basis to all constituencies under the control of the local MP. However, the CDF worked to undermine the role of local government instead of boosting local governance. Many MPs utilised the funds for projects that further their political careers to the detriment of other, more useful local projects.²⁰⁰ Since its introduction, there has been steady growth in the allocations to the CDF. For example, in 2013 K150.0 million was appropriated to CDF against K498.6 million allocated for grants to local authorities.²⁰¹ By 2016, CDF has grown to K210.0 million against K717.0 million allocated for local authorities.²⁰² Much criticism has been levelled at the existence of CDF, the leading arguments stating that the CDF approach blurs the boundaries of the distinct functions of the branches and levels of government.



4. EXPENDITURE

In addition to a decline in their revenue sources which began in the 1970s, local authorities were faced with an increase in their expenditure responsibilities. For instance, between 1980 and 1991 the functions of councils, operating under the Local Administration Act of 1980, were merged with those of the Party and additional offices were created in councils without additional financing. This trend continued after the introduction of the multiparty system. In November 2011, just after coming into power, the PF government awarded 50 per cent salary increment to all unionised workers.²⁰³ The increment in salaries was attributed to political strategies and considerations by the PF which drew support from the unions. However, this was done without any matching budgetary provisions from central government. In 2011 again, the newly created Local Government Service Commission increased LA staff by 40

¹⁹⁹Zambian Economist (2014).

²⁰⁰Mukwena (2001) 46.

²⁰¹National Assembly of Zambia '2013 National Budget'.

²⁰²National Assembly of Zambia '2016 National Budget'.

²⁰³Zambia Daily Mail 'Salary Increment for Civil Servants' available at <http://www.daily-mail.co.zm> (accessed on 17 September 2017).

per cent from about 4,400 to about 6,200.²⁰⁴ The staff increase was to a large extent, unfunded and LAs had to find the funds to pay for new staff, which in some cases included firemen where fire stations were yet to be built.²⁰⁵

4.1 Expenditure controls

Over the years (specifically from 1972) local government in Zambia has been characterised by poor financial management. Irregular production of financial statements, poor presentation of financial statements, a lack of internal audit team, unauthorised expenditure and poor debt collection, are all part of this poor state of financial management.²⁰⁶ The Local Government Act of 1991 was enacted amongst other things to address the failures by local authorities in financial management. While a good number of the financial provisions and arrangements of the Act enhanced good financial management, others had the potential to create financial constraints in the management of councils.

To ensure accountability in the use of public funds and generally enhance good financial management, the Act empowered the Minister of local government to appoint an auditor to the council for each financial year.²⁰⁷ The Act also stipulated that annual expenditure estimates must be open for inspection to the public.²⁰⁸ Therefore, those responsible for drawing up estimates would be more careful knowing that interested people will question the relevance of the expenditures. Further, the Act vested powers in the Minister to approve the opening and keeping of banking accounts for all councils.²⁰⁹ This took away autonomy/ real power from local authorities and gave more discretion to the Minister.

4.2 Budget process

Under the local Administration Act of 1980, the UNIP government under the 'One Party State' merged the party and government organs at district level to create an integrated local government structure.²¹⁰ Therefore, budgeting during this era was centralised because local government did not exist as an autonomous structure. Later, the 1991 Act, under the new multiparty system de-linked local administration from the central government and local authorities were empowered to prepare their budgets. However, the local budgets were

²⁰⁴Chitembo (2014) 96.

²⁰⁵Chitembo (2014) 96.

²⁰⁶Mukwena (2009) 60.

²⁰⁷S 46(I) Local Government Act of 1991.

²⁰⁸S 34(I) Local Government Act of 1991.

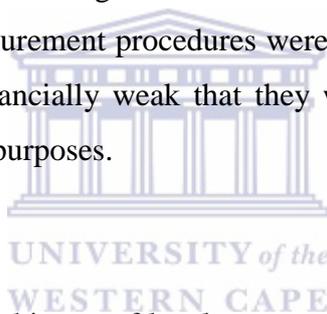
²⁰⁹S 42(I) Local Government Act of 1991.

²¹⁰Chulu (2014) 17.

subjected to final approval by the Minister of local government.²¹¹ This limited autonomy for local authorities as the minister would require various adjustments to the budgets before finally approving.²¹²

4.3 Procurement

With procurement, local government under the 'One Party State' and partly in the new multi-party era had a centralised purchasing section (normally a professional institute of purchasing and supplies) headed by a chief supplies officer.²¹³ The purpose of this section was to ensure that council purchases were always made at optimal prices and that goods and services were standardised across the country.²¹⁴ A Public Procurement Act was passed in 2008 which empowered local authorities to make their own purchases under prescribed procurement rules and procedures.²¹⁵ The General rules focussed on procurement participation, records of procurement, communication and confidentiality. However, the financial status of most councils made it difficult to purchase goods or receive any particular concessions from suppliers.²¹⁶ While therefore procurement procedures were put in place to optimise value for money, the councils were so financially weak that they were unable to take advantage of these procedures for cost control purposes.



5. CONCLUSION

Arguably, it can be stated that the history of local government finances in Zambia before the 2016 Constitution and after the first period (1965 to 1972) is one of inadequate revenue, underfunding, lack of expenditure autonomy and financial mismanagement within the councils. This situation can be attributed to the lack of constitutional recognition and autonomous fiscal powers for local government. The local government finance system in Zambia in the past years was left to operate within the provisions of an Act of Parliament, which was changed at will to suit a given political situation. It was demonstrated for example that the 1980 Local Administration Act under UNIP government, allowed government to transfer responsibilities of providing public services to councils without matching financial resources. This had a negative impact on the provision of public services by councils. Equally, the 1991 Act under the new multi-party system of the MMD had its weaknesses. For

²¹¹S 39 Local Government Act of 1991.

²¹²Mukwena (2009) 63.

²¹³LGAZ (1997).

²¹⁴LGAZ (1997).

²¹⁵Public Procurement Act of 2008.

²¹⁶Loljih (2008) 56.

instance, the Act gives the Minister many powers over democratically elected councils such as the approval of council budgets which subsequently undermined the autonomy of local authorities.

This may all be history, if the new 2016 Constitution, which for the first time in Zambian history constitutionally entrenched local government finance, can deliver fiscal and financial autonomy. The question is thus: will the new constitutional protection of local government fiscal powers have an impact on local government financial matters?



CHAPTER 4

An Interpretation of Local Government Finance Provisions in the 2016 Constitution

1. INTRODUCTION

In 2016, Zambia adopted a new constitution which among other things requires decentralisation of responsibilities and financial resources to local government. The aim of this chapter is to discuss the local government finance provisions in the 2016 Constitution.

The chapter argues that the Constitution has made some positive strides towards financially strengthening local government. The Constitution suggests a local government finance system with adequate revenue and a measure of expenditure autonomy. Additionally, the constitutional provisions on local government finance are a big step towards the promotion of financial decentralisation because the financial responsibility for local authorities provided for in the Constitution is a core component of decentralisation. However in as much as the Constitution provides for local government finance, it is further argued that the ‘text’ of the Constitution lacks some detail and leaves room for discretion by the national government.

The chapter begins by analysing the revenue raising powers of local authorities. It then analyses the intergovernmental grant system designed to complement local government’s resource-raising effort. This is followed by an examination of the constitutional provisions on local government expenditure. As there are textually great similarities between the Zambian and South African constitutional provisions, the jurisprudence developed by the latter’s Constitutional Court will be a useful guide towards interpreting the text of the Zambian provisions below. Reference is also made to the Kenyan Constitution, and concluding remarks complete the discussion.

2. OWN REVENUE SOURCES

In Chapter Two an argument was made for the decentralisation of resource-raising powers to local government to enable local authorities to raise revenue to finance their obligations. The concept given is that own revenues enhance local discretion and uniquely offer an element of

horizontal accountability of public officials to their constituents.²¹⁷ The main sources of own revenue which were identified in Chapter Two included local taxes, user-charges, licensing fees, and borrowing.

2.1 Constitutional principles on local government revenue sources

Article 151(1)(f) of the 2016 Constitution states that, ‘there is established a local government system where a sound financial base is established for each local authority with reliable and predictable sources of revenue’. Article 148(2) further states that, central government ‘shall provide adequate resources for the performance of the functions of the sub-structures’. Although these are very generalised statements, the constitutional principles provided highlight the importance which is placed on financial resources for the ability of local authorities to effectively perform their functions, as will be elaborated below.

Reliability and predictability in the provision above implies that the revenue sources established for local authorities must be stable, and not subject to arbitrary variations.²¹⁸ Local authorities must be able to know their revenue sources and the expected revenue from each source, so that they can properly plan their budgets. The ‘adequacy’ required by the Constitution entails that central government has got a constitutional obligation to ensure that local government has financial resources which are sufficient enough for the realisation of their constitutional mandate.²¹⁹ The question is however, to what extent does the Constitution guarantee local authorities access to revenue, giving content to these important principles?

2.2 Taxes

Article 161 of the Constitution states that ‘a local authority is competent to levy, impose, recover and retain local taxes, as prescribed’. Competency in this regard implies that local authorities have the power to impose or levy local taxes. However, in as much as the Constitution makes mention of local government competency with regards taxes, it also makes an additional contradictory statement “as prescribed”. This means that the local government taxing powers are not guaranteed by the Constitution but rather dependant on enabling national legislation.

²¹⁷Rafuse R, ‘Financing Local Government’ in Petersen J and Strachota D (eds) *Local Government Finance: Concepts and Practices* (1991) 9-29.

²¹⁸Litvack J, Ahmad J and Bird R *Rethinking Decentralisation in Developing Countries* (1998) 13.

²¹⁹Litvack *et al* (1998) 13.

In addition, the Constitution does not mention the actual taxes to be imposed by local authorities. The assignment of all taxes has been left for prescription through national legislation.²²⁰ Therefore local authorities have weak fiscal powers, as central government will determine and allocate appropriate taxes to local authorities. The power of local authorities to impose a tax which stems directly from the Constitution itself was described by the South African Constitutional Court as an original power.²²¹ A consequence of being an original power is that a local authority's power to impose that specific tax is not dependent on enabling national legislation, as a municipality's right to impose the tax is constitutionally guaranteed.²²²

Following the principles of tax assignment discussed in Chapter Two, local government can be assigned taxes that are non-mobile in nature such as property taxes or betterment levies. It was further argued that property tax is perhaps the most appropriate source of income for local governments.²²³ However the 2016 Constitution has not secured the levying of property rates as an original power for local government. Therefore, should there be no national legislation assigning property taxes to local government, local authorities may not impose such taxes. All taxing powers including the rating power are powers to be conferred on a local authority by national legislation. The determination of local government taxes by national legislation is contradictory to the constitutional principle of predictability described above because local authorities are not certain of their specific tax sources.

According to Steytler and De Visser, original fiscal powers provide local authorities with a measure of financial autonomy.²²⁴ Therefore, without original fiscal powers on specific types of taxes, the 2016 Constitution does not offer strong protection of the financial autonomy of local authorities. It is therefore suggested that the constitutional objective to establish a 'sound financial base' for each local authority must require the decentralisation of some lucrative taxes to the local level. National legislation should decentralise resource-raising powers capable of raising significant revenue for local authorities. This will enable local authorities to mobilise revenue required for them to carry out their objects and responsibilities which includes: ensuring that services are provided to substructures in an

²²⁰Art 161 Constitution of Zambia.

²²¹*City of Cape Town v Robertson* 2005 (3) BCLR 199 (CC) para 56.

²²²De Visser J, *Developmental Local Government: A Case Study of South Africa* (2005)162.

²²³Martinez-Vazquez J 'Mobilizing Financial Resources for Public Service Delivery and Urban Development' in Weliwita A and Howells I (eds) *The Challenge of Local Government Financing in Developing Countries* (2015)19.

²²⁴Steytler N and De Visser J *Local Government Law of South Africa* (2016) Ch 12, 3.

equitable and sustainable manner; promoting social and economic development and promoting a clean, safe and healthy environment.²²⁵ Further, resource-raising powers must be assigned together with a degree of discretion in determining taxation rates. Each local authority must be able to exercise its powers to determine rates with respect to relevant taxes and fees. This authority can be exercised within a national framework and under the supervision of national government.

2.3 User-charges and fees

It was asserted in Chapter Two that in addition to local taxes, revenue can be raised at the local level by imposing user charges on the delivery of public services such as the supply of water, electricity, and removal of refuse.²²⁶

One of the constitutional objects of local government in Zambia is to ensure the provision of services to communities.²²⁷ Annex C of the Constitution contains a list of 52 exclusive functional areas that circumscribe the scope of services local authorities may deliver, such as electricity, water and vehicle licensing.²²⁸ Therefore, through these exclusive local government functions, the Constitution implies the availability of local government powers to impose user charges and fees for services rendered. The South African Constitutional Court noted that “[a]lthough the Constitution does not specifically authorise a province to enact legislation authorising the imposition of user charges, such a power would be within the express or implied power to legislate with regard to provincial constitutional competences.”²²⁹ The original power for local authorities to impose user charges is therefore linked to the local government constitutional competences such as electricity and water undertakings, and this will serve as an additional source of revenue for local authorities. Unlike the past where these functions were provided for in Acts of parliament and later withdrawn, local authorities now have the constitutional power to charge fees and cross subsidize for the provision of these services.

²²⁵ Art 151(2) Constitution of Zambia.

²²⁶ Bird R ‘Intergovernmental Fiscal Relations: Universal Principles, Local Applications’ Working Paper 00-02 (2000) 26.

²²⁷ Art 151(2) Constitution of Zambia.

²²⁸ Annexure C Constitution of Zambia.

²²⁹ *In Re Certification of the Constitution of the Republic of South Africa*, 1996 (10) BCLR 123 (CC) para 438.

2.4 Borrowing

As illustrated in Chapter Two, traditional sources of funding from the national government and revenue from own sources of revenue like taxes or charges may not be appropriate and sufficient to meet local infrastructural investment.²³⁰ As a result, borrowing was recommended for local authorities as an alternative to the financing of capital projects. However, it was also stressed that borrowing at local government level must be regulated so as to minimise unintended effects on macro-economic stability which may be caused by uncontrolled borrowing.²³¹

Article 164(d) of the 2016 Constitution states that ‘the raising of loans, grants and other financial instruments by local authorities shall be prescribed’. The Constitution therefore does not provide original borrowing powers for local government, as the powers are constrained to be exercised only as prescribed by national legislation. In addition, the Constitution does not provide national legislation with a guiding framework for local government borrowing. In comparison to South Africa, the Constitution provides that a Municipal Council may, in accordance with national legislation– ‘raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year.’²³² Thus, the South African Constitution is explicit regarding local government borrowing as it provides a framework with guiding principles upon which national legislation will be enacted. It also provides that Parliament must regulate the borrowing power.²³³

It is therefore suggested that, national legislation regarding local government borrowing in Zambia, should be designed to allow local authorities that have the capacity to repay loans to borrow money.²³⁴ This should be accompanied by a well-designed regulatory framework to ensure disciplined financial management at the local level. However, foreign borrowing can still be prohibited for all local authorities so as avoid any negative implications on macro-economic stability.²³⁵

²³⁰Musgrave R *The Theory of Public Finance* (1959) 54.

²³¹Mawhood P *Local Government in the Third World* (1983) 46.

²³²S 230A(1) Constitution of South Africa.

²³³S 230A(2) Constitution of South Africa.

²³⁴Bahl R and Schroeder L ‘Intergovernmental Fiscal Relations’ in Bahl R and Miller B (eds) *Local Government Finance in the Third World: A Case Study of the Philippines*, (1983) 83.

²³⁵Martinez-Vazquez (2015) 31.

3. TRANSFERS

As shown in Chapter Two, where there is a mismatch between local expenditure needs and the revenue generated locally, a balanced system of intergovernmental transfers is required to complement local revenue-raising efforts.²³⁶ Revenue-sharing serves multiple objectives like bridging the fiscal gap, promoting fiscal equalisation and regional development, and stimulating tax effort at the local level.²³⁷ It was further discussed that a measure of constitutional recognition of fiscal decentralisation is necessary to provide a guaranteed source of funding for local government.²³⁸ The question then is how much detail on transfers to local government has been recognised in the 2016 Constitution?

3.1 Local government equitable share

Article 198(b)(ii) provides that ‘revenue raised nationally shall be shared equitably among the different levels of government.’ The text of this constitutional provision is analysed below.

3.1.1 Revenue raised nationally

Central government has the responsibility of collecting national wide taxes, this includes: value-added taxes (VAT); income tax; and corporate taxes. All revenue raised or received by central government is then paid into a national revenue fund.²³⁹ The national revenue fund is what constitutes the ‘revenue raised nationally’. Therefore, prior to the allocation of revenue to local authorities, nationally raised revenue may not be regarded as central government revenue even though such funds are kept in the national fund.²⁴⁰ It is only when local authorities have been given their portion of the funds that the remainder can be regarded as national government revenue.²⁴¹

3.1.2 Entitlement to share

The constitutional provision above means that local government is ‘entitled’ to the share.²⁴² The use of the phrase ‘shall be shared’ is an obligation imposed by the Constitution, which guarantees local government a portion of the funds. The South African Constitution provides a similar provision which entitles local government to an equitable share of revenue raised

²³⁶Shah A *Fiscal Decentralisation in Developing and Transition Economies: Progress, Problems and the Promise* (2004) 22.

²³⁷Shah (2004) 23.

²³⁸Shah (2004)25.

²³⁹Art 200(1) Constitution of Zambia.

²⁴⁰Art 201(1) Constitution of Zambia.

²⁴¹Art 201(1)(a) Constitution of Zambia.

²⁴²Art 198(b)(ii) Constitution of Zambia.

nationally.²⁴³ As the equitable share is an entitlement, the Constitution further provides that additional revenue raised by local authorities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue.²⁴⁴ To support this, the South African High Court noted that “local government should not be penalised for showing industry and initiative in revenue gathering”.²⁴⁵ It is therefore argued that the principle of not punishing well performing local authorities equally applies to Zambia, because the Constitution guarantees their entitlement to the share. It is further argued that the equitable share may not be allocated with any conditions. In South Africa it was found that the equitable share is an unconditional grant.²⁴⁶ Attaching conditions to the spending of the equitable share reduces local discretion and undermines local accountability.²⁴⁷ However, the spending of the equitable share by local authorities can be exercised within a national framework and under the supervision of national government. This is to ensure that local authorities use whatever share of money they receive for their constitutional and developmental mandates.

3.1.3 Equitable share

The use of the term ‘equitable’ highlights the importance which is attached to redistribution of financial resources to local authorities. Equitability means sharing relative to need, which in this case implies that, the sharing of nationally raised revenue will depend on the responsibilities which each level of government has, and the capacity of each government to pay for these functions through own revenues.²⁴⁸

3.1.4 Involvement of local government in revenue sharing

In Chapter Two it was shown that local government should have the means and mechanisms of influencing the sharing and distribution of financial resources, as it directly affects the financial sustainability for local authorities.²⁴⁹ Before the 2016 Constitution there was no involvement of local authorities in the determination of intergovernmental grants. The irregular disbursing of funds negatively affected the budgeting processes and fiscal discretion of local authorities.

²⁴³S 227(1) Constitution of South Africa.

²⁴⁴S 227(2) Constitution of South Africa.

²⁴⁵*Uthuleka District Municipality and Others v President of the Republic of South Africa and Others* 2002 (5) BLCR 479 (N) at para 17.

²⁴⁶Steytler and De Visser (2016) ch 12, 10.

²⁴⁷UN-Habitat (2007) 9.

²⁴⁸Litvack *et al* (1998) 14.

²⁴⁹UN-Habitat (2007) 9.

The 2016 Constitution however, can be said to envisage the participation of local government in revenue sharing. Article 151(1) states that, ‘there is established a local government system where co-operative governance with the national Government, provincial administration and local authorities is promoted to support and enhance the developmental role of local government’. Cooperation refers to a relationship of equality where the actors in intergovernmental relations operate as equal partners.²⁵⁰ Co-operative governance can therefore be construed to mean the need to establish mechanisms to ensure that there is regular dialogue between central and local government in matters of common interest. One area of common interest between the two levels of government is the sharing of revenue. On this basis, it can be argued that the constitutional provision above gives hope for the involvement of local government in the sharing of revenue. The division of revenue directly affects the financial capacity of local government and therefore their ability to deliver on their developmental role.

3.1.4 Criteria for sharing revenue

The criteria for revenue sharing in the 2016 Constitution is implied and guided by the Constitutional principles discussed above. These include: equitability; adequacy; and predictability. In comparison, the South African Constitution sets out similar considerations in the allocation of revenue to the subnational levels. The criteria encompass a broad range of issues which include: service delivery obligations; fiscal capacity; economic disparities; own revenue effort; and the desirability of stable and predictable allocations of revenue shares.²⁵¹ One method of ensuring predictability of local government shares is by publishing multi-year projections of funding availability.²⁵² For example, the Medium Term Expenditure Framework (MTEF) in South Africa gives provinces and municipalities predictions of amounts of intergovernmental grants they are likely to receive over a three-year period.²⁵³ Any changes in the actual amounts in each year are mitigated by a stabilisation grant.

The equitable share provided in the 2016 Constitution thus creates certainty of funding and provides guaranteed financial resources to local authorities. It is a significant departure from what was experienced in the past where intergovernmental transfers were irregular and

²⁵⁰De Visser (2005) 210.

²⁵¹S 214(2) Constitution of South Africa.

²⁵²Shah (1994) 45.

²⁵³The Medium Term Expenditure Framework ‘Provincial and Local Government Finance’ available at <http://www.treasury.gov.za> (accessed 09 November 2017)

depended on the goodwill of the national government. The sharing of nationally raised revenue will provide a sound financial base for and allow effective budgeting at the local level in accordance with the constitutional provisions.²⁵⁴

3.2 Local Government Equalisation Fund

As explained in Chapter Two, intergovernmental transfers can be an effective instrument to promote fiscal equalisation at the local level.²⁵⁵ It was later elaborated in Chapter Three that in trying to implement this purpose, central government established an equalisation fund for local authorities in 2014. The introduction of the local government equalisation fund was aimed at taking care of wide variations among councils in terms of their relative local resource base and capacity to generate their own revenues.²⁵⁶ However the disbursement of the fund to local authorities was put on hold following failures by various local authorities to account for its use.²⁵⁷

The 2016 Constitution has provided for the establishment of a Local Government Equalisation Fund. Article 163 (2) states that, ‘Parliament shall annually appropriate monies to the Local Government Equalisation Fund which shall be disbursed by the Ministry responsible for finance to local authorities’. Therefore the existence of the Equalisation Fund has been constitutionally guaranteed, and Parliament has a constitutional obligation to allocate funds for local authorities every year. However, the Constitution is silent on how appropriation of resources will be done and any other conditions attached if any.

An example of how to structure an equalisation fund can be emulated from the 2010 Kenyan Constitution. The Equalisation Fund was established in Kenya to address decades of historical marginalisation and unequal development in specific areas and communities.²⁵⁸ Article 204 sets up legal requirements and prescribes principles on the structure of the Fund. First, it creates an obligation on the national government to create an Equalisation Fund and specifies that a proportion of ‘one half per cent’ of all revenue collected by the national

²⁵⁴ Art 151(1) (f) Constitution of Zambia.

²⁵⁵ Shah (2004) 25.

²⁵⁶ Local Government Association of Zambia (LGAZ) ‘Local government in Zambia – Assessing Opportunities and Needs’ 1997 available at <http://www.lgazambia.org.zm> (accessed on 17 September 2017).

²⁵⁷ Lusaka Times ‘Government Stops Disbursement of Equalisation Fund’ August 17, 2017 available at <http://www.lusakatimes.com> (accessed on 17 September 2017).

²⁵⁸ Kinuthia J and Lakin J ‘A Fair Share of the Budget: Principles and Practices in Public Resource Distribution in Kenya’ August 2016 available at <http://www.internationalbudget.org> (accessed 31 August 2017).

government each year should be paid into the fund.²⁵⁹ Second, it prescribes the specific uses of the Fund, which is to provide basic services such as water, roads, health facilities and electricity to marginalised areas.²⁶⁰ Third, it states that the Equalisation Fund can only be disbursed through conditional grants to the marginalised communities.²⁶¹ Then lastly, it also requires the national government to establish monitoring mechanisms to ensure that the funds are spent on intended projects.²⁶² These principles can be applied to Zambia on how the Equalisation Fund should be designed.

3.3 Other transfers

Besides the equitable share and equalisation fund, Article 163(3) of the Constitution provides that ‘central government may transfer additional funds and grants to local authorities’. The use of the word ‘may’ in this context entails that additional transfers have been left to the discretion of national government, and should they decide not to make such funds available, it will not be unconstitutional. Further the Constitution does not specify whether additional funds or grants can be transferred with attached conditions or not.

A grant is conditional if conditions are used to direct the spending of the grant.²⁶³ Conditional grants are an effective tool of influencing national government policy objectives.²⁶⁴ Before the 2016 Constitution, central government allocated specific grants to local councils such as health grants, grants in lieu of rates and housing grants to make it possible for them to provide certain services.²⁶⁵ However, over the years these grants were withdrawn by central government. With the adoption of the 2016 Constitution, which recognises the need for central government to provide additional funds to local authorities, the possibility is created that the national government will allocate more financial resources to local authorities to enable them to effectively deliver on various developmental projects.

3.4 Constituency Development Fund

It was discussed in Chapter Three that in 1995, the MMD government introduced a Constituency Development Fund (CDF) for local infrastructure development in electoral constituencies. Decisions about how these funds are allocated were influenced by elected

²⁵⁹ Art 204(1) Constitution of Kenya, 2010.

²⁶⁰ Art 204(2) Constitution of Kenya.

²⁶¹ Art 204(3) Constitution of Kenya.

²⁶² Art 204(3) Constitution of Kenya.

²⁶³ Khumalo B, Dawood G and Mahabir J ‘South Africa’s Intergovernmental Fiscal Relation’ in Steytler N and Ghai YP (eds) *Kenya-South Africa Dialogue on Devolution* (2015) 201- 226.

²⁶⁴ Khumalo *et al* (2015) 215.

²⁶⁵ Chikulo B C ‘Decentralization Reforms in Zambia’ (2014) 40(1) *Journal of Social Sciences*, 26.

members of parliament (MPs). It was further explained that the existence of the CDF was criticised as having undermined the role of local authorities in local governance.

However, this parallel financial system has not been resolved, as the 2016 Constitution provides for the continued existence of CDF. Article 162 (1) states that ‘there is established the Constituency Development Fund’. It further states that ‘the appropriation of monies to the Constituency Development Fund and the management, disbursement, utilisation and accountability of the Constituency Development Fund shall be prescribed’.²⁶⁶ Now constitutionally entrenched, the CDF undermines the constitutional role of local government towards local development. Article 152(1)(b) gives local authorities the power to oversee all programmes and projects of the district. However, CDFs are in conflict with this provision, as they directly involve MPs in the distribution and application of centrally allocated funds. Further, the direct involvement of MPs is a significant break from their primary law-making and oversight roles.²⁶⁷ A major concern has been raised by scholars and civil society organisations that CDFs erode the separation of powers between the legislative and executive branches of the government. In Kenya, the Supreme Court declared the CDF unconstitutional on the basis that, it violates the division of functions between the national and county government and offends the principle of separation of powers.²⁶⁸ It is therefore argued that the CDF conflicts with some constitutional provisions on local government. It is suggested that national legislation must allocate a greater proportion of resources to local government and minimize the allocation to the CDF. This will boost the finances of local councils and enhance their role in local development as envisaged by the Constitution.²⁶⁹

4. EXPENDITURE

In addition to resource-raising powers, local government should be given revenue spending powers. However it was argued in Chapter Two that the national government should retain the power to set expenditure frameworks so as to influence local spending and achieve national goals such as equity. Article 205(f) of the 2016 Constitution states that ‘the control and disbursement of appropriated funds to local authorities shall be prescribed’. This provision suggests that central government will determine how appropriated funds will be

²⁶⁶ Art 162(2) Constitution of Zambia.

²⁶⁷ Art 62(4) Constitution of Zambia.

²⁶⁸ *Institute of Social Accountability & Another v National Assembly & 4 Others* [2015] eKLR.

²⁶⁹ Art 151(1) Constitution of Zambia

used by local authorities. Therefore the Constitution does not guarantee local autonomy over local government expenditure.

4.1 Expenditure controls

In Chapter Two it was asserted that best practice is for the Constitution and national legislation to prescribe measures of ensuring both transparency and expenditure control for local authorities.²⁷⁰ Article 198(a) of the 2016 Constitution requires transparency and accountability as one of the principles on public finance. The Constitution further leaves the financial management and regulation of public funds by local authorities to be prescribed by national legislation.²⁷¹ Therefore, in determining the expenditure framework for local authorities, the constitutional principles above must be captured in legislation to ensure that appropriate and sound decisions are made with regard to expenditure.

4.2 Budget process

The budget is the main instrument through which local authorities deliver on their responsibilities. It is a financial plan which shows how resources will be generated and used over the financial period.²⁷² It was argued in Chapter Two that the degree to which local governments are able to determine expenditure programmes is important for adjusting the mixture of services to closely match local preferences.²⁷³ It was further stated that budget autonomy suggests that senior governments do not have the power to determine expenditure programmes of local governments or have the power to approve their budgets.²⁷⁴

Article 205(c) of the 2016 Constitution states that ‘the budget preparation process for local authorities shall be prescribed’. Therefore, the preparation process of a local budget shall be determined by national legislation. Further, the 2016 Constitution is silent about the power of local authorities to adopt their own budgets. However, it does anticipate local authorities exercising legislative powers by granting them the power to make by-laws.²⁷⁵ The legislative power given to local authorities to make by-laws can thus be construed to mean the power to adopt a budget, because approval and adoption of a budget is a legislative action. The South African Constitutional Court noted that, the adoption of a budget is a legislative act and thus

²⁷⁰Steytler and De Visser (2016) ch 14, 5.

²⁷¹Art 205(a) Constitution of Zambia.

²⁷²Sprecher L ‘Operating Budgets’ in Petersen J and Strachota D (eds) *Local Government Finance: Concepts and Practices* (1991) 45-65.

²⁷³Sprecher (1991)48.

²⁷⁴Bahl (1999) 61.

²⁷⁵Art 152(1)(c) Constitution of Zambia.

not subject to administrative review.²⁷⁶ It is therefore argued that, the Constitution provides implicit powers for each local authority to adopt its own budget. In that regard, it is suggested that national legislation should set budget timeframes and provide for oversight and corrective mechanisms in cases where a local authority fails to submit a budget on time. For example, the South African Constitution mandates every municipal council to adopt a budget, and this must be done at least 30 days before the start of the budget year.²⁷⁷ If a municipality fails to approve a budget within the specified period, the Constitution provides appropriate intervention measures by the national and provincial government into the municipality.²⁷⁸ Such measures include approving a temporary budget to provide for the continued functioning of the municipality; and in serious cases, dissolving the municipality and appointing an administrator until a new municipal council is elected.²⁷⁹ Therefore, a similar approach towards council budgets can be adopted in Zambia, through national legislation.

4.3 Procurement

Article 210 (1) of the Constitution provides that ‘a State organ, State institution and other public office shall procure goods or services, in accordance with a system that is fair, equitable, transparent, competitive and cost-effective, as prescribed.’²⁸⁰ Therefore, national legislation must prescribe a framework for government procurement which must be informed by the principles prescribed in the Constitution. Section 217(1) of the Constitution of South Africa provides similar principles for government procurement as the ones stated above.²⁸¹

Article 210(1) of the 2016 Constitution can thus be interpreted similarly to the South African Constitution, from which as contended above, the Constitution of Zambia borrowed some of its principles.

The principle of competitive and cost effectiveness entails the goal of achieving value for money.²⁸² Cost effectiveness has been related to the effort required to get the best value for expenditure, while competition enables a variety of prices from services providers, thereby creating various options to assess before procuring.²⁸³ Fairness in this context relates to

²⁷⁶Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1998(12) BCLR 1458 (CC).

²⁷⁷S 160(2)(b) Constitution of South Africa.

²⁷⁸S 139(4) Constitution of South Africa.

²⁷⁹S 139(4)(a) and (b) Constitution of South Africa.

²⁸⁰Art 210(1) Constitution of Zambia.

²⁸¹S 217(1) Constitution of South Africa.

²⁸²Bolton P *The Law of Government Procurement in South Africa* (2007) 41.

²⁸³Bolton (2007) 44.

applying fairness to procurement procedures. The procedure is required to be an open and unbiased process that allows potential providers to participate according to equal rules, procedures and criteria.²⁸⁴ Equity is concerned with obtaining fair procurement outcomes, thus requiring the accommodation of disadvantaged groups.²⁸⁵ Then lastly, the system is required to be transparent. This means that all processes involved in the procurement process must be open to the public, unambiguous and easy to follow.²⁸⁶

5. CONCLUSION

From the analysis above, it can be argued that, in as much as local government finances have been entrenched in the 2016 Constitution, they have not been provided for adequately. With own revenue sources, there is weak entitlement with regards to taxes because the Constitution does not list nor specify the actual taxes to be imposed by local government. It merely provides generic fiscal powers, thus denying local authorities original power to impose taxes that do not depend on enabling national legislation.

In addition to own revenue sources, the Constitution provides a weak entitlement for local government transfers. This is because the provisions on transfers do not provide enough detail. It was contended in Chapter Two that local government transfer system should be structured in a way that creates predictability, transparency and provides a guaranteed source of funding for local government. However from the analysis above, the Constitution lacks in some aspects of best practices on transfers. Further it is argued that, the Constitution provides little financial autonomy to local government because much of the constitutional 'text' on finances has been left to be determined through national legislation. The implications which may be counterproductive to local government considering the history before the 2016 Constitution where legislation was designed to suit a given political situation and not for the benefit of local authorities.

Overall, the provisions on local government finance in the 2016 Constitution can be said to be mostly centralised as is evident from the analysis above. Therefore, what will be the impact of these provisions on the current local government law, policy and practice?

²⁸⁴Bolton (2007) 47.

²⁸⁵Bolton (2007) 50.

²⁸⁶Bolton (2007) 56.

CHAPTER 5

Concluding Analysis

1. INTRODUCTION

It was established that before the 2016 Constitution, local government finance in Zambia was never provided for in the Constitution. Any issues relating to local finances were provided for through Acts of Parliament, which were changed at will to suit a given political situation. The research question therefore focused on determining the impact of the 2016 Constitution on the financial matters of local government. It was found in Chapter Four that overall, as in many Constitutions, the provisions on local government finance in the 2016 Constitution are mostly open to centralisation, the Constitution does not protect some local government powers. This chapter thus provides the concluding analysis of the research and offers recommendations that should be considered when reforming current law on local government to bring it in line with the Constitution. The recommendations aim at giving concrete shape to the constitutional provisions on local government finances, especially given that a significant part of current legislation is inconsistent with the requirements of the 2016 Constitution. The question is whether the alignment of legislation with the Constitution is enough to adequately give effect to the local government finance system provided in the 2016 Constitution. It is further recommended that in addition to alignment, the Constitutional Court must undertake a significant role in interpretation of the Constitution. The South African Court decisions pertaining to similar constitutional provisions, could be of assistance and guidance when interpreting the Zambian Constitution.

2. OWN REVENUE SOURCES

After independence local government enjoyed stable and strong fiscal resources as 70 per cent of their income came from own revenue sources and this was complimented by grants from the central government. By 2016, 90 per cent of income for local authorities depended on central government grants and a small per cent was generated from own revenue sources. The 2016 Constitution provides local government with revenue raising powers, which includes taxing, borrowing and power to impose user charges and fees. It was argued that some of the revenue raising powers provided by the Constitution are weak because they are constrained to be exercised only 'as prescribed'. It was further argued however, that the

Constitution provides principles which highlight the importance placed on financial resources, for the ability of local authorities to effectively perform their functions. Therefore, recommendations are given below, to ensure that the Local Government Act of 1991, which is current legislation, is aligned with the 2016 constitutional provisions and principles.

2.1 Taxes

It was observed in Chapter Four that the 2016 Constitution provides local government with taxing powers but does not include specific taxes, hence the Constitution does not protect any type of local taxes, and is not in clear conflict with current legislation.²⁸⁷ Legislation permits local authorities to generate part of their own revenue from property taxes, which as earlier argued, is perhaps the most appropriate source of income for local government.²⁸⁸ However, revenue collections from rates are poor and cannot be maximised because most properties were exempted from paying rates.²⁸⁹ It is therefore recommended that, in line with the constitutional principle of adequacy, and in order to improve the local tax base, national legislation should abolish the exemption of certain property, such as state property and quasi-government institutions from paying property rates. Also, national legislation can decentralise additional taxing powers capable of raising significant revenue for local authorities, such as: betterment levies; or local business tax. This will enable local authorities to mobilise revenue required for them to carry out their objects and responsibilities which includes: ensuring that services are provided to substructures in an equitable and sustainable manner; promoting social and economic development and promoting a clean, safe and healthy environment.²⁹⁰ Furthermore, current legislation provides for the approval of all council rates by the Minister.²⁹¹ It is therefore recommended that this particular section should be abolished and resource-raising powers must be assigned to local authorities together with a degree of discretion in determining taxation rates. This is in line with the new autonomous status of local government, and the discretion will allow local authorities to structure the rate of tax instruments to support social policies, cross-subsidisation and any unique changes in local economic conditions.²⁹²

²⁸⁷ Art 161 Constitution of Zambia.

²⁸⁸ S 69(1) Local Government Act (Cap.281) of 1991.

²⁸⁹ Rating Act No 12 of 1997.

²⁹⁰ Art 151(2) Constitution of Zambia.

²⁹¹ S 70(2) Local Government Act, 1991.

²⁹² Khumalo B, Dawood G and Mahabir J 'South Africa's Intergovernmental Fiscal Relations' in Steytler N and Ghai YP (eds) *Kenya-South Africa Dialogue on Devolution* (2015) 207.

However, this authority should be exercised within a set of nationally determined policy guidelines, in order to ensure that local decisions on taxes do not compromise macroeconomic policies and stability or create destructive regional tax competition.²⁹³ The regulation includes the Ministers role to prescribe upper limits for tax rates and ratios for rates on specific social or publically important property.

2.2 User charges and fees

In Chapter Three it was demonstrated that from 1965, councils did impose various user charges and fees on the recipients of service from the councils. This included: electricity undertakings, water, motor vehicle licensing and local business levies. However, after the declaration of the 'One Party State' in 1973 and even after the reintroduction of the multiparty system, various functions were withdrawn from local government and transferred to national entities. The withdrawal of these services translated into a substantive loss of revenue for local authorities as they could not charge user fees. The 2016 Constitution however, provides local government with various exclusive functions such as water and electricity, and has guaranteed local authorities the power to impose user charges and fees for the services rendered.²⁹⁴ The local government functional areas provided in the Constitution are thus in conflict with current legislation as most of these functions are currently under the national government. It is therefore recommended that there is need for law reform which will devolve all functions provided in Annex C of the Constitution to local government. This will include, giving back to local authorities their previous function of water utility undertakings, electricity and motor vehicle licensing, which had been previously transferred to national and commercial utilities. Local authorities now have the constitutional power to provide the various services listed in Annex C and charge user fees.

2.3 Borrowing

In Chapter Three it was shown that before the 2016 Constitution, councils were permitted to borrow from local financial institutions and were only limited to borrow by their weak financial status.²⁹⁵ Further, borrowing by councils was restricted to recurrent and capital budget funding at a percentage limit determined by the Minister.²⁹⁶ The 2016 Constitution provides for local government borrowing but leaves the borrowing framework to be

²⁹³ Khumalo *et al* (2015) 207.

²⁹⁴ Annexure C, Constitution of Zambia.

²⁹⁵ S 47 Local Government Act of 1991.

²⁹⁶ Hoffman B and Gibson C 'Fiscal Governance and Public Services: Evidence from Tanzania and Zambia' (2005) available at <http://www.sscnet.ucla.edu> (accessed on 23 June 2017).

determined by legislation.²⁹⁷ Therefore, there is no conflict with current practice, as legislation currently governs the ability of local government to borrow funds. The Local Government Act restricts local borrowing to recurrent and capital expenditure, which is good in order to minimise unintended effects on macro-economic stability which may be caused by uncontrolled borrowing. However, now that the Constitution grants local government a larger revenue base and adequate revenue sources, local authorities must have a relatively greater discretion to engage in debt financing. It is therefore recommended that in order to guarantee local authorities some degree of borrowing discretion, national legislation should abolish the restriction that local authorities can borrow only the amounts specifically permitted by the Minister. However, as argued in Chapter Two, foreign borrowing can still be prohibited for all local authorities so as to avoid any negative implications on macro-economic stability.

3. TRANSFERS

It was observed in Chapter Three that the period after independence was one of the most successful for Zambian local governments with regards to transfers. During this period, they received funds from national government for support of various services. The transfers were usually predictable and based on a predetermined formula. However, the allocation of intergovernmental grants to local authorities over the different political eras became sporadic. By 2016, intergovernmental grants were transferred to local government at the discretion of the national government. The 2016 Constitution seeks to change this practice and recognises the need for intergovernmental transfers to the local level. Recommendations are therefore given below in order to align current legislation to the constitutional requirements. This will ensure that nationally raised revenue is not allocated to local government arbitrarily. Any allocations to local authorities have to be based on the principles set in the Constitution.

3.1 Local Government Equitable Share

It was discussed in Chapter Four that unlike the past, the Constitution entitles local government to an equitable share of nationally raised revenue.²⁹⁸ The Constitution further provides for the involvement of local government in the revenue sharing and provides criteria in that regard. However, current legislation is inadequate to provide the constitutional requirements for entitlement highlighted above. Recommendations are thus given below which can ensure that current legislation is aligned to the constitutional requirements.

²⁹⁷ Art 164(d) Constitution of Zambia.

²⁹⁸ Art 198(b)(ii) Constitution of Zambia.

First, it is recommended that the national government should adopt mechanisms which provide some predictability in the allocation of the equitable share to local government. This could include: publishing multi-year projections of future allocations to local authorities; the equitable share could also be kept reasonably stable from year to year; and the revenue sharing should be done in parliament through the national budget. This will ensure forward planning and effective budgeting at the local level.

Secondly, it is recommended that the design of the intergovernmental fiscal system should ensure that nationally raised revenue is shared according to the responsibilities which each level of government has. Formula-based allocations may be an effective way of ensuring equitable sharing of revenue. Furthermore, the allocation of the equitable share to local government should advance equity by ensuring that poor jurisdictions receive more funds relative to the rich regions.

Lastly, it is submitted that legislation should make provision for the involvement of local government in the decision-making processes that decide revenue sharing. This is in line with the constitutional principle of co-operative governance, which in part means that the two levels of government must consult each other on matters of common interest such as revenue sharing.²⁹⁹ For example, before the sharing of nationally raised revenue, the Minister of Finance should be obliged to consult representatives of organised local government. Alternatively, specific forums can be established where central and local government may consult on matters around revenue sharing and general financial matters.

3.2 Local Government Equalisation Fund

It was stated in Chapter Three that a local government equalisation fund (LGEF) was introduced in 2014 by the PF government, and was aimed at taking care of wide variations among councils in terms of their capacity to generate their own revenues.³⁰⁰ The LGEF has now been entrenched in the 2016 Constitution.³⁰¹ However, the 2016 Constitution introduced the equitable sharing of nationally raised revenue, which local authorities are entitled to, and one of its objectives will be to address inequalities between local authorities. It is therefore recommended that, national legislation must realign the LGES with the new constitutional provisions on local finances, and restructure the LGES to target a more specific objective.

²⁹⁹ Art 151(1) Constitution of Zambia.

³⁰⁰ The Local Government (Amendment) Bill, 2014.

³⁰¹ Art 163(2) Constitution of Zambia.

An example of how to structure an Equalisation Fund was elaborated in Chapter Four, as emulated from the Kenyan Constitution. The Equalisation Fund in Kenya is structured to address historical marginalisation and unequal development in specific areas and communities.³⁰² The LGES is set up with specific legal requirements which include: a specified proportion of revenue which should be paid into the fund in each year; specified uses of the Fund, which is to provide basic services such as water, roads, health facilities and electricity to the marginalised areas; the Equalisation Fund is disbursed as a conditional grants to the marginalised communities; and, the national government is required to establish monitoring mechanisms to ensure that the funds are spent on intended projects.³⁰³ These requirements can be applied to Zambia and assist on how the Equalisation Fund should be designed. This will also ensure that the LGES is not misappropriated by local authorities, as was the case in the past.

3.3 Other transfers

Before the 2016 Constitution, central government allocated specific grants to local councils such as: health grants, grants in lieu of rates and housing grants to make it possible for them to provide certain services.³⁰⁴ However, over the years these grants were withdrawn by central government. It was established that besides the equitable share and equalisation fund, the 2016 Constitution recognises the need for central government to provide additional funds to local authorities.³⁰⁵ The Constitution does not impose this provision as an obligation on central government, but the principle of adequacy tends to suggest the need to provide sufficient resources to local government. It is therefore recommended that, national government can allocate more financial resources to local authorities to enable them to effectively deliver on various developmental projects. A considerable portion can be allocated as conditional grants, which is an effective tool of advancing national government policy objectives.³⁰⁶

3.4 Constituency Development Fund

It was discussed in Chapter Three that in 1995 the MMD government introduced a Constituency Development Fund (CDF) for local infrastructure development in electoral

³⁰²Kinuthia J and Lakin J 'A Fair Share of the Budget: Principles and Practices in Public Resource Distribution in Kenya' August 2016 available at <http://www.internationalbudget.org> (accessed 31 August 2017).

³⁰³Art 204(3) Constitution of Kenya.

³⁰⁴Chikulo B C 'Decentralization Reforms in Zambia' (2014) 40(1) *Journal of Social Sciences* 26.

³⁰⁵Art 163(3) Constitution of Zambia.

³⁰⁶Khumalo, Dawood and Mahabir (2015) 215.

constituencies.³⁰⁷ Decisions about how these funds are allocated were influenced by elected members of parliament (MPs). It was further explained that the existence of the CDF was criticised as having undermined the role of local authorities in local governance, and is a significant break from the primary law-making and oversight roles of MPs.³⁰⁸ However, this parallel financial system has not been resolved, as the 2016 Constitution provides for the continued existence of CDF as it was in legislation. It is therefore recommended that in order to create a balance, national legislation must allocate a greater proportion of resources to local government and minimize the allocation to the CDF. This will fit in and be aligned with the developmental role of local government.³⁰⁹

4. EXPENDITURE

It was explained in Chapter Three that current legislation requires that significant or large local government expenditure should be authorised by the Minister of local government.³¹⁰ Just like the current practice, the 2016 Constitution does not strengthen local autonomy, but leaves it to national legislation to determine the control and disbursement of appropriated funds by local authorities.³¹¹ However, it has been established that some appropriated funds like the equitable share is an unconditional grant and so its use should be at the full discretion of local authorities. It is therefore recommended that in line with its new autonomous status, local government should be given the power to make expenditure decisions. This will ensure that local authorities face, at least to a certain degree, the political consequences of their spending decisions. However, national government should retain the power to set expenditure guidelines, so as to influence local spending and achieve national goals such as equity.

4.1 Expenditure controls

The Local Government Act of 1991 was enacted to address, amongst other things, the failures by local authorities in financial management.³¹² The expenditure controls in the Local Government Act are in harmony with the 2016 constitutional principles of transparency and accountability on public finance.³¹³ To ensure accountability in the use of public funds and generally enhance good financial management, the Act empowers the Minister of local

³⁰⁷S 45 Local Government Act of 1991.

³⁰⁸Art 62(4) Constitution of Zambia.

³⁰⁹Art 151(1) Constitution of Zambia.

³¹⁰Mukwena R 'Local Government Finance in Zambia in the Third Republic: Future and Prospects' (2009) 24 (2) *Africanus: Journal for Development Alternatives* 63.

³¹¹Art 205(f) Constitution of Zambia.

³¹²Mukwena (2009) 58.

³¹³Art 198(a) Constitution of Zambia.

government to appoint an auditor to the council for each financial year.³¹⁴ The Act also stipulates that annual expenditure estimates must be open for inspection to the public.³¹⁵

It is therefore recommended that in addition to the existing control measures and to further ensure the efficient use of public funds, the Act can adopt some control measures like those provided in South African legislation. Section 216(1) of the South African Constitution mandates national legislation to prescribe measures to ensure transparency and expenditure controls in each sphere of government. In giving effect to this constitutional mandate, the Municipal Finance Management Act has provided for expenditure controls, which includes: personal liability of both councillors and administrative officials in cases involving deliberate and negligent incurring of unlawful expenditure; local authorities recovering unlawful expenditure from the councillor or administrative official concerned; the council is also allowed to institute disciplinary criminal proceedings against the councillor or administrative official for breaching legislative prescriptions.³¹⁶ Therefore, a similar approach towards expenditure controls can be adopted in Zambia, through national legislation.

4.2 Budget process

In Chapter Three it was observed that local governments did not have budget autonomy. The national government did not only set expenditure frameworks at the local level but also approved the budgets of local authorities.³¹⁷ While the setting of expenditure frameworks is necessary to protect the realisation of certain goals, the requirement for the approval of budgets by the national government undermined the institutional integrity of local authorities. The 2016 Constitution grants local authorities the power to make by-laws, hence the power to adopt their own budgets.³¹⁸ Current legislation on local budgets is therefore in conflict with this constitutional provision. It is thus recommended that the requirement for approval of local budgets by the Minister should be abolished as it is unconstitutional. However, it is further suggested that national legislation should set budget timeframes and provide for oversight and corrective mechanisms in cases where a local authority fails to submit a budget on time. The Minister should have the power to intervene if a local authority fails to approve the budget. As emulated from the South African Constitution in section 139, such powers can include the power to adopt a temporary budget to provide for the continued functioning of the

³¹⁴S 46(I) Local Government Act of 1991.

³¹⁵S 34(I) Local Government Act of 1991.

³¹⁶Chapter 11 Municipal Finance Management Act 56 of 2003.

³¹⁷S 39 Local Government Act of 1991.

³¹⁸Art 152(1)(c) Constitution of Zambia.

local authority. In serious cases, the Minister can dissolve the council and appoint a caretaker until a new council is elected.

4.3 Procurement

Before the 2016 Constitution, the Public Procurement Act of 2008 empowered local authorities to make their own purchases under prescribed procurement rules and procedures. The general rules in the Public Procurement Act of 2008 focus on procurement participation, records of procurement, communication and confidentiality.³¹⁹ The 2016 Constitution provides for local government procurement, with stated principles focusing on a procurement system that is fair, equitable, transparent, competitive and cost-effective.³²⁰ In Chapter Four it was found that, Section 217(1) of the South African Constitution provides similar principles for government procurement as the ones in the Zambian Constitution. The provision on government procurement in the 2016 Constitution was therefore interpreted similarly to those of the South African Constitution. In comparison, most procurement guidelines in the Public Procurement Act and those of the 2016 Constitution are different and therefore in need of realignment. The former focusing on: Eligibility and non-discrimination in procurement procedures; maintenance of all procurement records; communication procedures between the procurement entity and suppliers; and, confidentiality relating to procurement proceedings.³²¹ While the latter requires: Value for money; fairness in procurement procedures; fair procurement outcomes, thus non-discrimination; and, transparent procurement procedures.³²² It is recommended that the Public Procurement Act must be amended, and new procurement guidelines established, which must be informed by the constitutional principles above.

5. CONSTITUTIONAL COURT

In a number of countries which have adopted multilevel systems of government, the courts have played an important role in upholding the Constitution. Countries, such as South Africa, and Kenya, have established constitutional courts whose function it is to interpret the Constitution, including constitutional allocation of powers and functions to various spheres of governments. In these countries, the courts have been relied upon to resolve constitutional disputes as was demonstrated in Chapter Four. The newly established Constitutional Court of Zambia therefore has a key role to play, given that there is a constitutional allocation of

³¹⁹Part V of Public Procurement Act of 2008.

³²⁰Art 210(1) Constitution of Zambia.

³²¹Part V of Public Procurement Act of 2008

³²²Art 210(1) Constitution of Zambia.

distinct powers and functions to local government. The court can seek guidance from the South African and Kenya courts on the interpretation of similar provisions.

6. CONCLUSION

The research paper argued that revenue raising responsibilities for local authorities must be matched as closely as possible to spending responsibilities so that there are better links between the benefits and burdens of public expenditure. Before the 2016 Constitution, local government went through a long period of financial instability gradually authored by central government ever since the declaration of the 'one party state' in 1973. The constitutional recognition of local government finances has provided a claim to power for local authorities, which was not available to them. The significance attached to this is that the Constitution guarantees local government original and protected powers which cannot be easily removed or amended. Some constitutional provisions lack detail and leave wide room for national discretion. The implications for such wide discretion may be counterproductive to local government finances and the good governance of municipalities as a whole.

However, the Constitution further provides various principles and objectives of fiscal decentralisation which, if given effect through legislation, may result in the creation of a strong local government. Therefore, amendments have to be made to the current local government legislation which will give concrete shape to local government finance. Further, a significant number of disputes will likely arise relating to the distribution of fiscal powers to local government, which the Constitutional Court will have to resolve.

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