

The University of the Western Cape



UNIVERSITY *of the* WESTERN CAPE

MODE II

Topic:

A CRITICAL ANALYSIS OF THE MINISTERIAL POWERS TO APPOINT ‘SPECIAL INTEREST’ COUNCILLORS IN TERMS OF SECTION 4 A OF ZIMBABWE’S URBAN COUNCILS ACT (2008).

A Mini Thesis submitted in partial fulfillment of the requirements of the MPhil (Law) degree in the Faculty of Law, University of the Western Cape

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Submitted: November 2012

Declaration

I, Jephias Mapuva, declare that ‘**A Critical Analysis of the Ministerial Powers to Appoint ‘Special Interest Councillors’ in Terms of Section 4 A of the Zimbabwe’s Urban Councils’ Act (2008)**’ is my own work, that it has not been submitted for any degree or for examination in any university, and that all the sources I have used or quoted have indicated and acknowledged by complete references.

Jephias Mapuva

Date.....

Signature.....



Acknowledgements

The compilation and subsequent submission of such an intensive research document would not have been the effort of one person. First and foremost, I acknowledge the hand of God in the final completion of this study. Additionally, a number of people and institutions contributed to the successful completion of this study. It is the intention of the researcher to acknowledge their contributions.

I would like to thank my supervisor, Professor Jacobus De Visser for his patience, resilience and scholarly advice towards my research. To him I say please keep up the good spirit with which you dealt with my study area

Special thanks and appreciation go to the Community Law Centre of the University of the Western Cape for having provided a conducive work, research and study environment without which this study would have seen the light of day.

Of note are the contributions made by Mrs Virginia Makanza of the Midlands State University's Department of Local Governance (Zimbabwe) whose contribution in the collection of data on special interest councillors in 20 urban councils could not have been achieved without her involvement. To her I say many thanks and hope you keep that good spirit of collegiality.

Colleagues, Tyanai Masiya at the School of Government's African Centre for Citizenship and Democracy [ACCEDE] as well as my wife Loveness Muyengwa-Mapuva, deserve special mention for having contributed towards my study during both formal and informal discussions.

Various staff members and researchers of the Faculty of Law's Community Law Centre for having provided input during regular seminars at the Centre.

To all the above and others who might have contributed directly and/or indirectly, I say thank you and may God bless you all.

Dedication

I dedicate this piece of work to my late father, Josiah Mapuva, my mother Sarah Mapuva, my Wife Loveness Muyengwa-Mapuva, my children and siblings



Acronyms

BSAC	British South Africa Company
MLGRUD	Minister of Local Government, Rural and Urban Development
UCA	Urban Councils Act
MDC	Movement for Democratic Change
ZANU PF	Zimbabwe African Union Patriotic Front
CHRA	Combined Harare Residents Association
MISA	Media Institute for Southern Africa
COPAC	Zimbabwe Parliamentary Select Committee
UDHR	Universal Declaration of Human Rights
UNESCAP	United Nations Economic Commission for Asia and the Pacific
UCLG	United Cities and Local Government
ULCGA	United Cities and Local Governments of Africa
CPPDT	Charter for Popular Participation in Development and Transformation
ACDEG	African Union Charter on Democracy, Elections and Governance
AMCOD	African Ministerial Conference on Democracy
UGI	Urban Governance Index
IULA	International United Local Authorities
UTOM	United Towns Organisations and Metropolis
GNU	Government of National Unity
GPA	Global Political Agreement
ZEC	Zimbabwe Electoral Commission
ZEA	Zimbabwe Electoral Act

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CHAPTER ONE: INTRODUCTION

1.1 Background

Local governance in Zimbabwe dates back to the 1890s when the colonial administration of the day, the British South African Company (BSAC) established the first formal local authority, the Salisbury Sanitary Board to administer local affairs.¹ Local government was not provided for in the Constitution but became a creature of statute which meant that the local government system did not have constitutional protection. Subsequent local government instruments and institutions such as municipal ordinances as well as advisory boards and councils were established and all fell under the direct control of the District Commissioner who sought to reinforce colonial policy in African townships. The centrally-defined local governance institutions and structures were instituted to deny African self-government, residents, mostly from urban areas, resisted the entrenched racial legal and institutional frameworks. The centralised local government system imposed substandard and centrally-defined programmes on African and Native Councils and 'laid the foundation for a highly centralised post-colonial local governance system that was inherited at independence in 1980'.²

The post-colonial era saw the creation of a single local government Ministry and the amalgamation of African Councils into District Councils governed by new legislation, namely the Rural District Councils Act³ and the Urban Councils Act⁴. It should be noted that the new post-colonial dispensation did not seek to loosen central government's stranglehold on local authorities but perpetuated the dominance over local councils by empowering the Minister of Local Government, Rural and Urban Development (MLGRUD) to provide strict monitoring mechanisms for local councils. Consequently the post-colonial political establishment is often blamed for failing to redress the centralisation of powers by central government and to democratise local government.⁵ What appears to be misconstrued by many people in Zimbabwe

¹ Jordan JD *Local Government in Zimbabwe: An Overview* (The Mambo Press Gweru 1984) 12.

² Madhekeni A & Zhou G 'Legal and Institutional Framework: The 'Achilles Heel' of Local Authorities and Raison D'être of Ministerial Intervention in Zimbabwe'" (2012) *Journal of Public Administration and Development* 2 (3)20

³ Chapter 29.13, Rural District Councils Act (1996).

⁴ Chapter 29.15, Urban councils Act, (1996).

⁵ Blunt G 'Overcoming a decade of crisis: Zimbabwe's Local Authorities in transition' 2011 *Journal of Public Administration and Development* 31 (4) 340-350.

is the fact that the governing legal and institutional framework of local governance in the country provides room for the responsible Minister to legally enable or disable local authority administration.⁶ The intervention by the Minister has been viewed as the ‘Achilles Heel’ of local authorities presents a major weakness in the administration of local government affairs in the country.⁷ One of the pieces of legislation that has promoted legal intervention by the MLGRUD is section 4A of the Urban Councils Act in which the Minister monitors or appoints special interest councillors in all urban councils in the country. Public outcry and negative media reports on the implementation of section 4A has resulted in loss of faith with the way the MLGRUD has been implementing this legislation.

1.2 Statement of the problem

The appointment of special interest councillors in terms of section 4A of the Urban Councils Act has encountered much opposition from residents in many urban areas.⁸ The appointment has also attracted public attention, especially through the media which has highlighted the plight of urban councils most of which have failed to contend with additional unelected personnel on their payrolls. There has also been a claim that the process of appointing special interest councillors may be or that it is being abused.⁹ What has further exacerbated this situation is the fact that there is no legal provision to check the powers of the Minister, leaving room for the manipulation of the powers to appoint.¹⁰ Since the enactment of section 4A of the Urban Councils Act (UCA) in April 2008, numerous elected councillors and mayors belonging to the MDC have been dismissed, or summarily suspended pending dismissal to justify the appointment of special interest councillors over and above elected councillors. At the same time the Minister seeks to discredit the Movement for Democratic Change (MDC) councillors as incompetent to gain political mileage for the Zimbabwe African National Union Patriotic Front (ZANU PF).¹¹ The rampant dismissal and suspension of MDC-T (the MDC faction led by Mr Morgan Tsvangirai) councillors and mayors and dissolving urban councils has led to allegations that the Minister seeks to weaken MDC in urban local councils and to justify the existence of special interest councillors in urban councils. By highlighting and examining the implications of these appointments on urban governance and the general functioning of urban local councils, the

⁶ Bland G ‘Overcoming a Decade of Crisis: Zimbabwe’s Local Authorities in Transition’ (2011) *Journal of Public Administration and Development* 31 (4) 342.

⁷ Madhekeni & Zhou 25.

researcher will be able to assess the practice of appointing special interest councillors against internationally accepted norms.

1.3 Significance of the problem

This section explains the significance of the problem of appointing special interest councillors in urban councils as discussed above. Most urban local councils argue that the appointment of special interest councillors has become a financial burden on the councils since the appointees should be paid by the respective councils where they are appointed.¹² The print media has also highlighted the appointment of special interest councillors in terms of section 4A of the Urban Councils Act. A cross section of media reports has presented the appointment of special interest councillors as a controversial practice that has led to a deterioration of relations between the MLGRUD and most urban councils¹³ as well as between residents and the MLGRUD.¹⁴ Both residents and elected councils have been angered by the fact that while many elected councillors have either been suspended and/or dismissed,¹⁵ no such action has been taken against appointed special interest councillors. The media reports have also noted that most local councils view the appointment of such councillors by the MLGRUD as abuse of power by the Minister with some threatening to take legal action¹⁶. Other media reports have expressed the view that the Minister's powers be reduced.¹⁷ Precious Shumba has acknowledged that special interest councillors may help to enrich debates in local councils. However he has noted that currently special interest councillors are a liability to most local councils that do not have the resources to accommodate

⁸ Sibanda A 'Bulawayo residents and Chombo to clash over special interest councillors' *Bulawayo24*, 16 May 2012.

⁹ Harare Residents Trust. 'Chitungwiza Residents raise concerns with Minister Chombo' *SW Africa Radio*, 13 February 2012.

¹⁰ 'Bulawayo: Chombo Tries (again) to impose "Special Interest" Councillors' *Zimbabwe Metro* 24 April 2012.

¹¹ Ndlovu N 'Zimbabwe: Special Interest Councillors Dismissed' *The Standard*, 14 April 2012.

¹² S 4A (2), Urban Councils' Act (2008).

¹³ "Chombo Risks Lawsuit" in *Zimbabwe Daily News*, May 23, 2010; CHRA, 2012- Brian James suspension Exposes Urgent Need for Local Government Reform!.

¹⁴ Sibanda A 'Bulawayo residents and Chombo to clash over special interest councillors' *Bulawayo24*, 19 May 2012.

¹⁵ Chombo has of January 2012 suspended a total of four MDC councillors in Harare for corruption. These were five in Rusape, one in Nyaminyami Rural District Council; two in Zvimba Rural District Council; and two in Harare Municipality – Councillors Warship Dumba and Casper Takura who had opened a council probe on the minister on how he had acquired so many properties in Harare, Brian James becomes the latest victim.

¹⁶ Staff Reporter 'Chombo Risks Lawsuit' in *Zimbabwe Daily News*, 23 May 2010.

¹⁷ MISA "Residents wants Chombo's powers clipped" *Human Rights-The Zimbabwean*, 18 September 2010.

such appointments.¹⁸ The Combined Harare Residents' Association (CHRA) has expressed the need for local government reforms¹⁹ as a way of strengthening local democracy, while the Harare Residents' Trust has equally expressed concerns with the way the Minister has been making these appointments.²⁰ All the media reports have roundly expressed criticism of the ministerial powers to appoint special interest councillors with the Media Institute of Southern Africa (MISA) suggesting that the Minister's 'wings be clipped'.²¹ This thesis seeks to provide a critical analysis of such appointments given that most media reports have gone as far as expressing opposition to such appointments without providing a critical analysis of the practice.

1.4 Research Question and Objectives of the Study

The study questions the criteria employed by the MLGRUD to appoint special interest councillors for urban areas and the implication of such appointments on local democracy. A survey of international and comparative legislative and regulatory frameworks as well as the Zimbabwe Parliamentary Select Committee draft constitution (herein COPAC draft) will be undertaken to establish democratic elements of local governance. From the normative framework, the researcher will draw elements of representative democratic local governance that will be used to assess section 4A of the Urban Councils Act against international best practices and the COPAC draft. The COPAC draft came as a result of inter-political party deliberations and public consultations on a new constitution for Zimbabwe to replace the existing Lancaster House Constitution of 1979. Hence the researcher also intends to establish the extent to which the COPAC draft provides for representative local government. The researcher will investigate the extent to which the appointment of special interest councillors in terms of section 4A of the Urban Councils Act complies with principles of representative democracy as provided in international instruments and the COPAC draft²².

The researcher will seek to:

¹⁸ Shumba P 'Special Interest councillors ideal but not necessary' *SW Africa Radio*, 17 SW Africa Radio, 26 March 2012.

¹⁹ CHRA, 'Brian James suspension Exposes Urgent Need for Local Government Reform!'

²⁰ Harare Residents Trust. 'Chitungwiza Residents raise concerns with Minister Chombo' *SW Africa Radio*, 13 February 2012.

²¹ MISA 'Residents wants Chombo's powers clipped' *The Zimbabwean*, 18 September 2010.

²² S 14 of the COPAC draft provides for Provincial, Metropolitan and Local council structures and institutions as well as the election of local council office bearers.

- (i) Extrapolate elements of representative governance from selected international and regional instruments as well as from the COPAC draft.
- (ii) Assess the impact of the appointment of special interest councillors on the relationship between local authorities and central government.
- (iii) Test the extent to which the appointment of special interest councillors in terms of section 4A encroaches on local democracy.
- (iv) Test the practice of appointing special interest councillors in terms of section 4A against international standards and COPAC draft provisions on representative governance.
- (v) Provide recommendation of improving the appointment of councillors in line with representative democracy.

1.5 Literature Review

While much concern has been expressed in literary works about the Ministerial powers in the operations of local councils (both in rural and urban areas), there is no critical analysis of the practice of appointing special interest councillors. Most of those who have written about the appointment of special interest councillors have concentrated on the general MLGRUD's powers over the affairs of local councillors without focusing on a critical analysis of section 4A of the Urban Councils Act that empowers the Minister to make such appointments. While Chakaipa²³ has written about special interest councillors, the author only mentions these appointed officials in light of electoral processes as well as the introduction of such a portfolio in urban areas and does not say anything about the operation or impact of such appointed councillors in urban governance. Additionally, the major part of Chakaipa's discussion is confined to elected councillors and local government electoral process. Mushamba²⁴ discusses special interest councillors in relation to decentralisation of power from central to local authorities but he does not explain about their appointment and the role of the Minister in such appointment. Media houses in Zimbabwe have flip-flopped about the issue of the appointment of special interest councillors. Although the Media Institute for Southern Africa (MISA) has argued about the need

²³ Chakaipa S 'Local government institutions and elections' in de Visser J; Steytler N & Machingauta N (eds) *Local Government Reform in Zimbabwe: A policy dialogue* (2010) 31-68.

²⁴ Mushamba S 'The powers and functions of local government authorities' De Visser J; Steytler N & Machingauta N (eds) *Local Government Reform in Zimbabwe: A policy dialogue* (2010) 101-120.

to amend of the Urban Councils Act in order to reduce the powers of the MLGRUD in general, it has not focused on the appointment of special interest councillors per se. Machingauta²⁵ has come closer to addressing the issue of special interest councillors but the author tended to confine himself to “the appointment of caretakers to act as councils” in terms of section 80 of the Urban Councils Act of Zimbabwe. Again Machingauta’s discussion of special interest councillors is on the basis of the broader caretaker framework in which caretakers may be appointed to act as full council in certain circumstances, but does not specifically refer to section 4A of the Urban Councils Act. In her thesis, Madzivanyika²⁶ provides a generic catalogue of legislative weaknesses in the Urban Councils Act that impact on efficient and effective service delivery. However the thesis does not discuss the issue of special interest councillors in detail since it was not the focus of the study. However, most importantly the study will draw from the recently published Zimbabwe Parliamentary Select Committee (COPAC)²⁷ constitutional draft which is due for consideration at the referendum towards the end of 2012 or early 2013. The COPAC draft is vital in this study because, despite the fact that it is yet not law, it is the first attempt in Zimbabwe to incorporate local government in the Constitution. From the COPAC draft the researcher will analyse section 14 which provides for local government structures and institutions as well as the election of local council officials.

1.6 Methodology

The thesis mainly based on review of secondary sources such as legislation and regulatory frameworks to test the compliance of section 4A of the Urban Councils Act with regards to representative governance. In addition, the researcher conducted a random survey of twenty (20) urban local councils to establish the composition of their special interest councillors. The basic criterion that was used to select the councils was that these should be functional urban local councils with some councillors whose composition would then be used in appointing special interest councillors by the MLGRUD. In order to get information on special interest councillors

²⁵ Machingauta N *A legal analysis of the appointment of caretakers to act as council in terms of Zimbabwe’s section 80 of the Urban Councils Act* (unpublished LLM thesis, University of the Western Cape, 2010)

²⁶ Madzivanyika L *The impact of weaknesses in the Urban Councils Act on efficient and effective service delivery in urban local councils in Zimbabwe* (unpublished LLM Research paper, University of the Western Cape, 2011).

²⁷ The Parliamentary Select Committee (COPAC) is an inter-party committee of parliamentarians that was tasked by the Unity Government in Zimbabwe to make public consultations for a new constitution. The Draft will be taken to a referendum either late 2012 or early 2013 before it can be adopted as the new Constitution of Zimbabwe.

for the selected local councils, the researcher reviewed documents pertaining to each council, minutes of local council meetings as well as through using websites for the selected councils.

During the survey, the researcher sought information from appointed special interest councillors in the selected local authorities. The local councils were selected at random, irrespective of their city/town status. From the special interest councillors, the researcher sought information about the skills/expertise which they bring to the local council, their political alignment and gender.

1.7 Chapter outline

The thesis will be made up of five chapters. Chapter one provides the key aspects of the thesis, notably the problem statement, argument and its originality, methodology and the methodology used in the study.

Chapter two provides a framework for local representative governance. The chapter will explore and analyse selected legislative and regulatory frameworks that focus on representative democratic governance. The study will extrapolate from the COPAC draft critical features of democratic local governance. In addition, the researcher will extrapolate elements of representative governance from international and regional instruments. The normative frameworks for best practices and benchmarks in representative governance will be drawn from the Universal Declaration of Human Rights (UDHR), UN-Habitat-Urban Governance Index; European Charter of Local Self-Government; African Charter on Human and Peoples' Rights; United Cities and Local Government of Africa model; the Kigali Declaration; and the Victoria Falls Declaration.

Chapter three provides a discussion of local government structures and institutions in Zimbabwe and the appointment of special interest councillors. The legal framework and policy rationale of appointing special interest councillors in urban councils by the MLGRUD will be the focus of this chapter. The chapter will start off by presenting the history of local government in Zimbabwe and the appointment of special interest councillors, a practice which had initially started in rural councils in terms of section 60 of the District and Rural Councils Act. The study will also provide the content of section 4A of the Urban Councils Act, highlighting the role of the Minister. The researcher presents a brief discussion on the genesis of the appointment of

special interest councillors initially in rural areas and later in urban areas in terms of section 4A of the Urban Councils Act.

Chapter four makes a comparative discussion of the practice of appointing special interest councillors and the normative framework drawn from international instruments and the COPAC draft. In this chapter the researcher tests section 4A of the Urban Councils Act against elements of representative democratic local governance drawn from the COPAC draft as well as from international instruments. The focus is on the ministerial powers to appoint special interest councillors and whether such appointments are acceptable practice in a representative democracy and what impact this practice has on service delivery and local councils decision-making processes. Consequently this chapter tests and compares the provisions of section 4A of the UCA to the critical features of representative democratic local governance drawn from the COPAC draft and other international and regional instruments.

Chapter five provides a conclusion based on the comparative analysis of section 4A of the UCA against international instruments and the COPAC draft. The comparative analysis will seek to test the extent to which section 4A of the UCA complies with elements of representative democracy drawn from international instruments and the COPAC draft. The conclusion also highlights any shortfalls of section 4A of the UCA and local governance elements of COPAC that would make it a better document to local governance structures and institutions.

Recommendations on how to improve the Zimbabwean local government system will be presented after identifying gaps in the implementation of section 4A of the Urban Councils Act of 2008.

CHAPTER TWO: NORMATIVE FRAMEWORK FOR LOCAL REPRESENTATIVE GOVERNANCE

2.1 Introduction

This chapter aims to provide a normative framework for local representative governance. To be able to provide the normative framework, the researcher will extrapolate critical features of representative governance from the different international and regional instruments as well as the Zimbabwe Parliamentary Select Committee (COPAC) constitutional draft. The chapter explores selected instruments to extra the critical features of democratic governance. By using the critical features of democratic governance extrapolated from the instruments, the researcher will be able to provide a critical analysis of section 4A of the Urban Councils Act which empowers the Minister of Local Government Rural and Urban Development (MLGRUD) to appoint special interest councillors. The instruments that were discussed are categorised into four sections which are:

- international instruments to which Zimbabwe is not a signatory;
- international instruments to which Zimbabwe is a signatory;
- African regional instruments to which Zimbabwe is a signatory; as well as
- the draft constitution of Zimbabwe which is yet to become law.

2.2 Instruments to which Zimbabwe is not a signatory

This category of instruments is noted for its provision of critical features of democratic representative democracy in designated regions such as the Asian and Pacific region as well as countries covered by the European Union. In different regions of the world, guidelines have been used to provide guidance on govern local governance. There are several international instruments that provide for democratic local governance in different parts of the world that may not be relevant to Zimbabwe but from which the country can draw significant lessons.

The international instruments to which Zimbabwe is not a signatory are the European Charter of Self-Government (2010) and the United Nations Economic Commission for Asia and the Pacific (UNESCAP)-Good Governance (2006). These instruments provide a general framework from which Zimbabwe can draw critical features of democratic local governance. Although these instruments refer to local government in Europe and Asia and the Pacific regions, but Zimbabwe can draw from them. The Charter recognises the autonomy of local authorities and the right of local communities to take part in the election of local councillors.²⁸ With regards to the autonomy of local councils, the Charter recognises the right and the ability of local authorities to regulate and manage public affairs under their own responsibility and in the interest of the local population.²⁹ The Charter also highlights the composition of local councils which should comprise members freely elected by secret ballot on the basis of direct, equal, universal suffrage.³⁰

The UNESCAP-Good Governance Index provides eight generic critical features of good governance which are participation, equity and inclusiveness, effectiveness and efficiency, responsiveness, rule of law, accountability and transparency. The instruments do not have provision for the appointment of local councillors. From these instruments critical features of local governance will be identified. For this thesis, these two instruments help in setting standards to test the extent to which section of 4A of the UCA conforms to representative governance standards. In addition the index provides a framework for democratisation of the country's local government system.

2.3 International instruments to which Zimbabwe is a signatory

There are several international instruments to which Zimbabwe is a signatory. These include the United Nations-Habitat –Good Urban Governance Index (2004) and the United Cities and Local Governments (UCLG). The instruments are included in this study to provide a picture of the extent to which they provide critical features of democratic governance. The discussion of these instruments also provides a framework for international best practice on which to test local government legislation in Zimbabwe and establish whether it complies with international best

²⁸ Article 3 (1), European Charter of Local Self-Government (2010).

²⁹ Article 3 (1).

³⁰ Article 3 (2), The European Charter of Local Self-Government (2010).

practices in local government. The United Nations-Habitat –Good Urban Governance Index (2004) provides benchmarks for transparent and democratic local governance. The United Cities and Local Governments (UCLG) provides a forum for the promotion of democratic local governance. The UCLG Constitution places obligation local government institutions to promote local democracy. The UCLG Committee on Decentralisation and Self-Government has as its main objective ‘to strengthen decentralisation and local self-government processes with the aim of improving local governance in every region of the world’.³¹ The work of the Committee contributes to the strategy of the World Organisation of United Cities and Local Government in the field of local governance and seeks to influence local governance practices across the globe.

2.4 African regional instruments to which Zimbabwe is a signatory

In addition to the two categories of instruments discussed above, there are African regional instruments which are created by African countries. In the African region, the most notable local government instruments are the United Cities and Local Governments of Africa (UCLGA). The others are the Charter for Popular Participation in Development and Transformation (CPPDT) (1990); the African Union Charter on Democracy, Elections and Governance (ACDEG) (2012); the All Africa Ministerial Conference on Decentralisation (AMCOD); the Victoria Falls Declaration (1999); the Kigali Declaration (2006) and the Harare Declaration (1999). The different international and regional instruments as well as the COPAC draft are discussed in detail. From all the instruments the researcher extrapolated critical features of democratic local governance which will be used to test the extent to which the legislation and practice of appointing special interest councillors in terms of section 4 A of the Urban Councils Act (UCA).

It should be noted that most of the instruments that will be explored are ‘soft laws’ which are commitments made by negotiating parties that are not legally binding. ‘Soft laws’ are characterised by the relatively large amount of discretion which is left to the parties bound by the obligation.³² However it should be noted that although ‘soft laws’ are discretionary in nature, they are not without important legal and political effects. They help to promote co-existence and exchange of information among state parties as a way of finding common ground on issues of

³¹ UCLG, Committee on Decentralisation and Local Self- Government (2012) 4.

³² Grnchalla- Wesiershi T ‘A Framework for Understanding “Soft Law” (2001) *McGill Law Journal* 30 (37).

national, regional and international importance. As such it can be pointed out that soft law instruments are only *potentially* binding and can be conceived of as the *beginning of a gradual process* in which further steps are needed to make such agreements binding rules for states.³³ This is the premise on which the instruments that are explored for this thesis will be regarded.

2.5 The Zimbabwe Parliamentary Select Committee (COPAC) draft

It should be noted that although the COPAC draft is not yet law, its provisions on local government highlight democratic local governance. Given that the local government is old, the draft holds prospects for representative democratic governance.

The frameworks will be used in this chapter to determine the extent to which section 4A of the Zimbabwe Urban Councils Act complies with elements of representative democratic governance. In addition to the wide range of legislative, institutional and regulatory frameworks that provide acceptable standards of representative democratic governance, a brief discussion of Zimbabwe's Parliamentary Select Committee (COPAC) constitutional draft on decentralisation and devolution will be provided.³⁴ From the selected legislative and regulatory frameworks, this section will identify the objectives of each instrument as well as the legal status, guiding principles, elements of democracy and decentralisation and cooperative governance as well as whether the framework recognises local governance. The findings from this discussion will provide the basis for the analysis of local government practices in Zimbabwe, notably the provisions of section 4A and the extent to which this legislation resonate with these elements of good local governance.

2.6 Legislative and regulatory frameworks providing for critical features of representative governance

In exploring the different instruments, the researcher will present the background, legal force and relevance of the instruments to local governance as well as the elements of representative governance. A detailed analysis of the COPAC draft and international instruments will be used to test section 4 A.

³³ Grnchalla- Wesiershi (2001) .

³⁴ S14.11, COPAC draft (2012).

2.7 International framework for local governance

A brief discussion of the UN-Habitat-Good Urban Governance Index and the United Cities and Local Governments guidelines as instruments providing for generic guidelines for good local governance is provided.

2.7.1 United Nations Habitat-Good Urban Governance Index (UGI)

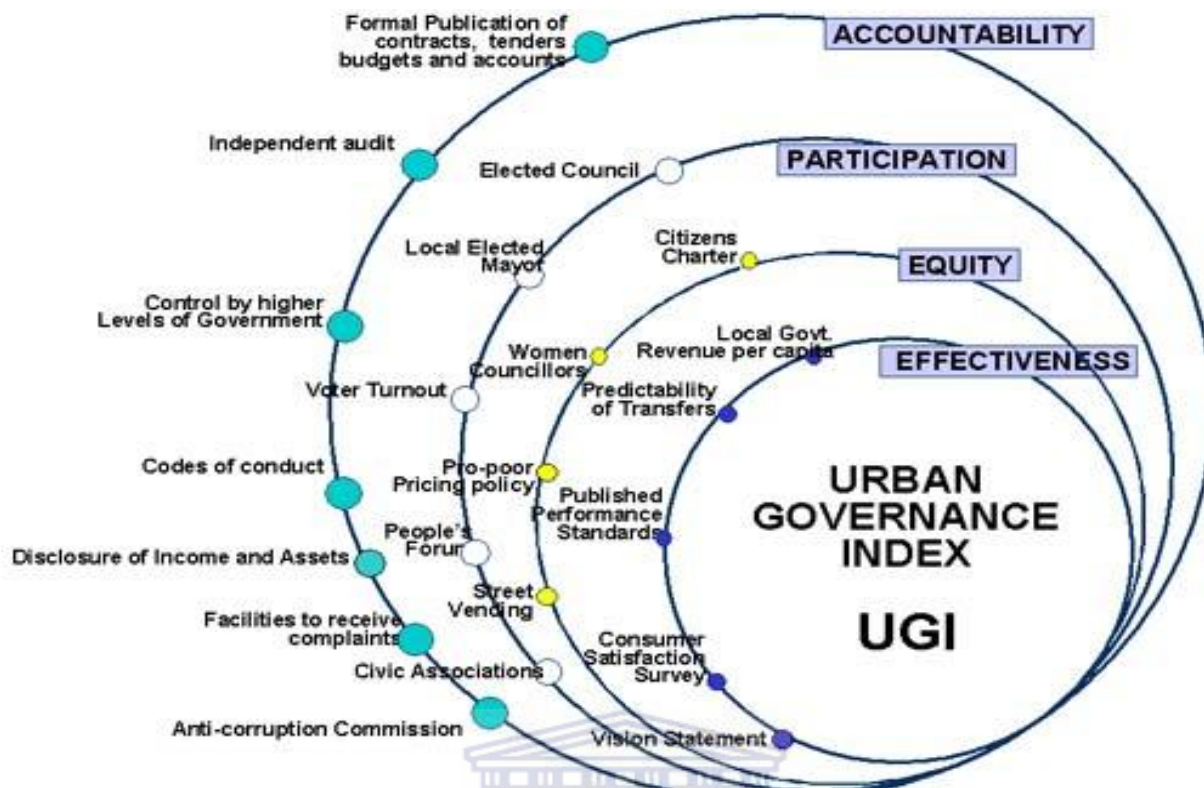
2.7.1.1 Background and purpose

The United Nations-Habitat Urban Governance Index (UGI) was developed by the Global Urban Observatory and the Global Campaign on Urban Governance to provide a normative framework for good urban governance. The UGI is an advocacy and capacity-building tool that assists urban councils and countries in monitoring the quality of urban governance. The objectives of the UGI are ‘to demonstrate the importance of good urban governance in achieving broad development objectives’ at global level, and at local level ‘to catalyse local action to improve the quality of urban governance by developing indicators that respond directly to their unique contexts and needs’³⁵ and to contribute to the strengthening and improving of urban governance.³⁶ The UGI provides a blueprint for good urban governance practices in urban areas across the globe. The UGI is anchored in its desire to promote participatory local governance in urban areas including participatory budgeting.

The UGI graph below is important for this thesis because it identifies elements of democratic urban governance which provides a normative framework from which local government institutions in Zimbabwe can extrapolate the practice of democratic governance. The UGI graph provides accountability, participation, equity and effectiveness as elements of democratic governance.

³⁵ UN-HABITAT-Good Urban Governance Index ‘Urban Indicators Guidelines: Monitoring the Habitat Agenda and the Millennium Development Goals’ (2004b).

³⁶ UN-HABITAT-Good Urban Governance Index (2004b).



Adapted from the *UN-Habitat-Good Urban Governance Index* (2004).

2.7.1.2 Relevance and legal force

Although the UN-Habitat Good Urban Governance Index is not a binding document, it provides a normative framework for democratic local governance in local councils. The UN-Habitat provides a self-assessment framework for cities and a platform on which assessment of performance of local governance structures and instruments can be based. From the framework countries are able to draw critical features of local democratic representative governance.

2.7.1.3 Critical features of democratic governance

As indicated above, the Urban Governance Index presents several normative elements that constitute democratic governance practice in general and representative governance in particular. It can be noted that the elements encapsulated in the UGI index are accountability, participation, equity and effectiveness. All these elements are components of representative governance.³⁷

³⁷ UGI (2004).

The Index provides that democratic local governance should be accountable to the local community. Accountability is also promoted through independent audits as well as monitoring by higher tiers of government. Public officials must abide by codes of conduct, avoid corrupt practices and receive public complaints.³⁸ To promote transparency, anti-corruption institutions and disclosure of incomes for local council officials should form part of the accountability processes.

The UGI graph puts emphasis on participation as a vital component of democratic governance. Participation in local governance should be through election of councillors by residents. The Index encourages local authorities to strive for gender balance in the composition of local authorities. The graph provides that equity is of paramount importance in democratic governance where the election of local leadership is in recognition of the role of women and other marginalised groups in decision making processes. The involvement of communities in establishing citizen charters and formulation of pro-poor policies provides an opportunity for citizens to be part of the governance process. The Index also presents effectiveness as the beneficial utilisation of resources to ensure transparency in financial transactions. Lastly the UGI index recognises the role that civil society organisations can play in ensuring accountability by public institutions and officials. The UGI exhorts local authorities to make available communication channels by way of citizen charters, thereby acknowledging citizens' right of access to basic services.³⁹

2.7.2 United Cities and Local Governments

2.7.2.1 Background and purpose

The United Cities and Local Governments (UCLG) is an amalgamation of the International Union of Local Authorities (IULA) and the United Towns Organisations and Metropolis (UOTM).⁴⁰ The UCLG is the largest local government forum in the world that brings together different towns and cities across the globe. Together the UCLG Committee and other affiliates of the UCLG provide a forum where local government institutions deliberate on local government

³⁸ UGI (2004).

³⁹ UGI (2004).

⁴⁰ UN-Habitat-United Cities and Local Governments' (2011).

best practices and the implementation of such practices in different cities and towns across the globe. The UCLG provides a forum for setting norms and standards for the promotion of local democracy, self-government and decentralisation. In addition, UCLG helps in mapping ways of fostering accountable and transparent local governance through forging linkages between communities and NGOs.

2.7.2.2 Relevance and legal force

The UCLG is a persuasive forum that inculcates the values of norm-setting in cities, towns, metropolis and national local government institutions. The UCLG provides a platform for mapping programmes that promote representative governance and setting a normative framework for democratic governance. Through committees such as the Committee on Social Inclusion, Participatory Democracy and Human Rights, the UCLG is able to influence local government policy formulation and making representations on behalf of its affiliates. The UN General Assembly has accorded the UCLG an observer status. This means that although the UCLG is not a member of the United Nations, it can be invited to observe the deliberation of the United Nations.⁴¹ The UCLG is thus an advisory body to the United Nations on mechanisms to promote decentralisation and to deepen local democracy. It also advises the UN on more systematic ways to engage with elected representative and authorities at local level as well as on principles of local autonomy. Taking cognisance of its advisory role within the UN organs, the UCLG can influence policies on local government. In addition, the UCLG enjoys international recognition, with the World Bank and the Global Forum having signed cooperation agreements with the UCLG to collaborate in strengthening democratic structures, fighting poverty and improving living standards of people. However despite this recognition, the UCLG Constitution remains a ‘soft law’ but Zimbabwe can still draw from the elements of representative democracy provided by the UCLG on the election of local representatives.

⁴¹ General Assembly of the United Nations Observer status for the United Cities and Local Governments in the General Assembly (2010) (A/C.6/66/L.6).

2.7.2.3 Critical features of democratic governance

The UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights of the United Cities and Local Governments (UCLG) recognises people's right to social inclusion, participation and to human rights.⁴² The UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights recognises the importance of social inclusion.⁴³ In this context social inclusion implies incorporating all people in the decision making processes. The Committee also supports the notion of 'the right to the city' in which cities have a right to be managed by competent individuals democratically elected by residents.⁴⁴ Residents' socio-economic rights are viewed as of paramount importance and should be realised by local authorities.⁴⁵ In addition, the Committee provides for the articulation of participatory democracy in local government institutions.⁴⁶ The UCLG also recognises the importance of local forums as a platform for information exchange among citizens and local authorities.

It can therefore be noted that the Committee holds that social inclusion and participative democracy only make sense as political goals committed to the recognition of civil, political and social rights realised through the application of very diverse, institutional and non-institutional tools. By this point, the Committee notes that citizens must be regarded as equal and should therefore enjoy their political, social and economic rights.⁴⁷ By this statement the Committee implies local communities should be regarded as having the right to participate in the social, economic and political activities within their communities. For this thesis the Committee's provisions would imply that democratic governance should incorporate the contribution of different actors in governance processes. The fact that the UCLG recognises the existence of vulnerable and marginalised groups in society is a vital component of representative democracy. The UCLG does not allude to the appointment of local councils in its provision of elements of representative democracy. The critical features of democracy that are drawn from the work of the Committee on Social Inclusion, Participatory Democracy and Human Rights include citizen participation through electoral processes, inclusion of marginalised groups in decision-making

⁴² From the work of the Committee on Social Inclusion, Participatory Democracy and Human Rights (2011).

⁴³ Article 2, UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights (2011).

⁴⁴ Article 4, UCLG Committee (2011).

⁴⁵ Article 4, (1), UCLG Committee (2011).

⁴⁶ Article 6, UCLG Committee (2011).

⁴⁷ Article 4 (1), UCLG Committee (2011).

processes, accountable local leadership and decentralisation of decision-making powers to local communities.⁴⁸ In addition the UCLG Committee provides for the right of residents to clean and well-managed cities.

2.8 Framework for local governance in Africa

A number of regional instruments on local governance are presented in this section. Some of the international instruments are linked to Africa since they have chapters on the African continent. An example is the United Cities and Local Governments (UCLG) which has the United Cities and Local Government in Africa (UCLGA) as its African chapter. As such the two institutions link their activities. Similarly most African local governments draw from international frameworks such as from the UN-Habitat framework on local government. On the African region, the instruments, both binding and 'soft laws' to be explored are the Charter for Popular Participation in Development and Transformation (CPPDT) (1990); the African Union Charter on Democracy, Elections and Governance (ACDEG) (2012); the All Africa Ministerial Conference on Decentralisation (AMCOD); the United Cities and Local Governments of Africa (UCLGA); the Victoria Falls Declaration adopted in 1999; the Kigali Declaration of 2006 and the Harare Declaration. From each of the instruments the researcher will extrapolate critical features of representative democratic governance that will be used in chapter 4 to test section 4 A of the Urban Councils Act.

2.8.1 The United Cities and Local Governments of Africa (UCLGA)

2.8.1.1 Background and purpose

The United Cities and Local Governments of Africa (UCLGA) is a forum of African local government institutions and it is guided by a Constitution. The UCLGA was established by the leaders of local governments in Africa at the Africities 1 Summit, Abijan, 1998 to spearhead local government reforms in most African countries and democratise local government institutions.⁴⁹ The General Assembly is the supreme decision-making body of the UCLGA⁵⁰

⁴⁸ Article 9, UCLGA Constitution (2008).

⁴⁹ Preamble, UCLGA Constitution (2008).

⁵⁰ Article 10, UCLGA Constitution (2008).

while the Pan African Council of Local Governments is the policy-making body of the organisation.⁵¹ The researcher discusses elements of representative democracy contained in the UCLGA Constitution.

2.8.1.2 Relevance and legal force

The United Cities and Local Governments of Africa (UCLGA) was established by a Constitution as a Pan African international organisation of which the majority of African countries, including Zimbabwe, are members.⁵² The UCLGA enjoys the recognition of the African Union and strives for a united and strong Africa.⁵³ The UCLGA draws its power from the UCLGA Constitution which regulates activities of the organisation in seeking to provide a framework for the governance of cities and local government in Africa. The UCLGA recognition by the African Union enables it have credibility and recognition by member states on the continent, including Zimbabwe.

2.8.1.3 Critical features of democratic governance

The UCLGA is guided by its founding values which are *respect for democratic principles, rule of law and good governance*.⁵⁴ In addition, the Constitution presents the objectives of the UCLGA, the most applicable to this thesis being that of seeking *to promote democratic principles and institutions, popular participation in the processes of governance*.⁵⁵ In its objectives, the UCLGA also encourages State parties to abide by and/or complement the efforts of other regional legislation especially those that seek to promote the observance of human rights⁵⁶ such as the African Charter on Human and People's Rights as well as the African Charter on Democracy, Elections and Governance which seeks to promote democratic electoral principles.⁵⁷ In addition the UCLGA recognises the importance of involving popular participation in governance of local authorities as evidenced in the provision that central

⁵¹ Article 10, UCLGA Constitution (2008).

⁵² Article 1, UCLGA Constitution (2008).

⁵³ Preamble, UCLGA Constitution (2008).

⁵⁴ Article 3.4, Constitution of the United Cities and Local Governments of Africa (UCLGA) (2008).

⁵⁵ Article 4.9, UCLGA (2008).

⁵⁶ Article 4.10, UCLGA (2008).

⁵⁷ Article 4.11, UCLGA (2008).

government should seek to *'promote democratic principles and institutions, popular participation in the process of governance and good governance generally'*.⁵⁸

Most importantly the UCLGA recognises the importance of decentralisation of power from central government to local councils and eventually to communities. This is provided in the statement that central governments should seek to *'promote the policy of decentralisation'*.⁵⁹

The critical elements of representative democracy drawn from the UCLGA Constitution include *decentralisation, popular participation, the rule of law and good governance*. As a result the promotion of decentralisation of power to local authorities and communities forms one of the core components of UCLGA. The study will seek to test the extent to which the appointment of special interest councillors in the Zimbabwean context complies and/or resonate with the elements of representative governance provided in the UCLGA Constitution.

2.8.2 Charter for Popular Participation in Development and Transformation (CPPDT)

2.8.2.1 Background and purpose

Unlike most international instruments and initiatives which are spearheaded by national government, the Charter for Popular Participation in Development and Transformation (CPPDT) was a collaborative initiative by NGOs, grassroots organisations as well as African states.⁶⁰ The CPPDT was adopted by the United Nations Economic Commission for Africa in Arusha, Tanzania in February 1990. The major objective of the Charter was

'to sensitise national governments and the international community to the dimensions, dynamics and processes and potential of a development approach rooted in popular initiatives and self-reliant efforts'.⁶¹

The Charter was established in response to the deterioration of social and economic conditions in most African countries from the 1980s onwards. This deterioration of the socio-economic

⁵⁸ Article 4 (4.9), UCLGA Constitution (2008).

⁵⁹ Article 4 (4.12), UCLGA Constitution (2008).

⁶⁰ Article (B) (d) and Article (D) (a), Charter for Popular Participation in Development and Transformation (1990).

⁶¹ Article 4 (b), Charter for Popular Participation in Development and Transformation (CPPDT) (1990).

conditions and the closed political systems that characterised most of Africa's governance structures and institutions in the 1980s led to the '*full appreciation of the role of popular participation in decision making processes*'.⁶²

The Charter was therefore meant to seek ways of curtailing the deterioration of the social and economic conditions of people on the African continent through empowering them to make decisions on matters that affect their lives. Consequently the focus of the CDDPT is rooted in adopting a community-centred approach to development and recognises the vital importance of a people-based approach to development where communities are part of the governance process at all levels and at all times. The CDDPT has provided a blueprint on which participatory democratic principles can be strengthened, including empowering people to make informed political decisions. Key features of representative democratic governance emanating from the CDDPT that will be used to examine section 4 A are participation, inclusiveness, accountability and transparency.

2.8.2.2 Relevance and legal force

The Charter for Popular Participation in Development and Transformation (CDDPT) is 'soft law'. Zimbabwe is a signatory to the Charter and as such it is bound by the provisions. The Charter calls for popular participation in development and transformation.⁶³ It lacks the force of law but encourages state parties to make a commitment towards the realisation of the ideals of popular participation and democratic governance.

2.8.2.3 Critical features of democratic governance

The Charter for Popular Participation in Development and Transformation (CPPDT) presents several elements of democratic representative governance. These include citizen participation (popular participation) which highlights the importance of a participatory approach to governance. The CPPDT presents popular participation as a fundamental right of the people to fully and effectively participate in the determination of the decisions that affect their lives at all

⁶² Charter for Popular Participation in Development and Transformation (CPPDT) (1990).

⁶³ Article 21 (ii), African Charter for Popular Participation in Development and Transformation (ACPPDT) (1990).

levels and at all times.⁶⁴ The Charter asserts the role of popular participation as a determinant and assertive ingredient in democracy and recognises that governance is a collaborative effort between the citizens, their respective governments as well as the international community. Citizens provide a vital cog in the participation continuum and should *'be fully involved, committed and indeed, seize the initiative'*.⁶⁵ The Charter urges African governments to provide an enabling environment for citizens to freely participate in affairs that affect their lives by way of appropriate legislation at different levels of government *'to yield space to the people, without whom popular participation would be difficult to achieve'*.⁶⁶

The CDDPT also recognises the importance of the international community in supporting

*Indigenous efforts which promote the emergence of a democratic environment and facilitate the people's effective participation and empowerment in the political life of their countries.*⁶⁷

From the CPPDT it can be noted that the instrument presents governance as a collective obligation of both the governors and the governed. The CPPDT puts the obligation to facilitate popular participation on state parties which are required to create enabling legislation and conducive environment for citizens to freely deliberate on political, economic and social decision-making processes. State parties are compelled to tolerate differences, accept consensus on issues as well as ensure the effective participation of the people and their organisations and associations.⁶⁸

2.8.3 African Charter on Democracy, Elections and Governance (ACDEG)

2.8.3.1 Background and purpose

The African Charter on Democracy, Elections and Governance (ACDEG) came into force on 15 February 2012 and seeks *'to promote adherence by each State Party to the universal values and principles of democracy and respect for human rights premised upon the supremacy of the*

⁶⁴ Article 23 (ii), ACPPDT (1990).

⁶⁵ Article 23 (iii), ACPPDT (1990).

⁶⁶ Article 17, African Charter for Popular Participation in Development and Transformation (1990).

⁶⁷ Article 23 (3) (iv), African Charter for Popular Participation in Development and Transformation (1990).

⁶⁸ Article 24 (1), ACPPDT (1990).

constitution and constitutional order'.⁶⁹ The ACDEG is possibly the first comprehensive instrument to call for decentralisation and to make it binding on African governments and reaffirms Africa's commitment to democracy and the rule of law. The Charter has been credited for reaffirming the primacy of the rule of law and calling on state parties to initiate appropriate measures, including legislative, executive and administrative actions to bring State Parties' national laws and regulations in conformity with the Charter.⁷⁰ Given that the ACDEG is the latest of African initiative to democratise governance on the continent, it stands to contribute to the strengthening of electoral processes. It should be noted that the thrust of the Charter is on 'stating the minimum requirements for the observance of democratic principles, and its ratification and implementation is imperative to the attainment of peace and security, protection of human rights and effective democratic governance in Africa'⁷¹. While the Charter provides for democratic principles, it does not specifically allude to the appointment of political leadership.

2.8.3.2 Legal status and relevance

The ACDEG presents one of the most outstanding efforts by African heads of state to democratise local government through either decentralisation or devolution or both. The plethora of 'soft laws' that had existed prior to the enactment of the ACDEG, notably the Charter for Popular Participation in Development and Transformation adopted by the UN Economic Commission for Africa (1990), the Victoria Falls Declaration (1999) as well as the Kigali Declaration of 2006 were not enforceable as will be highlighted later under section 2.10. Zimbabwe is one of the countries that signed and adopted the instrument in January 2007.⁷² The ratification of the Charter in February 2012 comes at a time when states are increasingly coming under pressure to democratise different institutions of government, especially local government. The ACDEG is therefore a continental effort by African heads of state showing commitment to the decentralisation and democratisation of local government. The Charter exhorts

AU members that accede to the Charter commit themselves to establishing and strengthening independent and impartial national electoral bodies responsible for the

⁶⁹ Lee R 'New era for democracy in Africa' (2012) *Open Society for Southern Africa* (OSISA).

⁷⁰ Lee (2012).

⁷¹ IDASA (2012) '15 Ratifications of the AU Charter on Democracy, Elections and Governance'.

⁷² IDASA (2012).

*management of elections, and to ensure that there is a binding code of conduct before, during and after the election period*⁷³

Zimbabwe being a signatory to the Charter has an obligation to subscribe and implement the guidelines guiding electoral processes contained in the Charter. In addition the ratification of the Charter signaled a new era in Africa based on the links between free and fair elections, good governance and promotion of the rule of law.⁷⁴

2.8.3.3 Critical features of democratic governance

The contribution of the ACDEG to local government is that the instrument recognises the importance of decentralisation in the governance of communities. The instrument requires state parties to ‘*decentralise power to democratically elected local authorities as provided in national laws*’.⁷⁵ In addition, the Charter reaffirms the importance of free and fair elections and the need for political stability in African states.⁷⁶ As a result the instrument seeks to *promote best practices in the management of elections for purposes of political stability and good governance*.⁷⁷ The ACDEG recognises the right of communities to contribute to decision-making processes through the creation of conditions conducive to citizen participation. The instrument identifies transparency, access to information, media freedom and accountability as some of the elements that make for democratic governance. In this regard, the instrument requires that states should

*promote the establishment of the necessary conditions to foster citizen participation*⁷⁸, *transparency*,⁷⁹ *access to information, freedom of the press and accountability in the management of public affairs*⁸⁰

The ACDEG acknowledges the significance of transparency in the election of public officials, which in the case of local government would mean the election of councillors. In addition the

⁷³ Article 3 (4), ACDEG (2012).

⁷⁴ Lee *New era for democracy in Africa* (2012).

⁷⁵ Article 34, African Charter on Democracy, Elections and Governance (ACDEG) (2012).

⁷⁶ Article 35, (ACDEG) (2012).

⁷⁷ Article 2 (13), ACDEG (2012).

⁷⁸ Article 2 (10), ACDEG (2012).

⁷⁹ Article 2 (10), ACDEG (2012).

⁸⁰ Article 2 (10) ACDEG (2012).

instrument compels states to take reasonable measure to ensure that people have access to information that would enable them to make informed political decisions.

It calls upon state parties to enact relevant legislation that promotes and strengthens democratic institutions. In this regard it calls upon state parties to ‘*develop the necessary legislative and policy frameworks to establish and strengthen a culture of democracy and peace*’.⁸¹

The ACDEG subscribes to the election of public officials as a democratic way of securing political leadership. In summary the Charter calls upon states to conduct of free and fair elections, establish good governance structures and promote the rule of law.⁸²

2.8.4 All Africa Ministerial Conference on Decentralisation (AMCOD)

2.8.4.1 Background and purpose

The growing realisation and recognition of the importance of local governance has resulted in states making concerted efforts and taking initiatives to promote decentralisation. In this regard African Ministers of Local Government have established forums and platforms to deliberate on ways to promote and enhance local governance. One such forum is the All Africa Ministerial Conference on Decentralisation (AMCOD) which was established in terms of its constitution. The AMCOD is a permanent ministerial forum where Ministers in charge of local governance map out strategies about enhancing local government structures. Through AMCOD forums Ministers responsible for local government in their respective countries deliberate on ways to enhance democratic governance and share democratic governance best practices. Most importantly the AMCOD initiated the drafting of the *African Charter on the Values, Principles and Standards of Decentralisation and Local Governance*.⁸³ Together with the United Cities and Local Governments of Africa (UCLGA) these two bodies have a specific focus on developing common regional standards on sub-national governance and democracy. The AMCOD is therefore evidence of commitment by Ministers in charge of local government to share experiences on local government best practices.

⁸¹ Article 11, ACDEG (2012).

⁸² Article 34, ACDEG (2012).

⁸³ Article 2, AMCOD Constitution (2008).

2.8.4.2 Legal status and relevance

The AMCOD is a ministerial grouping and its provision on decentralisation can only be soft law. It is guided by a constitution which stipulates ministerial functions in terms of decentralisation of local government institutions. The AMCOD is a persuasive instrument that provides a platform for ministers of local government to make resolutions on ways of strengthening local democracy. The African Union (AU) invites the AMCOD to AU meetings as a way of recognising the concerted effort of African government in enhancing local democracy. The AMCOD is in regular interaction with the AU during which the African Union and the AMCOD may hold joint consultative meetings through their competent organs⁸⁴. Its provisions are not binding on member states.

The decision making process in the AMCOD is by consensus. In this regard the AMCOD provides that:

*decisions of the Conference of Ministers are adopted by consensus, or where necessary, by the majority of members present.*⁸⁵

This implies that in the spirit of unity, ministers are bound by the decisions of the AMCOD and as such this helps to inculcate a sense of compliance with these decisions. All ministers in charge of local government adopt the Constitution through the vote. It is stipulated that:

*the AMCOD Constitution shall be enforceable as soon as it is adopted by the Ministers in charge of decentralisation and local development by a 2/3 (two-third) majority of member countries present*⁸⁶

The AMCOD links decentralisation and local development.⁸⁷ In addition, through sub-regional groups of Ministers responsible for local government, Ministers are able to peer-review each other on the extent to which they implement decentralisation programmes in their respective countries. Zimbabwe is a member of the AMCOD and as such is bound by the resolutions of the Conference.

⁸⁴ Constitution of the All Africa Ministerial Conference on Decentralisation and Local Development (AMCOD) (2008).

⁸⁵ Article 11, AMCOD Constitution (2008).

⁸⁶ Article 22, AMCOD Constitution (2008).

⁸⁷ Article 23, AMCOD Constitution (2008).

2.8.4.3 Critical features of democratic governance

The AMCOD calls upon AU member states to enact defined laws that empower local authorities to make decisions that address the challenges in the respective constituencies. The Constitution sets out several objectives of the ACMOD, which include *‘to promote decentralisation, local governance and participation of citizens and social groups in designing and implementing development policies’*.⁸⁸

This objective places decentralisation at the centre of local governance where citizens are given the opportunity to participate in the formulation and implementation of developmental policies. In addition the AMCOD takes cognisance of the importance of incorporating civil society in development initiatives and urges state parties to collaborate with civil society in this regard to *‘sensitise all the stakeholders of the civil society to the primordial place of decentralisation in the economic, social and cultural development of every nation’*.⁸⁹

For this thesis the provision on decentralisation would mean that the empowering of communities to make decisions on matters that affect their lives and communities is vital for local democracy. The AMCOD does not provide for appointment of public officials but points out that leadership should undergo the democratic electoral process.⁹⁰

In conclusion critical features of representative democracy that have been identified include decentralisation, community participation, and inclusiveness. The emphasis of the AMCOD is decentralisation of local government, and this will be used in chapter 4 to test the level of compliance of section 4 A of the UCA to representative democratic practices. In addition section 4 A will be tested against the contribution of stakeholders to the democratic process as provided by the AMCOD.

⁸⁸ Part I (2), AMCOD Constitution (2008).

⁸⁹ Part 1 (2) (2008).

⁹⁰ Article 17, AMCOD (2012).

2.8.5 The Kigali Declaration (2006)

2.8.5.1 Background and legal status

The Kigali Declaration is a culmination of deliberations by ministers in charge of decentralisation and local government held in Kigali (Rwanda) in 2005. The focus of the meeting was to provide a road map for decentralisation and the empowerment of local communities to participate in decision-making processes.⁹¹ Zimbabwe took part in the deliberations and as such is party to the commitments that were reached at the meeting. The resolutions of the Ministerial Conference, which came as a declaration, are a show of commitment by participants to the meeting and as such not binding. All the provisions of the Kigali Declaration are in the form of ‘soft law’ and as such are persuasive and call upon participants to commit themselves to the democratisation of local government through decentralisation in which central government cedes power to sub-national government level. In addition, as ‘soft law’ the Declaration provides guidelines to the signatories and other states on how to promote and strengthen democratic local governance.

2.8.5.2 Critical features of democratic governance

The Kigali Declaration recognises the negative impact of poverty on the promotion of democratic local governance structures as well as promoting development. Consequently the Declaration considers decentralisation as central to poverty reduction as it states that:

*decentralisation is an essential instrument for consolidation and strengthening of democracy, good governance, economic growth and poverty reduction.*⁹²

⁹¹ Preamble, Kigali Declaration on Leadership Capacity Building for Decentralised Governance and Poverty Reduction in Sub-Saharan Africa (2005).

⁹² ‘Decentralised Governance Challenges’ Kigali Declaration on Leadership Capacity Building for Decentralised Governance and Poverty Reduction in Sub-Saharan Africa (2005).

In addition the Kigali Declaration calls upon states to enact legislation that provides for decentralisation of local government institutions to accommodate community participation in decision-making processes of local councils:

The Declaration further calls upon States to facilitate the enactment of

*legal and institutional frameworks based on clear decentralisation vision containing the effective process of decentralisation and legal instruments that determine the pace of commitment to decentralisation*⁹³

The primary elements of representative democratic governance that have been drawn from the Kigali Declaration are *decentralisation, citizen participation* and *economic growth and poverty reduction* and the need for state parties to enact legislation for the promotion of decentralisation of power to local councils.

2.8.6 The Victoria Falls Declaration

2.8.6.1 Background and legal status

The Victoria Falls Declaration was the result of deliberations by ministers responsible for local government and decentralisation, mayors, and key stakeholders. The Declaration sought to map out a shared vision on local government in Africa and to identify action for strengthening further local governments in Africa. Adopted in 1999, it is a reaffirmation of Africa's commitment to decentralisation of central powers to sub-national level and democratisation of the local government and was a significant step towards decentralisation. However, just like the Kigali Declaration the Victoria Falls Declaration is 'soft law' and is not binding to signatories but depends on the commitment of state parties to adopt the normative framework contained in the Declaration. However the Declaration urges sub-saharan African governments to enact and adopt legislation that provides for decentralisation and devolution of power to promote local democracy.⁹⁴ Given that Zimbabwe was part of the group of states that signed the Declaration, it has an obligation to recognise the contents of the Declaration.

⁹³ Kigali Declaration (2005).

⁹⁴ Article 3 (1), Victoria Falls Declaration (1999).

2.8.6.2 Critical features of democratic governance

The Victoria Falls Declaration is informed by the principle of devolution for the growth of local democracy. Under the Victoria Falls Declaration, the states are required to commit themselves to *the promotion of democracy and good political governance and enhance the accountability of public office holders.*⁹⁵

In addition the Declaration places importance on decentralisation in local governance and recognises the role that communities play in strengthening democratic institutions. Furthermore, the Declaration encourages states to enact legislation to:

- *to devolve power and responsibility to lower echelons, promote local democracy and good governance, with the ultimate objective of improving the quality of life of the people;*⁹⁶
- *be directed towards local government structures, which are representative of, and accountable to, all sectors of the local population, including marginalised and disadvantaged groups;*⁹⁷
- *be directed to levels of local government structures, which enable effective community participation in local governance;*⁹⁸
- *involve the transfer to local government institutions those powers and functions necessary to enable them to: provide services for the local population efficiently and effectively*⁹⁹ and
- *provide a conducive environment for local economic development;*¹⁰⁰

In conclusion the Victoria Falls Declaration identified decentralisation, devolution and community participation as salient features of democratic governance. In addition the Declaration encouraged states to take reasonable measures to ensure that these features of democratic governance are provided in legislation.

⁹⁵ Article 3 (3).

⁹⁶ Article 3 (3).

⁹⁷ Article 3 (b).

⁹⁸ Article 3 (c).

⁹⁹ Article 3 (d) (i).

¹⁰⁰ Article 3 (d) (ii).

To that effect participants concurred that there was need for decentralisation to take place as a way of transforming local government and enhancing *accountability* and *transparency, inclusion of marginalised* and disadvantaged social groups, effective *community participation* and to enshrine local government in the constitutions of the countries present.¹⁰¹

2.8.7 Summary

While most of the instruments were explored above are ‘soft laws’ they do present a blueprint for democratisation of local government. In addition they are evident of the level of commitment by African states to democratise local government mostly through decentralisation and devolution. The different African instruments found common voice in calling upon their governments to enact enabling legislation to promote local democracy through electoral processes. The different instruments that were explored identified several critical features of representative democratic governance. The critical features include community participation, transparency, accountability, efficiency, inclusiveness and representative leadership. These features of democratic governance extrapolated from the instruments will form the basis for testing section 4 A of the Urban Councils Act to establish the extent to which it resonates with democratic practices.

In the following section, the study discusses the Zimbabwe Parliamentary Select Committee (COPAC) constitutional provisions on local government. The COPAC draft is vital for this study because it is a result of public consultations and is the first document to provide local government as an institution with constitutionally-protected powers.

2.8.8 The Zimbabwe Parliamentary Select Committee (COPAC) Draft Constitution

2.8.8.1 Introduction

The political and economic crises of the 1990s and the disputed elections of 2008 led to the signing of the interparty Global Political Agreement (GPA)¹⁰² in Zimbabwe. The GPA paved way for the formation of the government of national unit (GNU) or Inclusive Government in

¹⁰¹ Article 3(e) (i).

¹⁰² Ndlovu-Gatsheni SJ ‘Elections in Zimbabwe: A recipe for tension or remedy for reconciliation’ 2012 *Institute for Justice and Reconciliation Cape Town* (IJR 2012).

2008. The Inclusive Government was provided in the Global Political Agreement as a three-year transitional political arrangement during which various political reforms would be implemented, including the drafting of a new constitution¹⁰³ for Zimbabwe. This is how the COPAC draft came into being after nation-wide public consultations by an interparty parliamentary committee- the Parliamentary Select Committee (COPAC). The public consultations commenced in July 2010 and went on until March 2011. During the period from April 2011 up to July 2012, members of the COPAC undertook the task of writing up the constitutional draft by interpreting findings from public consultations. The document that culminated from these public consultations came to be known as the COPAC draft constitution. However, the draft constitution is yet to be taken to a referendum, presumably in March 2013 after which elections would be held. This section provides a detailed discussion of local government provisions of the COPAC draft contained in section 14¹⁰⁴ which, if adopted, will become law and will transform the local government system in Zimbabwe. Given that there are prospects that the COPAC draft is the prospective constitution of Zimbabwe, it is being explored in this thesis to determine the extent to which it provides for representative local governance. A comparative analysis of the COPAC draft provisions on local government and those extrapolated from different instruments will be used to test the extent to which section 4A of the Urban Councils Act complies with critical features of representative governance.

2.8.8.2 Unpacking the COPAC draft on local councils

This section unpacks elements of local governance that are provided in the COPAC draft to prepare for a comparative analysis of these COPAC draft elements of representative democratic governance to section 4A of the Urban Councils Act to establish the extent to which section 4A of the UCA complies with the requirements of representative democratic governance. The COPAC draft gives a detailed description of local government in four sections under the following headings: Devolution of Governmental Powers and Responsibilities;¹⁰⁵ Urban Local Authorities;¹⁰⁶ Functions of Local Authorities;¹⁰⁷ and Elections and Local Authorities.¹⁰⁸

¹⁰³ Article VI, Global Political Agreement (2009).

¹⁰⁴ S14, COPAC draft (July 2012).

¹⁰⁵ S 14.1 COPAC draft (July 2012).

¹⁰⁶ S 14.11, COPAC draft (July 2012).

2.8.8.3 Devolution of Governmental Powers and Responsibilities

Under devolution, the COPAC draft exhibits the desire to reform local government by empowering local councils and enhance their autonomy. The provisions on devolution in the COPAC draft present a first attempt in Zimbabwe to provide constitutionally protected powers of local government institutional and legislative frameworks. In addition, the comprehensive provision of local government in the COPAC draft provides for structures and institutions that should comprise the new local government system in the country. Most importantly, the COPAC draft provides for devolution of powers from central government to local communities. In this regard the COPAC draft provides that:

*governmental powers and responsibilities must be devolved to provinces and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively.*¹⁰⁹

In addition, the COPAC draft recognises the right of communities to manage their own affairs for developmental purposes. This is stipulated in the provision that it is mandatory

*“to recognise the right of communities to manage their own affairs and to further their development”*¹¹⁰

The COPAC draft is different to all constitutional and legislative provisions in the history of the country because it recognises the right of communities to contribute to local democracy primarily through the election of local council officials. The draft presents local governance as seeking *“to enhance citizen participation in local governance”*¹¹¹.

This is stated in the provision that

*“to give powers of local government to the people and enhance their participation in the exercise of State powers in making decisions that affect their lives”*¹¹².

¹⁰⁷ S 14.13, COPAC draft (July 2012).

¹⁰⁸ S 14.14, COPAC draft (July 2012).

¹⁰⁹ S 14.1 (1) COPAC draft (July 2012).

¹¹⁰ S14.1 (2) (d) COPAC draft (July 2012).

¹¹¹ S14.1 (3) (d) COPAC draft (July 2012).

¹¹² S14.1 (2) (a) COPAC draft (July 2012).

No other legislative or constitutional framework in the constitutional history of Zimbabwe ever provided for the ceding of State powers to communities and the incorporating of communities in the decision-making processes through electing local leadership. The COPAC draft recognises the importance of devolution by empowering local councils and local communities through the

“transfer [of] responsibilities and resources from national government in order to establish a sound financial base for each provincial and metropolitan and local authority”¹¹³

2.8.8.4 Urban Local Authorities

The COPAC draft makes specific reference to urban local governance. It provides that the primary purpose of urban local councils is *to represent and manage the affairs of people in urban areas*.¹¹⁴ In addition, the provision recognises the importance of elected councillors in the management of urban council affairs by stating that

“urban local authorities are managed by councils composed of councillors elected by registered voters in the areas concerned”¹¹⁵

This provision does not make any reference to the appointment of councillors by local communities or councils. This provision reaffirms the need for community participation in the election of local leadership.

2.8.8.5 Functions of Local Authorities

This is one of the most important provisions of the COPAC draft with regard to the establishment of autonomous local councils. The draft provides for the creation of autonomous local councils as the draft recognises that:

“a local authority has the right to govern on its own initiative, the local affairs of the people within the area for which it has been established, and shall have all the powers necessary for it to do so”¹¹⁶

¹¹³ S14.1 (1) (2) (f) (2012).

¹¹⁴ S14.11 (1) COPAC draft.

¹¹⁵ S14.11 (2) .

The provision is confirmation that the COPAC draft recognises the importance of autonomy of local authorities. In addition this provision recognises and acknowledges the importance of investing power in local authorities to represent their interests. In addition the draft recognises that locally-elected leadership understands community needs although in reality this might not be the case. The draft does not make provision for the appointment of councillors local by communities.

2.8.8.6 Elections and Local Authorities

The COPAC draft recognises the importance of locally-elected councillors in local councils and stipulates when (and how) as well as under what circumstances these should be elected into office.¹¹⁷ The draft reaffirms the view that councils should be established for every locality and that the respective communities should be responsible for the election of local council officials to administer the affairs of the communities.¹¹⁸ The COPAC draft also recognises the fact that mayors should be appointed by those councillors elected to represent different wards in council.

¹¹⁹

2.8.8.7 Overview

The COPAC exhibits elements of democratic governance, providing for the election of local councillors as well as mayors and other public office bearers. The COPAC draft also recognizes the role of communities in determining the choice of local leadership. The draft also recognises the significance of elections and elected leadership. Most importantly devolution is provided for as acknowledgement transfer of power and functions should help to facilitate participation of communities in decision making processes with limited central government intervention.

¹¹⁶ S14.113 (1) .

¹¹⁷ S14.14 (1) COPAC draft.

¹¹⁸ S14.14 (2) .

¹¹⁹ S14.14 (2) (a).

2.8.8.8 Summary of provisions of international instruments and the COPAC draft

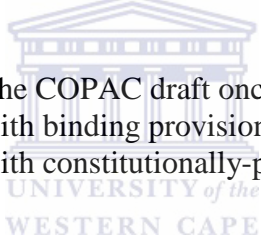
The study has explored different international and regional instruments as well as the COPAC draft to establish a normative framework for representative democratic governance. Below is a table presenting a summary of the critical features of representative democratic representative governance. The table presents those critical features of democratic representative governance that apply to Zimbabwe and legislative framework to which Zimbabwe is a member of affiliate.



Instrument	Summary of provisions and critical features of representative governance	Elements of representative governance	Relevance for Zimbabwe
UN Habitat-Good Urban Governance Index (UGI)	<p>-provides an index and regulatory framework for good local governance and seeks to establish how local action can improve the quality of urban governance.</p> <p>-advocates for human rights, non-discrimination and inclusion, gender equity and marginalised groups.</p>	Calls for elected councillors and elected mayors who should be accountable to the communities who elected them into office	<p>Should align its local government in accordance with the UGI in coming up with councillors</p> <p>Zimbabwe is a member of the UN-Habitat</p>
Charter for Popular Participation in Development and Transformation (CPPDT)	-advocates for a participatory approach to governance	Calls for full appreciation of the role of popular participation in decision making processes	<p>Should consider role of residents in appointment of councillors</p> <p>Zimbabwe is a member and is bound by the terms of the Charter</p>
African Charter on Democracy, Elections and Governance (ACDEG)	-encourages democratic governance through transparent electoral processes	Provides for decentralisation of power to democratically elected local authorities as provided in national laws	<p>Local authorities should be elected by local communities</p> <p>Zimbabwe is a signatory to the Charter and is obliged to abide its terms</p>
All Africa Ministerial Conference on Decentr.	-advocates for devolution of government structures	Calls for decentralisation and deepening of local democracy	<p>It is imperative to deepen local democracy through decentralisation and devolution</p> <p>Zimbabwe is a participant</p>

Instrument	Summary of provisions and critical features of representative governance	Elements of representative governance	Relevance for Zimbabwe
The United Cities and Local Governments of Africa (UCLGA)	-advocates for African unity through a united local government framework and urges nation states to enact legislation to promote such unity of purpose.	Calls for promotion of democratic principles and institutions, popular participation in governance	Popular participation enhances legitimacy for local councils Zimbabwe is a member of the UCLGA and draws from the recommendations of the body.
The Kigali Declaration	- provides for legal and institutional frameworks based on clear	-decentralisation and devolution of functions to different levels of government	Should consider decentralisation as the cornerstone of local democracy. Zimbabwe is a signatory and is obliged to comply with terms of the Declaration.
Victoria Falls Declaration	-advocates for limited central government interference and in local government affairs. -advocates for autonomous local government based on participatory democracy.	Recognises the role of local communities in strengthening local democratic institutions.	Communities have a role to play in enhancing local democratic institutions Zimbabwe is a signatory to the Declaration.

Instruments	Summary of provisions and critical features of representative governance	Elements of representative governance	Relevance for Zimbabwe
<p>The Zimbabwe Parliamentary Select Committee (COPAC) Draft Constitution</p>	<ul style="list-style-type: none"> -recognises the right of communities to manage own affairs -devolves powers of local governance to local communities as a way of enhancing citizen participation. -places heavy emphasis on decentralisation and devolution -advocates for democratic, transparent and accountable local governance. 	<p>Calls for devolution of powers to local councils which are elected by local residents.</p> <p>Urban local authorities are managed by councils composed of councillors elected by registered voters in the areas concerned</p> <p>The COPAC draft once passed at the referendum will become a constitution with binding provisions. Local government will be presented as an institution with constitutionally-protected status</p>	



2.8.8.9 Values emerging and COPAC Draft

Several critical values of representative democratic governance have emerged from the exploration of international instruments and the COPAC draft. The common elements of representative governance identified are: decentralisation/devolution (where power is transferred to the sub-national level to make autonomous decisions, local democracy (where local people contribute to decision-making processes within their areas), inclusiveness (where every social group is involved in making decisions that affect their lives), accountability (local government (and its officials-both elected and appointed) should be accountable to the community it serves), transparency (where all decisions are clear and apparent), representative leadership (where political leadership should represent the needs of the citizens), citizen participation (residents should play an active role in decision-making processes).

The different instruments identified devolution as central to the implementation of other critical features of representative governance. In addition different instruments have highlighted the importance of cultivating local democracy through election of representatives, community participation, transparency and accountability. The COPAC draft calls on recognition of special interests and equity in democratic governance. Despite the call for devolution and decentralisation of functions to local authorities, cooperation between different levels of government should exist. Under devolution, the study discusses the fact that powers and functions should be transferred to local communities to make decisions that impact on their livelihoods. In local democracy, local communities should take part in the election of local leadership who should represent those communities. The election of local leadership should be transparent. In addition elected leadership should be accountable to local communities whose interests they represent. In the election of local leadership, cognisance should be taken of the need to represent special interests. The composition of the elected leadership should also be inclusive of marginalised groups. Effectiveness and efficiency are components of democratic governance which help in achieving development. In local governance effectiveness and efficiency seek to ensure that objectives benefit communities through economic use of resources. In the different instruments, it was noted that cooperation between the different spheres of

government help in effective implementation of policies. It is on the basis of these values that the practice and implementation of section 4 A will be tested to establish the extent to which it complies with international benchmarks as provided by different instruments and the COPAC draft. The next chapter unpacks the provisions of section 4 A of the Urban Councils Act to establish the extent to which the practice and implementation of legislation complies with representative democratic governance.



CHAPTER THREE: LOCAL GOVERNMENT IN ZIMBABWE AND THE APPOINTMENT OF SPECIAL INTEREST COUNCILLORS

3.1 Introduction

This section discusses local government system in Zimbabwe. Most importantly this section discusses the local government system in Zimbabwe, local government structures and institutions, local councils in rural and urban areas, the election of local council officials as well as political leadership. This chapter discusses the background to the appointment of special interest councillors and the content, practice and implementation of section 4 A of the Urban Councils Act. The chapter then unpacks the content of the legislation and the extent to which the practice and implementation of the legislation impacts on democratic governance. The thrust of this section is on the role of local council leadership (appointed or elected) and how they impact on local autonomy and representative democratic governance. The emphasis of this chapter is to discuss different parts of section 4 A.

3.2 Local government system in Zimbabwe

The history of local government in Zimbabwe dates back to the 1890s with the arrival and subsequent colonisation of the country by the British South Africa Company (BSAC). This is besides the existence of traditional forms of local government systems that were presided over by traditional chiefs. The control of local populations and Native Councils was done through the enactment of different pieces of legislation and the establishment of different structures and institutions.¹²⁰ Different legislation for controlling rural and urban areas were enacted, but the most important was how the increasing urban population groups were to be controlled and services provided in growing townships.¹²¹ Hence the first legislation and structures for the control and provision of services was implemented in urban areas with those pertaining to rural areas being enacted later. The first local government structure was the Salisbury Sanitary Board, established in 1891 under the Ordinance 2. Other advisory boards came later in different urban

¹²⁰ Yoshikuni T *African Urban Experiences in Colonial Zimbabwe: A Social History of Harare before 1925* (Harare: Weaver Press 2006) 15.

¹²¹ Mushamba (2010) 13.

areas to provide a strict monitoring mechanism for African affairs. All the advisory boards fell under the direct control of the District Commissioner.¹²² These structures ‘laid the foundation for a highly centralised system of local governance based on white supremacy policies and characterised by the imposition of sub-standard and centrally-defined programmes on Africans and Native Councils’.¹²³ To further institutionalise white control of Native affairs, a plethora of other local government legislation was to follow. These included the Matabeleland Order in Council (1894), the Municipal Law (1897), the Land Apportionment Act (1930), the Municipal Act (1930) and the Urban Councils Act (1973). Through these different pieces of legislation, central government was able to monitor and control operations of local councils and Advisory Boards. Although Advisory Boards were established in African townships played a purely consultative role, they were not intended to empower the local authorities or residents.¹²⁴ This plethora of legislation signaled the commitment of the colonial administration to entrench their control of indigenous population. The predominant characteristic of these pieces of legislation was the level of control of central government over local affairs.

3.2 Post colonial local government system and administration

This section unpacks the different structures and institutions that comprise local government in Zimbabwe. The issues that will be discussed are the local government institutions that administer urban and rural affairs, numbers of personnel involved with local government administration, the electoral system in local government, powers and responsibilities of different structures and institutions, as well as significant institutions such as mayors and managers.

3.2.1 Local government institutions

The post-colonial system of local government in Zimbabwe inherited elements of colonial local government system, notably the classification of rural and urban, governed through rural and urban councils. These local government institutions are governed through the Urban Councils Act and the Rural and District Councils Act respectively. At independence the new dispensation

¹²² Yoshikuni (2010) 23 .

¹²³ Madhekeni & Zhou (2012) 4.

¹²⁴ Chatiza (2010) 8 .

sought to reform local government by creating a single local government Ministry and amalgamating former African councils into district councils and urban councils. In addition, new local government legislation was enacted for district councils and urban councils, namely the Rural District Councils Act¹²⁵ and the Urban Councils Act¹²⁶ respectively. The new legislation and institutional framework retained the central government stronghold on local authorities.¹²⁷ Additional specialised subsidiary legislation was enacted to strengthen central government's grip on local authorities as well as on citizens in general. Some of the subsidiary legislation included the Chiefs and Headmen Act¹²⁸, Communal Land Act¹²⁹, the Provincial Councils and Administration Act, the Customary Law and Local Courts Act¹³⁰ and the Traditional Leadership Act.¹³¹ The implementation and practice of each of the legislation falls directly under the control of the Minister of Local Government, Rural and Urban Development (MLGRUD). The MLGRUD oversees the implementation of all the above-mentioned local government legislation. Taking charge of all the above pieces of legislation has enabled the MLGRUD to exercise enormous executive power over all local government activities and local council operations and facilitating central government's grip on local councils.

3.2.2 Urban Councils

Urban councils administer the affairs of urban areas. Currently there are 30 urban councils in the country. Urban councils are arranged in hierarchical order. Those in level 1 are city councils (7), level 2 are municipalities (9), and level 3 are town councils (10). Lastly those in level 4 are local boards (4). Legislation provides for the establishment and upgrading of urban councils to the next level.¹³² The upgrading of urban councils is done by the Minister in terms of legislation.¹³³ Urban councils are empowered to make bylaws that regulate socio-economic activities within

¹²⁵ Chapter 29:13, Rural District Councils Act (1996).

¹²⁶ Chapter 29:15, Urban Councils Act (1996).

¹²⁷ Yoshikuni T *African Urban Experiences in Colonial Zimbabwe: A Social History of Harare before 1925*. (Harare: Weaver Press 2006).

¹²⁸ Chapter 29:01, Chiefs and Headmen Act (1990).

¹²⁹ Chapter 20:04, Communal Land Act (1990)

¹³⁰ Customary Law and Local Courts Act (No. 2) of 1990.

¹³¹ Traditional Leadership Act of 1998; Zimbabwe *Institute Local Government: Policy Review* (Cape Town 2005).

¹³² S 4 (1) (14), Urban councils Act [Chapter 29:15].

¹³³ S 14 (3), Urban Councils Act.

their area of jurisdiction, in terms of existing legislation.¹³⁴ The bylaws may regulate the provision of health and education, as well as other aspects of service delivery, including housing and the provision of water.¹³⁵ In all these functional areas, councillors play a pivotal role to link up council residents with the local council and to represent the interest of residents in council. Councils are composed of both elected ward councillors and appointed special interest councillors.¹³⁶ To facilitate participation in local council debates and to better transact business, councils establish specialised administrative committees to deal with different aspect of local governance.¹³⁷ Committees such as Health, Finance, Housing, Environmental, are some of the common structures that exist in different urban (and even rural) councils.

3.2.3 Rural District Councils

Rural and district councils are established in terms of legislation.¹³⁸ These councils administer the affairs of rural districts across the country. There are a total of 60 district councils across the country. The current district councils are a result of the amalgamation of former African and European Councils that existed in rural areas before 1980 in line with democratic requirements of inclusiveness and equity among racial groups. Among the major functions of rural district councils include the demarcation of ward and constituency boundaries, imposing taxes in terms of legislation.¹³⁹ In addition, just like urban councils, rural district councils have powers to make bylaws for the administration of the affairs of district areas.¹⁴⁰ However the stronghold of central government on the operations of rural district councils is reflected by the fact that the Minister may dissolve such councils in the event of any irregularities such as maladministration or corruption and appoint a Commission to run the affairs of the affected rural councils in terms of legislation.¹⁴¹ Just like urban councils, rural district councils are managed by elected councillors

¹³⁴ S 102, 145, 227 & 232, Urban Councils Act.

¹³⁵ S 228, Urban Councils Act.

¹³⁶ S 4 (1), Urban Councils Act.

¹³⁷ 224 (50), Urban Councils Act.

¹³⁸ S 8, Rural and District Councils Act [Chapter 29:13].

¹³⁹ S 6, Rural and District Councils Act.

¹⁴⁰ S 88, Rural and District Councils Act .

¹⁴¹ S 207 (1), Rural and District Councils Act.

in addition to appointed special interest councillors.¹⁴² Just like in urban councils, rural councils have specialised committees that facilitate participation of councillors in council business.

3.2.4 Elections of local council officials

Elections play a vital role in determining local leadership of local councils. All electoral processes in the country including local government elections are conducted by the Zimbabwe Electoral Commission.¹⁴³ All electoral process in the country have been harmonised and as such are carried out simultaneously for all different levels of government. The Zimbabwe Electoral Act oversees the conduct of elections, including the election of councillors. Local councils are composed of ward councillors by elected by residents and special interest councillors appointed by MLGRUD in terms of legislation.¹⁴⁴ Below is a discussion of the election and appointment of local council councillors.

Elected councillors are elected by residents in the wards where the incumbents reside.¹⁴⁵ The incumbents are elected to represent the interest of those in their constituencies or wards. The appointed councillors can either be caretaker councillors¹⁴⁶ or special interest councillors.¹⁴⁷ In both cases of appointed councillors, the appointed councillors are appointed based on their expertise or skill in a designated interest area. Caretaker councillors are appointed by the Minister in urban areas not exceeding three councillors where there are no elected councillors or the incumbent has been suspended, imprisoned or due to ill-health.¹⁴⁸ The caretaker councillors may be appointed on a temporary basis to take charge of a council ward whether or not the individual qualifies to be appointed. The qualifications for appointment as a caretaker councillor include owning immovable property in the municipality such as a house or business.¹⁴⁹ In some cases, the MLGRUD may dispatch its own officials until new councillors are elected to fill the vacancy.¹⁵⁰ The other group of appointed councillors is known as special interest councillors and

¹⁴² 229 (2)), Rural and District Councils Act.

¹⁴³ S 104 (1), Urban Councils Act.

¹⁴⁴ S 4A, Urban Councils Act.

¹⁴⁵ S 4, Urban Councils Act

¹⁴⁶ S 80, Urban Councils Act.

¹⁴⁷ S 4A, Urban Councils Act.

¹⁴⁸ S 41 (7), Urban Councils Act.

¹⁴⁹ S 104 (1) (b), Urban Councils Act.

¹⁵⁰ S 80 (1), Urban Councils Act.

just like caretaker councillors, these are appointed on the basis of skill or expertise in a specific area of relevance to local government. Those appointed on the basis of possession of skills is in recognition of the possible contribution that the incumbents can make in local councils to represent the interest of designated groups, such as those in business, disabled and gender. Those appointed on the basis of expertise possess professional credentials that enable them to competently represent the interest of their designated fields, such those in education, legal and medical fields. This means that the appointment is at the discretion of the Minister. The practice of appointing special interest councillors and the implementation of the relevant legislation is the focus of this thesis.

One of the most important elected council officials are mayors who are elected from among elected councillors at the first sitting of council in terms of legislation.¹⁵¹ Councillors are either elected or appointed. In terms of legislation once ward councillors are elected, they may then elect a mayor¹⁵² and deputy mayor¹⁵³ from among them. The position of mayor used to be an executive portfolio but changes to local government legislation¹⁵⁴ rendered the portfolio ceremonial.¹⁵⁵ Currently the position of mayor is ceremonial which means that the incumbent does not have executive powers to make decisions but has to consult with elected councillors. The major functions of the mayor are:

- to supervise and co-ordinate the affairs of the council concerned;¹⁵⁶
- control the activities of the employees of the council;¹⁵⁷
- preside over all meetings of the councils' executive committee;¹⁵⁸
- sign orders, notices and documents that require execution or authentication¹⁵⁹ as well as;
- exercise any function that the council may delegate to him/her.¹⁶⁰

¹⁵¹ S 48 (1) Urban Councils Act.

¹⁵² S 38 Urban Councils Act.

¹⁵³ S 103 (1) (b) Urban Councils Act.

¹⁵⁴ S 103 (1), Urban Councils Act.

¹⁵⁵ S 87, Urban Councils Act.

¹⁵⁶ S 64 (1) (a) Urban Councils Act.

¹⁵⁷ S 64 (1) (b) Urban Councils Act.

¹⁵⁸ S 64 (2) (a) Urban Councils Act.

¹⁵⁹ S 64 (2) (d). Urban Councils Act.

These functions put the mayor on a crucial position in the implementation of local council policies and ministerial directives.

The details of the appointment of special interest councillors in urban local councils will be discussed in detail in the next section.

3.2.5 Political leadership

In the pre-colonial era, traditional chiefs were the political leadership and were in charge of traditional institutions. This formed some form of elementary local government system but falling under the direct control of the colonial administration. At independence the new political dispensation inherited the centralised local government structure where all major decisions of local authorities were directed from the centre. At independence, the new dispensation adopted the political party system, which resulted in the politicisation of local government system. The politicisation of local government is characteristic of elected leadership in political party systems as political parties seek to influence local government policies.

The politicisation local councils is rooted in ZANU PF's desire to influence local government policies.¹⁶¹ It has also been argued that ZANU PF sought to manipulate its popularity in rural areas during the liberation struggle to spearhead its party policies to gain political mileage.¹⁶² Having been in power for most of the post-colonial era, ZANU PF set about imposing local leadership in local government structures and institutions across the country. In cases where local council elections were held, candidates were imposed on residents.¹⁶³

3.2.6 Local autonomy

Jordan (1984) has noted that the existence of autonomy in local affairs is a *sine qua non* for continued existence of local democracy.¹⁶⁴ Threats to local autonomy can come either through direct interference by central government or through direct interference by the Minister of Local

¹⁶⁰ S 64 (2) (h) Urban Councils Act.

¹⁶¹ Yoshikuni (2006).

¹⁶² Helmsing (2004).

¹⁶³ Madhekeni (2012) 12.

¹⁶⁴ Jordan JD *Local Government in Zimbabwe: An Overview' Mambo Occasional Papers-Socio-Economic Series* No. 17 (1984) 89.

Government.¹⁶⁵ For example, in terms of existing legislation, the Minister has the power to appoint senior staff of councils.¹⁶⁶ In either way interference curtails local autonomy as instructions are handed down from either central government or the Minister. From the establishment of the first structures of local government in colonial Zimbabwe, the Salisbury Sanitary Board and later the Victoria Advisory Board, it was evident that the concept of local autonomy would be difficult to introduce because the Advisory Boards fell under the direct control of the District Commissioner. The legislation accompanying these Advisory Boards put the District Commissioner at the centre of all local government activities.¹⁶⁷ The post-colonial local government legislation does not much from colonial legislation, as it allowed direct interference of the Minister in the local affairs and stifling local autonomy. The appointment of special interest councillors originates from the desire by central government to provide strict monitoring of local councils by deploying the Minister to make interventions in local council operations. These interventions came in the form of being involved in the appointment of senior local government personnel, interpretation of statutory instruments and the oversight over the general operations of local councils. The wide-ranging delegated powers of the Minister to make appointments to ‘rectify any shortcomings in the local governance system’¹⁶⁸ have resulted in additional appointments to local councils. These decisions by the Minister impact on the operations of local councils in terms of decision-making and budgetary processes. Below is a discussion of one such case of Ministerial interference in local affairs of councils through the appointment of special interest councillors in terms of section 4A of the Urban Councils Act.

3.3 Background to the appointment of special interests councillors in local government

The practice of appointing council officials to local councils is not a post-colonial development. The practice of appointing council officials is not a recent development in local government. From 1891 when the Salisbury Advisory Board was established, the practice of appointing council of officials was introduced when in the same year a Board of Management was

¹⁶⁵ Jordan (1984) 89.

¹⁶⁶ S 132/133/134, Urban Councils Act.

¹⁶⁷ Madhekeni & Zhou (2012) 21.

¹⁶⁸ Jonga & Chirisa ‘Urban Local Governance in the Crucible: Empirical Overtones of Central Government Meddling in Local Urban Councils Affairs in Zimbabwe’ 2009 *Theoretical and Empirical Researches in Urban Management* 3 (12) 168.

established to run the emerging town of Salisbury. The Board of Management was composed of four elected members and three members appointed by the British South Africa Company which was the Company responsible for the administration of the town.¹⁶⁹ From that time the appointment of local council officials has co-existed alongside elected council officials. In the current local government system the appointment of special interest councillors has attracted much attention and forms the basis for this study. In successive advisory boards, the local government systems continued to appoint African councillors to advise the white officers on the status of African townships. Since then the appointment of councillors by central government has become common practice. The current local government system provides for the appointment of special interest councillors in both rural¹⁷⁰ and urban councils¹⁷¹ by the MLGRUD.

Although most of Ministerial appointments have not attracted much attention, it was the introduction of the appointment of special interest councillors in rural district councils¹⁷² that showed such appointments could be used for political reasons. The appointment of special interest councillors became a continuous process of ‘establishing grassroots participation structures, and providing a framework for co-ordinating government institutions’ participation in rural development’.¹⁷³ However, it faced a lot of criticism from affected rural communities because of lack of transparency.

Mushamba has argued that despite the fact that decentralisation enhances democracy and increases efficiency in service delivery,¹⁷⁴ much of the decentralisation process has been implemented in rural areas.¹⁷⁵ In the Zimbabwean case, rural areas have been political strongholds for ZANU PF over the years and as such appointing special interest councillors would help to consolidate the ZANU PF in rural areas.¹⁷⁶ Having been in power for long, ZANU PF sought to use the same practice of appointing special interest councillors in urban areas to

¹⁶⁹ Chakaipa, S (2010) 35.

¹⁷⁰ S 80, Rural and District Councils Act (1996).

¹⁷¹ S 4 A, Urban Councils Act (2006).

¹⁷² S 11 (b) Rural and District Councils Act (1996).

¹⁷³ Chatiza (2010).

¹⁷⁴ Government of Zimbabwe *Local Governance for Poverty Reduction: The case of Zimbabwe* Paper prepared for presentation at the Africa Governance Forum, Maputo, May 23-25 2002.

¹⁷⁵ Mushamba S (2010) 5.

¹⁷⁶ Hammar A *The making and unmaking of local government in Zimbabwe’ in Zimbabwe’s Unfinished Business: Rethinking Land, State and nation in the Context of Crisis* (eds) Hammar A, Raftopoulos B and Jensen S (Harare: Weaver Press 2003).

bolster their presence in urban local councils. To be able to appoint special interest councillors in urban local councils, central government amended the Urban Councils Act in 2008 to enable the Minister to appoint special interest councillors. The section below unpacks the content of section 4 A and the implication of the provisions for representative democratic governance.

3.3.1 Background to the enactment of section 4 A of the Urban Councils Act

The practice of appointing councillors to local councils has been in existence since the 1980s when Zimbabwe attained political independence and was the dominant political party in the country. The practice was put in place as part of the post-colonial local government reforms initially implemented in rural areas. However the practice was only implemented in district rural councils in terms of District and Rural Councils Act¹⁷⁷. The practice was introduced at a time when ZANU PF was the sole political party with very little or no opposition to its hegemony as has been discussed above. The appointments were therefore made to consolidate ZANU PF hold on political power in rural areas as has been discussed above. The councillors were appointed on the basis of expertise and were known as ‘special interest’ councillors responsible for specialist areas such as the education, health, the disabled, women’s affairs as well as legal issues. It should be noted that because ZANU PF was the main political party then, it dominated local government both in rural and urban councils. It was not until the end of the 1990s that ZANU PF began to face a threat to its political hegemony from emerging political parties, notably the Movement for Democratic Change (MDC), a broad-based political movement which became increasingly popular from the 2000 onwards. This emergence of the MDC and its subsequent domination of urban councils in the elections that were conducted in the elections of 2000 put ZANU PF’s political hegemony under threat.

This led to ZANU PF seeking ways of diluting the MDC’s dominance in urban councils. On the eve of the 2008 Harmonised Presidential, Senatorial, House of Assembly and Local Government Elections, sensing possible defeat, and vested with much experience in the workings of local government, ZANU PF initiated deliberations to amend the Urban Councils Act to incorporate the practice of appointing special interest councillors in urban areas. This culminated in the

¹⁷⁷S 11, District and Rural Councils Act .

amendment of the Urban Councils' Act on 8 April 2008, leading to the enactment of section 4A of the Urban Councils Act.

Through statutory instrument 79/2010 which gave rise to section 4A of the Urban Councils Act, the Minister of Local Government is vested with authority to fix the maximum possible number of special interest councillors for every urban area, without consulting the residents in the ward.¹⁷⁸ Under this legislation, the MLGRUD makes additional appointments to urban councils. The introduction of special interest councillors was based on the policy rationale that the new elected councillors need to work alongside experienced individuals and to represent interests of marginalised groups in society. In the next chapter the researcher discusses the practice and implementation of legislation of appointing special interest councillors by the MLGRUD in terms of legislation.¹⁷⁹ A detailed chronicle of dismissals and suspensions of different councillors and mayors presented under **Table 1** of the survey is evidence of the power that the Minister wields in determining who should be councillor and who should not.

3.3.2 Provisions of section 4A of the Urban Councils' Act

The amended section 4A of the Urban Councils Act is made up of three sub-sections. It stipulates the quota of appointed special interest councillors in each urban local council. The legislation also determines how the incumbents should relate to the MLGRUD. In addition the legislation provides the benefits that should accrue to the incumbents in their capacity as councillors, although they do not vote. Below is the full provision of section 4 A of the Urban Councils Act:

Subject to this Act, every municipal and town council shall consist of-

(1) (a) One elected councillor for each ward of the council area; and

(b) Such number of appointed councillors representing special interests, not exceeding one-quarter of the number of elected councillors, as the Minister may fix in respect of the council by statutory instrument, and who shall hold office during the pleasure of the Minister

¹⁷⁸ Veritas (2010) *Urban Councils to get special interest councillors*-Bill Watch 15/2010.

¹⁷⁹ S 4A, Urban Councils Act.

(2) Appointed councillors shall participate in the business of the municipal or town council to which they are appointed and perform the same functions and be entitled to the same benefits in every respect as if they were elected councillors, except that they shall not have a vote at meetings of the municipal or town council concerned.

3.4 Unpacking section 4A of the Urban Councils Act

In this section the researcher unpacks the implementation of the legislation and how it resonates with representative democracy. In the discussion of the legislation, the researcher highlights elements such as deciding on the numbers to be appointed and elected; selecting candidates for appointment based on interest; deciding on tenure of incumbents; and status of appointed special interest councillors.

3.4.1 Deciding on the Numbers

Section 4A (1) (a) provides for the election of at least one ward councillor for each ward. This is in line with representative democracy where residents are able to elect local leadership of their choice. This section also recognises the right of residents to elect leaders of their own choice. In this section there is no evident influence of the MLGRUD in the election of councillors, or if such influence is there, it is limited. Such election of local councillors is legitimate as it is (or should be) done in terms of the Zimbabwe Electoral Act.¹⁸⁰ This in turn stipulates the number of councillors to be elected for each ward. This section of the Act is thus important in that it sets the foundation on which the number of special interest councillors will be based. However the Minister may deviate by going over the 25% threshold since he/she is empowered to fix the number of those individuals that may be appointed as special interest councillors.¹⁸¹ Once the councillors are elected, the Minister would then appoint more than 25% of elected councillors.¹⁸² This means that the higher the number of elected councillors in a constituency, the higher the possible number of appointed special interest councillors. This element of discretion on the part of the Minister to fix the number of appointed councillors could be the reason for different

¹⁸⁰ Article 23 (1), Zimbabwe Electoral Act (2006).

¹⁸¹ S 4 A (2), Urban Councils Act.

¹⁸² S 4 A (2), Urban Councils Act.

numbers of appointed special councillors in urban councils with the same number of elected councillors. It is left to the Minister to determine the number of special interest councillors not exceeding one quarter of the elected councillors. This means that the Minister may decide to appoint less or an equivalent of a quarter of those elected to council. More details in this regard are presented under paragraph 3.4.2 the survey of 20 urban councils which shows different numbers of appointed special interest councillors in different local councils.

3.4.2 Selecting candidates based on expertise

Section 4A (1) (b) calls upon the MLGRUD to make the necessary appointment of individuals with the special skills (and in some cases with relevant expertise as with former mayors). Although section 4A (1) (b) mandates the MLGRUD to make the appointments, it does not provide guidelines or criteria and the process of appointing councillors is left at the discretion of the Minister. However practice has shown that the common fields that have been considered as special interest areas include skills and expertise (experience) in education, health, the disabled, women and other fields that the Minister may from time to time identify. In addition, the legislation does not provide for ways to determine the level of skills and/or expertise of the appointees. This means that the Minister may appoint anybody as long as according to the Minister's judgment, the individual is suitable. Thus it is the Minister who makes the final decision without being restrained by any statutory criteria. Thus also there is no guarantee that the appointed special interest councillors indeed possess the required expertise or indeed represent special interests.

3.4.3 Deciding on the length of the tenure

In addition to providing for the selection of candidates for appointment as special interest councillors, section 4A (1) (b) also decides on the length of tenure of the appointees. The appointed councillors *shall hold office during the pleasure of the Minister*.¹⁸³ This means that they may operate as long as the Minister wants them to and can be dismissed or have their tenure

¹⁸³ S 4A (2), Urban Councils Act.

renewed, whether they are performing well or not. The fate of special interest councillors is thus in the hands of the Minister to retain or dismiss them.

3.4.4 Status of the appointed special interest councillors

Section 4A (2) empowers the appointed special interest councillors to take part in municipal business and to perform the same functions as their elected counterparts. The appointees receive the same benefits as their elected counterparts, with their salaries being paid by the local authority and not by the Minister. However the major difference between appointed and elected councillors is that of voting rights. While elected councillors can vote, appointed special interest councillors do not have the right to vote. Despite the fact that the appointed special interest councillors have no voting rights, they are influential in terms of providing expertise and skills. In addition, appointed councillors enjoy the personal recognition of the Minister unlike the elected councillors who are chosen by the local communities. Therefore they can be regarded as vital to the implementation of policy in local councils due to their expertise and skills in local government.

3.5 Justification for the enactment of section 4 A of the Urban Councils Act

It can be noted that section 4A (2) brings up questions of the desirability of special interest councillors given that they are non-elected individuals, enjoying similar benefits as their elected counterparts. It has been argued that their presence can be important because they contribute to debates in councils and help influence policy towards specific interest groups. By virtue of their experience and expertise, special interest councillors are necessary to retain continuity of council business after the election of new and inexperienced MDC councillors.¹⁸⁴ It can be noted that there are several justifications for the enactment of section 4A of the Urban Councils Act. The justification for appointing special interest councillors using the practice as a way of promoting multi-party democracy, as a bulwark against corruption or as a partisan practice by a dominant political party. On the other hands there are political reasons for appointing special interest

¹⁸⁴ Shumba P (2012) 2.

councillors in urban councils. The two positions will be discussed under separate headings, namely ‘official policy position’ and ‘political reasons’.

3.5.1 Official policy position

The argument under the official position was that since most of the elected MDC councillors are still inexperienced in local governance, they needed to work alongside experienced former councillors, hence the need to incorporate experienced councilors mostly from ZANU PF. It should be noted that only ZANU PF held the position of councilors in most local councils because it was the only dominant political party with no challenges to its rule until 2000 with the participation of the MDC in local government elections. The existence of inexperienced councillors mostly from the MDC justified the need to appoint special interest councillors.

3.5.1.1 Need for expertise in local council

During the enactment of section 4A of the Urban Councils Act it was argued that the appointment of special interest councillors would help to integrate experienced councillors and other civic leaders into local councils to strengthen and promote balanced debate. It was envisaged that such experienced councillors and civic leaders would draw from their years of exposure to local council business. The experience of the appointed councillors would be of help to the elected MDC councillors most of whom did not have any prior local government experience. Therefore in order to have continuity in local council business the appointment of experienced councillors, mostly ZANU PF candidates who had lost in local government elections was justified.¹⁸⁵

3.5.1.2 Promoting multi-party democracy

It was argued that confining the composition of local councils to elected councillors would limit the composition of most local councils to MDC councillors who are usually the preferred political party, especially in urban areas. Therefore finding alternative ways of opening up the

¹⁸⁵ Grabmore G ‘Ignorance Chombo's primary aim is to frustrate MDC councils’ *New Zimbabwe Forums*, 18 May 2012.

composition of local councils through incorporating other political parties and constituencies without passing through the voting process would enable more voices in local councils.¹⁸⁶ Incorporating different social groups would give voice to different sections of the local community. Despite the fact that the MDC party had won in most urban councils, but the incorporation of individuals from other political parties would facilitate the cross fertilisation of ideas in local councils and a culture of tolerance among different political parties. It was envisaged that having one political party in council would not be in the spirit of multi-party democracy. The appointment of special interest councillors coming from different political, social and economic backgrounds would not only enrich the debates and expertise within local councils, but would also promote multi-party democracy.¹⁸⁷ In addition, the appointment of different social interest groups within local councils would ensure representation of different social groups. Bringing in specific groups such as women, the disabled and youth would ensure the representation of their interest in local government policy formulation and implementation. Appointing special interest councillors for these and other groups would also enable local councils to make informed policy decisions that serve the interests of different groups.

3.5.1.3 Bulwark against corruption and protection of residents

It was argued that special interest councillors were appointed to provide checks and balances on the performance and activities of elected councillors from the same political parties who might want to engage in corrupt practices.¹⁸⁸

There were also claims by the MLGRUD that the enactment and subsequent implementation of section 4A was necessitated by central government's desire to protect residents from councillors. The MLGRUD justified the intervention in local councils as seeking to 'protect residents' from the excesses of inexperienced MDC councillors.¹⁸⁹ This is the official version of what the

¹⁸⁶ Shumba, P (2012) 3.

¹⁸⁷ Madhekeni G (2012) 23.

¹⁸⁸ Harare Residents Trust (2012) 2.

¹⁸⁹ This is expressed in the following newspaper report: *Chombo has justified his meddling, insisting that he is protecting residents from the excesses of corrupt local authorities – most of which are run by the MDC-T.*

Minister presents as the justification for making additional appointments to urban councils that are dominated by the MDC councillors elected in their respective wards.¹⁹⁰

However despite the official rationale for the appointment of special interest councillors, there are those who view such appointments as being done for political reasons.

3.5.2 Political reasons

Apart from the official policy position which states that experienced former councillors should be appointed by the Minister as a way of inserting expertise and skills, there is also another position (herein the political position) which argues that in enacting section 4A and appointing special interest councillors, the MLGRUD has political motives as discussed below.

3.5.2.1 Capitalising on the inexperience of the MDC in local governance to enact the piece of legislation

One of the most puzzling issues is how the MDC could have allowed the enactment of Section 4 A when it was evident that it not only empowered the MLGRUD but that it would be used to against the MDC elected councillors. There are possibilities that the euphoria of prospects of winning all electoral processes in the election which were to be held in 2008 overwhelmed the MDC legislators to the extent that they saw no need to delay the amendment of the Urban Councils Act. It could also be that the lack of local government experience and the meaning and impact of local government legislation could have contributed to this oversight on the part of the MDC. In 2006 when section 4A first became operational in urban local councils, ZANU PF had been in government for over 26 years while the MDC had never been in government as a sole party. As such it lacked government experience and tended to take things for granted, including the possible impact of section 4 A on the operations of urban local councils dominated by the MDC.

¹⁹⁰ Staff Reporter 'Mangwana raps 'undemocratic' Chombo'' *New Zimbabwe*, 25 August 2012.

3.5.2.2 Using the appointed special interest councillors as spies for the MLGRUD

Given that most councillors in both urban and rural councils are from the MDC the Minister may have sought, through appointed special interest councillors, to gather information on what would be going on in urban councils. With different political parties in local councils as well as experts in different fields, these councillors would also check on each other's performances and such practice would most likely limit corrupt tendencies. It may be that the MLGRUD have used the appointment of special interest councillors to gather intelligence on the proceedings in urban local councils.¹⁹¹ This argument has been expressed by the media as the major reason behind the suspension and dismissal of MDC councillors on the pretext that there are either corrupt or incompetent. It would only be through some of the councillors in councils that the Minister would be knowledgeable about deliberations in local councils. As a result appointed special interest councillors could be the most likely source of information for the Minister for him to be able to decide who to suspend and eventually dismiss for 'maladministration' or 'mismanagement' subjective terms which cannot be quantified.¹⁹²

3.5.2.3 Using the appointment of special interest councillors as a way of discrediting the MDC

In addition to using special interest councillors to gather intelligence the study has also noted that the appointment of special interest councillors could mostly be used to discredit the MDC which dominate most urban local councils. The dominance of the MLGRUD in local council decision-making processes and operations of all local authorities could have been used to frustrate the efforts of elected MDC councillors in their endeavours to execute projects in their constituencies and subsequently curry favour with residents and eventually put the name of their political party-ZANU PF in good public standing. As a result of rampant suspension and dismissal of elected MDC councillors, many projects have not been completed. The deterioration of services against the backdrop of the regular suspension of elected councillors has portrayed the MDC elected

¹⁹¹ The Elected Councillors' Association of Zimbabwe (ECAZ) 'Chombo uses councilors as spies' *The Zimbabwean*, 7 August 2012.

¹⁹² Media reports have highlighted that there has been regular suspension and subsequent dismissal of MDC elected councillors as mayors as cited by the Combined Harare Residents' Association (see Shumba 2012:2).

councillors as incompetent and accuses them of being unsuitable to hold public office. By such behaviour, the MLGRUD seeks to weaken the MDC as a political party and discredit elected MDC councillors.

The fact that the Minister does not appoint special interest councilors in some urban councils such as in Kwekwe and Chinhoyi could be that there is no provision that sets timeframes for such appointments to be made. This lack of a timeframe calling upon the Minister to make the appointment of special interest councillors could lead to hasty appointment of individuals with no expertise to offer.

3.6 Summary

The local government system in Zimbabwe has been characterised by the domineering role of central government over local affairs. This domineering role of central government has also frustrated cooperation between the centre and local authorities. Through pieces of legislation, the centre has been able to control and monitor local councils.

The chapter unpacked the contents of section 4A of the Urban Councils Act. The discussion of the content of section 4 A indicated that the legislation provides for the election of ward councillors, appointment of special interest councillors to provide skills and expertise. In addition, the legislation empowers the MLGRUD to decide on the length of tenure and status of the appointed councillors. In all these provisions the MLGRUD plays a decisive role. The implementation of section 4A is a subjective decision by the Minister. There are no guidelines to direct the Minister on whom to appoint, for how long and to whom such appointees should be accountable. The official justification of appointing special interest councillors has been to augment the work of the elected councillors and to insert skills and expertise through appointing experienced individuals. In addition in this chapter the study presented political reasons that assumed to be behind the appointment of special interest councillors.

CHAPTER FOUR: COMPARING THE APPOINTMENT OF SPECIAL INTEREST COUNCILLORS AGAINST NORMATIVE FRAMEWORKS AND THE COPAC DRAFT

4.1 Introduction

From the exploration of international instruments and the COPAC draft in Chapter 2, different values of representative democratic governance emerged. These are devolution and limits to central government interference; elements of local democracy, notably election of representatives, community participation, transparent decision-making and accountable leadership as well as effectiveness and efficient decision making. In realising these values there should be cooperation between different levels of government. In this chapter the researcher will establish the extent to which the implementation and practice of section 4 A complies with these values drawn from the international instruments and the COPAC draft. In order to assess practice, a sample survey of 20 urban local councils is presented below and discussed. This list is used to establish the extent to which section 4 A complies with the critical features of representative governance drawn from international instruments and the COPAC draft.

4.2 An analysis of the practice of appointing special interest councillors in terms of section 4A

The researcher undertook a survey of 20 urban councils to establish the practice and implementation of section 4 A. In addition the study analyses the level of consistency in the appointments with the quota provided in section 4A (1) (b) of section 4 A.

4.3 Special interest councillors in selected urban councils

The researcher uses results of a survey of selected local councils to analyse the composition of the appointed special interest councillors in terms of gender, political party alignment as well as the skills that they have, as presented in the table below.

City/ Town	Elected	Appoint ed	Remarks						
			Gender		Party alignment		Special interests	Special skill/expertise	% special interest councillors (approx.)
			M	F	ZANU PF	MDC			
Bulawayo	29	7	7	-	7	-	All rejected by residents ⁱ	unconfirmed	25%
Chinhoyi	15	1	-	1	1	-	unconfirmed	unconfirmed	7%
Gweru	18	4	4	-	4	-	1 resident assoc. 1 disabled	1 commerce 1 education	22%
Kadoma	17	4	1	3	4	-	-	1 male-former mayor 3 females 1 medical doctor, 1 education, 1 media	24%
Kwekwe	14	0	-	-	-	-	Minister made NO appointment	no appointments made	0%
Marondera	12	3	2	1	3	-	-	1former ZANU PF mayor, 1 former ZANU PF dep. mayor, 1 former ZANU finance chair	25%
Mutare	18	4	4	-	4	-	1business	1 legal,1 finance,1 admin	22%
Redcliff	9	2	2	-	2	-	1 business	1 artisan	22%
Shurugwi	13	-	-	-	-	-	no appointment	No appointment	0%

Victoria Falls	11	1	1	-	-	1	1 business	-	9%
Harare	46	11	9	2	11	-	1 disabled, 1 residents assoc	1 business, 8 former ZANU PF councillors	24%
Gwanda	11	2	2	-	2	-	1 business	1 former ZANU PF councillor	18%
Kariba	9	1	1	-	1	-	-	1 former ZANU PF mayor	11%
Karoi	10	3	2	1	3	-	-	3 former ZANU PF councillors	30%
Zvishavane	12	2	1	1	2	-	1 business	1 former ZANU PF councillor	17%
Masvingo	17	3	2	1	3	-	1 disabled 1 business	1 education	18%
Rusape	13	2	1	1	1	1	-	1 former (ZANU PF) councillor, 1 education	15%
Chegutu	15	1	1	-	1	-	-	1 former (ZANU PF) mayor	7%
Bindura	8	2	2	-	2	-	-	2 former (ZANU PF) councillors	25%
Chitungwiza	23	4	4	-	4	-	1 business	1 former mayor, 2 former (ZANU PF) councillors,	17%
TOTAL	320	57	46	11	55	2	13 interests	44 skills/expertise	18%

4.4 Summary of salient aspects of the composition special interest councillors

The summary discusses political affiliation, gender, special interest areas, and skills of the appointed councillors. From a total of 320 elected councillors in 20 urban areas, 57 were appointed as special interest councillors. This represents 18% of the total elected councillors. This is less than the stipulated 25% quota for special interest councillors. It should be noted that the Minister has the right to determine the number of special interest councillors as long as it does not exceed 25% of those elected by residents.

The researcher has observed that the thrust of the appointments seems to be tilted towards skills and expertise more than the representation of special interests. What is of importance in the composition of this table is the fact that there are more special interest councillors appointed on the basis of their skills or experience in a designated field than those representing special interest. This implies the thrust is more on expertise and experience than on representation of special interest groups such as the disabled and women. From the table above it can be noted that the number of representation of interests is 13 which represents 23%. On the other hand the number for skills and expertise is 44 which represent 77%. This can be interpreted to mean that it is not about representation of special interests but skills and expertise which implies that the focus of the Minister is to insert skills and expertise among the elected councillors.

4.4.1 Percentage of councillors from ZANU PF

The researcher has observed a trend in which most appointed special interest councillors are losing ZANU PF candidates. The composition of the special interest councillors shows that there more councillors affiliated to ZANU PF than those from the MDC. Out of the 57 appointed special interest councillors, 55 are from ZANU PF which represents 96% of the total of appointed special interest councillors. This inclination towards the appointment of ZANU PF councillors by a ZANU PF Minister suggests that the appointments are being used to serve a political purpose more than inserting skill and expertise in local councils. From the evidence presented by the survey it can be argued that the MLGRUD may be using the appointment of special interest councillors to reward political associates. This is even more evident in that almost all appointed special interest councillors belong to ZANU PF which happens to be the

political party of the MLGRUD.¹⁹³ It could therefore be concluded that the appointees are not only close associates of the Minister, but the practice of appointing individuals without and set criteria could promote nepotism and patronage. The appointment as special interest councillors could also be consolation for ZANU PF losing candidates for having braved the political storm against popular MDC candidates. Although it can be blamed on the absence of criteria for appointing special interest councillors, there are chances that could be appointing political associates as special interest councillors.

4.4.2 Percentage of female appointees

From the picture given by the composition of appointed special interest councillors derived from the table above, it suggests that the appointment does not seem to consider gender equity or representation. From a cumulative total of 57 appointed special interest councillors, only 11 are women while 46 are male. This percentage of women to men is approximately 24%. This is despite the fact that women are generally under-represented in most areas and more women would have been appointed under 'interest' to increase the representation of women. It could be argued that the appointment of very few female special interest councillors shows the negative impact of lack of guidelines which has led to arbitrary appointments without due regard for gender equity.

4.4.3 Percentage of the disabled

While it can be acknowledged that the disabled are a special interest area and that more representation is necessary, this could be achieved by appointing at least one for representative for each of the local councils. This representation of the disabled is very small, given that out of a total of 57 appointed special interest councillors, only 2 (Harare and Gweru) have been appointed to represent the interests of this group. This represents 3.5% of the total number of special interest councillors in the selected local councils. The inadequate representation of the disabled as depicted on the composition of special interest councillors defeats the purpose of

¹⁹³ See Survey table of the composition of special interest councillors in 18 urban local councils for different urban councils. In two urban councils, namely Kwekwe and Chinhoyi the Minister did not make an appointment for special interest councillors.

inclusive representation, especially given the increasingly number of the disabled people in society. In the appointment of special interest councillors, the Minister claims that the interests of designated groups should be represented, but in the case of the disabled, the representation is not adequate and uniform for all urban councils.

4.4.4 Appointment based on skill

An analysis of the table shows that under skills there are those who have been involved in a specific working environment for a long time and have gained relevant experience, such as former mayors and councillors. These have been included based on the contribution that their skills would make to local government. Then there are those who have received training in a specific trade or vocation, such as medical or legal practitioners. These have been incorporated on the basis of their expertise. This is the basis on which ‘skills/expertise’ and ‘interest’ were distinguished in the table above. However for purposes of this discussion both columns of ‘skills/expertise’ and ‘interest’ will be regarded as representing skills. As a result, each of the appointed special interest councillors represents specific skills or interests. However there are cases where the skills of the appointees could not be confirmed, such as the case in Bulawayo and Chinhoyi.

4.4.5 Frustrating residents for failing to vote for ZANU PF candidates

From the way special interest councillors have been selected for appointment and the fact that most of them are former councillors, it is evident that the incumbents are losing candidates. The appointment of the incumbents is meant to frustrate the residents who refused to vote for the ZANU PF candidates. It is also assumed that the MLGRUD seeks to sway the electorate in future elections by implanting voter apathy since resident will see no need to vote for an MDC candidate when at the end of the day both those that they voted for and those that they voted against will co-exist in council and enjoy the same benefits.

4.4.6 Exacerbating the scarcity of local council financial resources

It is the researcher's interpretation that the appointment of special interest councillors whose salaries come from the coffers of local councils has been targeted as depleting financial resources in local councils and cripples them into failing to provide services to residents. The very essence of the appointment of special interest in addition to elected councillors has put pressure on local councils' financial resources. While it is a well-known fact that most local councils do not have adequate financial resources. Adding more councillors whose welfare and benefits have not been budgeted for exacerbates the scarcity of financial resources of local councils and decreases their propensity to provide quality service delivery to residents.

4.5 Gaps in implementation of section 4A of the Urban Councils Act

Several gaps have been identified in the implementation of section 4 A of the Urban Councils Act. The researcher has observed that there is a lack of consistency and clarity on the number of special interest councillors that all appointed for each urban council. While the legislation¹⁹⁴ stipulates the maximum number of special interest councillors to be appointed to each local council, there is no mention of how many these should be. The lack of consistency is a result of the ambiguous nature of the provision. This vague nature of the legislation has led to inconsistencies in the numbers of special interest councillors that are appointed for each council. Such inconsistencies in the allocation of special interest councillors have shown the extent to which legislation can be abused for political gain. The appointments have also shown that the term 'special interest' has been interpreted straddle between skills/expertise and experience. This explains why there are more appointees with professional backgrounds which depict expertise than skill.

The vague nature of the legislation has also led to the appointment of special interest councillors to those local councils which pose a political challenge and no appointments to those councils which do not. The fact that four years after the enactment of the legislation, some cities like Kwekwe and Shurugwi have no special interest councillors shows that these local councils do

¹⁹⁴ S4 A (1) (b), Urban Councils Act.

not pose much challenge to the Minister. It is common knowledge that the work of a Cabinet Minister is to implement policy and legislation, but taking such a long time to implement section 4 A in some parts of the country is shows the extent to which the Minister can act arbitrarily. The most likely reason for this lack of urgency on the part of the Minister to appoint special interest councillors for some cities could be that such local councils do not present a major political challenge.

4.6 Comparing section 4A to critical features of representative democratic governance

Chapter 2 explored different international instruments and the COPAC draft to extrapolate critical features of representative governance. This part of the thesis compares section 4A of the Zimbabwe Urban Councils Act and elements of democratic governance as well as COPAC provisions on local governance. The exploration of different international instruments and the COPAC draft have led to the extrapolation of critical values which will be used in this section to establish the extent to which section 4 A complies with the requirements of representative democratic governance. The analysis and comparison of section 4 A to critical elements of representative governance will be guided by values extrapolated from international instruments and the COPAC draft. The values are devolution and Limits to central interference in which the discussion will be centred on the extent to which in the practice and implementation of section 4 A, there has been devolution. In addition the analysis will seek to establish whether there has been a restraint on limiting central interference. The study will also seek to establish the extent to which local democracy has been provides in law and practice of section 4 A. Other elements that will be used to compare section 4 A to international instruments and COPAC draft are the level of representative democracy, transparency, participation and accountability in the practice that have been achieved in the practice and implementation of section 4 A. In addition the study will seek to establish whether the appointment of special interest councillors contributes to efficiency and effectiveness in local council operations and whether the practice is able to accommodate special interest and equity. In addition, the analysis will also seek to establish whether there is cooperation between levels of government.

4.6.1 Devolution and limited central government interference

This section seeks to establish the extent to which the practice and implementation of section 4 A exhibits devolution of functions to local authorities. Devolution and decentralisation featured because both concepts call for the transfer of powers to sub-national levels for communities to make autonomous decision in line with the needs of localities.¹⁹⁵ It has been argued that the major reason for devolution of governmental powers and responsibilities to lower levels of government is to empower them to make decisions that affect that their communities and to enhance efficiency and effectiveness.¹⁹⁶ Devolution helps in limiting central government interference and at the same time transferring functions to local communities.

In terms of section of 4A of the Urban Councils Act central government does not transfer power to communities to make appointments. While it can be acknowledged that central government has decentralised government functions to sub-national levels the Minister continues to appoint special interest councillors. Through legislative powers, the Minister can make additional appointments to all urban councils. The COPAC draft, assumes that devolution and decentralisation form the basis for local government and are the central themes that inform provincial and local council governance.¹⁹⁷ While it can be acknowledged that section 4 A of the Urban Councils Act seeks to enhance capacity within local councils by incorporating expertise, it compromises devolution of power to sub-national level.

The reason why the Minister does not consult local councils or communities is that from the way section 4A was enacted and how it has been implemented, it is evident that it was never intended to devolve power to lower levels of government. The legislation focuses on the Ministerial powers to intervene in local council affairs. The legislation therefore compromises devolution as it does not seek to consider input from local councils or communities. This failure to devolve power within section 4A enhances central government role in local council affairs. As a result, central government exercises unlimited interference in local council affairs. The legal framework

¹⁹⁵ S 14 (1), COPACdraft

¹⁹⁶ S 14, (1) (1).

¹⁹⁷ S14.1, COPAC draft.

and practice do not provide a restraint on central government interference in line with the principle of devolution. From the manner in which section 4 A is being implemented, it does not suggest that this principle of devolution is being respected.

It has also been noted in the table of special interest councillors above that the Minister may even decide not to make any appointments as is the case with the Kwekwe City Council and Shurugwi Town Council. In the case of determining how many individuals should be appointed as special interest councillors, the Minister makes the final decision. In addition it has also been observed that there is inconsistencies the appointments because in some cities the appointments are more than the 25% threshold, (Karoi 30%), while in other areas the appointments are less than the threshold (Chinhoyi, Chitungwiza, Kariba and Victoria Falls). In other towns the appointments comply with the 25% threshold (Bindura, Harare and Marondera). It is evident that the Minister acts subjectively in the implementing section 4A appointments and thus as an instrument of control which translates to lack of devolution.

4.6.2 Local democracy

The elements drawn from the international instruments and the COPAC draft in chapter 2 are representative, participation, transparency and accountability. In line with the requirements of different instruments and from practice, local democracy requires that communities elect or appoint leaders to represent their interests in government. At local government level, local communities should be involved in electing local leadership. The process of electing leadership should ensure that there is representivity, that the process enables participation of different people in the community, that there is transparency in the electoral process or the way the leaders are chosen or appointed and that the elected or appointed leaders are accountable to the community.

4.6.2.1 Representative democracy

In the case of section 4A of the Urban Councils Act the appointed special interest councillors are accountable to the MLGRUD and do not represent the interests of local communities. As such the practice of appointing special interest councillors falls short of representative democratic

governance requirements which require public officials to be elected by their communities to represent the affairs of the communities. It can be argued that the fact that only 2 special interest councillors belong to the MDC, representing about 4% of appointed councillors indicates that the practice of appointing special interest councillors does not appear to promote political pluralism. In addition, there is no evidence to suggest that appointed councillors are democratically elected or that they represent different political parties or different constituencies. In addition out of the 57 special interest councillors appointed by the Minister, only 2 special interest councillors are from the MDC while the other 56 belong to ZANU PF as shown on the table above. Therefore the appointed councillors cannot be regarded as somehow representing democratic leadership. While it is acknowledged that special interest councillors are proportionally elected representatives, the fact that some of them have been rejected by residents (as shown by the case of Bulawayo), implies that the practice is unpopular with residents. This is further confirmed by negative media report which castigates the practice and implementation of section 4 by the Minister. In the case of section 4A the special interest councillors do not originate from people's choices and do not represent a confirmed constituency. In the appointment of special interest councillors in terms of section 4A residents are not consulted and the exclusion of residents in determining who should be appointed to administer their affairs does not comply with the requirements of representative democracy. The councillors are therefore not a representation of local interests but represent the interests of the Minister who appointed them.

4.6.2.2 Participation

The principle of participation emerged as a critical feature of democratic governance. Effective participation of citizens in democratic and development processes and in governance in public affairs helps to strengthen democratic institutions.¹⁹⁸ In representative democratic governance, citizens should be involved in all decision-making processes that affect citizens' lives. Evidence has shown that, the appointment of special interest councillors has been done by the Minister without and public consultation since the legislation instructing the appointment of special interest councillors does not provide for the transfer of powers to communities to participate in the appointment of such councillors.

¹⁹⁸ Article 3 (7), African Charter on Democracy, Elections and Governance (ACDEG) (2012).

However, in the practice and implementation of section 4 A, the MLGRUD is not required to seek their opinion in this regard. There is no provision calling on the MLGRUD to interact with residents. It would be argued that this piece of legislation does not conform to the requirements of participatory or representative democracy as it adopts a non-participatory approach to the appointment of special interest councillors in urban areas. It can be noted that this piece of legislation falls short of the principle of representative and participatory. The picture created by the table above suggests that the implementation of section 4 A does not suggest that residents should be part of the appointment process, especially given that residents rejected the very candidates who were eventually appointed by the Minister.

4.6.2.3 Transparency

Transparency has been identified in Chapter 2 as an important aspect of democratic decision making. Transparency refers to clarity and fairness in the management of public affairs.¹⁹⁹ Transparency in the election of political leadership forms the basis for a representative democracy²⁰⁰ as it enhances legitimacy of elected leadership. Without transparency, decisions risk being rejected by the citizens as is the case of the seven special interest councillors appointed in Bulawayo (see table above). In the case of appointing special interest councillors in terms of section 4A there is no transparency about how special interest councillors are appointed by the MLGRUD. The fact that there are no criteria to guide the Minister in making the appointments has led to lack of transparency. In stipulating the appointment of special interest councillors, the law assumes that the Minister will appoint people with the required skills, experience and/or expertise. The lack of guidance may result in anybody being appointed as special interest councillor. As a result, the practice has become shrouded in mystery. These shortfalls make the procedure of appointing special interest councillors in terms of section 4A flawed since the practice lacks transparency. In addition the constituencies of the special interest councillors are subjective in the opinion of the Minister; hence some are not adequately represented while others like the business sectors are adequately represented. In addition, some special interest areas are not clearly defined such the education sector. Going by how section 4 A

¹⁹⁹ Article 3 (8), African Charter on Democracy, Elections and Governance (ACDEG).

²⁰⁰ Article (1) (vi), African Charter on Democracy, Elections and Governance (ACDEG).

is currently being implemented, as well as by the results of the survey; it can be argued that the value of transparency is not being observed.

4.6.2.4 Accountability

Accountable governance demands that public officials should be answerable to the public in the management of public affairs. Accountability of public officials should be directed at those who elected them into public office. Accountability to local communities provides checks and balances on public officials. Local councillors are elected into office through the electoral process and in accordance with existing electoral laws.²⁰¹ As such the elected councillors strive to serve their local councils. Through the appointments of special interest councillors, the MLGRUD is able to monitor performance of public officials. As a result local leadership should be accountable to local communities.

Section 4A is precise as to whom the appointed special interest councillors are accountable to. The fact that the special interest councillors “hold office at the pleasure of the Minister”²⁰² implies that they operate at the behest of the Minister who may dismiss them at any time. Given that the appointed special interest councillors are accountable to the Minister, it suggests that they serve the interests of the Minister. The appointment of special interest councillors in terms of section 4A put the elected councillors in a position where they are accountable to the Minister despite holding public office. Given that special interest councillors are public officials, it is reasonable to assume that they should be accountable to the public. However this is not the case as they are accountable to the MLGRUD.

Following from the language of section 4 A, whoever is appointed is the Minister’s personal preference and as such should be accountable to the Minister. It is also worth noting that the tenure of those appointed as special interest councillors is decided by the Minister who may decide to renew their appointment, dismiss or suspend the incumbents. The Minister thus determines their working conditions. The legislation and practice of appointing special interest councillors compromises the accountability of special interest councillors to the public or their

²⁰¹ 14 (2) (ii), COPAC draft (July 2012).

²⁰² S 4 A (2), Urban Councils Act (2008).

respective local councils. Therefore the law and practice of section 4 A does not suggest that the value of accountability is being respected.

4.6.3 Accommodating special interests/equity

Inclusiveness ensures the representation of all social groups in the community and contributes to local democracy. Inclusiveness also helps in mobilising different groups in the community. Equity has been used interchangeably with inclusiveness in most instruments. Equity enables the representation of different social groups on an equal basis irrespective of their social status and gender.²⁰³ Out of a cumulative total of 57 special interest councillors for 18 urban local councils, only 8 are women. This is a far cry from the provisions of major instruments which call for gender balance and equality in governance and development processes.²⁰⁴

The appointment of special interest councillors is one way of achieving equity. In appointing special interest councillors in terms of section 4A there is no evidence that the Minister considers appointing individuals representing different political, economic and social sectors. The incorporation of appointed special interest councillors, mostly from ZANU PF, does not really add to pluralism and renders the composition of local councils inadequate in terms of incorporation of other political parties or interests other than those presented on the table above. In principle the inclusion of special interest councillors could facilitate the accommodation of a variety of interests, particularly those of vulnerable groups such as the disabled, women, minority groups and political parties. However the fact that the Minister is not required to ascertain prospective appointees' expertise leads to arbitrary appointments, which might not include those able to represent the interest of vulnerable groups. It can therefore be challenged that their presence in local councils as appointed councillors does not contribute to political pluralism. Political pluralism would entail the existence of individuals from different political backgrounds and elected into council to represent their constituencies. In the case of special interest councillors, they do not have the mandate of the people and as such cannot be recognised as contributing to political pluralism. From the table of special interest councillors drawn from

²⁰³ UN-Habitat-Good Governance.

²⁰⁴ Article 2 (11), African Charter on Democracy, Elections and Governance (ACDEG) (2012).

eighteen (18) urban councils (in two councils no appointments were made),²⁰⁵ there is no or very little evidence to show representation of vulnerable groups. Of the 57 special interest councillors in different towns, only three represent the interest of the disabled (Harare, Gweru and Masvingo). The rest of the special interests councillors have been appointed on the basis of skills such as business, legal, medical and educational skills. All these are considered as exclusive interest of those pursuing affluent lifestyles. It can therefore be argued that while the notion of appointing special interest councillors is noble, the practice is fraught with inconsistencies which results in the representation of the well-to-do and not the vulnerable groups. It can therefore be acknowledged that while there is pluralism in the composition of local councils as a result of the incorporation of special interest councillors that does not benefit the target groups. The interests of marginalised groups such as the disabled, the homeless and orphans as well as organised groups such as residents have either been inadequately represented or have not been represented at all.

In terms of section 4A the appointment of special interest councillors is not based on any criteria, hence there is no provision for affirmative action. Although it is argued that special interest councillors could represent specific expertise, often marginalised groups such as women, the disabled and people living with HIV/AIDS, are not considered as a priority for representation. There is no evidence to suggest that these are equitably and sufficiently represented. As a result, section 4A falls short of the requirements of democratic and representative governance which prescribes equity as a vital condition and requirement.

Despite the existence of an opportunity presented by section 4 A to represent the interests of disadvantaged and marginalised groups such as orphans, the homeless and the disabled, the MLGRUD has not taken advantage of it. Instead it would seem the Minister has concentrated on political survival at the expense of the general populations' interests. It could therefore be argued that section 4 A has a noble intention of representing the interests of different sectors of society but the Minister has confined the terms of the legislation to those that he regards as vital for him.

The practice of having more special interest councillors from one political party and less from another party does not meet the requirement of political pluralism that helps to strengthen

²⁰⁵ In Chinhoyi and Kwekwe urban councils, no special interest councillors were appointed.

democracy. The fact that the Minister appoints individuals whose skills or expertise are known confirms the likelihood that appointed special councillors have a contribution to make towards enhancing effectiveness of local councils. In addition to the failure of the system to promote political pluralism as discussed above, it shows that the implementation of this legislation does not recognise other minority political parties or other people from marginalised groups in the community whose interest are not being represented or where there is no such evidence. As a result it can be noted that by appointing more special interest councillors from one political party and without being gender sensitive, the Minister has failed to achieve inclusiveness. It can therefore be noted that section 4A fails to meet the requirements of inclusiveness in representative democratic governance.

4.6.4 Effective and efficient decision making

Efficiency implies using minimum resources to get maximum output and making sound decisions. In the case of local government efficiency would mean using available resources economically. Although special interest councillors have no vote, their existence as advisors to the councils enables councils to make informed decisions on policy formulation and implementation. Taking cognisance of their experience in local government, it is assumed that they have some contribution that they can make to enhance the performance of local councillors.²⁰⁶ In terms of section 4A there is no evidence that the inclusion of special interest councillors has enhanced the quality of decision making. However what is evident is that the additional special interest councillors are an additional financial burden on local councils which contribute to the depletion of council financial resources.

On the other hand the disagreements that are likely to erupt in local councils as a result of different political backgrounds between the elected and appointed councillors are likely to compromise of effectiveness. It can therefore be argued that the legislation and practice of appointing special interest councillors have not improved the efficiency and effectiveness of

²⁰⁶ UN-Habitat Urban Governance Index / United Cities and Local Governments (UCLG); United Cities and Local Governments in Africa (UCLGA); The United Cities and Local Governments of Africa; All Africa Ministerial Conference on Decentralisation (AMCOD); Charter for Popular Participation in Development and Transformation (CPPDT). African Charter on Democracy, Elections and Governance (ACDEG); Kigali Declaration; Victoria Declaration; COPAC Draft.

local councils. What is evident is that there has been increased inefficiency as local councils become increasingly bankrupt while effectiveness has decreased as evidenced by dilapidated infrastructure in most towns.²⁰⁷

The practice and implementation of section 4 A could most likely have had an impact on sound decision making processes. Sound decision making involves incorporating the community in making decisions that affect the lives of the people in that community. Although from a policy point of view, the infusion of special interest councillors would facilitate sound decision making, the practice of appointing the councillors is fraught with inconsistencies. This eventually defeats the purpose of inserting skills in local councils.

Despite the assumption that the presence of special interest councillors enhances the efficiency and effectiveness of local councils, but the differences in political ideologies of elected and appointed should not be taken lightly. There is evidence from media reports that the political rivalry between the elected MDC councillors and the appointed special interest councillors, have led to fraught relationships that would negatively impact on sound decision making. As a result it can be pointed out that the presence of experienced former ZANU PF councillors would likely not contribute to sound decision making or strengthen council debates.

4.6.5 Cooperation between levels of government

Cooperation between levels of government entails the cooperation, co-existence and interaction between different levels of government to implement policies. Cooperative governance enhances the efficient implementation of public policies as different levels of government complement each other in this regard. From the composition of special interest councillors provided above, there is no evidence of cooperation between the Minister who represents central government, and local authorities, in the appointment of special interest councillors. Section 4A does not recognise or facilitate for cooperation between different levels of government. Also, in implementing section 4A the Minister does not act in the spirit of cooperation. In making the appointments, the Minister does not consult local councils. The way section 4A has been implemented leaves local councils with no role to play in the appointment of these councillors

²⁰⁷ Combined Harare Residents' Association (2010).

despite the fact that the councillors will serve together in local councils. This is a recipe for failure as it creates a rift between central and local governments. It also shows that the interaction between central and local government is not in the spirit of cooperation but one in which local councils receive and implement policies handed down from central government. It can therefore be argued that section 4 A does not comply with the requirements of cooperative governance because there is no evidence of consultation between central government (represented by the Minister) and local government (represented by local councils).

4.7 Observations

The discussions about the practice and implementation of section 4 A of the Urban Councils Act concluded that in appointing special interest councillors in urban local councils, the Minister is not required to consult residents or local councils. The Minister eventually makes the appointments of special interest councillors at his discretion. This was further shown by the composition of special interest councillors appointed in different urban councils in which the Minister did not comply with legislation. While in some cases the Minister appointed less than the required quota, in other cases the Minister did not appoint any special councillors at all. There is evidence to show that the practice and law of section 4 A compromises the accountability of the appointed special interest councillors who should be answerable to the Minister. Therefore the researcher makes recommendations that would strengthen the practice and implementation of appointing councillors in urban local councils. In addition the researcher may also seek to provide ways in which local the operation of councils can be strengthened.

The researcher has also observed that the tenure of the appointees rests with the Minister who can either renew or terminate it. It has also been shown that most appointed councillors belong to ZANU PF which practice does not translate to political pluralism because there should be other factors that may be considered in appointing special interest councillors other than putting emphasis on political affiliation.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The previous chapter presented a survey of twenty urban councils and the composition of the councils in terms of both elected and appointed councillors. It emerged that there is no regulated appointment of councillors to represent special interests. The practice and law of section 4 A was also found to be implemented inconsistently. In some cases many individuals are appointed to represent one special interest, while in other areas like the disabled there are very few individuals appointed to represent their interests of the disabled. The study also presented critical features of democratic governance whose values were used to test section 4 A and the extent to which it complies with the requirements of democratic representative governance. From the analysis of section 4 A against the values of representative democratic governance extrapolated from international instruments and the COPAC draft, it emerged that the legislation has failed to comply with the major requirements of representative democratic governance. From the discussions above, it can be noted that the practice and implementation of section 4 A does not only negate international benchmarks on representative democratic governance, but falls short of the basic democratic requirements of participation and transparency. Instead of curbing corrupt practices in local councils, there is evidence to show that the subjective appointments by the Minister could promote corrupt practices.

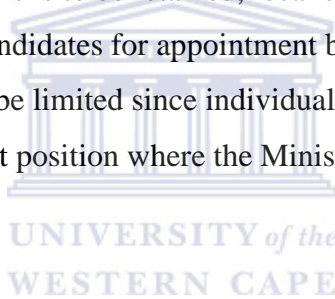
Taking note of the way the practice and law of section 4 A, the researcher makes recommendations based on the values that were extrapolated from Chapter 2. The researcher will seek to identify how devolution and limits to central interference can be achieved; how local democracy could be enhanced; ways in which community participation and transparency in the implementation of local government legislation can be incorporated in legislation. In addition, recommendations will also include ways in which special interests of different groups and equity can be represented in local councils. Lastly the study would also seek to suggest ways of enhancing efficiency and effectiveness of local councils.

5.2 Recommendations

5.2.1 Devolution and limits to central interference

Devolution ensures that lower levels of government are empowered to make their own decisions in line with national legislation. The researcher recommends that having noted that the practice and implementation of section 4 A violates democratic practices; it would be in the best interest of residents and democracy to either repeal or amend the legislation. If the legislation is to be amended, it should aim to ensure that local councils have a say in the appointment of special interest councillors. In the event that the legislation is repealed, I should ensure that all councillors are democratically elected.

If the notion of appointed councillors is to be retained, local councils should be given the opportunity to present their own candidates for appointment by the Minister. In this way the interference of the Minister would be limited since individuals would be presented to him to choose from, contrary to the current position where the Minister identifies and points individuals without consultation.



5.2.2 Local Democracy

In order to enhance local democracy the researcher provides two recommendations. The first option would be for the Minister to make the appointments, subject to consultation with residents. Alternatively, as has been alluded to above, residents may come up with lists of preferred candidates. Under this option, residents compile lists of candidates that they know have the required expertise and skills to represent different interests. Once such lists have been compiled, they are presented to the Minister who should, on the recommendation of local boards made up of residents makes the final appointment.

The second option entails residents making the appointments from among local people who have the required skills and expertise to represent different groups in their localities. In this option, residents use their knowledge of their community to identify local residents who have specific skills and expertise that can represent designated interests in local councils. It is common

knowledge that residents know each other better than a Cabinet Minister; they are likely to appoint qualified individuals in terms of experience, skill, expertise and those from marginalised groups whose interests should be prioritised.

Both options require the amendment or repulsion of the current legislation on the appointment of special interest councillors in urban councils to be able to provide criteria to be used in identifying and eventually appointing the right individuals. As such the local communities and local councils should be instrumental in appointing special interest councillors to take charge of specific areas. As such the incumbents should individuals who are elected or appointed to promote local democracy, and in which the respective communities take part in the identification and appointment of special interest councillors.

As with the above critical feature of devolution, existing legislation should be amended to incorporate community participation in the identification of local individuals with the prerequisite skills and expertise that would help to strengthen democratic governance in local councils. A broader interpretation of special interest areas should therefore be considered.

Involving communities in the appointment of special interest councillors would improve transparency and accountability because the individuals so appointed would be aware of the role of the community in the appointment and is more inclined to be accountable to the local community. Such a way of appointing special interest councillors would also minimise nepotism and help reduce the powers of the Minister in decision making processes. Equity is also likely to be improved since communities are in a position to know those social groups which are under-represented in public office.

In addition, the process of appointing the councillors should be transparent and should recognise the right of communities to choose local leaders. It is common knowledge that individuals feel grateful to those who appoint them to a position. In the same way the current situation is that special interest councillors feel obliged to be accountable to the Minister who appoints them to local councils. Amending the legislation to enable communities to make the appointments would entitle the appointees to be accountable to local communities.

5.2.3 Accommodating special interests/equity

Casting the net wider by calling upon communities to provide lists of individuals with expertise and skills in designated areas of local governance would help in coming up with candidates possessing the best skills and expertise. Such a process of identifying people with skills and expertise would legitimise the practice and implementation of appointing special interest councillors. The legislation should either be enacted or the existing legislation be amended to contain the provision of having special interest councillors in urban local councils to represent designated interests. Such legislation would also need to contain a clause providing criteria of the qualities that are required in candidates vying for appointment as special interest councillors. The problem that has been identified with the practice and implementation of section 4 A has been that it lacks criteria to guide the Minister in appointing individuals for such appointments.

In the practice and law of section 4 A the definition of special interest area has been limited to the disabled and women and the vulnerable groups, whose interests are not adequately represented as shown in the survey of twenty urban councils. However in the end the appointments include professionals and individuals with experience in local government affairs. It could also be as a result of the Minister's limited interpretation of the definition of 'special interest' areas. Providing guidelines that define which areas should be considered as 'special interest' areas would help avoid such a trend. Providing guidelines would also help in providing for equity and inclusiveness of minority groups and other marginalised groups such as the homeless, widows, and the youth.

As a result, it is recommended that if the practice of appointing special interest councillors is to be retained, existing legislation should be amended to contain a clause that stipulates clear criteria on how and for how long the special interest councillors should be appointed. The criteria should be clear on to whom the appointees should be accountable, who should pay the appointees, and for how long should they incumbents be in council as well as the specific interests that the incumbents would represent in local councils. The issue of appointing losing candidates would most likely be avoided since the criteria in place would also seek to address the identification of suitable candidates whom who may not be strongly inclined to specific political parties, save for the elected councillors who are elected to represent their respective political

parties. With such criteria contained in the legislation, the current challenges pertaining to accountability, transparency and inclusiveness would be curtailed.

The researcher also recommends that distinction between skills and expertise should be made so as to avoid mistaking one for the other in the appointment of special interest councillors.

In addition the researcher recommends that there should be clarity on what skills and expertise local councils require, before making the appointments. It should only be after local councils have identified what skills and expertise they require that suitable appointments would be made.

5.2.4 Cooperation between levels of government

The current practice and implementation of appointing special interest councillors compromises cooperative governance. To improve the relationship between central and local government, the introduction of advisory boards comprising members from central government and local councils would help to promote cooperation between central and local government. Such advisory boards would help in the interpretation of local governance statutes and provide a roadmap of implementing such legislation. In addition, the advisory boards would take part in a number of functions such as

- advising the Minister on special skills and the criteria to be used in appointment of special interests councillors;
- advising the Minister on special interest areas and the criteria to use to determine whether an area is a special interest or not;
- nominating candidates for consideration by the Minister;
- vetting candidates that will have been nominated by residents

With such advisory boards in place, there is likely to be consensus between the two levels of government in the implementation of section 4 A.

Given that Ministers are politicians, in some cases they do not have the knowledge of the portfolios that they handle, it would not be appropriate to leave the practice and implementation

of legislation to them. The current system of appointing special interest councillors to local councils did not take into consideration the availability of resources. It would be appropriate to consult with the concerned local councils to establish the status in terms of resources and whether the available resources can accommodate new appointed councillors. If such local councils do not have adequate resources, the appointment of councillors would be set aside until such a time when resources are available

5.2.5 Effective and efficient decision making

As has been discussed above, the lack of criteria to guide the Minister in making the appointments has also led to flawed decisions in terms of the calibre of candidates that are eventually appointed. It is recommended that special interest councillors be appointed based on criteria set by local councils since the councils know the special interests that they want to be represented in their councils. However, the local councils should be guided by legislation to define what constitute a special interest area. This would help local councils to identify candidates with the skills and expertise that they require in their local councils as well as interests of those people in their communities that they think should be represented.

With regards to the working conditions of the appointed special interest councillors it is recommended that this be borne by central government since the individuals are not elected by local residents. Such councillors should not be allowed to strain the financial resources of local councils compromise their ability to provide efficient and effective services to residents.

5.3 General remarks

It has been noted that the practice and implementation of section 4 A of the Urban Councils Act has not complied with the critical features of representative governance extrapolated from international instruments and the COPAC draft. It was noted that the COPAC draft contains crucial elements that would provide democratic local governance. If political developments in Zimbabwe are anything to go by, there are chances that the COPAC draft will pass through the referendum stage and become the new Constitution of Zimbabwe. In the event that the COPAC draft sails through the referendum and eventually become law, local government will be

transformed. It also remains to be seen whether the practice of appointing special interest councillors as provided by section 4 A will survive under the new Constitution.

However, given the acrimony between the two major political parties in the country, namely ZANU PF and the MDC-T, it remains to be seen whether the two political rivals would collaborate or stick to democratic principles of governance.

From the way section 4 has been implemented, there it is evident that the current system of local government is untenable and need to be transformed or overhauled. This means that either section 4 A be repealed or amended to modify or leave out section 4 A and replace it with legislation that promotes democratic governance. These remarks, if considered, would go a long way in transforming local governance in general and the operations of local councils in achieving their objectives.



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