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SUPERVISION OF LOCAL GOVERNMENT IN ZIMBABWE

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1. Introduction

Zimbabwe is a unitary state divided into ten administrative provinces.¹ Except for Harare and Bulawayo metropolitan provinces, the rest are a mixture of rural and urban areas. Each province is under the political leadership of the provincial governor, appointed in terms of section 4 (1) of the Provincial Councils and Administration Act.² The provinces are each divided into districts which are further divided into council areas made up of several wards. Councils are run by a combination of elected and appointed councillors. There is therefore hierarchical government at two levels i.e. at the national and local levels. Local government falls under the Ministry of Local Government, Rural and Urban Development which is responsible for the administration of all local government legislation.³ The hierarchical nature of the relationship between central and local government allows central government to supervise local government with a view to bringing it into harmony with national policies. Supervision enables the supervising authorities to prevent the unlawful use of the funds and other property of local authorities, to prevent corruption, or to improve the performance of local authorities, among others. In South Africa where there are three spheres of government⁴, the supervision of local government is largely done by the provincial government and to some extent by the national government.⁵

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

¹ The ten provinces are Mashonaland Central, Mashonaland East, Mashonaland West, Manicaland, Masvingo, Midlands, Matabeleland North, Matabeleland South, Harare and Bulawayo.

² Chapter 29:11.

³ See for example, section 2 of the Urban Councils Act Chapter 29:15, the Rural District Councils Act Chapter 29:13 and the Regional, Town and Country Planning Act Chapter 29:12.

⁴ Section 40 of Constitution of South Africa, Act 108 of 1996.

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

following the suspension or dismissal of councillors or until the crises have been managed to their satisfaction.

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

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

At independence in 1980, the new government sought to introduce wide-ranging reforms aimed at removing some of the racial overtones in the local government system”.⁶ These reforms included the removal of restrictions based on race and the participation of all races in local government elections and the redistribution of resources, among others. Although they are body corporates⁷, local authorities remained creatures of statute with no constitutional recognition of their existence. The main pieces of local government legislation are the UCA, the RDCA, the Provincial Councils and Administration Act⁸ (PCAA), and the Traditional Leaders Act⁹ (TLA), among others. The UCA establishes municipalities, towns and local boards, municipal and town councils as well as their administration, powers and functions. The RDCA establishes districts and rural district councils and confers their powers and functions. The PCAA provides for the division of Zimbabwe into provinces, the appointment of provincial governors for these provinces as well as the establishment

⁶See generally Makumbe, J page 23.

⁷ Sections 4 (8) and 4 of UCA and RDCA, respectively.

⁸ Chapter 29:11.

⁹ Chapter 29:17.

and functions of provincial councils. Provincial councils are made up of mayors, chairpersons of town councils and rural district councils and representatives of chiefs. Their main role is to approve provincial development plans prepared by a committee of heads of ministries in the province, district administrators, town clerks and the Chief Executive Officers of rural district councils.¹⁰ Lastly the TLA provides for the appointment of village heads, headmen and chiefs, the establishment of the Council of Chiefs and village, ward and provincial assemblies and provide for their functions.

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

It has been suggested that the definition of local government at a national level has been confused.¹² To start with, the colonial government explained the basis of local government as "...a genuine community or its creation...and [that] no definition of local government is more suited or urgently needed in Africa than that of a community building agency."¹³ In more recent years, the late former Minister of Local Government, Joseph Msika reportedly defined local government as- "...the administration of local affairs by local people elected by the registered residents of a given locality ...in Zimbabwe, local government entails the division of functions and responsibilities between central and local government ...the final accountability of local Councils remains with central government, which created local government in the first place...local does not extend to include the concept of sovereign self-rule for local authorities."¹⁴

In a paper by the same ministry in 2002, local government is referred to as the "...creation of a lower tier of governance to perform functions that central government is too far to perform effectively and efficiently..."¹⁵ According to Chatiza:

"The shifting confusion is evident in the contradiction between the concepts of local affairs or needs and locally elected decision makers on the one hand and division of functions between central and local government as well as the notion of transfer of functions inherent

¹⁰ Sections 12 and 13 PCAA.

¹¹ Makumbe, J page 27.

¹² Chatiza, K pages 6-7.

¹³ Government of Rhodesia, 1953.

¹⁴ Chatiza, K pages 6-7.

¹⁵ Government of Zimbabwe 2002.

in the decentralization debate on the other. This is further exaggerated by categorical reference to final accountability lying with central government ‘which creates local government’ i.e. not the residents. This is a structural contradiction in Zimbabwe’s local government, which is not accidental but shows the undemocratic nature of the local governance environment. Central government vacillates between a devolution thrust (administering local affairs by locally elected officials) and a delegation one (performing tasks transferred from or assigned by the centre).”¹⁶

It is against this background that the supervision of local authorities by the national government must be understood. There are three broad forms of supervision i.e. regulation, monitoring or evaluation and intervention. This paper will concentrate on monitoring or evaluation and intervention as there is a separate paper that will deal with the regulation of local government institutions.

3 Monitoring

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

3.1 The legal framework for monitoring

3.1.1 Right of access to records of council

The UCA allows the Minister of Local Government unrestricted access to all records, minutes and any documents in the possession of any council which relate to the council’s meetings,

¹⁶ Page 7.

resolutions and affairs. This access by the Minister enables him to keep abreast of what is happening in councils. The councils are obliged to allow the Minister this unrestricted access.¹⁷ There is no corresponding right of access to council records in the RDCA although section 51 (8) requires council to submit to the Minister minutes of council proceedings.

3.1.2 Self-reporting

Local authorities are required by law to report to the Minister on occasions as defined in the legislation. The most significant reports are the financial estimates on expenditure and income;¹⁸ the audited accounts of a rural district council,¹⁹ and the auditor's report,²⁰ all of which must be submitted to the Minister. The financial estimates are essentially the councils' proposed budgets for the next financial year. Their submission to the Minister will enable the Minister to see how local authorities intend to finance their operations and to see if their estimates have taken into account concerns of the marginalized and underprivileged groups in the community, including the elderly, orphans, women and children as well as poor households.

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

3.1.3 Requests for information

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

“The Minister may from time to time require a council to submit to him certified copies of records of its proceedings, statistics and other documents, and such other information as he may consider

¹⁷ Section 91 (1) UCA.

¹⁸ Section 288 (2) UCA.

¹⁹ Section 137 (6) (a) RDCA.

²⁰ Sections 311 and 154 of UCA and RDCA respectively.

necessary for the effective discharge of his duties and responsibilities in terms of this Act or for any other purpose, and the council shall comply with any such requirement.”

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

3.1.4 Investigations

The power to monitor the performance of local government must be coupled with the power to cause investigations into suspected acts of misconduct and non compliance. Both the UCA and the RDCA allow the Minister to appoint investigators into council affairs²¹ if the Minister considers it “necessary or desirable in the public interest” to appoint the investigators to look into any matter which-

- a) relates to the good government of a council area or local government area or arises out of the government of a council area or local government area; or
- b) relates to a failure by a council to undertake any function or provide any facilities for which it has the necessary power in terms of the law, which power it has failed to exercise; or
- c) relates to or arises out of the affairs or conduct of –
 - i) council or any of its committees; or
 - ii) ...

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

²¹ Sections 311 and 154 of UCA and RDCA respectively.

4. Intervention in local government

As a result of the hierarchical nature of government in Zimbabwe, central government often intervenes in the affairs of local authorities. Depending on the nature of their scope some of the interventions may be so intrusive as to substitute council decisions with those of the Minister while others may not be so intrusive. In its current form, local government legislation treats local government as an extension of central government rather than a separate sphere of government. By definition, an intervention is the next step where all the other monitoring mechanisms discussed above show a serious failure to fulfil statutory obligations or where other monitoring mechanisms have failed to bring the desired result. The act of intervention means ‘to involve oneself in a situation, especially for the purpose of influencing or altering a situation’.²² In this regard national government will be involving itself in the affairs of local government in order to correct identified shortcomings.

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

4.1 Ministerial directives

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

For the rural council, the Minister may give directions from time to time to ensure that the council, when constructing or repairing roads, dams or water works, makes use of the services

²² Collins Paperback Dictionary, 5th Ed.

provided by the State, any state corporation, the District Development Fund (DDF) or any other government agency.

The Minister may also give directions to councils where-
a council has failed to give effect to any of its obligations in terms of legislation;²³ or

- a) the final accounts show a deficit and the council has not made any provision for its reduction to the satisfaction of the Minister.

If the council's affairs are as described in paragraphs (a) and (b) above, the Minister may direct the council to take such action as the Minister considers necessary to address the issues, failing which the Minister may carry out the directions and recover the costs thereof from council.²⁴

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

In carrying out its duty to govern its council area, a council may adopt by-laws to control certain activities. However in certain circumstances, the Minister may direct councils to make or adopt model by-laws on behalf of the council such as where -

- a) council has not made by-laws for any matter in respect of which it may make by-laws;²⁵ or
- b) The Minister considers that the matter should be controlled or regulated by by-laws.

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

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

In the exercise of his many powers, the Minister may direct a council to reverse, suspend or rescind any of its resolutions or decisions if the Minister considers that the resolutions or decisions are not in the interest of the inhabitants of the area, or in the national or public interest.²⁶ In addition, the Minister may also direct that certain resolutions shall require the Minister's approval;²⁷ failing which any such resolutions are invalid. The same argument made above about what would be in the public or national interest or the interest of the inhabitants of the area applies here with equal force. Further this provision takes away the power of the council to govern its council area. These are

²³ Section 315 (1) (a) UCA.

²⁴ Section 315 (2) UCA.

²⁵ Sections 233 (1) (a) and (b) (i-ii) UCA and 94 (1) (a) and (b) (i-ii) RDCA.

²⁶ Section 314 UCA and 52 (3) RDCA.

²⁷ Section 53 (1) and (2) RDCA.

classical examples of the imbalance between the need to provide oversight and the need for local discretion.

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

4.4 The suspension of councillors

The UCA²⁸ allows the Minister to suspend a councillor, where he has reasonable grounds for suspecting that the councillor has –

- a) contravened a provision of the Prevention of Corruption Act (PCA); or;
- b) has contravened sections 107,108, and 109 of the Act; or
- c) has committed any offence involving dishonesty in connection with any funds or property of the council.

In the field of criminal law, the concept of 'reasonable grounds' is commonly used to denote a "set of facts or circumstances which would cause a person of ordinary and prudent judgment to believe beyond a mere suspicion that an offence has been committed".²⁹ This formulation of reasonable grounds is applicable to section 114. The grounds upon which a councillor may be suspended are dealt with separately below:

4.4.1 Contravention of the Prevention of Corruption Act

The PCA sets out corrupt activities for which a person may be prosecuted. Section 3 of the PCA spells out corrupt practices³⁰ by private persons for which they can be prosecuted. For public officials it is an offence if, in the course of their employment they-

²⁸ Section 114 (1) (a-c).

²⁹ du Toit, E de Jager, F J Paizes, A Skeen, A S Q van der Merwe, S (eds) page 5-10.

³⁰ If -

- a) any agent corruptly solicits or accepts or obtains, or agrees to accept or attempts to obtain, from any person a gift or consideration for himself or any other person as an inducement or reward-
 - i) for doing or not doing, or for having done or not done, any act in relation to his principal's affairs or business;
 - or
 - ii) for showing or not showing, or for having shown or not shown, favour or disfavour to any person or thing in relation to his principal's affairs or business; or
- b) any person corruptly gives or agrees to give or offers any gift or consideration to any agent for himself or any other person as an inducement or reward
 - i) for doing or not doing, or for having done or not done, any act in relation to his principal's affairs or business; or
 - ii) for showing or not showing, or for having shown or not shown, favour or disfavour to any person or thing in relation to his principal's affairs or business;

- a) do anything that is contrary to or inconsistent with their duties as public officers; or
- b) they omit to do anything which it is their duty as public officers to do.

These acts or omissions must be done for the purpose of showing favour or disfavour to any person.³¹ The Minister may suspend any councillor who is reasonably suspected of contravening any provision of the PCA.

4.4.2 Contravention of sections 107, 108 and 109 of UCA

Councillors may not conduct themselves in a manner that compromises their positions as councillors. It is an offence for a mayor or councillor to vote in a matter in which the mayor or councillor has any pecuniary interest.³² An example of this contravention is where a councillor in the finance committee takes part in the award of a tender to a company controlled by his family. A mayor or councillor is not allowed to provide professional services for reward for or against council or against any person who has been charged with contravening any by-laws of the council,³³ or to act as a medical practitioner, veterinary surgeon, architect, surveyor, accountant, auditor, estate agent, auctioneer, valuer or appraiser or in any other professional capacity³⁴ on behalf of council. This prohibition prevents councillors with an obvious conflict of interest from taking part in those decisions of council in which their judgement may be influenced by improper considerations. In addition, it is an offence for any mayor or councillor, acting as an agent, to appear before the valuation or other boards of council, or before council's licensing authorities.³⁵ Again the same considerations of conflict of interest apply in this regard.

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- c) or any-
 - i) agent, with intent to deceive his principal, uses, or
 - ii) person, with intent to deceive the agent's principal, gives to an agent; any receipt, account or other record in respect of which the principal is interested and which contains a statement that is false or erroneous or defective in a material particular; or
 - d) any agent, by arrangement with any seller of goods or with any person engaging to render any services, secretly obtains any gift or consideration for himself or for any other person in connection with his principal's affairs or business; or
 - e) any seller of goods, or any person offering his services, secretly offers any gift or consideration to an agent for himself or for any other person in regard to the sale of the goods or to the employment of his services in connection with the affairs or business of the agent's principal; or
 - f) any agent, with intent to deceive his principal or any other person, fails to disclose to his principal the full nature of any transaction carried out in connection with his principal's affairs or business; shall be guilty of an offence.

³¹ Section 4 PCA.

³² Section 107 UCA.

³³ Section 108 (1) (a) UCA.

³⁴ Section 108 (1) (b) UCA.

³⁵ Section 109 (a-c) UCA.

Lastly a councillor may be suspended on suspicion of the commission of an offence involving dishonesty in connection with any funds or property of council.³⁶ This seems to imply the commission of fraud against the council as a result of which council suffers or stands to suffer prejudice. It would follow that where the councillor has been suspended on any of the above grounds, the suspension would be followed by an investigation into the allegations and the possible institution of criminal proceedings against the councillor. Unless the Minister lifts the suspension, it shall lapse after sixty days.³⁷

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

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

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

4.4.3 Suspension and dismissal of councillors under the RDCA

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

³⁶ Section 114 (1) (c) UCA.

³⁷ Section 114 (4).

councillor whose suspension is not lifted is barred from being nominated for election as a councillor until the President has lifted the disqualification.

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

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

4.4.4 The appointment of caretakers or commissioners to act as council

One of the most significant supervisory powers of the Minister is the power to appoint caretakers or commissioners in certain circumstances, to act as council. In terms of sections 80 and 158 of the UCA and RDCA, respectively, the Minister may appoint caretakers or commissioners, to act as council. Until the Local Government Laws Amendment Act,³⁸ the two sections were almost the same in their wording and content. In terms of the new section 80, the Minister may appoint not more than three people to act as council where-

- a) there are no elected councillors for a council area; or
- b) where all the elected councillors for a council area have been suspended or imprisoned or are otherwise unable to exercise all or some of their functions as councillors.

On the other hand, section 158 simply refers to "councilors" and not "elected councillors". In terms of the UCA, caretakers will be appointed if there are no elected councillors or if they have been

³⁸ 1 of 2008.

suspended or are, for some reason unable to exercise all or some of their functions as councillors. The councillors referred to in the RDCA include special interest councillors.

4.4.4.1 The functions of commissioners or caretakers

The caretakers or commissioners shall function under the direction of the Minister. While in office they shall exercise-

- a) all the functions of council where there are no elected councillors for the council area; or
- b) such of the functions of the elected councillors as they are not able to exercise, where there are any elected councillors.³⁹

Some of the functions will be exercised with the approval of the Minister.⁴⁰ While the caretakers are obliged to consult the remaining councillors, there is no indication in the law as to how much weight will be given to the views of the remaining councillors. It is submitted that since the Minister will have taken over the council through the caretakers, the remaining councillors too shall exercise their functions under the direction of the Minister.

4.5 Tenure of office of the commissioner or caretaker

In terms of the RDCA, the commissioner shall hold office until there are councillors able to exercise all their functions as councillors, or their term of office expires at the end of six months, whichever occurs first. If the six months expire within three months before the date of the next general election, the commissioner shall hold office until the general election.⁴¹ However if the Minister is satisfied that at the end of the term of office of the commissioner there will be no councillors able to exercise all their functions, the commissioners may be reappointed for another term.⁴² In the past the Minister has used a similar provision in the UCA to reappoint commissioners in a manner that was interpreted by the court as an illegal method of using what was clearly meant to be a stop gap measure to deny the citizens of the city the right to elect their own council.⁴³ The new section 80 has not retained the Minister's power to reappoint caretakers.

³⁹ Section 80 (2) (a) and (b) UCA.

⁴⁰ Sections 80 (2) (b) (i-ii) UCA and 158 (2) (b) (i-ii) RDCA.

⁴¹ Section 158 (3) (b) RDCA.

⁴² Section 158 (5) RDCA.

⁴³ *Stevenson v Minister of Local Government and National Housing and Others* SC 38/02.

Assessment

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

5 Recommendations for policy and law reform

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

5.1 Harmonising local government legislation

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

5.2 Providing for local government in the Constitution

As already seen, local government in Zimbabwe is a creature of statute. Essentially this means that it requires only a simple majority vote in parliament to amend local government laws. In

the past, the ability to amend laws at will has been used to achieve narrow political ends. Providing for local government in the constitution will mean that it will require more than a simple majority to amend the constitution, thereby giving a measure of protection and stability to local government.

5.3 Rationalising the role of the ministry of local government

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

6 Conclusion

The current local government legislation was designed to allow the minister of local government absolute control over local authorities. Granting so much power to the minister takes the initiative out of local authorities and opens them to manipulation. Perhaps the constitutional review process currently under way may resolve some of the current challenges.

Bibliography

1. Books

- i) Collins Paperback Dictionary 5th Ed
- ii) De Visser, JW (2005) *Developmental local government A case study of South Africa* Antwerpen-Oxford.
- iii) Du Toit, E de Jager, F J, Paizes, A Skeen, A S Q van der Merwe, S (eds) *Commentary on the Criminal Procedure Act* (2008) Juta & Co Ltd Cape Town.
- iv) Makumbe, J (1998) *Democracy and development in Zimbabwe: Constraints of decentralisation* SAPES Trust Harare.
- v) ZILGA/UN HABITAT *Councillor Induction Handbook-From Promise to Result* (unpublished).
- vi) Zimbabwe Institute (2005) *Local Government: Policy Review* (unpublished).

2. Acts (South Africa)

- i) Constitution of South Africa Act 108 of 1996.

3. Acts (Zimbabwe)

- i) Constitution of Zimbabwe, 1979.
- ii) Local Government Laws Amendment Act 1 of 2008.
- iii) Prevention of Corruption Act [Chapter 9: 16].
- iv) Provincial Councils and Administration Act [Chapter 29:11].
- v) Rural District Councils Act [Chapter 29: 16].
- vi) Traditional Leaders Act [Chapter 29:17].
- vii) Urban Councils Act [Chapter 29:15].

4. Cases

- i) *Stevenson v Minister of Local Government and National Housing and Others* **sc 38/02**

5. Articles

- i) Schou, A. 'Democratic local government and responsiveness: Lessons from Zimbabwe and Tanzania' (2000) *International Journal of Comparative Sociology* Volume 41 125.
- ii) Helmsing, A.J.H. 'Transforming rural local government: Zimbabwe's post-independence experience' (1990) *Environment & Planning C: Government and Policy* p 87-110.
- iii) Chatiza, K *Can local government steer socio-economic transformation in Zimbabwe? Analysing historical trends and gazing into the future-* a paper presented at the Local Government Policy Dialogue Seminar Harare 3-4 November 2009.

