THE LAW AND POLICY

FOR PROVINCIAL AND LOCAL GOVERNMENT IN ZIMBABWE:

THE POTENTIAL TO REALISE DEVELOPMENT, BUILD DEMOCRACY AND SUSTAIN PEACE

by

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DECLARATION

I, Tinashe Calton Chigwata, do hereby declare that *The law and policy for provincial and local government in Zimbabwe: The potential to realise development, build democracy and sustain peace* is my original work and has not been submitted for any degree or examination in any other university or institution of higher learning. While I have relied on numerous sources and materials to develop the main argument presented in the thesis, all the materials and sources used have been duly and properly acknowledged.

Signed……..

Date…….

Supervisor: Professor Jaap De Visser

Signature……

Date……

ABSTRACT

The adoption of the 2013 Constitution of Zimbabwe heralded a new era with high expectations from ordinary citizens of Zimbabwe. Among other matters, the Constitution provides for a multilevel system of government with government organised at the national, provincial and local levels. The design of this system of government is linked to the need, inter alia, to realise development, build democracy and sustain peace in Zimbabwe. Provincial and local governments are expected to play a role in the realisation of these goals. The question is whether the law and policy governing provincial and local governments in Zimbabwe enables these governments to play that role. It will be argued that the law and policy hinders the role of provincial and local governments in realising development, building democracy and sustaining peace. The national government has excessive supervisory powers over provincial and local governments which limit the minimum level of local discretion required if these lower governments are to assist in realising development, building democracy and sustaining peace. Moreover, the legal and institutional design emphasises coordinative rather than cooperative relations among governments, thereby undermining opportunities for effective multilevel governance. It will be argued that the 2013 Constitution, however, provides the foundation upon which an effective system of multilevel government can be built. Mere alignment of the legislative framework with the 2013 Constitution is nevertheless unlikely to give full effect to the non-centralised system of government envisaged by this new Constitution. What is required is the development of a policy, institutional and legislative framework that gives effect to the constitutional spirit of devolution of power and cooperative governance.

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'In God I believe.'

DEDICATION

This work is dedicated to my mother, Ronica Minizhu.

LIST OF ABBREVIATIONS

AG	Auditor-General
BSCA	British South Africa Company
CEO	Chief Executive Officer
COPAC	Constitution Selection Committee
DCs	District Councils
DA	District Administrator
DDP	District Development Plan
GPA	Global Political Agreement
MDC-T	Movement for Democratic Change-Tsvangirayi
MDC	Movement for Democratic Change
NDP	National Development Plan
PA	Provincial Administrator
PDCs	Provincial Development Committees
PDP	Provincial Development Plan
PGs	Provincial Governors
PSIP	Public Sector Investment Programme
RCs	Rural Councils
RDCA	Rural District Councils Act
RDDCs	Rural District Development Committees
SPB	State Procurement Board
VIDCOs	Village Development Committees
WADCOs	Ward Development Committees
UCAZ	Urban Councils Association of Zimbabwe

UCA	Urban Councils Act
UCs	Urban Councils
UDI	Unilateral Declaration of Independence
ZANU-PF	Zimbabwe African National Unity-Patriotic Front
ZAPU	Zimbabwe African People's Unity
ZEC	Zimbabwe Electoral Commission
ZILGA	Zimbabwe Local Government Association
ZimAsset	Zimbabwe Agenda for Sustainable Socio-Economic Transformation

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CHAPTER 1

Introduction

1. Background and problem statement of the study

Zimbabwe felt the effects of the second wave of decentralisation that swept across Africa in the 1980s and 1990s. Having inherited a decentralised system of government from Britain, Zimbabwe implemented various legal and institutional reforms soon after independence. The main goals of these reforms were to democratise the decentralised system of government, enhance development, and secure peace and stability by improving the vast black majority's access to basic services. In the 1980s Zimbabwe had robust institutions of subnational government, but the powers and resources of these institutions have systematically degraded as a result of political and economic developments.[1] Since the late 1990s, the country's political and economic climate has been unstable, and reached a point of crisis in 2007 and 2008. According to estimates, in this period Zimbabwe's Gross Domestic Product (GDP) contracted by a cumulative 50.3 percent, official inflation rose to 231 million percent by July 2008, and capacity utilisation in industry fell below 10 percent by January 2009. Poverty remained widespread, infrastructure deteriorated, the economy became more informalised, and the country experienced severe shortages of food and foreign currency.[2] The political environment was characterised by polarisation, alleged abuses of human rights and breaches of the rule of law.[3] The situation improved when a Government of National Unity comprising Zimbabwe's three major political parties was formed in 2009.[4]

Subnational governments have not been immune to the effects of this harsh political and economic environment. Through legislative amendments, ministerial orders and other mechanisms, the national government increased its control over subnational governments and restricted local autonomy. Since the formation of the Movement for Democratic Change (MDC) and its subsequent control of government at subnational level, central-local relations have been characterised by competition, antagonism and a lack of trust.[5] Subnational governments are facing huge challenges such as inadequate financial resources, obsolete

[1] Oluwu 2010: 118.
[2] United Nations 2010: 3.
[3] United Nations 2010: 3, 13.
[4] Article 1 Global Political Agreement (GPA).
[5] Jonga 2012: 122, Hammar 2005: 9.

equipment and the lack of skilled manpower. This has been attributed in part to the lack of a decentralised system of government with appropriate local government structures equipped with adequate resources and autonomy.[6] Against this background, the importance of reforming the decentralised system of government was widely acknowledged in the constitution review process, which started in 2009 and ended with the adoption of the 2013 Constitution. Among other matters, the Constitution provides for a multilevel system of government with government organised at national, provincial and local levels.[7] The Constitution requires devolution of power to the provincial and local levels to realise development, democracy and sustainable peace.[8] The question is: are the challenges to development, democracy and sustainable peace going to be reduced under this multilevel system of government?

2. Research question

This study seeks to establish whether the Zimbabwean multilevel system of government has the potential to promote the roles of subnational governments in achieving development, democracy and sustainable peace. In answering this main question the study will address the following sub-questions:

a) What are the key design features of a multilevel system of government which enables subnational governments to play a role in development, democracy and sustainable peace?
b) How are provinces and local authorities established?
c) Do the governance structures of provincial councils and local authorities position them as key players in development, democracy and sustainable peace?
d) Which powers and functions do provinces and local authorities have?
e) How do provinces and local authorities fund their activities?
f) Does the national government have the necessary powers to supervise subnational governments which are exercised within limits?
g) Does the legal and institutional framework provide for mechanisms for promoting intergovernmental cooperation?

4. Argument

The study argues that subnational governments play a role in realising development, building democracy and sustaining peace. It will examine the claim that the extent to which

[6] Centre for Peace Initiatives in Africa 2005: 23.
[7] See S 5 Constitution.
[8] See Preamble of Chapter 14, S 264(1) Constitution.

subnational governments play a role in development, democracy and sustainable peace depends on the design of the multilevel system of government. The study highlights which design features are necessary for promoting development, democracy and sustainable peace and conclude by asserting that Zimbabwe's multilevel system of government falls short of these vital design features.

5. Limitations of the study

The multilevel system of government will only be measured against key design features referred to above. The study reflects the legal and institutional position as of July 2014. The study acknowledges the existence of draft bills on provincial and local government which it could not examine as they were subject to change. Nonetheless, reference is made to the draft bills where they propose significant changes or maintain the status quo against the provisions of the 2013 Constitution. As at July 2014, provincial and metropolitan councils had not been established. Thus, the study includes an examination of the envisaged role of provincial and metropolitan councils and an assessment of the law under the Lancaster House Constitution as it relates to provincial councils.

6. Methodology

This is a desk-top study which reviews relevant international literature on decentralisation and multilevel governance. It uses the thematic comparison approach to identify key design features of an effective system of multilevel government. This involves comparison of certain themes rather than individual jurisdictions. The study explores the role which subnational governments can play in development, democracy and sustainable peace; examines the constitutional and legal framework for multilevel governance in Zimbabwe; reviews constitutional drafting materials to the 2013 Constitution of Zimbabwe; and looks closely at policy practice and the Lancaster House Constitution, with particular reference to provincial and local governments. Due to the secretive nature of government activities in Zimbabwe (which makes access to government policy documents difficult), the study significantly relies on informal sources such as newspaper articles in addition to formal sources.

7. Organisation of the study

Chapter Two examines the potential of a multilevel system of government to realise development, democracy and sustainable peace. It proposes design features of a multi-level

system of government that enables subnational governments to play a role in development, democracy and sustainable peace. Chapter Three discusses the Zimbabwean multilevel system of government from a historical perspective, while Chapter Four assesses the establishment of provinces and local authorities. Chapter Five discusses the governance structures at subnational level. Chapter Six offers an analysis of the powers and functions of provincial and metropolitan councils and local authorities. Chapter Seven discusses how the activities of provincial and metropolitan councils and local authorities are funded, while Chapter Eight examines the supervisory powers of the national government over provincial and metropolitan councils and local authorities. Chapter Nine addresses intergovernmental relations and Chapter Ten provides the concluding analysis and recommendations.

8. Terminology

There are different ways of distributing power and organising government in a state. Power-sharing is the common theme of federalism, decentralisation, devolution, deconcentration and delegation, to different degrees. These terms are regularly used across the world and are given different meanings depending with the context in which they are applied. A distinction between federalism and devolution is particularly important as these terms tend to be used interchangeably. The section below provides working definitions for these modes of distributing power in a state.

8.1. Subnational governments

The term 'subnational government' is used internationally to describe political systems of different types: unitary, federal and con-federal. Most scholars have not attempted to define the term, despite its widespread usage. Subnational government is defined as any form of government which is found at the subnational level of a country.[9] This implies that any system of government obtaining in a country other than the national (or federal) government will fall within this classification.[10] The word government indicates that the institution must reflect democratic representation and exercising some powers in a defined territorial area. States, provinces, counties, local authorities, and municipalities all fall in the category of subnational governments. For the purposes of this study, the term subnational government is used to describe a representative institution with powers decentralised to it by the national or

[9] Selvakkumaran 1998: 194.
[10] Selvakkumaran 1998: 194.

regional government in respect of a restricted geographical area for which it is responsible within a nation or state.[11]

8.2. Decentralisation

Decentralisation is a generic term that covers most forms of governmental power distribution. Rondinelli defines the term as

> the transfer of responsibility for planning, management, and the raising and allocation of resources from the central government and its agencies to field units of government agencies, subordinate units or levels of government, semi-autonomous public authorities or corporations, area-wide, regional or functional authorities, or non-governmental private or voluntary organizations.[12]

In its narrow sense, decentralisation is used to describe the transfer of authority within government bureaucracy. To fit the broader aspects of this study, decentralisation is defined as a purposeful process of diffusing authority, responsibility, power and resources within the bureaucracy of the national government or beyond it to lower-level autonomous or semi-autonomous units. This distribution of power occurs in several forms and goes by different names, which in this work will be limited to devolution, deconcentration and delegation. The transfer of power to private actors is excluded for the purposes of this study as it involves the transfer of power outside the political system of government.

8.3. Decentralisation to subnational governments

Devolution, a more extensive form of decentralisation, disperses power territorially to sub-national governments. It is defined as the diffusion of political, financial and administrative power to subnational units of government, whose activities are substantially beyond the direct control of the national government.[13] A devolved unit of government usually enjoys substantial autonomy guaranteed by the constitution or legislation, but not enough to occupy a co-equal position with the national government. It is an elected body exercising legislative and executive powers over its jurisdiction. Judicial powers do not necessarily have to be diffused to subnational units, although this is sometimes the case. For the purposes of this

[11] Vosloo *et al* 1974: 10.
[12] Rondinelli 1981a in Rondinelli & Nellis 1984: 9. Mawhood argues that a decentralised body should have its own budget, a separate legal existence, authority to allocate substantial resources on a range of functions and the decisions being made by representatives of the people. See Mawhood 1993: 9.
[13] Rondinelli & Cheema 1984: 19.

study, devolution is defined as a process whereby the national government, while retaining its authority to take back such powers, distributes some of its powers to subordinate elected units responsible for managing a localised geographical area.[14]

8.4. Decentralisation within the national government

Deconcentration disperses 'authority and responsibility from one level of the national government to another while maintaining the same hierarchical level of accountability from the local units to the central government ministry or agency which has been decentralised'.[15] It is the weakest form of decentralisation as it does not involve the transfer of authority to lower levels of government but merely reorganises national government responsibility. Bodies which enjoy deconcentrated authority are generally created by administrative decisions and not set up by any separate legislative measure, as is normally the case with devolved units. When it is more than mere reorganisation, deconcentration may allow field agents to exercise discretion in adapting central directives to local conditions within guidelines set by the national government.[16] In this case, decision-making and administration are taken closer to the people, although to bodies which are not elected and accountable to the people.

8.5. Decentralisation to autonomous or semi-autonomous bodies

Compared to deconcentration, delegation gives more extensive authority to bodies which are subordinate to the national government. It is a process by which the national government 'transfers responsibility for decision-making and administration of public functions to local governments or semi-autonomous organisations that are not wholly controlled by the national government but are ultimately accountable to it'.[17] Akin to a devolved body, a body which exercises delegated power territorially cannot be equal to the central authority. The national government may withdraw the delegation or transfer of power from the sub-national unit or

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[14] Selvakkumaran 1998: 187. The shift of power between tiers of government determines the extent to which there is fiscal, political and administrative decentralisation. Fiscal decentralisation is concerned about who sets and collects what taxes, who undertakes which expenditures, and how any 'vertical imbalance' is rectified. Political decentralisation refers to the extent to which political assumptions map the multiplicity of citizen interests onto policy decisions. Administrative decentralisation is concerned with how political institutions, once determined, turn policy decisions into allocative and distributive outcomes through fiscal and regulatory actions. See Litvack *et al* 1998: 6.

[15] UNDP 2000: 5-7. Mawhood states that 'the officials who hold such authority do not acquire any "right" to it, they are merely doing their job in the organisation'. Mawhood 1993: 1.

[16] Rondinelli & Cheema 1984: 10.

[17] Litvack *et al* 1998: 6.

semi-autonomous body without the latter's concurrence. Organisations or subnational units exercising delegated authority normally have wide discretion when exercising delegated powers. Delegation usually creates a principal-agent relationship, with the national government as the principal and the subnational government or autonomous body as the agent. While accountability may follow delegation, the rest of it remains vertical to the national government.

8.6. Federalism

Federalism is the fullest form of apportioning power according to the notion of shared rule within a state. It is defined as 'constitutionalised power-sharing through systems that combine self-rule and shared rule'.[18] In a federal state, 'government authority resides not at a single "centre" but at the "centre" and the "circumference"'.[19] The government authority over some matters resides at the centre and over others at the circumference. Unlike in a decentralised system of government, the federal units stand equal to the federal government and enjoy exclusive governmental power over certain specified matters.[20] Federalism is more than simply a structural arrangement guided by the perpetuation of both the union and non-centralisation. It is a special mode of 'political and social behaviour as well, involving a commitment to partnership and active cooperation on the part of individuals and institutions that at the same time take pride in preserving their respective integrities'.[21] Power is dispersed to different centres, central or subnational, as a means of safeguarding individual and local liberties.

8.7. Multilevel government

The phrase multilevel system of government is relatively new in the discourse on state organisations. It has emerged as a neutral concept preferred to phrases such as federalism and devolution, which tend to be controversial. A multilevel system of government is used to describe various forms of government in which government is organised at more than one level. Under a multilevel system of government, government can be organised at two levels,

[18] Elazar 1995: 1.
[19] Selvakkumaran 1998: 187. Disputes between the federal state and federating units, as well as among federating units, are referred to the courts for adjudication. In classical federations such as United States of America and Australia, local government is usually a competence of the federating units, with little or no direct relationship with the federal state.
[20] It is important to note that decentralisation may take place in federations.
[21] Elazar 1995: 2.

as is the case in Kenya, for example. Or it can be organised at three levels, as is the case in South Africa, Nigeria and Zimbabwe. Government may also be organised at more than three levels, for example in Ethiopia. Thus federal, decentralised, devolved and confederal systems of government fall into the category of multilevel system of government.

CHAPTER 2

The prospects of a multilevel system of government to realise development, democracy and sustainable peace: theory and lessons for institutional design

1. Introduction

This chapter examines the prospects of decentralisation for development, democracy and sustainable peace and the institutional arrangements of a multilevel system of government needed to achieve these ends. The chapter focuses on the design features of such an institutional arrangement as the basis for examining whether the multilevel system of government of Zimbabwe promotes or hinders the role of provincial and local governments in realising development, building democracy and sustaining peace. The chapter is divided into five sections. The first section explores the link between decentralisation and development. In the second section, the chapter examines the relationship between decentralisation and democracy. The link between decentralisation and sustainable peace is examined in the third section. The potential threat or dangers of decentralisation will be analysed in the fourth section, and the last section searches for an institutional arrangement that promotes democracy, development and sustainable peace while reducing or managing the threat of decentralisation.

2. Multilevel government and development

In this section, the relationship between decentralisation and development will be examined with the goal of assessing the capacity of a multilevel system of government to realise development.

2.1 Defining development

The end of the Second World War marked the beginning of the modern view of development as synonymous with economic growth and thus measurable by indicators such as gross national and gross domestic product.[1] This narrow view of development was redefined in the 1970s after the realisation that economic growth does not necessarily result in the improvement of the welfare of ordinary citizens. Development should aim at the constant

[1] Todaro 1997: 14.

improvement of citizens' well-being.[2] The recognition that development efforts ought to focus on current and future generations has seen the emergence of *sustainable* development as the new paradigm. Sustainable development is defined by the World Commission on Environment and Development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.[3] Five goals of sustainable development can be identified: namely, reduction of inequalities, eradication of poverty, preservation of the environment, improvement of citizen access to the economy and universal access to basic public services. But the question is: does decentralisation foster the achievement of any of these objectives?

2.2 The potential of a multilevel system of government to achieve development

It will be argued in this section that a multilevel system of government has better potential to achieve development than a centralised system of government because it improves efficiency in public service provision, enhances the mobilisation of resources, provides a platform for innovation and experimentation, and makes development projects more sustainable.

2.2.1 Improved efficiency

Most countries have heterogeneous communities with distinct preferences for local public goods and services.[4] Economic efficiency requires the provision of such goods and services according to these diverse needs and preferences. In his Decentralisation Theorem, Oates argues that 'each public service should be provided by the jurisdiction having control over the minimum geographic area that would internalise benefits and costs of such provision'.[5] Subnational governments may promote local distribution of public services that closely match local preferences because they are physically closer to the citizens than the central government. The proximity to the citizens means that subnational governments are likely to have better access to local information than the central government. The provision of public services that closely match local preferences is likely to result in higher levels of efficiency than would occur under a centralised system of government. Efficiency in the provision of public services may also be attributed to horizontal fragmentation of the structure of

[2] Todaro defines development as a 'multidimensional process involving major changes in social structures, popular attitudes, and national institutions, as well as the acceleration of economic growth, reduction of inequality, and eradication of poverty'. See Todaro 1997: 13.
[3] World Commission on Environment and Development (1987).
[4] Bardhan & Mookherjee 2006: 6.
[5] Oates 1972: 55 cited in Shah 1994: 15.

subnational governments, which allows consumers of public services to emphasise their preferences by 'voting with their feet' from one subnational government to another, looking for their preferred mix of taxes and services.[6] In order to attract and retain mobile residents and businesses, each subnational government will have to ensure value for money in service provision, otherwise its beneficiaries will migrate to other subnational governments.[7] Competition among jurisdictions created by continual efforts to attract and retain tax payers and firms, is expected to result in higher levels of efficiency than under a centralised system of goods and service provision.

The efficiency argument has been criticised for its reliance on a number of variables or assumptions which are unlikely to be found in most developing countries.[8] For example, the argument relies on the voluntary mobility of public service consumers from one jurisdiction to another in search of their preferred 'mix' of taxes and services. Conversely, Marsh and Kay argue that a substantial proportion of migrations from one jurisdiction to another are involuntary and have little to do with selection of tax-service bundles.[9] However, there are further reasons for the local provision of services besides reaping efficiency benefits from competition between jurisdictions for tax-payers. Substantial spatial diversity in local environments and the existence of widely dispersed and poorly linked settlements may suggest the need for local provision of certain public services.[10] Local communities not only vary in the mixture of their needs and thus the services they require, but there is often disagreement within the community as to what this mixture ought to be.[11] It is not enough to be able to define objectively the characteristics of the locality. Consideration should also be given to the subjective views within the community as to what the objective facts imply in terms of needs. It is difficult, if not impossible, for the central government to reconcile these conflicts within each community.[12] Subnational governments may be better positioned to reconcile conflicts within communities and deliver services that closely match local preferences.

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[6] Boyne 1996: 709 in McKinlay 2006: 40.
[7] Tiebout 1956: 416-24 in Smoke 2001: 6, Shah 1994: 17.
[8] Bahl & Linn 1994 in Bird & Vaillancourt 1998: 2. The efficiency argument is criticised for negating economies of scale and spill-over effects in the provision of certain public goods and services, as well as for not considering a number of costs, such as the supply of jobs and the geographical accessibility of certain communities.
[9] Marsh & Kay 2004 cited in McKinlay 2006: 43.
[10] Smoke 2001: 8.
[11] Sharpe 1970: 168.
[12] Sharpe 1970: 168.

2.2.2 Resource mobilisation through local resource-raising mechanisms

Under a multilevel system of government, subnational governments can mobilise resources from revenue sources which the central government might have difficulties in reaching.[13] Central governments mainly make use of high tax instruments, such as personal taxes, company taxes and taxes on goods, to generate revenue. These taxes tend to target the formal sector because of the administrative procedures involved in collecting them. The informal sector is largely left out of the tax base contributing to diminished national resource mobilisation. Subnational governments, on the other hand, can mobilise resources through the use of tax instruments such as property rates, service charges and business licensing which are inclusive of both the formal and informal sectors.[14] This section discusses the main tax instruments of mobilising revenue at local level.

2.2.2.1 Property rates

It is often argued that property rates are the most appropriate tax instrument for local government.[15] In principle, property rates are difficult to evade because of the immovable and visible character of properties. Property rates, if well administered, can represent a non-distortional and highly efficient fiscal tool for mobilising resources for development.[16] Resources generated from property rates can be allocated to the delivery of basic services to those who cannot afford to pay for services provided. This can be an effective way of ensuring that all the citizens have comparable access to basic services. Nevertheless, property rates have a much higher revenue mobilisation potential in urban jurisdictions than in rural jurisdictions. Hence, reliance on property rates to mobilise resources for development can result in inequity between urban and rural areas.

2.2.2.2 Service charges

Service charges on the supply of water and electricity and refuse removal play an important role in the mobilisation of resources at subnational level, provided that such functional areas are assigned to subnational governments.[17] In economic terms, service charges are the best mechanism for matching demand and supply of public services as they provide a direct link

[13] Conyers 1986: 91.
[14] See Bahl 1999: 2.
[15] Fjeldstaad 2006: 6.
[16] Fjeldstaad 2006: 6.
[17] Bahl *et al* 2003: 76 cited in Fjeldstaad 2006: 12.

between citizens' contributions and service delivery. Further, service charges are an effective resource mobilisation tool that can recover cost from both the formal and informal sectors. Although the main economic rationale for service charges is to directly link supply and consumption, they can also generate additional revenues for development. Nonetheless, service charges can compromise the achievement of equity when a heavy burden is imposed on lower-income public service users, and when they exclude the poor segments of the society from receiving public services.[18] Thus, it is important that the design of the payment structure takes into account the ability-to-pay principle.[19] It is also vital that the payment of service charges is matched with quantity and quality of service provision that meets the expectations of those who pay.[20] If not, evidence across the world suggests that some segments of the society may resist paying service charges, citing poor or erratic service delivery.[21]

2.2.2.3 Business licencing

In many countries, the standard mechanism for mobilising revenue from businesses has been through business licensing.[22] If well implemented, local business licensing can generate substantial resources, in addition to serving its core regulatory purpose. However, local business licensing has been confronted with many challenges, including high compliance costs to businesses due to multiple licensing and complex procedures.[23] These constraints have impeded the start-up and expansion of especially micro and small enterprises needed to widen opportunities for citizen access to the economy, as one of the components of development identified above.[24]

[18] McDonald & Pepe 2002 in Fjeldstaad 2006: 12.
[19] According to the 'ability-to-pay' principle, beneficiaries pay taxes according to their income-generating capacity so as to foster greater social equity. Tax structure should be progressive by ensuring that the poor pay less tax than the rich. See National Treasury 2011.
[20] This has been termed the 'benefit principle'. This principle specifies that payments should be related to benefits. Consumers of services provided by local governments need to have the sense that they are getting 'value for money' for the taxes and charges they pay. If they do not get value for money they are likely to resist paying. See National Treasury, Government of South Africa 2011: 39.
[21] Fjeldstaad 2004 cited in Fjeldstaad 2006: 6. For example, some municipalities in South Africa and Zimbabwe have encountered resistance from the citizens to pay for service provided due to perceived poor performance. Such resistance to pay is commonly referred to as 'rates boycotts'. See De Visser & Powell 2012; Crook & Manor 2000: 18.
[22] Fjeldstaad 2006: 10.
[23] Devas & Kelly 2001: 385 cited in Fjeldstaad 2006: 10.
[24] Devas & Kelly 2001 cited in Fjeldstaad 2006: 6.

2.2.3 Innovation and experimentation

A centralised system of government is unlikely to implement several and varying policies across the country.[25] This limits the possibilities to uncover best practices to realise development goals such as preservation of the environment and eradication of poverty. In contrast, a decentralised system of government can encourage experimentation and innovation as individual jurisdictions are free to adopt new approaches to public policy.[26] The advantage of decentralising policy choice to subnational governments is that several different policies can be considered simultaneously, in the process uncovering superior new policy choices.[27] Superior new policies can accelerate the realisation of development goals.

2.2.4 Improving sustainability of development projects

It is argued that the decentralisation of power and resources to subnational governments brings government closer to the people and creates more opportunities for citizen participation in development projects than under a centralised form of government.[28] The involvement of citizens in the identification, prioritisation, design and implementation of development projects can promote a greater sense of project ownership and responsibility by citizens.[29] Increased commitment to development projects provides greater incentives to ensure proper operation, maintenance and sustainability of development projects.[30]

3. Multilevel government and democracy

This section examines the relationship between a multilevel system of government and democracy. Countries which have recently adopted multilevel systems of government, such as South Africa, Kenya and Zimbabwe, have done so to foster democracy, among other objectives.[31] The question at issue here is: does a multilevel system of government have greater potential to realise democracy than a centralised system of government? The section begins by defining democracy, briefly discusses some of its core principles, and goes on to examine the potential of a multilevel system of government to realise democratic goals.

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[25] Bryce 1888 cited in Oates 1997: 89.
[26] Oates 2006: 21, De Visser 2005: 24.
[27] Strumpf 2000: 1.
[28] Manor 1999: 91.
[29] Kalin 1999: 49.
[30] United Nations Capital Development Fund (UNCDF) 1999: 202-3.
[31] See Chapter 14, Constitution; Article 174(a)(c)(d), Constitution of Kenya; Preamble Constitution of South Africa.

3.1 Democracy defined

As an outcome, democracy aims to preserve and promote the dignity and fundamental rights of the individual, attain social justice, foster the economic and social development of the community, reinforce the cohesion of society and maintain national peace.[32] Democracy can be practised in many ways and at different levels. It can be practised directly through public decision-making processes.[33] But the most common form of democracy is practised indirectly when citizens elect representatives to make political decisions on their behalf. Participatory democracy is a variation of democracy in which citizens participate in decision-making through participatory structures. The Universal Declaration on Democracy of 1997 recognises that democracy 'is both an ideal to be pursued and a mode of government to be applied according to modalities which reflect the diversity of experiences and cultural particularities without derogating from internationally recognised principles, norms and standards'.[34] Some of the internationally recognised principles of democracy include respect for human rights, rule of law, political participation, accountability, separation of powers, equality, transparency and democratic pluralism.

3.2 The potential of a multilevel system of government to promote democracy

This section examines the potential of a multilevel system of government to promote democracy. It however does not exhaust all the principles of democracy mentioned above but is limited to discussing political participation, accountability and democratic pluralism given that a multilevel system of government has more direct relationship with these principles.

3.2.1 Political participation

Democracy is founded on the right of every citizen to take part in the management of public affairs and in activities which affect one's life.[35] The International Covenant on Civil and Political Rights recognises that every citizen has the right and the opportunity, without unreasonable restrictions, to take part in the conduct of public affairs directly or through

[32] Principle 3, Universal Declaration on Democracy 1997.
[33] This kind of democracy usually takes the form of referenda and is most practical with relatively small numbers of people in a community organisation, tribal council, or the local unit of a labour union where citizens arrive at a decision by majority vote or consensus. See Cincotta 2007: 6.
[34] Principle 2, Universal Declaration on Democracy 1997.
[35] Universal Declaration on Democracy 1997: 2.

elected representatives.[36] Participation in the public realm is not only an important right for citizens in a democratic state but also a key responsibility of every citizen. Political participation may be carried out in a number of ways, not limited to: standing for election, debating issues, attending civic meetings and voting in elections.[37] Multilevel systems of government have been adopted in many countries because of their potential to widen opportunities for political participation.[38] John Stuart Mill argues in favour of a multilevel system of government by stating that subnational governments are a fundamental element of a democratic system because they widen opportunities for political participation[39] Participation may take place through elections or through participatory structures and mechanisms

3.2.1.1 Elections

Local elections provide additional opportunities for political participation for citizens who otherwise would have few chances to hold their leaders accountable between national elections.[40] Elections at local level expand the number of opportunities in which citizens can practice democratic citizenship and participation. Nonetheless, effective participation through local elections is likely to be undermined in circumstances where there is no close link between the voter and elected representatives. [41] In such cases, it may be naive to imagine that simply introducing elections for local offices will promote political participation.[42]

Elections at local level may also foster political participation by expanding the cadre of leaders who may be elected for political positions at local and higher levels of government.[43] At subnational level, political leaders are exposed to the functioning of legislative and executive arms before they assume positions at national level. However, while subnational governments may provide a valuable platform for gaining political experience, the value of local councils for national legislatures should not be exaggerated. Subnational governments may provide experience of party systems, legislative roles, methods of policy formulation and

[36] Article 25(a) of the International Covenant on Civil and Political Rights.
[37] Citizens have to be empowered in order to meaningfully exercise their participatory rights. Empowerment denotes the 'development of conditions to the genuine exercise of participatory rights, while also eliminating obstacles that prevent or inhibit their exercise', Universal Declaration on Democracy 1997: 3.
[38] Brinkerhoff & Azfa 2010: 85.
[39] Mill 1911: 2357 cited by Andrew & Goldsmith 1998: 107; Manor 1999: 37.
[40] Mill 1911 cited in Smith 1985: 22, Manor 1999: 37.
[41] Smith 2007: 27.
[42] Crook & Sverrisson 2001 cited in Smith 2007: 114.
[43] USAID 2009: 23, Smith 1998: 86, Brinkerhoff & Azfar 2010: 85.

legislative-executive-administration relationships that are different from what is found at national level.[44]

3.2.1.2 Citizen participation

Decentralisation may provide a conducive environment for citizen participation at subnational level, given the small physical size of local governments. Political participation may be promoted by creating representative government at different levels in the hierarchy of a subnational area.[45] Subnational governments may increase the proportion of the community that will participate in a more active sense than just voting.[46] Lower structures of participation established at subnational levels may act as the vehicle of communication between citizens, especially marginalised groups and local councils. Decentralisation may also promote political participation by providing an environment where citizens can be consulted on matters which affect their lives. Consultations of the citizens may be easily carried out at subnational levels as subnational governments are physically closer to the citizens than under centralised administration. Consultations can be in the form of structures and events that systematically consult with affected constituencies, together or separately, on matters that affect them.[47] Community budgeting, for example, is a consultation mechanism in which the community defines and sets budget priorities. While budgets are often seen as technical documents that are best handled by local officials, citizen involvement in the budgeting process is an essential way of promoting political participation.[48]

3.2.2 Accountability

In a democratic state all public officials, whether elected or appointed, as well as bodies exercising public authority, have to be accountable to the citizens. Accountability is a 'relationship where one party has the obligation to answer questions regarding decisions or actions posed by another party, and the accountable party is subject to sanctions for failure or transgressions'.[49] There are many forms of accountability, including horizontal and vertical accountability. Horizontal accountability concerns the 'classic separation of powers', including the role of oversight entities such as audit offices, ombudsmen, public protectors,

[44] Smith 1985: 23.
[45] Smith 2007: 156.
[46] Smith 2007: 156.
[47] Sisks 2001: 155, Smith 2007: 152.
[48] Smith 2007: 152.
[49] Schedler 1999 cited in Brinkerhoff & Azfar 2010: 89. See also Smith 2007: 202.

courts of accounts and electoral commissions; while vertical accountability signifies actors located outside the state that play a role in holding state actors accountable.[50] In a democratic society citizens should have the means, freedom and institutions to scrutinise the conduct of public officials and respond to their underperformance.[51] Public officials may be held accountable via multiple mechanisms, including electoral processes, legal recourse, participatory processes, public reporting and third-party monitoring.[52] They are likely to be easily held accountable when government is physically 'closer' to the people. Electoral and intergovernmental accountability will be examined in this section as the other forms of accountability will be discussed in other parts of this chapter.

3.2.2.1 Accountability through elections

The main form of accountability in a multilevel system of government is likely to be accountability through elections. Elected representatives may be voted out of office during elections because of their poor performance.[53] It is argued that, unlike national elections, local elections allow voters to more easily evaluate local leaders on their performance given that what they deliver is likely to be more visible than that of their counterparts at national level.[54] For example, local citizens can easily identify what their councillor delivered in their ward as opposed to what a Member of Parliament did in the constituency. Thus, electoral accountability is likely to be stronger at subnational than national level.

3.2.2.2 Intergovernmental accountability

Decentralisation creates vertical checks and balances that can constrain the central and subnational governments' attempts to overstep or abuse its powers.[55] Besides being accountable to the citizens, subnational governments are accountable for their actions to the central government. The central government has the responsibility to monitor subnational governments and react to underperformance. On the other hand, subnational governments, as centres of authority and power, may monitor and control the activities of the central government, especially in cases where the interests of the citizens are in jeopardy. A

[50] Brinkerhoff & Azfar 2010: 89.
[51] De Visser 2005: 25, Smith 2007: 18.
[52] Ribot 2001: 10. It is important to note that the mere existence of accountability mechanisms does not guarantee effective accountability. Much depends on the rules and procedures of these mechanisms.
[53] Smith 2007: 22.
[54] De Visser 2005: 25.
[55] USAID 2009: 23, Pandey 2005: 12.

combined voice of subnational governments may be sufficient to discourage the central government from abusing power or implementing an unpopular policy. Hence, a multilevel system of government constitutes a specific and extended expression of the basic principle of separation of powers, which strengthens the accountability of one level of government to another.[56]

3.2.3 Democratic pluralism

Democratic states are characterised by a diversity of state and non-state organisations, which can be of a political, economic, religious, ethnic or other nature. Democratic pluralism assumes that these many interest groups and institutions do not depend on government for their existence, legitimacy or authority.[57] Democracy thrives on the creation, development and promotion of civic and political groups which champion diverse interests. The decentralisation of power and resources to subnational governments may promote the emergence and development of these groups. The following section discusses the potential of decentralisation to foster democratic pluralism.

3.2.3.1 Emergence and development of political parties

Political parties are at the centre of democratic pluralism.[58] A multilevel form of government may provide a conducive environment for the emergence of new political parties and the development of small political parties. New political parties and individuals, who often have a difficult time competing successfully in national elections, can use the local level entry-point to participate in the political system, since the cost of political mobilisation is relatively low compared to the national level.[59] However, as will be argued below, decentralisation may encourage the formation of political parties on ethnic and regional lines, which may pose a threat to the unity of the nation state.[60]

3.2.3.2 Promotion of the formation and development of civic groups

By shifting important decision-making powers away from the national government, a multilevel system may create incentives for the proliferation of civic groups at subnational

[56] Pandey 2005: 12.
[57] Cincotta 2007: 8.
[58] Smith 2007: 132.
[59] Brinkerhoff & Azfar 2010: 100, USAID 2009: 23.
[60] Smith 2007: 132.

level.[61] Subnational governments may be better positioned to mobilise resources and structures for the participation of civic groups in the public realm. Their proximity to the citizens allows them to partner with civic groups to deliver public services for the benefit of the citizens.

4. Multilevel government and sustainable peace

This section examines the potential of a multilevel system of government to prevent, manage and resolve internal conflicts and thus achieve sustainable peace.

4.1 Defining sustainable peace

Peace is a widely used term, commonly understood as the absence of war or violence. In this negative form, peace is a 'state requiring a set of social structures that provide security and protection from acts of direct physical violence committed by individuals, groups or nations'.[62] Positive peace, on the other hand, 'involves the search for positive conditions which can resolve the underlying causes of conflict that produce violence'.[63] It entails a culture of cooperation and integration among diverse groups of people, as well as a system of governance where there are no winners and losers.[64] The underlying concepts in positive peace are justice, accommodation, social equality and non-violent forms of interaction. In this chapter, sustainable peace is construed to mean positive peace in current and future generations. This requires mechanisms and institutional arrangements that can prevent, manage, and resolve conflicts.[65]

4.2 The potential of decentralisation to build sustainable peace

Conflict is an agent of change which is natural and inevitable and occurs at all levels of interaction.[66] The major question confronting most countries is how to ensure peaceful change. A multilevel system of government may provide a conducive environment for

[61] USAID 2009: 23, Manor 1999: 38. Civic groups defend and advance the interests of their members as well as the interests of people too weak politically to defend their own material position in society, such as women and children (Smith 2007: 132).
[62] Galtung cited in Sandy & Perkins 2002: 3.
[63] Woolman 1985: 8.
[64] O'Kane 1991: 92 cited in Sandy & Perkins 2002: 4.
[65] Conflict is the 'active striving for one's preferred outcome which, if attained, precludes the attainment by others of their own preferred outcome, thereby producing hostility'. UN-Habitat 2001: 14
[66] Fisher 2001: 17.

peaceful transformation.[67] By being an instrument of sharing power and responsibilities, a multilevel system of government can minimise the risks of violent change. This section explores the ways in which a multilevel government can promote peaceful change.

4.2.1 Responsive service delivery as a vehicle for sustainable peace

It was contended in paragraph 2.2.1 that a multilevel system of government has the potential to improve the responsiveness of government to the needs and preferences of the people. Responsive service delivery, particularly basic services, can prevent conflicting groups from resorting to violence. The reason is that there is little impetus for armed conflict in situations where citizens believe government is concerned about and responsive to their needs.[68] Responsive service delivery is likely to improve the living conditions of the citizens and reduce the risk of conflict. In post-conflict or transitional environments the delivery of basic services is essential to discourage the renewal of armed conflict.[69] Subnational governments can be a vehicle for simultaneously re-establishing the presence of the state and for demilitarising politics in divided societies.[70] On the other hand, failure to meet service delivery promises may ignite violence in post-conflict and peaceful environments.[71]

4.2.2 Platform for self-determination

A multilevel system of government provides opportunities for minority groups, which are unlikely to influence politics at national level, to exercise a degree of political authority in local and regional jurisdictions.[72] Self-rule allows groups to exercise self-determination: 'the power to determine the fundamental character, membership, and future course of their political society'.[73] The political space which decentralisation provides for the practice of local customs and religious beliefs, without fear of persecution, reduces the risk of intergroup

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[67] Grasa & Camps 2009: 18.
[68] Siegle & O'Mahony 2010: 135. Improvements in service delivery minimises dissatisfaction with the state and may prevent inter-group conflict over service provision. See Jackson & Scott 2007: 5.
[69] Jackson & Scott 2007: 4.
[70] Romeo 2002: 5 cited in Jackson & Scott 2007: 4. Cambodia, in the 1990s, offers one example of a country where decentralisation helped to restore citizen trust in government through responsive service delivery after years of armed conflict and political turbulence (USAID 2009: 22). In the 1980s and 1990s decentralisation played a role in facilitating the transition from violence to peace in Brazil and South Africa, respectively.
[71] In South Africa, for example, the perceived failure of the government to deliver on the service delivery promise has been linked with violent and non-violent conflicts in the form of service delivery protests. See De Visser & Powell 2012.
[72] Jackson & Scott 2007: 5.
[73] Tarr 2011: 180.

strife in ethnically diverse societies.[74] The self-rule offered to minorities at subnational level can enhance national cohesion and may undermine feelings of neglect among ethnic groups.

The role of a multilevel system of government as a tool of building sustainable peace is more appealing in multi-ethnic countries. In these countries, a multilevel system of government can accommodate diversity by giving officials at subnational level power and resources to offer differentiated programs that respect diversity and cultural preferences.[75] The inclusion of minority groups in local affairs can reduce feelings of marginalisation which is a recipe for violent conflict especially in Sub-Saharan Africa.[76] Minority groups can use the formal subnational structures to promote and protect their interests without recourse to violence or seceding as they are represented and recognised politically.[77] Nevertheless, for a multilevel system of government to effectively promote peace by accommodating diversity ethnic groups have to be territorially concentrated. In the absence of territorial concentration of ethnic groups, the legal and institutional design of a multilevel system of government has to guarantee and promote individual rights as well as representation of these groups in decision-making structures at various levels.

4.2.3. Enhanced conflict management capacity

Subnational governments can act as platforms for non-violent group discussion relating to local issues and allocation of resources.[78] They may encourage groups at subnational level to develop conflict resolution mechanisms, such as community forums, which can resolve disputes between groups before they escalate into violence. A multilevel system of government affords a 'political arrangement for ensuring that conflicts concerning a territorially delineated community are resolved solely by those affected by the conflict'.[79]

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[74] Siegle & O'Mahony 2010: 135. For Schou and Haug, the 'accommodation of national minorities holds the key to stability' and reassuring minorities that they will not be dominated by the majority (2005: 21).
[75] USAID 2009: 22, Brancati 2009: 8.
[76] Conflicts in countries such as the Democratic Republic of Congo, Sudan, Kenya, Rwanda and Nigeria have been linked to the marginalisation of certain ethnic groups.
[77] Grasa & Camps 2009: 34. Decentralisation is said to have helped prevent the secession of Quebec from Canada and the Basque Country from Spain. See Brancati 2009: 3.
[78] Jackson & Scott 2007: 5.
[79] Chandler 1989: 606 cited in Stroker 1996: 13. The principal argument is that 'people should, through local governments, be able to make decisions that are primarily of concern to their local community. Intervention by outside parties and interests is appropriate only in limited circumstances'. Chandler 1989 cited in Stroker 1996: 13.

Accordingly, decentralisation offers the opportunity to de-scale and handle conflicts at the very local level from which in many cases they originate.[80]

4.2.4 Multiple centres of decision-making

The sharing of power and resources between the central government and subnational governments promotes a process of continuous negotiation between the centre and subnational groupings. [81] Under a multilevel system of government, joint decision-making by governments placed at different levels is widely viewed as a viable alternative to the 'winner-takes-all' approach in which the winner at the ballot box alone controls the reins of authority at the central level.[82] Joint decision-making limits the ability for abrupt changes and strengthens a bargaining environment which has the potential to discourage subnational groupings from resorting to violence against the national government.[83] Thus, decentralisation may represent a valuable and effective concession to minority groups and can be an instrument for brokering peace with regional or local parties and minority groups.[84]

In post-conflict environments, the creation of a multilevel system of government enables the accommodation of ex-combatants and subnational or local groups that might be unwilling to put down arms if they are not offered positions of influence. Since decentralisation multiplies the number of elected offices, it can be an 'effective response to demobilising groups who believe they would have a difficult time in successfully competing for national offices'.[85] The presence of power at subnational level can 'lower the importance and desirability of holding the highest-level national offices, competition over which may have fuelled conflict in the past.[86] For example, the settlement of civil war in Mozambique which involved a 'radical decentralisation programme helped motivate the rebels to accept defeat in the first ever elections, with the implicit promises that power-sharing could take place within the new democratic institutions at the local level'.[87] Thus a multilevel government can entice ex-combatants to lay down arms and run for subnational posts, and form an important part of the conflict resolution strategy and sustainable peace in the long run.

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[80] Braathen & Hellevik 2006: 26.
[81] Conyers 2000: 8-9 in Schou & Haug 2005: 17; Braathen & Hellevik 2006: 21.
[82] Sisk 2001: 74, Jackson & Scott 2007: 6, Braathen & Hellevik 2008: 7, Siegle & O'Mahony 2010: 141.
[83] Schon & Haug 2005: 17, Grasa & Camps 2009: 35.
[84] Braathen & Hellevik 2006: 19.
[85] Eaton & Connerley 2010: 16.
[86] Eaton & Connerley 2010: 16.
[87] See Braathen *et al* 2000 cited in Schou & Haug 2005: 17.

The above foregoing discussion has established that subnational governments may play a role in realising development, building democracy and sustaining peace. The following section discusses the potential threat of a multilevel system of government to these goals.

5 Potential threat of a multilevel system of government to development, democracy and sustainable peace

Multilevel systems of government have not always promoted development, democracy and sustainable peace. In some cases, multilevel systems of government hindered the achievement of development, democracy and sustainable peace due to their legal and institutional design. This section examines the threat of corruption, inequalities, macro-economic stability, secessions and ethnic conflict; under a multilevel system of government.

5.1 Corruption

Corruption is defined as the 'exercise of official powers against public interest or the abuse of public office for private gain'.[88] It manifests in many forms, including petty corruption, grand corruption, state capture and patronage. A multilevel system of government creates a sizeable number of subnational governments, each having powers to tax, spend and regulate. The exercise of such powers at subnational level may 'increase the motivation for corruption among public officials by creating an impression that they are subject to lower monitoring, control and supervision'.[89] Prud'homme argues that corruption is likely to be rampant at the local levels since local officials usually have more discretionary powers than officials at the centre, which makes it easier to establish unethical relationships.[90] Subnational governments may be prone to the capturing of power by elites, due to the increased cohesiveness of interest groups. Local officials may abuse their office to satisfy the pressing demands by these interest groups or elites, whose money and votes count in matters such as taxation and authorisations.[91]

Corruption undermines the realisation of development, democracy and sustainable peace. It reduces or eliminates efficiency benefits associated with a multilevel system of government

[88] Shar 2006: 2.
[89] Shar 2006: 17, Prud'homme 1995: 211.
[90] Prud'homme 1995: 211. Manor (1999: 101) argues that corruption at local level is 'inevitable because [decentralisation] increases … dramatically the number of people with at least minimal access to political power'. However, it is important to acknowledge that corruption may even be more rampant at the national than at the local level.
[91] Prud'homme 1995: 211.

as it raises the cost of goods and services. It increases the costs in terms of allocative efficiency, because it leads to the supply of services for which the levels of kickbacks are higher, rather than those for which there is a demand.[92] Corruption undermines the distribution of public services in many countries and can make it more difficult for vulnerable groups to benefit from poverty alleviation programmes.[93] It is thus a significant hindrance to the fight against poverty.[94] Corruption also reduces the responsiveness of subnational governments since public resources are diverted for the benefit of a few. In situations where decentralisation gives elites power and resources, it may exacerbate conflict and threaten sustainable peace.[95]

5.2 Inequalities

Inequalities can be described as existing differences in income, assets and wealth between individuals, groups or jurisdictions.[96] Inequalities between jurisdictions are due to differences in resources, population sizes, and economic activity, among other factors.[97] A multilevel system of government can increase inequalities among jurisdictions and adversely affect equity.[98] Even if subnational governments have the same taxing and expenditure powers, service provision is highly unlikely to be the same. It has also been argued that a multilevel system of government may exacerbate disparities between regions as resource-poor jurisdictions will find it difficult to raise as much revenue as richer jurisdictions.[99] Differences in the capacity to mobilise resources also means differences in service delivery levels and economic and social development across regions, thereby threatening equity.

It is also argued that a multilevel system of government usually contracts the equalisation role of the central government by reducing the revenue mobilisation potential of the centre.[100] The

[92] Prud'homme 1995: 211. .
[93] Fjeldstad 2004: 5, Crook & Manor 2000: 15, Shah 2006: 2.
[94] Doig & Mclvor 1999 cited in Smith 2007: 175.
[95] Grasa & Camps 2009: 38; Siegle & O'Mahony 2010: 138. Unfair distribution of resources at the local level may have severe implications for peace, especially in post-conflict situations where resources are scarce. Failure by subnational governments to respond to the service needs of the majority and the domination of politics by elites can generate feelings of marginalisation and grievance among other groups. This development may force the neglected citizens to resort to violence as a means of showing their discontent. See Schou & Haug 2005: 30, Jackson & Scott 2007: 6.
[96] Inequalities among individuals and groups are not the primary focus of this study.
[97] Fjeldstaad 2006: 1
[98] De Visser 2005: 27.
[99] Prud'homme 1995: 201-3, Fjeldstaad 2006: 1. With time, disparities will entrench themselves, as jurisdictions with the best tax base will be able to limit taxation and attract further settlement and investment, thereby improving their tax base at the expense of other jurisdictions.
[100] Rodríguez-Pose & Gill 2005: 5. See Bahl & Linn 1992, Rodríguez-Pose & Gill 2005: 2.

reduction in the importance of national budgets relative to those at the subnational level increases inter-jurisdictional inequalities by reducing the impact of national policies designed to correct subnational inequalities.[101] If not addressed, inequalities in wealth and resources among regions within a nation state are likely to have a corrosive effect on internal cohesion and consequently threaten sustainable peace.[102]

5.3 Macro-economic stability

Macro-economic stability is concerned with 'sound macro-economic frameworks' characterised by price stability, sound fiscal policies, the well-functioning economy, sustainable debt ratios, and healthy public and private sector balance sheets.[103] Under a multilevel system of government, the decentralisation of fiscal powers to subnational governments may undermine macro-economic stability. Fiscal decentralisation tends to limit the power of the central government to use monetary and fiscal policies to create a stable macro-economic environment.[104] The total revenues and taxes at hand may be insufficient for the central government to implement stabilisation policies under circumstances of overspending.[105] Such a scenario may result in high inflation and poor macro-economic management which undermines macro-economic stability. Development goals such as the eradication of poverty, reduction of inequalities and universal access to basic services are unlikely to be achieved in an unstable macro-economic environment. An unstable macro-economic environment also has negative consequences for sustainable peace.

A multilevel system of government may threaten the achievement of macro-economic stability as the autonomy enjoyed by subnational governments has the potential to raise incentives for opportunistic behaviour among subnational governments, which may then try to shift their expenditure burdens onto the nation as a whole.[106] Excessive bailing out of

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[101] De Visser (2005: 25) contends that a centralised system of government, where taxes are collected and revenue is disbursed nationally, is better able than a decentralised state to redistribute resources from richer to poorer areas and in the process reduce economic disparities.
[102] Watts 2001: 34.
[103] Ocampo 2005: 2.
[104] Subnational governments have few incentives to undertake macro-economic stabilisation because of the complexity of these policies and because their benefits, such as a stable pricing system, transcend one jurisdiction. As such, subnational governments are unlikely to pay the 'full political cost of an economic stabilisation policy that would bring [them] partial benefits' (Prud'homme 1995: 205).
[105] Argentina is a good example of the threat decentralisation can pose to macro-economic stability. In 1986 provincial governments in Argentina spent excessively without generating corresponding revenue. The deficits that resulted from overspending were either financed by transfers from central government or by borrowing; in both cases it was inflationary. Prud'homme 1995: 206.
[106] Kalinga 2010.

subnational governments funded by tax revenues raised from other communities within the nation or from external sources can increase inflation, which has negative effects on macro-economic stability and development.[107]

Fiscal powers which subnational governments enjoy under a multilevel system of government may encourage subnational governments to compete for investment and tax-payers among themselves. It is argued that extreme competition among subnational governments, seeking to retain and attract tax-payers, may become unproductive by distorting business costs and free domestic trade.[108] This will have negative implications for macro-economic stability. In contrast, Smoke argues that the threat of subnational governments to macro-economic stability through competition is greatly overstated. He is of the view that there may be some inter-jurisdictional tax competition among subnational governments in decentralised countries, but it is generally unlikely to be a major problem to macro-economic stability.[109] Nonetheless, the potential of inter-jurisdictional competition for investment and tax should not be ignored.

5.4 Secession and ethnic conflict

A multilevel system of government may promote secession and ethnic conflict.[110] The decentralisation of powers and resources to subnational governments may weaken national unity, strengthen existing divisions and diminish the loyalty of subnational governments to the nation state.[111] It risks increasing inter-jurisdictional conflict when, for example, the reallocation of resources between jurisdictions precipitates demands in resource-rich jurisdictions for secession. For instance, conflicts in the resource-rich Niger Delta of Nigeria, where local people are engaging in armed confrontation with oil companies and the national government, are linked to inequitable resource distribution.[112]

Siegle and O'Mahony argue that a multilevel system of government may incentivise richer jurisdictions to break away from the state as they seek total independence which will guarantee total benefit of their resources.[113] Decentralisation of fiscal powers may trigger competition between the centre and subnational government(s) for resources. Such

[107] See McCarten 2003 cited in Rodríguez-Pose & Gill 2005: 5.
[108] Smoke 2001: 13.
[109] Smoke 2001: 14.
[110] The opposite is also true.
[111] Siegle & O'Mahony 2010: 163, Sisk 2001: 47, Grasa & Camps 2009: 36.
[112] Braathen & Hellevik 2006: 28.
[113] Siegle & O'Mahony 2010: 140, Jackson & Scott 2007: 6.

competition can ignite greater demands for autonomy and secession by subnational government(s), motivated to have full control over resources.[114] In the long term, tensions between the national government driving national unity and a subnational government seeking independence may degenerate into armed conflict. The threat of secession is high if the jurisdictions are delineated primarily on ethnic lines or if there is a strong geographic concentration of ethnic groups on international borders.[115]

It is also argued that a multilevel system of government may promote secession because it encourages the development of political parties which have an ethnic and regional orientation.[116] An ethno-regional political party with outright regional support can be incentivised by decentralisation of powers and resources to secede from the state. Potential tensions and conflicts are likely to occur especially when an ethno-regional political party commanding majority in a local jurisdiction differs from the ethnic group or political party commanding majority at the national level.[117] The regional political party is likely to demand political, fiscal and administrative autonomy over decision-making or even total independence, which the national government is unlikely to grant easily. The hostile relationship between the national and subnational government can develop into an armed confrontation and threaten sustainable peace.[118]

The shifting of power from national to subnational governments may go far in legitimising certain ethnic identities and subsequently accentuates intergroup differences and inter-communal strife.[119] Ethnic conflict may erupt when ethnic groups use various means such as legislation and public resources to protect and promote their interests at the expense of other groups or citizens. Discriminatory policies and legislation can incite conflict between minority and majority ethnic groups and prompt demands by the former for autonomy or independence.[120] The threat of ethnic conflict at local level may be high in jurisdictions

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[114] Brancati 2009: 10. It has also been argued that autonomy also triggers demands for more authority because it gives rise to regional elites that want to aggrandise power through increased autonomy.
[115] Schou & Haug 2005: 21.
[116] Ethnic-regional political parties have been defined by Brancati (2009: 12) as political parties which compete and win votes in only one region or local jurisdictions of a country. These parties drive for secession by mobilising constituencies along ethnic, identity and regional grounds. See also Schou & Haug 2005: 4.
[117] Jackson & Scott 2007: 6.
[118] Brancati 2009: 13.
[119] Siegle & O'Mahony 2010: 138, Grasa & Camps 2009: 33, Brancati 2009: 10.
[120] Brancati 2009: 11. For instance, the adoption of the Shari'ah Law in Northern Nigeria is argued to have fuelled conflict among Christians and Muslims. Although the Shari'ah Law is supposed to apply only to Muslims, many Christians claim that they are also forced to comply with its dictates. Such legislatives acts have the potential to trigger an ethnic conflict. See Brancati 2009: 11

where no single ethnic group commands a majority or where decentralisation creates minorities within minorities, spurring further conflicts.[121]

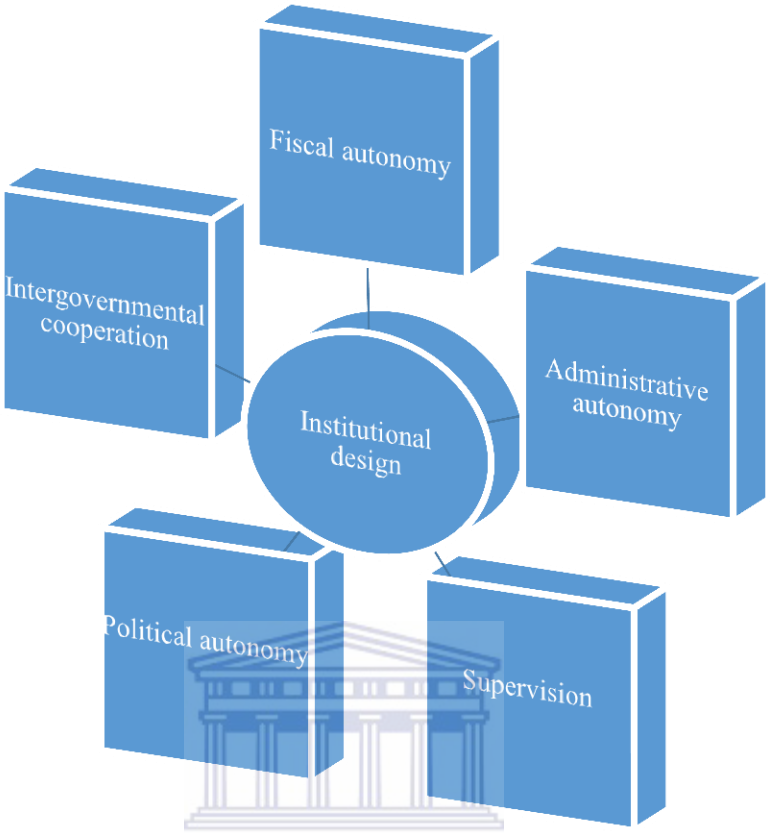
In this section it has been contended that a multilevel system of government can undermine the achievement of democracy, development and sustainable peace.[122] The argument is that it provides an environment which may promote corruption, reinforcement of disparities, macro-economic instability, secession and ethnic conflict. It is submitted, however, that the potential threat of a multilevel system of government ought not to be the sole reason for centralising power as the benefits of such a system outweigh its potential drawbacks. Moreover, there are certain features which, if incorporated in the institutional design, may maximise the benefits and reduce the risks associated with a multilevel system of government. The relevant institutional design features are explored in the following section.

6. Towards an institutional design for development, democracy and sustainable peace

As argued above, a multilevel system of government may be better organised to realise development, democracy and sustainable peace relative to a centralised system of government. It is submitted that it is not just any multilevel system of government which can achieve these goals. The design of a multilevel system of government is crucial. While acknowledging the importance of contextual particularities, literature on multilevel systems of government and international practice suggests that there are certain design features which may enhance the potential of a multilevel system of government to contribute towards realising development, democracy and sustainable peace.[123] These key features, as captured in Figure 1 below, will be discussed in this section.

[121] Ghai 2002 in Schou & Haug 2005: 2, Braathen & Hellevik 2008: 18.
[122] See Braathen & Hellevik 2008: 22.
[123] See Bahl 1999: 5.

Figure 1: Design features of a multilevel system of government that can realise development, democracy and sustainable peace



6.1 Political autonomy

A multilevel system of government ought to promote political autonomy at subnational level if it is to realise development, democracy and sustainable peace.[124] Political autonomy requires that subnational governments should be recognised in national legislation and, where possible, in the Constitution as autonomous subnational units.[125] In addition, the European Charter of Local Self-Government suggests that national legislation and ideally the Constitution should determine the manner in which subnational governments are established, the nature of their powers, the scope of their authority, and their functions.[126] The various aspects of political autonomy are examined below.

[124] Bahl 1999: 5.
[125] UN-Habitat 2007: 6.
[126] Article 4(1) European Charter of Local Self-Government, Strasbourg 15.X.1985. See also UN-Habitat 2007: 6.

6.1.1 Elected subnational governments

6.1.1.1 How are local leaders to be elected?

The direct election of local leaders by the citizens is an important element of self-rule, which is crucial for building sustainable peace and democracy.[127] The Commonwealth Principles on Good Practice for Local Democracy and Good Governance' (hereafter referred to as the Aberdeen Principles) suggest that subnational governments should be composed of leaders who are directly elected by the voters under an electoral system which guarantees regular, free, fair and inclusive elections.[128] The electoral system should require a minimum level of qualifications for one to be elected into office so that capable individuals are elected into office.[129] If officials at subnational level are appointed by higher tiers of government, their accountability will be upwards and not downwards to the local people, with the result that the efficiency gains discussed in paragraph 2.2.1 above will not be achieved. [130] Inter alia, free and fair elections mean that all political parties and independent candidates are allowed to participate in elections without any impediments, including equal access to the media.[131] The participation of a variety of political formations will nurture democratic pluralism, which is an important aspect of any democratic state. Free and fair elections also mean that elections are administered by independent and impartial institutions. Regular, free and fair local elections foster the accountability of locally elected leaders to the local citizenry.[132] It should be noted however that democratic elections are a vital but not a sufficient condition for political autonomy.[133]

6.1.1.2 Avoid harmonising national and local elections

To be politically significant and to allow local concerns to dominate the local electoral cycle, national and local elections should be separated. Sufficient separation of local and national

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[127] See Smith 2007: 111-13.
[128] The Commonwealth Local Government Forum 'Time for Local Democracy, The Aberdeen Agenda: Commonwealth principles on good practice for local democracy and good governance' 2005: 6, 8. These principles were adopted in 2005 by Commonwealth member countries in Aberdeen (Scotland) with the objective of strengthening local democracy and good governance. See also Article 3(2) European Charter of Local Self-Government.
[129] Such a system may be regarded as highly undemocratic. Moreover, educated officials do not necessarily possess 'good' leadership skills.
[130] Bahl 1999: 5.
[131] Eaton & Schroeder 2010: 170.
[132] Bahl 1999: 61.
[133] Fessha & Kirkby 2012: 256.

elections raises the profile of subnational governments and allows local leadership to function more independently of higher authorities.[134] If local elections are held at the same time as national elections, national factors will influence local voting behaviour. During concurrent elections voters are likely to respond to the performance of the political party rather than that of individuals.[135] The implication of this is that electoral accountability, which is key for responsive local government, will be undermined.

6.1.1.3 No arbitrary removal of local leaders

Once officials at subnational level have been elected into office, higher levels of government should not be empowered to arbitrarily remove locally elected officials.[136] Elected officials should be removed from office by senior governments only after following due process of the law or through democratic means such as elections. It follows from this argument that rules and procedures which give officials of senior governments the discretion to remove locally elected officials from office, without any form of public scrutiny, should not be allowed to exist. Such discretion can be used solely to settle political scores and not to serve the local public interests given that subnational institutions are prone to high levels of politicisation.[137] However, this should not be interpreted to mean that corrupt and incompetent officials should not be removed from their positions. Rather, as discussed in paragraph 6.6.3 below, there should be checks and balances in the exercises of the power to remove locally elected officials from office. Local officials should also be given the opportunity to debate the merits and demerits of issues without fear of being held liable for their contributions or opinions.[138] It is also submitted that the term of office of locally elected leaders should be limited to reduce chances of local authoritarianism.[139]

6.1.2 Inclusive subnational governments

Decision-making structures at all levels of government should be as inclusive as possible.[140] Marginalised groups, including minority groups, women and persons with disabilities, ought

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[134] Bland 2010: 56.
[135] Smith 2007: 27. It has been submitted that citizens will vote for a councillor or political party not as way of rewarding performance but due to the reputation of the leadership of the political association and/or a historical association with their class or ethnic interests. See Smith 2007: 27.
[136] Bland 2010: 55.
[137] Bland 2010: 55.
[138] See Steytler & De Visser 2009: 3-16.
[139] Bland 2010: 57.
[140] The Aberdeen Principles 2005: 6.

to have representation in various decision-making structures. These groups are usually too weak to organise themselves to compete for political positions. As a result, they usually lack representation in governmental decision-making structures. Inclusive decision-making structures are important for building sustainable peace. In a number of countries such as the Democratic Republic of Congo, Sudan, Central African Republic and Rwanda; violent conflict has been attributed in part to non-inclusive decision-making structures at various levels, which lead to inequitable distribution of resources. Thus, it is important that decision-making structures at all levels of government are as inclusive as possible.[141] The electoral system can be an effective mechanism for guaranteeing the representation of marginalised groups.[142]

6.1.3 Decentralising powers and functions to subnational governments

Political autonomy also entails giving subnational governments distinct powers and functions.[143] As will be argued, such powers and functions should be original, relevant, clearly demarcated and differentiated. Subnational governments should have the power to make final decisions on their functions.

6.1.3.1 Original

Subnational governments are more likely to play a key role in realising the goals of development and sustainable peace if they have original powers. Original powers are those which are assigned to a particular level of government directly by the Constitution. These powers may not be altered by national legislation but only by an amendment to the Constitution itself.[144] Constitutional recognition of powers, arguably, is the 'most critical and fundamental feature of the integrity' of subnational governments.[145] It provides the highest form of assurance to subnational governments that decentralised functions will not be arbitrarily assumed by the national government.[146] This provides predictability which is essential to ensure that subnational governments concentrate on delivering on their obligations, unlike under a system of delegated authority to subnational governments where the national government may recentralise powers and functions easily.

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[141] The Aberdeen Principles 2005: 6.
[142] See Bockenforde 2011: 16.
[143] Fessha & Kirkby 2012: 255.
[144] Steytler & De Visser 2011: 22-47. See also De Visser 2005: 79.
[145] De Visser 2005: 79.
[146] See De Visser 2005: 79.

6.1.3.2 Relevant

The powers and functions of subnational governments ought to be relevant for development. The World Bank put it succinctly that what subnational governments can achieve depends on the responsibilities they are granted.[147] As such, it is important that subnational governments are allocated a variety of powers and functions and not, for example, merely function of refuse removal. Subnational governments ought to have significant expenditure responsibilities that are relevant to local voters to strengthen the accountability of local officials to the citizens, among other objectives.[148] The literature on fiscal decentralisation (and federalism) suggests that the assignment of responsibilities in a multilevel system of government should be informed by the subsidiarity principle.[149] The principle states that 'public service responsibilities must be exercised by the lowest level of government unless a convincing case can be made for higher level assignment'.[150] This would mean that the national government should have expenditure responsibilities that include:

- functions to preserve national efficiency objectives such as maintenance of the internal common market and provision or financing of public goods and services whose benefits transcend subnational boundaries;[151]
- those functions needed to safeguard national equity objectives such as vertical equity based on incomes and other criteria, and horizontal and vertical equity across regions; and
- stabilisation programmes.[152]

Conceptually, responsibilities for other functions may be best exercised by regional and local governments. As will be argued in paragraph 6.6.1 and 6.2.5 below, the national government can ensure attainment of minimum standards of public services through regulatory oversight and use of conditional grants, respectively.[153] The assignment of responsibilities between provincial (regional) and local governments requires taking into account factors such as economies of scale, economies of scope (the bundling of local public services to improve efficiency), cost/benefit spill-overs, proximity to beneficiaries, consumer preferences and

[147] World Bank 2000: 109.
[148] Bahl 1999: 5, 61. See also Steytler 2005: 6.
[149] See Stigler 1953, 'Stigler's Menu'; Olson 1969, 'Fiscal equivalency'; Oates 1972: 55, 'Decentralisation Theorem'; Shah 2004: 8-9.
[150] Shah 2004: 3. See also Article 4, European Charter of Local Self-Government, UN-Habitat 2007: 4
[151] For example, defence, security, international trade, immigration and foreign affairs.
[152] Shah 2004: 9. Stabilisation programmes such as monetary policing, currency and banking.
[153] Shah 2004: 9.

culture.[154] Functions with a local benefit zone such as refuse removal, cemetery, street lighting, parks or local roads should be assigned to local government, since their delivery benefits the residents of a local area.[155] For the purposes of peace-building, there may be need to decentralise administrative authority over basic education, language and culture particularly in societies with substantial linguistic, religious, and cultural diversity.[156] This will allow local communities to protect and promote their linguistic, religious and cultural interests.

6.1.3.3 Clearly demarcated

The effective performance of decentralised functions by subnational governments requires clear demarcation of powers and functions of each level of government, especially under a system of concurrent distribution of functions.[157] The World Bank states that the clear demarcation of powers helps governments at various levels to identify functions they are responsible for, reduce the number of areas of potential conflict and avoid confusion in the performance of a function(s).[158] Further, clear demarcation of powers does not only avoid resource wastage through duplication of functions but also has the potential to enhance political accountability. Accountability is enhanced as members of the public can identify the level(s) of government to hold accountable for the delivery of certain public services.[159] Clear demarcation of powers is also important for the assignment of revenue-raising powers to tiers of government. If powers and functions of the various tiers of government are poorly defined, then the resources will also be inadequately defined in regard to both the amounts needed to finance spending and in regard to their nature.[160] Thus, it is important that the allocation of powers and functions across tiers of government is as clear as possible. In cases where powers and functions are shared among different tiers of government, these should not lead to a 'diminution of local autonomy or prevent the development of subnational governments as full partners'.[161] The role of each tier of government on the concurrent list of functions should be clarified whenever possible.

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[154] Shah 2004: 9, 1994: 19-20.
[155] See Dafflon & Madies 2009: 40.
[156] Eaton & Schroeder 2010: 169.
[157] See Bardhan & Mookherjee 2006: 13, National Planning Commission 2011: 386, Shah 2004: 7.
[158] World Bank 2000: 124. See also the National Planning Commission 2011: 386.
[159] Dafflon & Madies 2009: 29.
[160] See Dafflon & Madies 2009: 29.
[161] UN-Habitat 2007: 4.

6.1.3.4 Final decision-making over decentralised functions

The potential of subnational government to deliver services that closely match local preferences depends, in part, on the power of subnational governments to make final decisions on their functions. As argued in paragraph 6.6.1 below, when functions have been decentralised, the role of senior levels of government should be limited to setting the regulatory framework within which the functions can be carried out. Further, senior governments should make decisions on those functions only in cases were a subnational government will have failed to deliver on those functions.[162] Article 4(4) of the European Charter of Local Self-Government states that decentralised powers and functions should ideally be 'full and exclusive' and not undermined by any senior government except as provided for by the law.[163] Significant involvement of officials of higher governments in local decision-making processes constrains the overall process of decentralisation and consequently reduces the benefits a multilevel system of government can offer.

6.1.3.5 Asymmetric distribution of powers and functions

Subnational governments are unlikely to have equal capabilities to deliver and finance services. Moreover, subnational jurisdictions are endowed with different levels of wealth and are characterised by varying demographic composition. Thus, a 'one-size-fits-all' approach when decentralising powers and functions may not be appropriate for a coherent multilevel system of government.[164] It is submitted that a multilevel system of government should be sensitive to these differences at subnational level. This may involve the diffusion of differentiated powers and functions to subnational governments depending on factors such as administrative capacity and economic, demographic and geographical conditions of the locality.[165] The explicit recognition of differences between jurisdictions requires a clear set of rules about when a subnational government graduates from one status to another to take into account changing circumstances.[166]

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[162] Bardhan & Mookherjee 2006: 13.
[163]Bahl (1999: 5) argues that elected officials at subnational level should be allowed to take decisions on local functions without requiring 'approvals' from officials at higher levels of government. See also Kalin 1998: 2.
[164] National Planning Commission 2011: 387.
[165] See National Planning Commission 2011: 387, Ford 1999: 14.
[166] Bahl 1999: 10, Eaton & Schroeder 2010: 174.
[166] Fessha & Kirkby 2008: 12.
[166] Eaton & Schroeder 2010: 175

6.1.4 Security of existence

Subnational governments are unlikely to perform properly if their existence is in constant jeopardy by the ability of authorities on higher levels of government to dissolve them easily at any time.[167] If the autonomy of subnational governments is to be secure, it may not be enough to rely on the good faith of the senior governments.[168] The protection of such autonomy through a constitutional and statutory entrenchment of subnational government as an order or tier of government is vital.[169] Such entrenchment is important to protect the status of individual subnational governments, including their names, institutional structure and boundaries. Constitutional protection of the autonomy of subnational governments can serve as a deterrent to the invasion of subnational powers by the central government and provide a basis for judicial enforcement of constitutional limits.[170]

6.1.5 Citizen participation

As highlighted above, a multilevel system of government provides more opportunities for citizen participation by bringing government physically closer to the citizens. It is important that citizens participate actively in the local democratic processes, including budget-making, planning, the establishment of new local governments and the alteration of local government boundaries.[171] To realise this goal, the legal framework should provide for the establishment of participatory structures and mechanisms. It should require subnational governments to consult the citizens on important governance issues. It is also important that institutions and mechanisms of governance at local level be strengthened to prevent or reduce elite capture of political power, which discourages citizens from making use of participatory structures and mechanisms.[172]

6.1.6 Accountability

Accountability is the cornerstone of democracy and a prerequisite for responsive governance.[173] Thus, when designing a multilevel system of government is it vital to ensure that there are specific rules, mechanisms and institutions to promote the accountability of

[167] Kalin 1998: 1.
[168] Tarr 2011: 172.
[169] The Aberdeen Principles 2005: 6.
[170] Steytler 2009: 410, Tarr 2011: 173.
[171] The Aberdeen Principles 2005: 7.
[172] USAID 2009: 27, Smith 2007: 107.
[173] Geldenhuys 2008: 93.

various governments to the citizens as well as to other governments placed at different levels.[174] Some have already been discussed above and include direct election of leaders by citizens and citizen participation in local decision-making processes. In addition to these, the institutional design must enable or facilitate mechanisms through which local assemblies can hold the local executive to account.[175] Such mechanisms may take the form of oversight committees and reporting systems. Moreover robust, independent bodies need to be put in place to guard against corruption, mismanagement and the inappropriate use of resources by subnational governments, politicians, and officials.[176]

Accountability requires that decision-making processes of government at all levels be open and transparent.[177] Timeous and easy access to information is crucial for the citizens to hold local officials accountable for their actions or lack thereof.[178] It is also important for citizen participation since citizens can only participate meaningfully in governance processes if they are well informed.[179] Thus, the institutional design should include mechanisms that foster transparency, including opening the meetings of legislative assemblies and their committees to the public and media.[180] The legal and institutional design should ensure the accountability of local administrative officials to local elected officials. This is important for effective policy implementation at subnational level. Some of the mechanisms of fostering accountability include requiring regular reporting by the administrative arm to the executive and legislative arms.[181]

6.2 Fiscal and budget autonomy

The UN-Habitat claims that the decentralisation of powers and functions is likely not to be enough for subnational governments to play a role in development and building sustainable peace if not accompanied by fiscal autonomy.[182] Fiscal autonomy entails the ability of a

[174] Bardhan & Mookherjee 2006: 13, the Aberdeen Principles 2005: 7.
[175] The Aberdeen Principles 2005: 8, Eaton & Schroeder 2010: 172. The effectiveness of legislative assemblies to scrutinise the work of the executives requires that councillors or other elected representatives have a certain level of education and skills. Without sufficient education and skills, members of the legislative assemblies are unlikely to effectively oversee the work of the executives.
[176] The Aberdeen Principles 2005: 7.
[177] The Aberdeen Principles 2005: 7.
[178] The role of civil society should be strengthened to effectively hold government and public officials to account. See the Aberdeen Principles 2005: 7.
[179] See Ford 1999: 14, Bardhan & Mookherjee 2006: 13. The Aberdeen Principles (2005: 7) have also recognised the important role played by civil society in facilitating citizen participation and accountability.
[180] See Bardhan & Mookherjee 2006: 13; Local Government Project, Community Law Centre (CLC) 2008: 14.
[181] See Local Government Project, CLC 2008: 29-36.
[182] UN-Habitat 2007: 8.

subnational government to obtain through its own means the financial resources it needs without recourse to or dependence on other governments situated at a higher levels or within the same level.[183] Thus subnational governments should have resource-raising powers which allow them to raise sufficient revenue to meet their obligations and development needs. Only when they have independent sources of financial resources are local governments likely to make choices in response to local preferences.[184] Hence, fiscal autonomy is crucial for the role of subnational governments in development. The various aspects and importance of fiscal and budget autonomy are examined in this section.

6.2.1 Resource-raising powers

Subnational governments should be given the power to mobilise sufficient revenue to finance their expenditure and development needs.[185] Revenue can be mobilised through various ways, including imposing various taxes. It can also be mobilised through borrowing. These two ways of mobilising revenue are discussed in this section.

6.2.1.1 Taxing powers

The guiding principle when designing a fiscal system is that 'finance follows function' so that subnational governments are in charge of taxing powers that can raise financial resources that are commensurate with their responsibilities.[186] This will allow subnational governments to raise significant financial resources from their own revenue sources. Bahl argues that 'voters will hold their elected officials more accountable if local public services are financed to a significant extent from locally imposed taxes, as opposed to the case where financing is primarily by central government transfers'.[187] Thus, the devolution of weak sources of revenue undermines the ability of subnational governments to take on decentralised responsibilities.

Some of the taxes which may be appropriate for subnational government include motor vehicle licensing, tolls, parking taxes, motor fuels tax, property tax and user charges.[188] When designing a local taxation system it is important to ensure that resource mobilisation goals are

[183] Dafflon & Madies 2009: 62.
[184] Dafflon & Madies 2009: 62.
[185] The Aberdeen Principles 2005: 8.
[186] World Bank 2000: 124. See also Bahl 1999: 7, Article 9(2) European Charter of Local Self-Government.
[187] Bahl 1999: 10. See also UN-Habitat 2007: 9.
[188] Bahl 1999: 12-14.

not pursued at the expense of equity by allowing the tax burden to fall more on the poor than on the relatively better-off members of the community. A service charge system reflecting differences in ability to pay by incorporating sliding scales for the type of user or the amount of usage aligns with the equity goal.[189] In addition, the local taxation system should also be designed so that local taxes do not constrain the start-up of new and small enterprises and subsequently inhibit economic growth.[190]

6.2.1.2 Borrowing

Subnational governments which have the capacity to repay loans should be authorised to raise revenue through borrowing.[191] This may free resources available to the national government to assist smaller subnational governments which usually face difficulties in raising sufficient revenue to meet their obligations and development needs. However, evidence from Brazil and Argentina suggests that extreme caution should be taken when designing the fiscal aspects of a multilevel system of government as borrowing by subnational governments may have negative implications for macro-economic stability.[192] To minimise macro fiscal risk, a multilevel system of government should allow the national government to keep a sufficient share of taxes and expenditures to enable the use of fiscal policies to affect overall demand.[193] Moreover, the national government should implement a hard budget constraint policy to keep subnational spending in check.[194]

[189] Rondinelli *et al* 1989: 71.
[190] Bahiigwa *et al* 2004 cited in Fjelstaad 2006: 4. It is also important to ensure that subnational governments have 'adequate capacity to collect the revenues that are assigned to them', especially property tax, which is administratively difficult to administer. Bahl 1999: 61.
[191] Bahl 1999: 6; Article 9(8), European Charter of Local Self-Government.
[192] Smoke states that in Argentina and Brazil borrowing by subnational governments undermined macro-economic stability, which was characterised by high inflation. The unstable macro-economic environment was a result of undisciplined but correctable fiscal behaviour by subnational governments. See Smoke 2001: 13.
[193] Prud'homme 1995: 205. The central government should have the capacity and tools to control nominal variables so as to provide a stable macro-economic environment. This is why the stabilisation function is centralised in most states, unitary and federal alike.
[194] Eaton & Schroeder 2010: 182. A hard budget constraint entails that 'those local governments who are given autonomy will be asked to balance their budgets without recourse to any end-of-year assistance from the central government'. In addition, a hard budget constraint policy prevents the national government from bailing out local governments that suffer budgetary deficits. It 'forces local governments to live within their means, and forces local officials to be accountable for hard choices that they make' (Bahl 1999: 5, 27). However, it may be difficult for a national government to credibly commit to a no-bailout fiscal policy, as failure by the national government to rescue subnational deficits may lower the availability of goods and services and have adverse effects for the whole nation. The unavailability of goods and services, especially basic services, has negative implications for sustainable peace. See Kalinga 2010, Wildasin 1997 cited in Eaton & Schroeder 2010: 181.

6.2.2 Right to set tax rates

Effective revenue mobilisation requires that subnational governments have some control over tax rates or user tariffs or the definition of those revenues.[195] Subnational governments should be allowed to set tax rates and alter tariffs for user charges without seeking approval from the central government.[196] The right to set tax rates creates flexibility by enabling subnational governments to adjust tax rates to suit their budgetary requirements or as economic circumstances require. Thus, the right to set tax rates is not only important to mobilise revenue but also to influence behaviour in their respective jurisdictions.

6.2.3 'Real' tax base

The decentralisation of taxing powers is likely to be ineffective if local tax bases are not real.[197] A real tax base means that a subnational government can raise significant revenue in its jurisdiction with little reliance on the national government to finance its operations.[198] It is of particular concern in Africa where subnational governments historically developed along colonial lines. This development has caused the concentration of resources in areas which where of interest to colonial authorities. In Zimbabwe, for example, most urban local authorities mobilise significant revenue than rural local authorities because of the concentration of economic activities in urban areas. Thus, when determining the size of local jurisdictions and allocating taxing powers it is important to address this skewed distribution of resources.

6.2.4 Budget autonomy

Budget autonomy means that subnational governments have a certain measure of discretion to determine expenditure choices.[199] The degree to which subnational governments have control over their own revenues and intergovernmental grants is important for development and, in particular, for adjusting the mixture of services to closely match local preferences.[200] Subnational budgets should not be subjected to the approval of higher levels of government before they are considered final. The threat of rejection of local budgets diminishes budget

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[195] Eaton & Schroeder 2010: 180. See also Bardhan &Mookherjee 2006: 13, World Bank 2000: 117.
[196] Eaton & Schroeder 2010: 180.
[197] Rondinelli 1983: 48, Bahl 1999: 61.
[198] De Visser 2005: 42.
[199] Bahl 1999: 61. Budget autonomy also means that subnational governments do not carry out delegated responsibilities without commensurate resources. Eaton & Schroeder 2010: 180.
[200] See Bardhan & Mookherjee 2006:13

autonomy of local decision-makers.[201] Budget autonomy may be enhanced if a significant amount of transfers from higher levels of government is unconditional, although the achievement of certain national goals such as equity may require substantial conditional transfers.[202]

6.2.5 Equalisation and redistribution

Under a multilevel system of government, the sharing of taxing powers across tiers of government is unlikely to result in subnational governments raising enough revenue to fund their operations.[203] The national government will mobilise significant revenue as it usually controls high yielding taxes. Moreover, subnational governments are unlikely to raise an equal amount of financial resources due to varying levels of fiscal capacity and efficiency, among other reasons.[204] A balanced system of intergovernmental transfers to complement local revenue-raising efforts is therefore required for a number of reasons, namely to:

- equalise;
- ensure financial sustainability at subnational level;
- influence local priorities in areas of high national but low local prioritisation;
- compensate benefit spill-overs;[205] and
- address equity concerns, especially for poor jurisdictions.[206]

An intergovernmental fiscal system has two dimensions: namely, vertical and horizontal. According to Shah the vertical dimension (division) seeks to reduce the vertical fiscal imbalance likely to result after the assignment of revenue-raising mechanisms and expenditure obligations at national and subnational levels.[207] The horizontal dimension, on the other hand, seeks to reduce the horizontal imbalance caused by inconsistency between revenue-raising ability and fiscal needs of governments at the same level.[208] The equalisation and redistributive potential of an intergovernmental fiscal system is likely to be enhanced if

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[201] Eaton & Schroeder 2010: 180.
[202] Bahl 1999: 61. If subnational governments do not have independent sources of revenue they are unlikely to take independent decisions, which are crucial when the need arises to tailor-make service provision. See Watts 2001: 33.
[203] See Shah 1994: 57; 2004: 22-3.
[204] Shah 2004: 23.
[205] Subnational governments are likely to lack a proper incentive to provide the correct levels of services which yield spillover benefits to residents of other jurisdictions. An intergovernmental fiscal system responsive to expenditure spillovers will provide the incentive to increase expenditures. See Shah 2004: 25.
[206] Article 9(5), European Charter of Local Self-Government, UN-Habitat 2007: 9; Shah 2004: 24-5; Dafflon & Madies 2009: 40. Such intergovernmental transfers should however not diminish the discretion local authorities may exercise within their own sphere of responsibility.
[207] Shah 1994: 57.
[208] Shah 1994: 57.

certain principles inform the design of the intergovernmental fiscal system. These principles will be examined below.

6.2.5.1 Transparency

The manner in which fiscal resources are shared and distributed vertically and horizontally should be and should be seen to be transparent.[209] Transparency in financial equalisation may be promoted by creating simple predetermined rules of sharing resources across and within levels of government.[210] Formula-based allocations both for the vertical and horizontal dimensions are often regarded as the most appropriate component of a transparent intergovernmental fiscal system.

6.2.5.2 Predictability

A sound system of intergovernmental relations requires that intergovernmental fiscal transfers, especially unconditional grants, be predictable.[211] Conditional grants should be kept reasonably stable from year to year so that subnational governments can properly plan their budgets. Another method of ensuring predictability of subnational governments' shares is by publishing multi-year projections of funding availability.[212]

6.2.5.3 Equity

The design of the intergovernmental grants should ensure that funds which are allocated and distributed to subnational governments vary directly with fiscal need factors and inversely with the taxable capacity of each jurisdiction to advance equity.[213] This will result in poor jurisdictions receiving more discretion to spend intergovernmental grants relative to rich jurisdictions. However, equitable sharing of revenue among subnational governments might not be sensible in all circumstances and contexts. Some rich subnational governments may resist the equity notion in the horizontal sharing of fiscal resources.[214] In such cases the use of

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[209] World Bank 2000: 118; Litvack *et al* 1998: 13.
[210] World Bank 2000: 118.
[211] The Aberdeen Principles 2005: 8.
[212] Shah 1994: 45. For example, the Medium Term Expenditure Framework (MTEF) in South Africa gives provinces and municipalities predictions of amounts of intergovernmental grants they are likely to receive over a three-year period. Any changes in the actual amounts in each year are mitigated by a stabilisation grant.
[213] Shah 1994: 45.
[214] Dafflon &Madies 2009: 44.

the 'derivation or origin principle'[215] may be the solution to manage conflict that may arise among governments. This allows regions or jurisdictions to retain some of locally generated revenue or benefits from local resources and consequently promote national integration.

6.2.5.4 Flexibility

It is necessary to balance the competing principles of transparency, predictability, simplicity and equitability, on the one hand, and flexibility, on the other.[216] An intergovernmental fiscal system ought to be flexible to accommodate changes in the political and socio-economic environment.[217] Conversely, creating a completely ad hoc system of intergovernmental fiscal relations undermines transparency. Flexibility may be achieved if basic components of the intergovernmental system as opposed to the actual division of revenue are constitutionally recognised. Detailed provisions relating to actual division of revenue should be captured in ordinary legislation.[218]

6.2.5.5 Participation of subnational governments

The sharing of revenue between the national and subnational governments as well as amongst subnational governments themselves has significant implications for subnational governments. Therefore, the question of how much scope subnational governments have to influence revenue sharing is vital.[219] The UN-Habitat suggests that national legislation and, where possible, the constitution, should guarantee the participation of subnational governments in framing the rules governing the general sharing of nationally generated financial resources, including vertical and horizontal equalisation.[220] This allows subnational governments to influence the vertical and horizontal sharing of financial resources.[221]

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[215] Dafflon & Madies 2009: 44. The principle stipulates that horizontal revenue-sharing should be carried out depending on the contribution of each jurisdiction to the national purse. For instance, the 1999 Constitution of Nigeria contains a crucial provision stating that at least 13 per cent of oil-based revenue must be returned to those states where it is found before a horizontal allocation of national revenue to all states occurs.

[216] The establishment of a fiscal board which regularly reviews the sharing of revenues across levels of government and recommends necessary changes may promote these principles of intergovernmental fiscal relations. See Litvack *et al* 1998: 13.

[217] Litvack *et al* 1998: 13. Some elements of a fiscal decentralisation programme will have a short lifespan caused by changes in economic development. 'Disparities among regions within a country change, the quality of the basic infrastructure changes, priority areas for investment change and the technical capacities of local governments change. Central governments must have the flexibility in their fiscal decentralisation plans to adjust to such changes' (Bahl 1999: 24).

[218] See, for example, the Division of Revenue Act in South Africa, which is passed annually.

[219] Bardhan & Mookherjee 2006: 13.

[220] UN-Habitat 2007: 9.

[221] Article 9(6), European Charter of Local Self-Government.

Without the involvement of subnational governments in the executive processes that determine revenue sharing, the interests of subnational governments are likely to be alienated or receive secondary attention.[222] As discussed in paragraph 6.5.2.3 below, subnational governments may influence revenue sharing if they are represented in executive intergovernmental structures that determine revenue sharing or in the legislative arm which passes the revenue and expenditure bills, or both structures.

6.3 Administrative autonomy

Administrative autonomy plays a complementary role to the realisation of political and fiscal autonomy.[223] Administrative autonomy entails the discretion to appoint, remunerate, discipline and dismiss staff, as well as set internal administrative procedures. Fessha & Kirkby argue that administrative autonomy frees subnational governments from reliance on the national government and its bureaucracies to implement their local policy decisions.[224] It further ensures that implementation of local policies is locally directed and driven by promoting the accountability of local administrative officials to subnational governments and not to the national government. The various aspects of administrative autonomy are examined below.

6.3.1 Authority over personnel issues

Subnational governments are unlikely to effectively deliver on their mandate by using public sector employees whom they do not have control over. Responsive service delivery may be promoted if subnational governments have some control over their personnel.[225] Thus, subnational governments ought to have authority over the appointment, disciplining and dismissal of local administrative officials.[226] The decentralisation of administrative authority should take into account the capacity of individual subnational governments to attract qualified and skilled personnel.[227] Large subnational governments with the capacity to attract and retain skilled and qualified personnel should ideally have full competency over personnel issues exercised within the national framework. For smaller or low level subnational

[222] As a result, financial sustainability of subnational government, which is crucial for development and peace-building, is likely to be undermined too. See the Aberdeen Principles 2005: 8, 9.
[223] Bahl 1999: 5. See Fessha & Kirkby 2012: 259.
[224] Fessha & Kirkby 2008: 12.
[225] Eaton & Schroeder 2010: 174. See also Bahl 1999: 61.
[226] Bahl 1999: 5. See also Bardhan & Mookherjee 2006: 13.
[227] See Ford 1999: 14.

governments, which might experience difficulties in attracting and retaining skilled manpower, it may be necessary to establish a deployment system where the national government deploys some of its skilled employees to these subnational governments. Once subnational governments have established their personnel structures, they should have a code of good conduct that requires public officials to act with integrity and avoid situations that may lead to a conflict of interests.[228]

6.3.2 Authority to determine salaries of employees

Administrative autonomy also means that subnational governments have the authority to determine salary levels of local employees to allow the establishment of salary schemes which attract and retain professionals.[229] For example, a subnational government can vary salary levels on the basis of performance, profession and scarcity of particular skills. However, the discretion to set salary scales at subnational level should not be exercised without boundaries as it may breed corruption and resource wastage.[230] Thus, as argued in paragraph 6.6.1 below, it is important that the national government sets the framework within which subnational governments may determine salary levels for their employees.

6.3.3 Authority over the setting of internal procedures

The UN-Habitat contends that subnational governments may respond better to the demands of the localities if they are authorised to determine their own internal procedures as far as possible.[231] Such authority will allow subnational governments to adapt internal procedures to local needs and ensure effective management.[232] This is particularly necessary in countries where there is asymmetric decentralisation giving rise to different structures of subnational governments. It is however submitted that internal structures should be established within a framework set by the national government which should recognise different categories of subnational governments.

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[228] UN-Habitat 2007: 3. The code should be made public to allow the citizens to enforce it
[229] Eaton & Schroeder 2010: 175.
[230] See Grasa & Camps 2009: 38, Siegle & O'Mahony 2010: 138
[231] UN-Habitat 2009: 12.
[232] UN-Habitat 2007: 8.

6.4 Supervision

Under a multilevel system of government, the decentralisation of powers and functions to subnational governments should not be interpreted to mean that subnational governments operate as independent entities or governments. While exercising a certain measure of autonomy, subnational governments must remain accountable to senior government. Senior governments have a duty and obligation to supervise subnational governments. In this study supervision is understood to mean regulation, monitoring, support and intervention.[233] One of the most contested issues in countries with more than two levels of government is which level of government should have the responsibility to supervise local government.

In Ethiopia, the United States of America and Australia, local governments are an exclusive competency of the states or regional governments.[234] On the other hand, in Germany and South Africa, local governments are supervised by both the national and provincial governments.[235] Despite these differences, what seems to be clear is that the effective functioning of a multilevel system of government depends in part on the extent to which the institutional design balances the requirement for supervision with the need for local discretion. Further, Article 8(1) of the European Charter of Local Self-Government states that supervision should only be exercised in accordance with such procedures and in cases as provided for by the legal framework, which respects local autonomy.[236] The capacity of higher levels of government to supervise is as important as the capacity of subnational governments to deliver on their mandate. The various forms of supervision are discussed below.

6.4.1 Regulation

6.4.1.1 General regulation

The institutional design should allow the national government to regulate the activities of subnational governments by, among other ways, setting national standards.[237] National standard setting entails the degree to which the performance of subnational governments is supervised as opposed to controlled by higher levels of government. National standard setting

[233] See De Visser 2005: 170.
[234] See Steytler 2009: 425.
[235] See Steytler 2009: 426.
[236] See also UN-Habitat 2007: 7.
[237] The Aberdeen Principles 2005: 9.

is justifiable on a number of grounds, including equity concerns. The notion of equity among citizens requires the national government to set minimum standards on the quantity and/or quality of local public services.[238] In setting up national standards on the provision of goods and services, it is argued that the national government should strive not to endanger the minimum level of local autonomy which is necessary to reap the benefits of a multilevel system of government.[239] Regulation should be limited to framework legislation and policies.

National standards can also be set on personnel issues involving qualification requirements for key positions, salary scales and financial issues involving uniform accounting and auditing practices, financial disclosure, budgetary processes and borrowing.[240] Some of these national standards are necessary to combat or prevent corruption and maladministration. The guiding principles when setting standards are transparency, fairness, predictability, and explicit recognition of differences between subnational governments. When setting national standards it is also important to consider the costs associated with complying with the set standards, especially for smaller or poor subnational governments. Thus, national standards should be set that recognise asymmetric arrangements so that unrealistic targets are not set for poor or low level subnational governments.[241] As far as possible, when determining national standards of local service provision, the national government should take into account the principle of subsidiarity and consult subnational governments and their associations.[242]

6.4.1.2 Financial regulation

The decentralisation of fiscal resources should be carried out simultaneously with measures to promote better financial management at subnational level to safeguard and ensure effective use of public finances.[243] The effective use of public resources does not only promote a stable macro-economic environment but also the achievement of other aspects of development and sustainable peace. Failure to put in place measures to promote financial management at subnational level may encourage corruption and wastage of resources.[244] Thus, the national government should regulate the financial affairs of subnational government in order to

[238] Dafflon & Madies 2009: 40.
[239] De Visser 2005: 44. Ford suggests that 'legal barriers may inappropriately restrain the ability of local authorities to select the most desirable options for the delivery of decentralised services' (1999: 13).
[240] Eaton & Schroeder 2010: 175. To reduce the wastage of public resources, mechanisms are required to ensure that local governments do not hire poorly trained or corrupt local officials.
[241] See the National Planning Commission 2011: 385-91.
[242] UN-Habitat 2007: 5.
[243] Bahl 1998: 8.
[244] See Shah 2006: 17, Prud'homme 1995: 211.

promote sound financial management, transparency and accountability at subnational levels. The regulation should include imposition of a uniform system of financial accounts, audit rules, regular financial reporting, performance evaluation and transparency. Uniformity in financial accounts is necessary to create an integrated financial management system which, among other advantages, allows senior governments to easily carry out their supervisory role.

6.4.2 Monitoring and support

The institutional design of a multilevel system of government should enable higher levels of government to monitor and support subnational governments. As argued above, support is particularly required for smaller or low level subnational governments which often lack the capacity to raise revenue and administer programmes. Institutions established at the national level should be authorised and given the capacity to monitor and support the activities of subnational governments.[245] National government systems of monitoring and evaluating local affairs should be able to detect gaps or capacity constraints at subnational level that may undermine the performance of subnational governments. De Visser argues that monitoring is important to ensure compliance with the regulatory framework, including financial rules.[246] Financial rules may take the form of a requirement for submitting financial statements for auditing by an independent institution. Effective monitoring of the finances of subnational governments may require a regularly updated and comprehensive data system to detail the finances of subnational governments and allow quantitative monitoring and evaluation.[247] Financial information should be publicised to enable citizens to participate in local decision-making processes and hold public officials accountable.

The decentralisation of functions to subnational governments should be accompanied by measures to build the capacity of subnational governments to exercise decentralised functions.[248] The national government should provide support in the form of technical assistance, especially to smaller subnational governments, so that they are able to abide by the regulatory framework, including accounting, auditing, performance and reporting standards.[249] It is also important to strengthen and build the capacity of councillors, administrative officials and governance institutions so that local governments can deliver

[245] See Bahl 1999: 9.
[246] See Bahl 1999: 9, De Visser 2005: 30.
[247] Bahl 1999: 9.
[248] UN-Habitat 2007: 4, the Aberdeen Principles 2005: 9.
[249] See Bahl 1999: 9.

quality services to their communities. Once functions have been decentralised, it may be necessary to compel the national government to support subnational governments before it can exercise its powers to intervene, as will be discussed in detail below.[250]

6.4.3 Intervention

If the monitoring and support mechanisms suggest persistent problems at subnational level that threaten the attainment of national and/or local goals, it may be necessary for the national government to intervene at subnational level. This means that the national government ought to have the right to intervene in subnational affairs to protect local and national interests. These goals may include delivery of equitable quality and quantity of public services across the entire country. International literature suggests that the national government should only intervene in local affairs after it has provided the required support and after a subnational government has failed to deliver on its obligations despite the support which senior governments might have rendered.[251] Thus, interventions should be taken in the last resort. To protect the autonomy and institutional integrity of subnational governments a number of requirements should be stipulated in the legal and, where possible, constitutional framework.

6.4.3.1 Explicit legal recognition of the conditions under which senior government may intervene

To guard against arbitrary interventions, the law should specify the conditions under which a senior government may intervene in subnational affairs.[252] In the event that there is a need to suspend or dissolve a local elected body, it is submitted that the exercise of such interventionary powers should be carried out by due legal process.[253] The burden of justifying such an intervention should rest with the senior government.[254]

6.4.3.2 Oversight of the exercise of interventionary powers

An intervention into subnational affairs ought to be subjected to oversight mechanisms for checks and balances.[255] For example, an intervention into subnational affairs can be subjected

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[250] For example, section 151(4) of the Constitution of South Africa mandates national and provincial governments to support and strengthen local governments to carry out their functions.
[251] UN-Habitat 2009: 10, World Bank 2000: 122.
[252] Article 8(1), European Charter of Local Self-Government.
[253] UN-Habitat 2007: 7.
[254] UN-Habitat 2007: 5.
[255] UN-Habitat 2007: 7.

to intergovernmental approvals by institutions such as parliament and the courts, as in the case in Uganda.[256] The President of Uganda (heading the executive) may only assume the executive and legislative powers of the districts (local governments) after securing the approval of two-thirds of Parliament. Such oversight mechanisms may be effective in protecting the autonomy of subnational governments.

6.4.3.3 Intervention measures and resumption of duty by a subnational government

The power to intervene should be 'exercised in such a way as to ensure that the intervention of the senior government is kept in proportion to the importance of the interests which it is intended to protect.[257] Further, following the suspension or dissolution of a local elected body or local executives, the law should determine the resumption of their duties in as short a period of time as possible.[258] The same should apply in cases where a senior government has assumed a local function or responsibility. The guiding principle of intervention into local affairs is that interventions must be constructive and not be driven by the motive to penalise or score political goals.[259]

6.5 Intergovernmental cooperation

In a multilevel system of government various institutions are established at different levels of government to deliver goods and services to the people. In delivering goods and services, these institutions are usually involved in their own and in combined efforts with institutions within the same and different levels of government. Intergovernmental relations originate from these relationships between and across government actors.[260] If there are no sound intergovernmental relations, effective functioning of a multilevel system of government is likely to be compromised. Inter-institutional harmony can be achieved if governments within and at various levels cooperate with one another instead of competing. There is therefore the need to establish mechanisms to ensure that there is regular dialogue and cooperation between different tiers of government.[261]

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[256] See Article 202, Constitution of Uganda, 1995.
[257] Article 8(3), European Charter of Local Self-Government.
[258] UN-Habitat 2007: 7. See Article 202, Constitution of Uganda.
[259] See Article 8(2) of the European Charter on Local Self-Government.
[260] Geldenhuys 2008: 90.
[261] The Aberdeen Principles 2005: 6. See also Steytler 2009: 427, Geldenhuys 2008: 88.

Cooperation should be distinguished from supervision, which denotes a relationship of hierarchy where senior governments make binding decisions on junior governments. Conversely, cooperation refers to 'a relationship of equality where the actors in intergovernmental relations operate as equal partners'.[262] De Visser argues that such a relationship of equality to a large extent will depend on political maturity, the quality of human interaction and genuine interests in the realisation of national and local goals.[263] In addition, international practice underscores the importance of an enabling legal and institutional framework.[264] When designing a framework of intergovernmental relations, it is also important to ensure that the integrated structure of intergovernmental relations does not undermine the democratic accountability of each level of government to its own electorate.[265] Hence, measures should be put in place to ensure that each level of government remains accountable to its electorate while requiring intergovernmental structures to account to governments at the relevant level.

6.5.1 Enabling legal environment

A major issue when designing a multilevel system of government is whether intergovernmental relations should be constitutionally prescribed, established by ordinary legislation or left to be developed in practice.[266] Intergovernmental cooperation does not necessarily have to be legislated. Watts argues that the best practice may be to allow a general political culture of cooperation and mutual respect to develop over time so as to create flexibility and innovation.[267] However, written rules of engagement in the constitution or legislation can provide a foundation for nurturing a culture of cooperation in countries which have recently adopted multilevel systems of government (such as Zimbabwe) where such a culture might not exist because of a history of domination by the centre.[268]

[262] De Visser 2005: 210. See also Steytler 2009: 427.
[263] De Visser 2005: 210.
[264] Watts 2001: 39.
[265] Watts 2001: 26, De Visser 2005: 212.
[266] Watts 2001: 24.
[267] Watts 2001: 39.
[268] South Africa is a unique case where intergovernmental cooperation is constitutionalised and legislated. The Constitution of South Africa in chapter 3 provides the basis for cooperation among levels of government. The Intergovernmental Fiscal Relations Act, Intergovernmental Relations Framework Act and Organised Local Government Act have been enacted to give effect to the constitutional recognition of the principle of cooperation.

6.5.2 Enabling institutional environment

Countries with multilevel systems of government are often faced with the question of whether the development of constructive relations across tiers of government requires establishment of institutions for that purpose. It has been submitted that the development of constructive relations among tiers of government requires a degree of institutionalisation of vertical and horizontal integration.[269] Institutionalisation involves designing appropriate institutional arrangements to channel the participation of various tiers of governments in decision-making processes and defining the procedures through which such involvement is structured.[270] It provides the platform for cooperation and coordination likely to be required in any multilevel system of government.[271] While acknowledging the need for these institutions to promote coordinated implementation of national laws, the Aberdeen Principles suggest that there is need for a viable mechanism which ensures that the interests of subnational governments are protected in the decision-making processes of the national government.[272] These mechanisms are explored below.

6.5.2.1 Subnational interests and national law-making

Subnational governments should be given the platform to participate in the national legislative processes. The participation of subnational governments in the national law-making process is very important to avoid the alienation of interests of subnational governments. Some countries which adopted multilevel systems of government have adopted bicameral parliaments with the upper house charged with protecting the interests of subnational government.[273] Even countries without bicameral parliaments have put in place mechanisms to ensure the representation of subnational governments in the legislative process at the national level. Such mechanisms include giving subnational governments a certain number of seats in parliament. Another mechanism includes the requirement that the

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[269] De Visser 2005: 211-12.
[270] UN-Habitat 2007: 5, Hanf and Morata 2012: 141. The question of whether the institutions established to promote cooperation among governments have to be systematic or ad hoc relations depends on the form of government and whether there is a culture of cooperation among levels of government. Intergovernmental structures such as councils, committees and conferences can be formal and/or informal, meeting annually or more frequently. In cases where a country is emerging from a history of over-centralisation (such as Zimbabwe), it is recommended that formal intergovernmental structures should be established to promote engagements at various levels.
[271] Hanf & Morata 2012: 144.
[272] See the Aberdeen Principles 2005: 6.
[273] Tarr 2011: 172. For example; South Africa, Kenya, India, Spain, Malaysia, Belgium and Austria.

national government must consult subnational governments on any constitutional and legislative changes which affect the status and interests of subnational governments.[274] For instance in Uganda, Parliament may only amend certain provisions of the Constitution that affect local government after two-thirds of all the districts ratify the proposed amendment.[275] Such requirements may be effective in ensuring that subnational governments are not marginalised and their interests protected in the national legislative processes.

6.5.2.2 Subnational governments and national policy-making

Subnational governments are not only affected by legislation enacted by senior governments but also by policies of these governments. As such, subnational governments should have mechanisms to influence policy formulation at the national level. Such platforms may take the form of executive intergovernmental structures where levels of government can interact and consult each other on matters of common interest. These intergovernmental structures are vital for coordination which is desirable to 'improve the information base and quality of information analysis available to national, provincial and local governments, thus facilitating better decision-making and reconciling policy differences'.[276] Intergovernmental cooperation in policy issues can be promoted by establishing formal intergovernmental agreements which may be binding or non-binding.[277]

6.5.2.3 Subnational governments and fiscal control

The extent to which subnational governments have an influence on the distribution of nationally mobilised revenue is important for multilevel governance, particularly for the purpose of correcting fiscal imbalances. Subnational governments should have the means of influencing the distribution of financial resources across and within levels of governments.[278] The creation of intergovernmental structures where different tiers of government can discuss the sharing of nationally raised revenue and other financial matters may enable lower tiers of government to influence fiscal decisions at the national level.

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[274] See World Bank 2000: 113, Watts 2001: 31. For example, section 154(2) of the Constitution of South Africa requires that draft legislation that affects local government be published for public comment before it is introduced in parliament. A similar requirement is provided by Article 261 (read together with Article 176 and 189) of the Constitution of Uganda.
[275] Article 260, Constitution of Uganda. See Fessha & Kirkby 2012: 256.
[276] Watts 2001: 25.
[277] Watts 2001: 30. Switzerland and Germany are examples of countries where legally binding intergovernmental cooperation agreements were made after devolution.
[278] Watts 2001: 33. See also Machingauta *et al* 2014: 23.

6.5.3 Nurturing a culture of cooperation

Even if the legal and institutional environment is conducive to intergovernmental cooperation, in practice, effective intergovernmental relations require considerable time, effort and will.[279] Effective intergovernmental relations are directly influenced by the interactive behaviour of participating institutions of government and individuals (role-players).[280] A political culture of mutual respect, tolerance and equality among tiers of government is vital for nurturing constructive relations.[281] Watts argues that such a culture calls for 'tolerance towards diversity and autonomous experimentation', trust [and] … recognition of the need for regular consultation and interaction with a sense of political partnership'.[282] Besides a culture of respect, tolerance and equality, intergovernmental cooperation may also be engendered if all levels of government are empowered to engage with other levels of government.[283] It is therefore crucial to ensure that all levels of government, particularly local government, are well resourced and have adequate skilled manpower to support intergovernmental cooperation.[284]

6.5.4 Recognition of the role of organised local government

Local governments may not be in a better position to engage meaningfully with senior governments as separate units.[285] The exception is large local units such as metropolitan cities which may have the capacity to engage with senior government.[286] For effective engagement with senior government it may be necessary to recognise the role of organised local government to promote and protect local interests.[287] The European Charter of Local Self-Government provides that the law should compel senior government to consult local governments and their associations when preparing, or amending policies and legislation

[279] See National Planning Commission 2011: 386, Hanf & Morata 2012: 142.
[280] Geldenhuys 2008: 91.
[281] See National Planning Commission 2011: 386. A culture of cooperative relations is likely to develop when certain boundaries are respected. All tiers of government should seek to maintain national unity and indivisibility of the state; respect the geographical, functional and institutional integrity of other tiers of government; and assume only those powers assigned to them by the Constitution or national legislation.
[282] Watts 2001: 39.
[283] See Hanf & Morata 2012: 142.
[284] Watts 1997: 25.
[285] Article 10(2) of the European Charter of Local Self-Government. See also Watts 2001: 29.
[286] See Steytler 2009: 430.
[287] Steytler 2009: 429, Watts 2001: 29. Article 10(1)(2) of the European Charter of Local Self-Government acknowledges the need for local government to form an association to advance its interests both within and outside national borders.

affecting local governments.[288] Such policies and legislation include those providing for the establishment, boundaries,[289] powers and functions of subnational governments.[290] To effectively represent and promote interests of their members, organised local government will not only require legal recognition but also adequate and sustainable financial resources.

7. Conclusion

This chapter has argued that by sharing power and resources across many actors and levels of government, a multilevel system of government may promote development, democracy and sustainable peace. Equally, a multilevel system of government may undermine development, democracy and sustainable peace if measures are not put in place to reduce corruption, inequalities and the risk of secession. The important lesson for institutional design is that a multilevel system of government which seeks to realise development, democracy and sustainable peace should have an appropriate mixture of political, administrative and fiscal instruments. While acknowledging the importance of political will for the effective functioning of any system of government, it is submitted that at minimum the legal and institutional architecture should guarantee political, fiscal and administrative autonomy at subnational level. Furthermore, the legal and institutional design should have mechanisms through which senior governments may supervise junior governments to deal with problems such as corruption. Last, the chapter identified intergovernmental cooperation as a critical design feature of a multilevel system of government for realising development, democracy and sustainable peace.

[288] Article 4(6), European Charter of Local Self-Government, UN-Habitat 2007: 6.
[289] Boundaries of subnational governments should not be altered without prior consultation of the local communities concerned, in addition to the consultation of the subnational governments affected.
[290] See De Visser 2005: 236.

Chapter 3

The Zimbabwean multilevel system of government: a historical perspective

1. Introduction

This chapter discusses the Zimbabwean multilevel system of government from a historical perspective covering both the pre and post-colonial eras. The chapter begins by providing a general overview of Zimbabwe. It then discusses the colonial local government system giving particular attention to the powers and functions of local government units. A similar discussion is provided for the post-independence system of local government. Attention is given to the policy and legislative reforms which were crafted with specific reference to the multilevel system government to advance development, democracy and sustainable peace. Such reforms include the 2013 Constitution of Zimbabwe which has brought about significant changes to the multilevel system of government. The chapter will also provide a brief overview of the constitutional review process and the nature of the system of government which has been adopted.

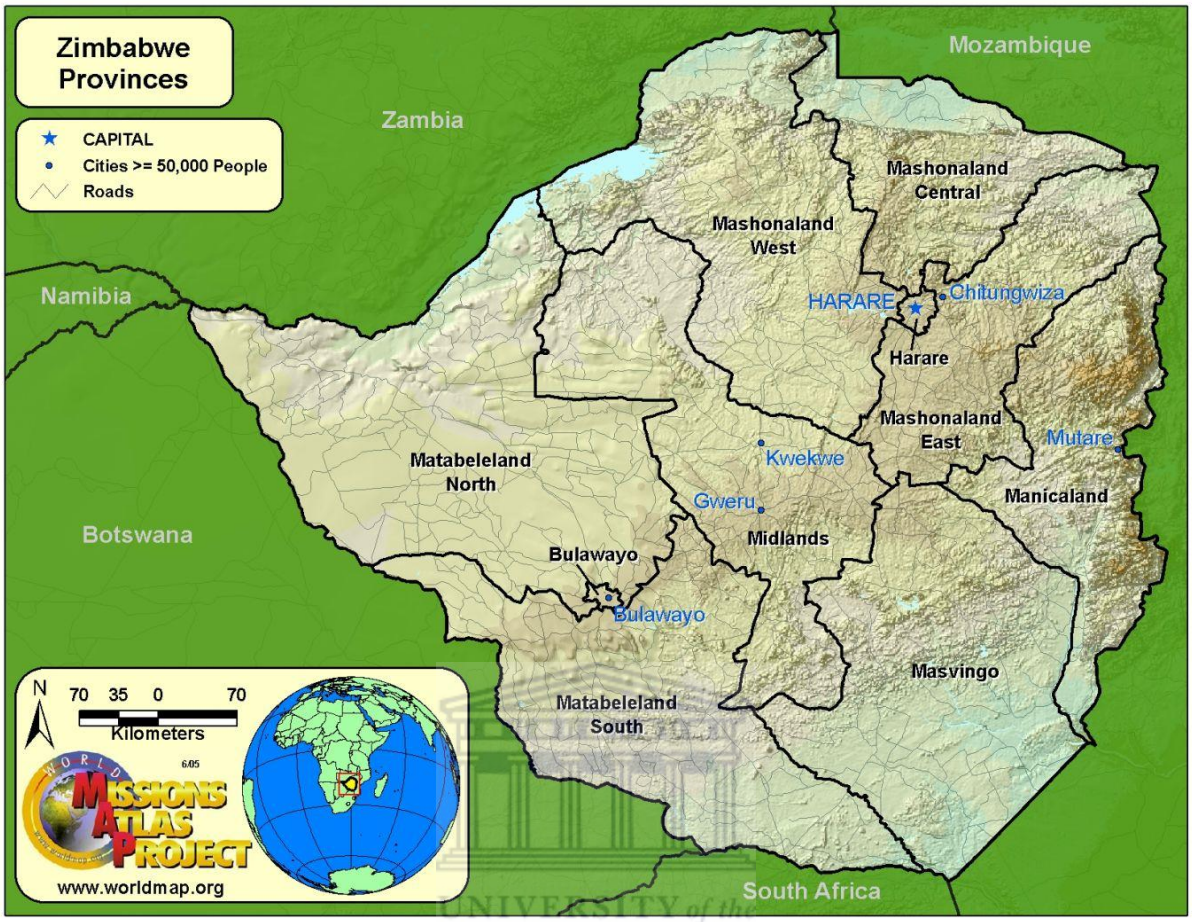
2. General overview of Zimbabwe

2.1 Geography

Zimbabwe is located in Southern Africa, where it borders Mozambique to the east, Zambia to the north, Namibia to the northwest, Botswana to the southwest and South Africa to the south. It has a land area measuring about 390 757 square kilometres.[1] As shown in Figure 2 below, the country is divided into ten provinces, namely Mashonaland Central, Mashonaland East, Mashonaland West, Matabeleland North, Matabeleland South, Midlands, Masvingo, Manicaland, Harare and Bulawayo. Provinces are further divided into districts for administrative convenience.[2] Harare and Bulawayo provinces are wholly urban while the other eight provinces are composed of both urban and rural areas.[3] As shown in the map below, the provinces of Harare and Bulawayo are the smallest in size. Harare is the capital city of Zimbabwe and where the national government administration is based.

[1] Zimbabwe National Statistics Agency (ZimStat) 2012: 13.
[2] ZimStat 2012. As discussed in Chapter Four, the boundaries of rural local authorities usually coincides with those of administrative districts in rural areas.
[3] See Zimstat 2012: 11.

Figure 2: Map of Zimbabwe



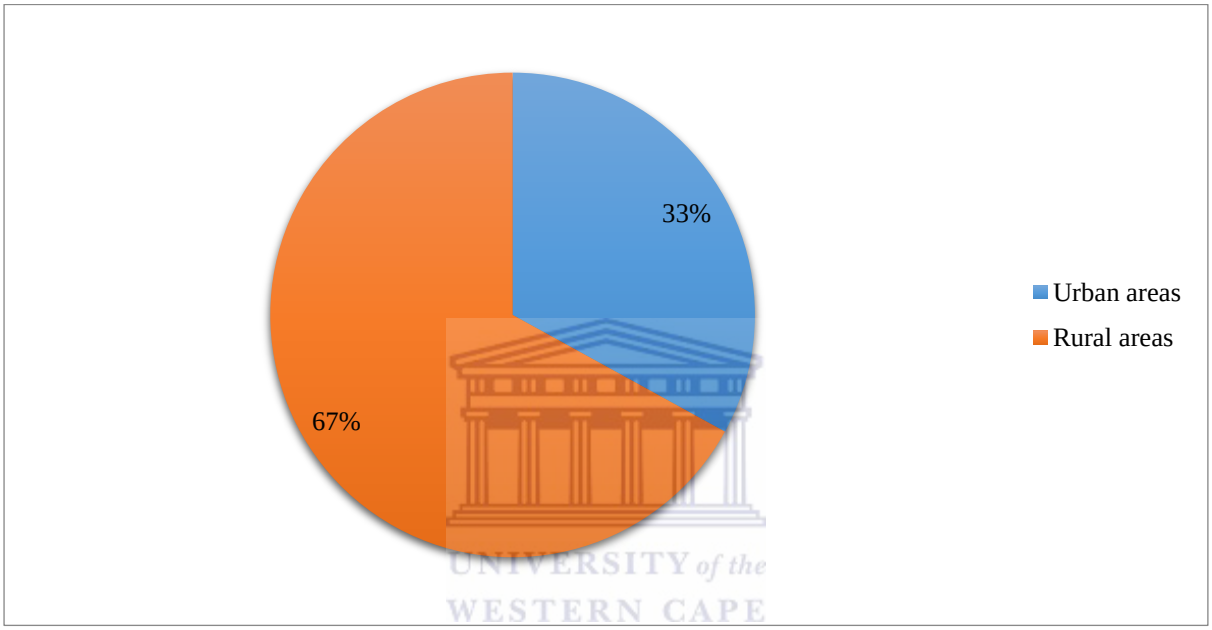
2.2 Demographics

Zimbabwe is home to the descendants of various Mashona tribes, the Ndebele ethnic group, and other small ethnic groups such as Kalanga and Tonga. It is also home to a small group of Indian descent, coloureds and white Africans. The Census of 2012 carried out by the Zimbabwe National Statistical Agency (ZimStat) estimated the total population of Zimbabwe to be just over 13 million.[4] Of the 13 million, 99.7 per cent are of African origin while only 0.3 percent is from European, Asiatic and mixed origin.[5] About 2 million Zimbabweans are reported to have migrated to other countries, mainly neighbouring South Africa, due to the political and economic hardships which the country has been experiencing since the late 1990s and which worsened after 2005.[6] As shown in Figure 3 below, the majority of the

[4] ZimStat 2012: 11.
[5] Zimstat 2012: 13, 26.
[6] The political and economic hardships were characterised by alleged abuse of human rights, high inflation, increasing poverty, high unemployment rate and poor delivery of public services. See Bland 2010: 2; the Centre for Peace Initiatives in Africa 2005: 16, Muchadenyika 2014: 128.

population in Zimbabwe resides in rural areas. Relative to other provinces, Harare Metropolitan Province has the largest population, about 16 per cent of the total population of Zimbabwe.[7] The total urban population of Harare Metropolitan Province of over 2 million is 47 per cent of the total population of people residing in urban areas in the whole of Zimbabwe.[8] The majority of the people who reside in urban areas reside in the two cities of Harare and Bulawayo and the town of Chitungwiza.

Figure 3: Population distribution between urban and rural areas



Source: Zimstat 2012: 25

2.3 Constitution

2.3.1 Constitutional review in Zimbabwe

Zimbabwe adopted a new Constitution[9] in 2013 after a constitution review process dating back to the 1990s. Before the adoption of the 2013 Constitution, Zimbabwe was governed by the Lancaster House Constitution which was adopted at the Lancaster House Conference held in Britain in 1979. The Lancaster House Constitution was negotiated between the British government, Rhodesian government and the liberation movements led by Zimbabwe African

[7] ZimStat 2012: 25.
[8] ZimStat 2012: 25. This explains why there is heavy demand for public infrastructure in this province compared to other provinces.
[9] Constitution of Zimbabwe Amendment (No.20) Act, 2013.

National Unity (ZANU) and Zimbabwe African People's Unity (ZAPU).[10] This constitution was regarded as a transitional document which later proved to be inadequate to deal with some of the challenges which Zimbabwe faced after independence, including growing poverty, unequal access to basic services and skewed resource distribution.[11] Efforts by the government, political parties and civic groups in reviewing the Lancaster House Constitution culminated in various draft constitutions, including the Constitutional Commission Draft Constitution of 2000,[12] National Constitutional Assembly Draft Constitution of 2001, Kariba Draft Constitution of 2007 and Law Society of Zimbabwe Model Constitution of 2010.[13] All of these draft constitutions did not get enough support to be adopted as the supreme law of Zimbabwe.

2.3.2 The making of the 2013 Constitution

Following the disputed Presidential Elections of 2008, the three major political parties[14] in Zimbabwe entered into a peace agreement in which they agreed to share power in a government of national unity.[15] The agreement, also known as the Global Political Agreement (GPA), was brokered under the auspices of the former South African President, Mr Thabo Mbeki. Under the agreement, the three major political parties agreed to restore political and economic stability in Zimbabwe.[16] Article VI of the GPA required the government of national unity to spearhead efforts to come up with a new Constitution through an inclusive and people-driven process.[17] The time period for the constitution-making process was limited to not more than two years after the inception of the GPA. The constitution-review process began in 2009 under the leadership of a parliamentary body, the Constitution Selection Committee (COPAC), as required by Article VI of the GPA.[18] The committee was composed of members selected from the three political parties as well as representatives of civil society.[19] As highlighted above, the GPA set aside a time period of not more than two years for the adoption of a new constitution. In practice, the constitution-

[10] See Dzinesa 2012: 1.
[11] Article IV, GPA. When the 2013 Constitution was adopted, the Lancaster House Constitution had been amended 19 times.
[12] The Commission, chaired by the Chief Justice Godfrey Chidyausiku, was appointed by the President.
[13] Dzinesa 2012: 2-5, Muchadenyika 2014: 30. See also Sims 2013: 11.
[14] Zimbabwe African National Unity-Patriotic Front (ZANU-PF), Movement for Democratic Change-Tsvangirai (MDC-T) and Movement for Democratic Change (MDC).
[15] Article 1, XX, XXV GPA.
[16] Article II, III, X, XI, XII, XIII, XVIII, XXIII GPA.
[17] See Constitution Select Committee (COPAC) 2013: 7.
[18] See art. VI, GPA.
[19] These included ZANU-PF, MDC-T and MDC.

making process took not less than four years as the major political parties failed to agree on a number of issues. Some of the contested issues included land ownership, citizenship, homosexuality, executive powers, the role of the liberation struggle, the role of the National Prosecuting Authority versus the Attorney General, and devolution.[20]

2.3.3 Controversies surrounding devolution or form of government

On the issue of devolution, which is more relevant for the purposes of this study, there were disagreements amongst the three main political parties with ZANU-PF opposing it and the two MDC formations advocating for it.[21] ZANU-PF was against a fully devolved form of government, citing its potential to promote secession and undermine national unity.[22] It further argued that that a fully devolved form of government was inappropriate for Zimbabwe because the country is small in size and population.[23] Moreover, ZANU-PF contended that that a devolved form of government would weaken the ability of the state to execute its core functions, namely security and defence, redistribution and macro-economic stabilisation.[24] Such an argument was rejected by a number of scholars who contended that the size and population of Zimbabwe cannot be a justifiable basis for rejecting a devolved form of government.[25] It was argued that there are a number of countries which have adopted a devolved system of government and, in some cases, even federal arrangements to exploit benefits associated with multilevel systems of government, despite being small in size and population.[26]

The two MDC political formations, on the other hand, advocated for a devolved form of government as a potential answer to a number of challenges which Zimbabwe was

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[20] COPAC 2013: 58.
[21] See COPAC 2013: 55, 57; Moyo 2013: 146; Masunungure & Ndoma 2013: 1; Muchadenyika 2014: 132-3; Dzinesa 2012: 12; Human Rights Bulletin 2012: 3-4.
[22] COPAC 2013: 57, Sims 2013: 12, Moyo 2013: 150.
[23] The leader of ZANU-PF, President Robert Mugabe, publicly denounced the adoption of a fully-fledged devolved system of government in Zimbabwe, citing its potential threat to national integration. In an interview with the public broadcaster, Zimbabwe Broadcasting Corporation, the President argued that devolution is done in big countries and not in small countries such as Zimbabwe. He also stated that Zimbabwe once had a federal system of government which included Malawi and Zambia. The federation failed to work, thus providing lessons against adopting a similar form of government such as a devolved one. See *The New Zimbabwe* 'Devolution of power: What they said', 'President Robert Mugabe – ZBC' 2012. See also Human Rights Bulletin 2012: 4.
[24] See *The New Zimbabwe* 'Devolution of power: What they said', Masunungure &Ndoma 2013: 1.
[25] Conyers 2010, Bloch 2012, Madhuku 2012. See *The New Zimbabwe* 'Devolution of power: What they said'.
[26] Chigwata 2012: 11. See also Muchadenyika 2014: 127, 133.

experiencing, including perceived unfair development in some provinces.[27] The MDC, led by Professor Welshman Ncube, strongly advocated for a fully devolved form of government, citing potential benefits such as development, democracy and peace.[28] These wide divisions between the political parties which characterised the constitution-making process may explain why a majority of constitutional provisions relating to devolution in the adopted 2013 Constitution are ambiguous. For instance, section 264(1) of the Constitution provides that 'whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively'. As will be discussed in Chapter Six, the exact meaning of this provision is unclear.[29]

As will be observed throughout this study, the 2013 Constitution and in particular its Chapter 14, which governs provincial and local governments, reveals 'fudged' devolution. It presents a compromise between those who were for a centralised system of government and those who were for a much more decentralised system of government.[30] Chapter 14 is the only chapter in the 2013 Constitution which has a preamble of its own. The preamble reads:

> Whereas it is desirable to ensure: (a) the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism; (b) the democratic participation in government by all citizens and communities of Zimbabwe; and (c) the equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas; there must be devolution of power and responsibilities to lower tiers of government in Zimbabwe.

The preamble of Chapter 14 strives to protect the interest of both those who were (are) for a devolved system of government and those who were (are) anti-devolution.[31] For those who were for devolution, the preamble guarantees that there 'must' be devolution of power to achieve a number of goals. On the other hand, the anti-devolution group have been given the assurance that there is not going to be 'blanket' devolution. Devolution will be embarked on to achieve certain goals, under certain conditions and controlled by the national government.

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[27] COPAC 2013: 57, Afrobarometer 2012: 2, Masunungure & Ndoma 2013: 1, Sims 2013: 12, Moyo 2013: 148-9. The National Constitutional Assembly of Zimbabwe and Law Society of Zimbabwe advocated for a devolved system of government. See Chapter 13 and 14 of the National Constitutional Assembly Draft Constitution, and Chapter 14 and 15 of the Law Society of Zimbabwe Draft Constitution.
[28] See *The New Zimbabwe* 'Devolution of power: What they said', Muchadenyika 2014: 133.
[29] See Muchadenyika 2014: 137.
[30] See Musekiwa and Mandiyanike 2013: 7.
[31] Musekiwa and Mandiyanike 2013: 7.

2.3.4 Adoption of the 2013 Constitution

Due to the political bickering witnessed in the constitution-making process as well as financial and administrative challenges, it took COPAC nearly 48 months instead of the initially planned 18 months to produce a draft constitution accepted by a majority of Zimbabweans.[32] The final draft constitution received resounding support from the people of Zimbabwe through a referendum organised on 16 March 2013.[33] As shown in the table below, over 93% of Zimbabweans who participated in the referendum voted in support of the draft constitution.

Table 1: 2013 national referendum results on the draft constitution

Yes vote	**No vote**	**Total rejected votes**	**Total votes cast**	**Total yes vote percentage**
3 079 964	179 487	55 799	3 312 907	93% +

Source: COPCA 2013: 69.

Following the referendum, a Constitutional Bill was gazetted on 29 March 2013 and adopted by the Lower and Upper Houses of Parliament on 8 and 14 May 2013, respectively.[34] The President signed the Bill into law on 22 May 2013, making it the supreme law of Zimbabwe.[35] The 2013 Constitution is founded on a number of important values and principles, including supremacy of the Constitution, rule of law, good governance, multi-party democracy, observance of the principle of separation of powers, and devolution.[36] It establishes three arms of government, provides an extensive Bill of Rights and makes provision for a multilevel system of government. A brief discussion of these three important aspects of the 2013 Constitution is provided below.

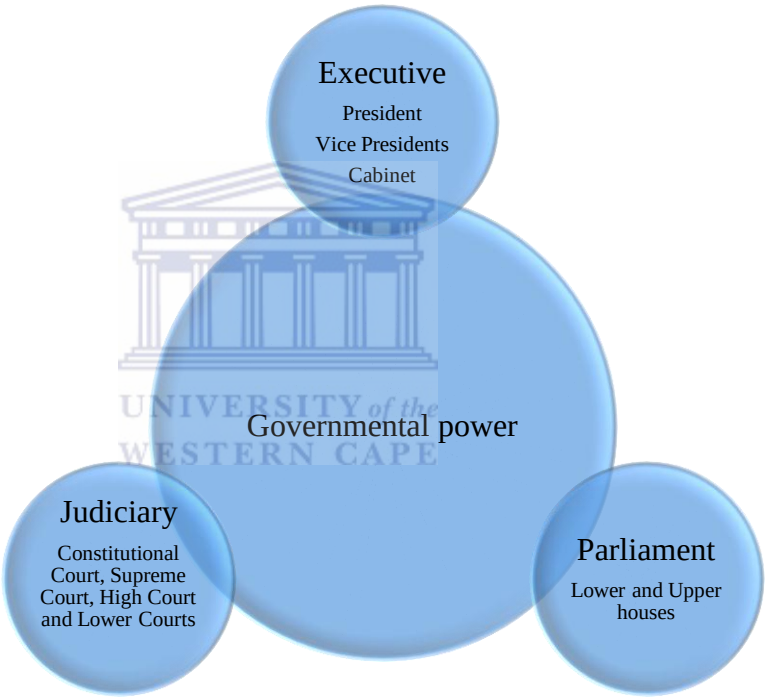
[32] See Muchadenyika 2014: 134, Masunungure & Ndoma 2013: 2, Dzinesa 2012: 6.
[33] See COPAC 2013: 69.
[34] See COPAC 2013: 70.
[35] See COPAC 2013: 71.
[36] See s 3 Constitution.

2.3.5 2013 Constitution in brief

2.3.5.1 Arms of government

Like many other modern constitutions, the 2013 Constitution of Zimbabwe provides for the establishment of the three arms of government, namely the Executive, Parliament and the Judiciary. As shown in Figure 4 below, the three arms of government are independent and also interdependent in that they share governmental power which cannot be exercised in isolation.

Figure 4: Arms of government



As shown in the diagram above, the Executive is led by the President who is directly elected by the citizens for a term of five years.[37] The President is the head of state and government with powers to appoint and chair cabinet.[38] Parliament is bicameral, consisting of the National Assembly (Lower House) and the Senate (Upper House).[39] The Senate is composed of six members from each of the ten provinces who are elected under a party-list system of

[37] S 92(3) Constitution.
[38] S 89 Constitution.
[39] S 118 Constitution.

proportional representation.[40] In addition, the Senate has a total of 18 chiefs and two members appointed to represent persons with disabilities.[41] The National Assembly on the other hand is composed of 210 directly elected members and 60 female members who are elected under a party-list system of proportional representation.[42] Thus, unlike the Lancaster House Constitution, the 2013 Constitution actively seeks to promote the representation of marginalised groups such as women and people with disabilities, which is necessary in any democratic society.

In addition to bringing about changes to Parliament, the 2013 Constitution revamped the Judiciary. The most notable change was the establishment of a new Constitutional Court in addition to the Supreme Court, High Court, Labour Court and other lower courts.[43] The Constitutional Court is now the apex court led by the Chief Justice. It is the highest court of appeal on all constitutional matters and its decisions on those matters overrule all other courts.[44] As highlighted above, constitutional provisions relating to devolution are ambiguous.[45] The implication of this is that the Constitutional Court is likely to be called upon to provide guidance on the meaning of these provisions. The Court has a key role to play in protecting and promoting a non-centralised system of government in Zimbabwe. Lessons from Kenya, which has also adopted a devolved form of government, are useful in interpreting the 2013 Constitution. The Chief Justice of Supreme Court of Kenya noted that

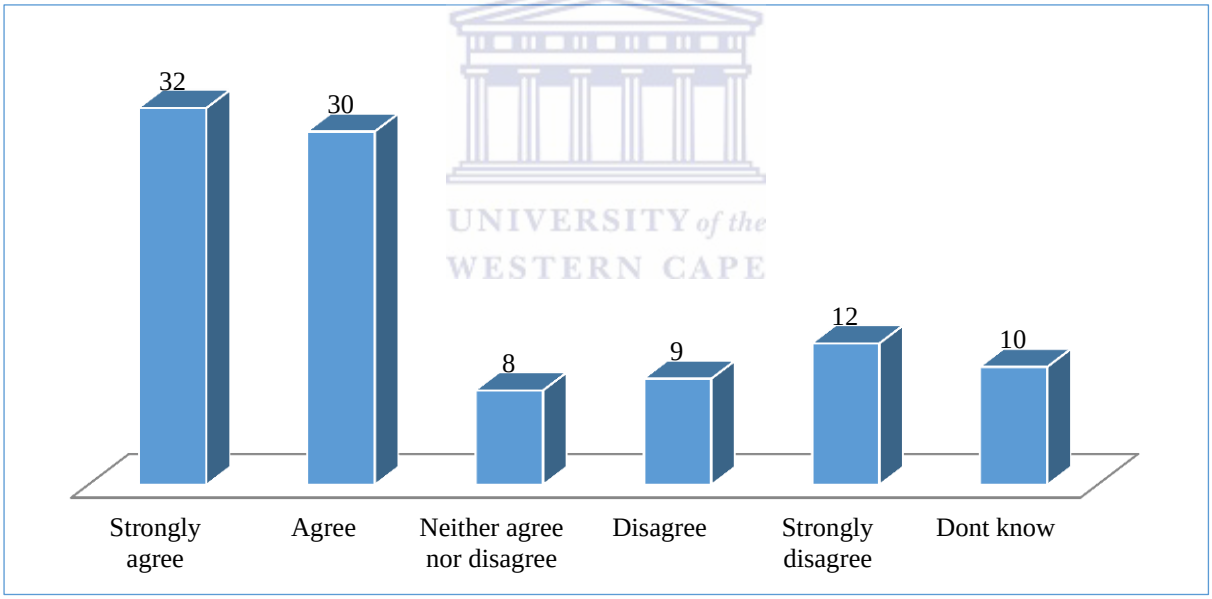
> constitution-making requires compromises which can occasionally lead to contradictions; and that the political and social demands of compromise that mark constitutional moments, fertilises vagueness in phraseology and draftsmanship. It is to the Courts that the country turns, in order to resolve these contradictions; clarify draftsmanship-gaps; and settle constitutional disputes. In other words, constitution-making does not end with its promulgation; it continues with its interpretation. It is the duty of the Courts to illuminate legal penumbras that constitutions borne out of long drawn compromises … tend to create. The constitutional text and letter may not properly express the minds of the framers, and the mind and hands of the

[40] S 120(1)(2) Constitution. The party-list system of proportion representation is based on votes cast for candidates representing political parties in each province in the general election for Members of the National Assembly in which male and female candidates are listed alternatively, every list being headed by a female candidate.
[41] See s 120(1)(b)(c)(d) Constitution.
[42] S 124(1) Constitution. The Constitution requires the election of six female members from each province for the life of the first two Parliaments after the adoption of the new Constitution.
[43] S 162 Constitution.
[44] S 167(1)(a) Constitution.
[45] See Sims 2013: 13

> framers may also fail to properly mine the aspirations of the people. The limitation of mind and hand should not defeat the aspirations of the people. It is in this context that the spirit of the Constitution has to be invoked by the Court as the searching for the illumination and elimination of these legal penumbras.[46]

It is submitted that the interpretation given by the Chief Justice of the Supreme Court, although referring to the Kenyan situation, is applicable in Zimbabwe. The Constitutional Court of Zimbabwe should consider adopting such a purposive approach of interpreting a constitution so as to give effect to a non-centralised system of government as expressed by majority of Zimbabweans during the constitution-review process.[47] Results of the Afrobarometer Round 5 Survey carried during the period of the constitution-review process revealed that 62% of Zimbabweans supported a devolved form of government.[48] Detailed results of the survey are presented below.

Figure 5: Results of the Afrobarometer survey on people's views on devolution



Source: Graph reworked from Afrobaromter 2012: 2

[46] *Speaker of the Senate and another v Hon. Attorney-General and others* [*2013] eKLR. The concurring opinion of the Chief Justice Mutunga W*, para 156.
[47] See Masunungure & Ndoma 2013: 1-6, Moyo 2013: 154.
[48] Afrobarometer 2012: 2. The survey was carried out by the Mass Public Opinion Institute in July 2012. It interviewed 2400 adult Zimbabweans to evaluate whether they supported or opposed a devolved form of government, respondents were asked the following question: 'Do you agree or disagree with the proposed constitutional provision to devolve power, from the central government to governments at a sub-national level, such as a local or provincial government, or haven't you heard enough to say?'

The result of the Afrobarometer survey also revealed that seven out of the ten provinces wanted a devolved form of government.[49] As shown in Table 2 below, Bulawayo Metropolitan Province was the highest, with 93% of those interviewed 'strongly' supporting a devolved form of government. Only three of the ten provinces had less than 50% of people who supported devolution.

Table 2: Support for devolution by province

Province	Agree/Strongly agree (%)	Disagree/Strongly disagree (%)	Neither agree nor disagree (%)	Don't know (%)
Bulawayo	94	1	3	3
Harare	83	11	5	2
Matabeleland North	75	8	9	9
Mashonaland West	71	12	16	1
Mashonaland East	69	19	7	5
Matabeleland South	69	23	3	4
Midlands	57	13	14	16
Mashonaland Central	47	37	3	13
Manicaland	37	49	6	8
Masvingo	26	29	7	38

Source: Afrobarometer 2012: 3.

Therefore, irrespective of the way devolution has been recognised in the 2013 Constitution, it is submitted that the courts, Parliament and other institutions have a role to ensure that the new multilevel system of government is implemented to promote the development of a non-centralised system of government.[50]

[49] Afrobarometer 2012: 2.
[50] See Moyo 2013: 154, Masunungure & Ndoma 2013: 5, Sims 2013: 24.

2.3.5.2 Bill of Rights

Zimbabwe has perhaps the most expansive Bill of Rights in the modern world. Chapter 4 of the 2013 Constitution, titled 'Declaration of Rights', is the longest chapter of the 2013 Constitution, with 43 provisions guaranteeing various rights. The chapter provides for political, socio-economic, environmental, individual and group rights in conformity with the United Nations Declaration of Human Rights.[51] Among other rights, the Constitution guarantees the right to equality and non-discrimination, access to information, freedom of assembly and association, language and culture, education and health care. The Constitution imposes an obligation on the state, every person and every institution and agency of government at every level to respect, protect, promote and fulfil the rights and freedoms set out in Chapter 4.[52] This means that even lower tiers of government and their agencies have equal responsibility.

2.3.5.3 System of government

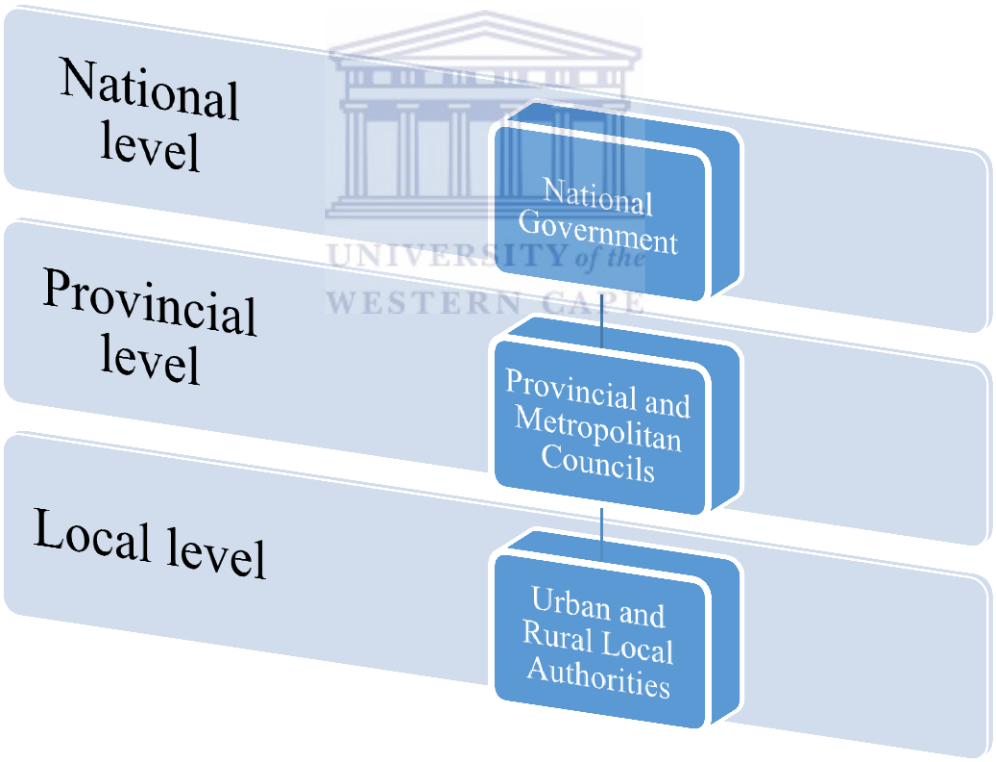
Zimbabwe has adopted a unitary form of government but with government organised at multiple levels.[53] As shown in Figure 6 below, at the national level, there is the national government while the middle tier of government is made up of provincial and metropolitan councils.[54] Urban and rural local authorities (local governments) make up the lowest tier.[55] While the powers and functions of provincial and metropolitan councils are enumerated in the Constitution, the Constitution does not do the same for the national and local tiers of government.[56] It only provides that subject to the Constitution and any legislation a local authority has a 'right to govern on its own initiative, the local affairs of the people within the area for which it has been established, and has all the powers necessary for it to do so'.[57] The exact meaning of this provision is unclear.[58] It is however clear that unlike the Lancaster House Constitution, the 2013 Constitution requires the national government to devolve

[51] See chap 4 Constitution.
[52] S 44 Constitution.
[53] See s 1 Constitution.
[54] S 5 Constitution.
[55] S 5 Constitution.
[56] See s 270(1) Constitution.
[57] S 276(1) Constitution.
[58] See Muchadenyika 2014: 137, Sims 2013: 13.

powers and functions to provincial and local tiers of government.[59] Whether the national government will comply with this constitutional directive remains to be seen.

For the first time in the history of Zimbabwe, the 2013 Constitution provides for the equitable sharing of nationally raised revenue among the three tiers of government.[60] As discussed in detail in paragraph 4 of Chapter Seven, provincial and metropolitan councils and local authorities are entitled to not less than five per cent of nationally raised revenue in each financial year.[61] The Constitution also provides various principles to promote better public financial management at all levels of government.[62] It requires transparency, accountability, responsible financial management, clear fiscal reporting, and prudent and effective spending of public funds.[63] This means that the national government should develop the necessary laws and policies to give effect to these principles.

Figure 6: Nature of the multilevel system of government



[59] See Preamble of chap 14, s 264(1) Constitution.
[60] See s 298(1)(*b*)(ii) Constitution.
[61] See s 301(3) Constitution.
[62] See s 298(1) Constitution.
[63] See s 298(1) Constitution.

Having provided a general overview of Zimbabwe and the constitutional background, this chapter will discusses the development of the Zimbabwean decentralised system of government. Attention is given to key legal and institutional changes and their impact on development, democracy and sustainable peace. The discussion is divided into the pre-colonial and post-colonial periods.

3. Pre-colonial system of government

3.1 System of government at the national level

Colonial rule in Zimbabwe (formerly Rhodesia or Southern Rhodesia), like elsewhere in Africa, destroyed the pre-colonial system of governance through war and imposing a repressive modern administration on the indigenous people.[64] In Zimbabwe, various forms of government have been established over a century of colonisation period, beginning in 1890 and ending in 1980. Between 1890 and 1923, Southern Rhodesia was under company rule of the British South Africa Company (BSAC). After the end of company rule, Southern Rhodesia was declared a British colony with a certain measure of self-government. In 1953, Southern Rhodesia joined Northern Rhodesia and Nyasaland to form a federation, which broke down in 1963. Following the dissolution of the federation, Southern Rhodesia reverted to a British colony. After several failed efforts to gain independence from Britain, in 1965, Southern Rhodesia declared itself an independent state with a government which effectively governed Zimbabwe until majority rule was attained in 1980. These various governments are briefly discussed below.

3.1.1 Company government (1890-1923)

In 1890, the British South Africa Company (BSAC) was given permission by the British Government to occupy and govern the land now referred to as Zimbabwe.[65] The company dismantled the 'well-organised' traditional governance structures of the Matabele and Mashona kingdoms and replaced these with institutions which matched those in conventional colonies of Britain.[66] The only difference was that the BSAC rather than the Colonial Office in Britain directly controlled the Executive Council, Legislative Council and Administration,

[64] Keulder 1998: 201.
[65] Palley 1966: 215, Keulder 1998: 201.
[66] Keulder 1998: 201.

which exercised governance powers in Southern Rhodesia.[67] The BSAC was however subordinate to the British High Commissioner in South Africa and the Colonial Office in Britain. Through its governance structures, the BSAC implemented various policies which sought to advance its interests, including expropriation of land and minerals at the expense of the black majority.

3.1.2 Self-government as a British colony (1923-1953)

Company rule lasted until 1923 when Southern Rhodesia was declared a British colony after a referendum in which a majority of white settlers voted against joining the Union of South Africa.[68] A constitution drafted for Southern Rhodesia in 1923 provided for some form of self-government subject to supervision by the British government.[69] Provision was made for the establishment of the Legislative Council,[70] Executive Council and Administration. Among other supervisory powers, the British government retained the power to legislate, appoint the governor and give him instructions, to supervise the local organs of government, and for the Judicial Committee of the Privy Council of Britain to hear appeals by special leave from courts in Southern Rhodesia.[71] This system of government was undemocratic in that it disenfranchised the black population. For example, blacks lacked representation in the Legislative and Executive Councils. Among other reasons, it is this lack of representation in decision-making structures that increased black resistance against minority rule.

3.1.3 Federal government (1953-1963)

In 1954 Southern Rhodesia combined with Northern Rhodesia (now Zambia) and Nyasaland (now Malawi) to form the Federation of Rhodesia-Nyasaland. All three territories were colonised by Britain. A number of factors influenced the formation of the federation. The British government supported the formation of the federation to create a liberal British counterpoint to white Afrikaner nationalism in South Africa.[72] Further, it saw a federation as an opportunity to establish a 'multi-racial society interposed between white racialism of

[67] Murray 1970: 1.
[68] Murray 1970: 1.
[69] Palley 1966: 215.
[70] The council which exercised legislative powers had no competence to legislate over certain areas, including the native administration. A bill passed by the council required assent of the British Crown.
[71] Murray 1970: 2.
[72] Palley 1966: 323.

South Africa and the black nationalism of the rest of the African continent'.[73] Palley highlights that it was even thought that a federation would afford Southern Rhodesian Africans opportunities for political participation which otherwise would not have been available to them.[74] Besides these political arguments, the formation of the federation was also justified on economic grounds. These included: the need to maximise economies of scale; the creation of a common market and powerful credit-worthy central government; economies of administration; and the complementary nature of the three territories.[75] The Rhodesia and Nyasaland (Federation) Act was enacted in 1953 by the British Parliament to establish the Federation.

A new Constitution was drafted which provided for the formation of the federation by the three territories under the leadership of a Governor-General, while the territories were led by a Governor.[76] The Constitution provided for the creation of a federal legislature which was to be composed of a specified number of European and African members drawn from the three territories, and certain members of any race elected by and allocated to the territories.[77] The Constitution enumerated the powers and functions of the Federal Government and those of the Territories under an asymmetric arrangement.[78] Some powers were concurrent, others exclusive to the Federation and others exclusive to the Territories.[79] The Constitution provided no right of secession and the only way secession could be effected was through an Act of British Parliament. The federation broke up in 1963, among other reasons due to divergent interests of whites and blacks which could not be reconciled under the federal arrangement. Africans in Northern Rhodesia and Nyasaland wanted to form their own independent states under black majority rule, whereas 'whites' from Southern Rhodesia wanted minority rule to continue.[80]

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[73] Palley 1966: 323. From the British point of view there was need to create an influential state in Africa where colour or race was to become of no account, unlike in South Africa were apartheid was the mode of governance. According to Palley (1966: 124), the other decisive factor was Britain's fear that Southern Rhodesia would join the Union of South Africa, a fear that was accentuated by the relatively high proportion of Afrikaners in Southern Rhodesia in 1954.
[74] Palley 1966: 323.
[75] Palley 1966: 323.
[76] Palley 1966: 343-4
[77] Palley 1966: 347.
[78] The two Territories of Northern Rhodesia and Nyasaland enjoyed more autonomy than Southern Rhodesia.
[79] As a norm in federations, the Federal government was given exclusive responsibility over economic regulation. Powers and functions which related to services which had a specifically close relation to the day-to-day life of Africans remained the responsibility of Territories. For example, chiefs were to be appointed by the Territories.
[80] Palley 1966: 677-9.

3.1.4 Independent unitary government (1965-1980)

After the dissolution of the federation, Southern Rhodesia reverted to its status as a British colony with some measure of self-government. The period between 1963 and 1965 were characterised by intense negotiations between the Southern Rhodesian and British governments, with the former advocating full self-rule. The British government was not satisfied that the government of Southern Rhodesian had met the prerequisites necessary for it to grant Southern Rhodesian independence.[81] When the negotiations for independence reached a deadlock, Southern Rhodesia declared itself an independent state in a proclamation commonly known as the Unilateral Declaration of Independence (UDI) of 1965.[82] Under the UDI, Southern Rhodesia came up with a new constitution in which it granted itself total independence, including changing its name to Rhodesia. It is this government which governed Zimbabwe until black majority rule was attained in 1980. The government strongly resisted attempts to have majority rule in Zimbabwe. Armed confrontation broke out between the nationalist movements and the government which eventually led to independence in 1980. Peace was restored in Zimbabwe after the Lancaster House talks in which the Rhodesian and British governments and nationalist movements agreed to have a majority-led government elected under the terms of an agreed constitution, the Lancaster House Constitution.

3.2 Local government

3.2.1 Origins of a system of local government

The origins of the system of local government in Zimbabwe can be traced back to the eighteenth century where the Mashona and Ndebele inhabitants had local government in the form of traditional structures of kings, chiefs, headmen and village heads.[83] The modern form of local government emerged soon after the occupation of Zimbabwe by the BSAC in 1890. The immediate priority of the BSAC was settling and developing the occupied territory. This objective was pursued by establishing strong central control; little attention was paid to the

[81] The prerequisites for the granting of independence were that 'there should be unimpeded progress to majority rule, that guarantees against retrogressive amendment of the Constitution would be given, that there should be immediate improvement in the political progress towards ending racial discrimination and that they should be satisfied that the suggested basis proposed for independence was acceptable to the people of Southern Rhodesia as a whole' (Palley 1966: 745).
[82] Palley 1966: 745, 751.
[83] Marsh *et al* 1974: 184, Ministry of Local Government 2013: 8. The *Mashona* tribe was comprised of the *Hera*, *Rozwi*, *Njanja*, *Dzete* and *Ndobvu* tribes. The *Ndebele* tribe on the other hand was *Nguni* speaking group which had fled wars in the south during the wars of *mfecane* to settle in the land now referred to as Matabeleland in Zimbabwe. See Keulder 1998: 142.

establishment of local structures of administration.[84] The BSAC nevertheless realised the need to establish some form of local structures to provide services to the white inhabitants who resided in the emerging town of Salisbury. Within a year of occupation, the BSAC established a board of management for this purpose.

The board of management failed to effectively execute its functions and was subsequently succeeded by the Salisbury Sanitary Board in 1891.[85] The Salisbury Sanitary Board was better resourced and enjoyed a wider range of functions than the board of management. Following the passage of the Town Management Ordinance in 1894, more sanitary boards were established in Bulawayo, Umtali and Gwelo. The Municipal Ordinance of 1897 converted the Salisbury and Bulawayo sanitary boards into municipalities with wholly elected councils.[86] Various forms of local government structures were also established in small towns and mining areas to cater for the interests of the white Africans. This marked the emergence of a modern system of local government in Zimbabwe. The form of local government which developed was modeled on the British system of local government but was later influenced by South African ideas.[87] The main local structures were urban councils, rural councils, African Advisory Boards, African (native) councils and the institution of traditional leadership.

3.2.2 Nature of local government system

The system of local government which developed was racist, discriminatory and based on ethnic division. In areas which were dominated by blacks, local government structures were designed to control the black population and implement colonial policies. As will be discussed later in the chapter, it is the impact of this form of local government that the post-independent reforms sought to address.

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[84] March *et al* 1974: 184.
[85] Jordan 1984: 7, Keulder 1998: 147.
[86] Palley 1966: 643; Jordan 1982: 8, 17. The Municipal Ordinance was based on the Cape Municipal Act which reflected the basic form of English local government. Subsequent legislation in Rhodesia, and then Zimbabwe, has continued to follow this pattern, in which local authorities are statutory corporations formed by Acts of Parliament.
[87] Jordan 1984: 8.

3.2.2.1 Racist

The system of local government which evolved was based on the principle of 'separate development' of races, with a sharp division between 'white' and 'black' areas.[88] To serve the purpose of racial segregation and 'apartheid', separate local government systems were created, with urban and rural councils serving areas reserved for white Africans, while Native (African) Councils, African Advisory boards and African Town Boards were responsible for areas reserved for black Africans.[89] Local government legislation provided for racially divided urban and rural areas, both in spatial and institutional form.[90] This system of local government did not accord black Africans the right to participate in the running of their own affairs. Even at the national level, Africans lacked democratic representation despite the fact that they were the majority.

When the Federation of Rhodesia and Nyasaland was formed in 1953 a general shift in colonial thinking towards Africans occurred, with an emphasis on the inclusion of Africans in decision-making structures. In line with this new thinking Africans were admitted to parliament and segregation legislation affecting mostly urban Africans was relaxed.[91] It has been argued that to a large extent the shift was a response to the threat of an African nationalist movement that had been growing since the 1920s.[92] Thus, democratic representation of blacks and the relaxation of segregation legislation was seen as a strategy to build peace. These strategies proved to be ineffective in the late 1960s and 1970s as the confrontation between the colonial government and nationalist movements turned violent, resulting in a significant number of people losing their lives.

[88] The Ministry of Local Government 2013: 8; Makumbe 1998: 19.
[89] The Ministry of Local government and Town Planning supervised urban and rural councils while the Ministry of Internal Affairs supervised Native Councils, African Advisory Boards, African Town Boards and traditional leaders.
[90] Chatiza 2010: 4.
[91] Keulder 1998: 157. The 1969 Constitution provided for a House of Assembly composed of 50 European and 16 African members. Of the 16, eight were elected and the other eight were chiefs nominated and approved by a body of chiefs, headmen and rural councillors. Shona and Ndebele chiefs were equally represented. The Senate consisted of ten Europeans, ten African chiefs and three members nominated by the head of the state. What is significant about the membership of chiefs in Parliament is that traditional leaders became politicians. Keulder states that this did little to improve the popularity of legitimacy of the white-dominated system. See Keulder 1998: 165.
[92] Keulder 1998: 157.

3.2.2.2 Residential segregation

The system of local government was also based on the principle of residential segregation. In the early years of occupation, a tradition developed of setting aside land in or near European settlements for residential purposes in which black employees in urban areas could reside.[93] It was designed to conform to a racially-based system of land apportionment and alienation.[94] In terms of this system, land ownership was based on race with white Africans being given preference over black Africans. The Town Management Ordinance No. 2 of 1894 legalised this tradition of setting aside land for African employees by empowering urban councils (UCs) to control and manage the land allocated to Africans. This marked the beginning of residential segregation or the 'twin-city concept', with certain urban areas reserved for white settlers and other areas for black employees.[95] The Land Apportionment Act of 1930 and the Consolidated Land Apportionment Act of 1941 retained the basic principles of territorial segregation, with the latter giving UCs increased powers over the setting aside of land for the development of African townships.[96]

3.2.2.3 Tool of local administration

In communal areas which were inhabited by a majority of black Africans, local government was not created to enhance democratic participation and representation.[97] Unlike UCs and rural councils (RCs), which were established to provide services to the white population, local government in communal areas was not designed to cater for the needs of Africans. The key theme was control of the black population through local government structures such as district commissioners, traditional leaders and African Councils.[98] These structures were used by the central government to implement its policies. In these areas, local government was the main tool of controlling and checking the rising resistance from blacks to colonial

[93] Marsh *et al* 1974: 208.
[94] Jordan 1984: 15, Mutizwa-Mangiza 1991: 394, De Valk & Wekwete 1990: 88. By 1894, the British South Africa Company had disposed of 80 percent of the land and alienated it to mines, farms and companies (Wekwete 1990: 39). Some other land was set aside for the use of the native population (Jordan 1984: 9). The system of apportionment of land by race was reinforced by the Land Apportionment Act of 1930 and consolidated by the Land Tenure Act of 1969.
[95] Makumbe 1998: 19.
[96] As a result, white Africans owned vast amount of land which was conducive for agriculture, while black Africans owned a marginal proportion of land situated in areas with bad soil and climatic conditions. This skewed distribution of land is one of the main reasons why black Africans took up arms to fight the white-minority government. See Mutizwa-Mangiza and Helmsing 1991: 5, Mutizwa-Mangiza 1991: 394, Makumbe 1998: 19.
[97] Wekwete 1990: 40.
[98] See Keulder 1998: 141.

administration.[99] This is one reason Africans rejected local government structures that were functional in their areas.[100]

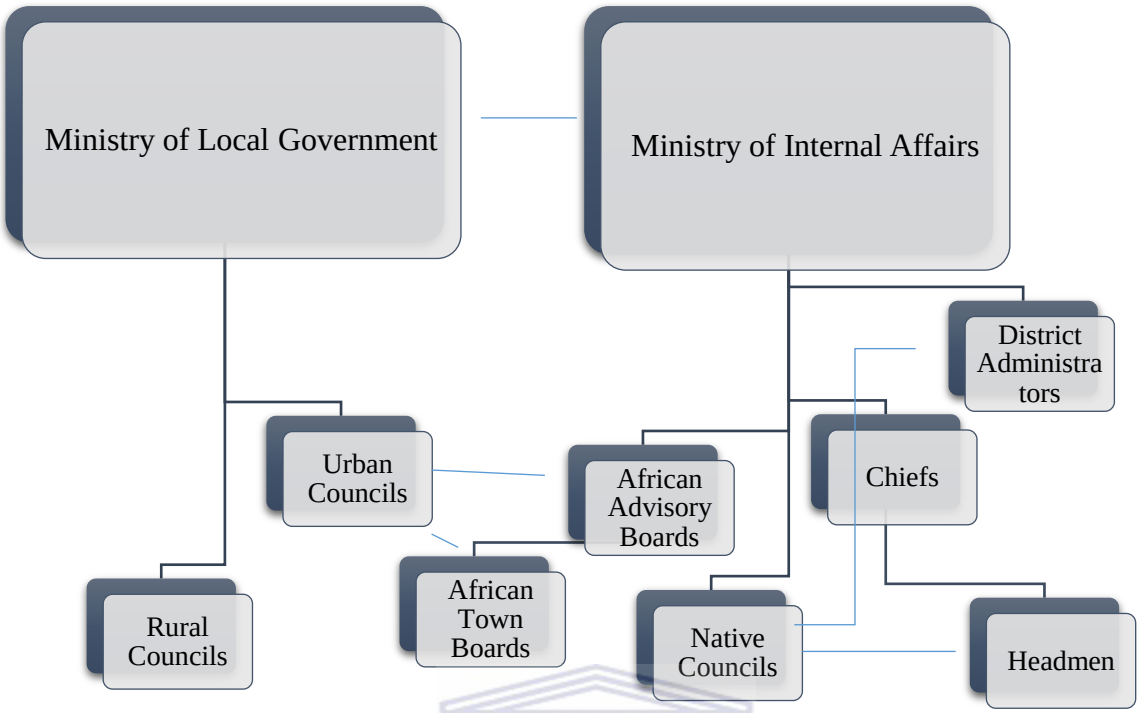
3.2.2.4 Ethnic division

Decentralisation in the colonial era was implemented by colonial regimes not only along racial but ethnic lines. The boundaries of administrative provinces and districts were drawn along ethnic lines. Most of the names of the administrative provinces and districts in the colonial era were indicative of the ethnic groups which were residing in those areas. In the post-independence era, some of these names have since been changed but the majority of names of provinces, such as *Mashonaland*, *Manicaland* and *Matabeleland* are still in use. However, the ethnic factor does not seem to have caused any significant political challenges among black Africans in the colonial era, although the threat of ethnic conflict has been high in the post-independence era.[101]

The diagram below represents the major institutions of the colonial system of local government. These structures and the relationships among them are examined in the following section.

[99] De Valk &Wekwete 1990: 86.
[100] See Makumbe 1998: 23.
[101] Makumbe 1998: 28.

Figure 7: Structure of the local government system



3.2.3 Institutions of local government

3.2.3.1 Urban Councils

UCs were creatures of statutes and in many ways extensions or agents of the central government.[102] As described above, the BSAC and successive colonial governments developed urban areas for whites, with black Africans who were residing in these urban areas regarded as temporary migrant workers. UCs were created to serve the interests of whites in these urban areas.[103] A sizeable number of UCs were also established to serve the white community which resided in mining regions. Black Africans were not represented in the structures of UCs and only those fully employed were considered to be 'legal' residents.[104] There were three main forms of UCs: namely, municipalities, town councils and local boards, as provided by the Urban Councils Act of 1973, which replaced the Municipal Act of 1930.

[102] Marsh *et al* 1974: 203. As shall be discussed in the coming chapters, local governments are still creatures of statutes.
[103] See Ministry of Local Government 2013: 8.
[104] Wekwete 1990: 40, Mutizwa-Mangiza 1991: 395.

UCs consisted of no less than six councillors, determined in each case by the President.[105] The Minister responsible for local government determined the time frames of elections and suffrage was limited to owners or occupiers of immovable property who were over 21 years of age.[106] UCs enjoyed a wide range of powers and functions, including the generation and supply of electricity, municipal planning, water supply, housing, recreation, parking, public transport and policing.[107] They could make laws which took the form of by-laws.[108] UCs funded their activities from various sources, including property rates, service charges, motor vehicle taxes, grants from the national government and through borrowing.[109] Thus, UCs had sound resource-raising powers. The Local Government Association of Rhodesia was established to represent UCs and engaged with the central government on various policy, legislative and other matters.[110]

3.2.3.2 Native Advisory Boards

After the occupation of Zimbabwe a significant number of blacks migrated to urban centers to provide labour. In the areas (widely known as African townships) which were inhabited by blacks there were no traditional authorities or local structures to provide some form of government.[111] Instead, these areas were placed under the direct management of the central government or municipalities and town management boards (councils) which had established the African townships.[112] Thus, the urban local government system which developed in the colonial era excluded Africans from urban local governance. The first local government institutions where Africans had representation in urban areas, African Advisory Boards, were established more than 40 years after the emergence of the modern local government

[105] Marsh *et al* 1974: 198.
[106] Marsh *et al* 1974: 198. Companies, associations or any other bodies who owned or occupied land were entitled to vote through a representative. Any person who qualified to vote was eligible to be elected as a councillor.
[107] Urban Councils Act of 1973, Marsh *et al* 1974: 200.
[108] Marsh *et al* 1974: 200. A by-law required the approval of the Minister, who could also make model by-laws or direct a council to make by-laws on any matter.
[109] Marsh *et al* 1974: 200, 201.
[110] Marsh *et al* 1974: 208.
[111] Palley 1966: 667.
[112] The African Councils were however considered to fall outside municipal boundaries although they were subject to the control of these municipalities.

system.[113] These boards were merely informal channels of communication of grievances and thus cannot be considered 'real' local government structures.[114]

The Native (Urban Areas) Accommodation and Registration Act of 1946 compelled UCs to set aside a native urban area for the establishment of African townships. The Act also established Native Advisory Boards to enable Africans who resided in African townships to influence the running of their affairs by UCs. This was to be made possible through democratic representation on the council, where three native residents had membership in addition to the chairman of the council who could be white or black.[115] The Act, however, required the establishment of Native Advisory Boards only in African residential areas under the management of UCs. African townships which were directly administered by the central government were still without any form of local government available to their inhabitants as of 1964. In areas in which they were established, Native Advisory Boards lacked executive powers to influence the running of African affairs in native townships.[116] They served as mere advisors to UCs on matters affecting Africans, such as the impact of by-laws. As a result, they failed to meet the need for local government in African townships and by 1964 out of 13 boards in six municipalities, only seven were operational.[117]

3.2.3.3 African Town Boards

Since the colonisation of Zimbabwe in 1890, black Africans were never given the opportunity to elect their own local governments with a direct influence on the running of African townships. Following a series of inquiries into African affairs, the Town Board of St Mary's[118] was established in 1971 as the first African urban local government unit, in which elected African representatives had executive authority.[119] The board was established to offer democratic representation to Africans in local structures. This was seen as a mechanism which could discourage Africans from actively supporting the violent resistance against minority rule which was beginning to gather momentum.

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[113] Chakaipa 2010: 35. African advisory boards remained as the only local government units for many Africans until the municipal elections of 1980/81.
[114] See Palley 1966: 688.
[115] Palley 1966: 668.
[116] Mutizwa-Mangiza 1991: 394.
[117] Palley 1966: 670.
[118] St Mary's is a shadow town of the capital city, Harare (formerly Salisbury). The town has recently developed into a large dormitory town named Chitungwiza.
[119] Section 66 D Local Government Act [*Chapter 124*].

The Town Board of St Mary's was governed by a constitution approved by the Minister responsible for local government (the Minister). It comprised of members who were directly elected by the citizens, others nominated by the Minister and some designated by the Greater Salisbury Authority (now City of Harare).[120] It had corporate legal status with authority to hire its own staff, competence over education and the power to make by-laws. The board had resource-raising, executive and legislative powers. Most of the functions which the board carried out were subject to the approval of the Greater Salisbury Authority (an UC in charge of the City of Salisbury).[121] Hence, it is submitted that the board had very limited autonomy. In 1978, the board was combined with the neighboring industrial areas of Zengeza and Seki to form Chitungwiza Urban Council (which has since graduated to a status of a municipal council).[122]

3.2.3.4 Rural Councils

Rural Areas which were inhabited by commercial white farmers were without any particular form of local government for more than 30 years after the establishment of the first modern local government structure in 1890. Road Committees and Intensive Conservation Committees were established in the 1930s as the first local government units in rural areas inhabited by whites. The main function of Road Committees was to provide public infrastructure in large-scale commercial farming and mining areas which were outside urban areas.[123] Intensive Conservation Committees were established to promote 'good land management' and conservation of natural resources in rural areas.[124] The Rural Councils Act of 1966 transformed the Road Committees into Rural Councils (RCs), with Intensive Conservation Committees serving as sub-committees of RCs. The first RC was established in 1967 and, by July 1971, 43 RCs had been created, covering all rural areas occupied by white Africans. Thus, RCs were the product of statutes.[125]

Like UCs, RCs were established by the President and were administered by councils that consisted of a number of councillors (not less than six) determined by the Minister.[126] The

[120] Marsh *et al* 1974: 215.
[121] Marsh *et al* 1974: 215.
[122] Jordan 1984: 11.
[123] Palley 1966: 658; Rambanapasi 1992: 1501.
[124] Rambanapasi 1992: 1498, Wekwete 1990: 40, Marsh *et al* 1974: 190. Road committees were chaired by district commissioners.
[125] Marsh *et al* 1974: 203.
[126] Marsh *et al* 1974: 191.

voting qualifications which applied in UCs also applied in RCs, except that in the case of voters resident within the designated RC area, voting was by post. Councillors were directly elected on a ward basis but the Minister could appoint individuals to the council to represent special interests.[127] Although RCs had councils which were democratically elected, they 'lacked mechanisms of effectively representing the thousands of African farm labourers who resided in their areas'.[128] As shall be discussed later, the lack of representation of African labourers on RCs is one of the democratic challenges which the post-independent government sought to rectify.

RCs could carry out functions such as water supply, health services, roads and bridges, prevention and control of animal diseases and the establishment of markets and slaughter houses.[129] They had the power to make by-laws which had to be approved by the Minister before they could be binding.[130] The Minister could also authorise RCs to carry out other functions in addition to those enabled by the Act.[131] RCs financed their activities from property rates, motor vehicle taxes, borrowing and taxes on business activities.[132] These councils had sound resource-raising powers which were complemented by grants from the national government. A variety of revenue sources enabled RCs to fund their activities and deliver quality services. An Association of Rural Councils was established to represent RCs and engage the national government on various policy, legislative and other matters.[133]

3.2.3.5 Native Boards and African (Native) Councils

Unlike in urban areas and in large-scale farming and mining areas, local government in communal areas (also known as Tribal Trust Land), which had been set aside for the inhabitation of the majority of black Africans, evolved rather slowly.[134] Although the 1923 Constitution (section 47) had made provision for the establishment of Native Councils to administer communal areas (native reserves) which were inhabited by blacks, such structures

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[127] Marsh *et al* 1974: 191. The system of allowing the Minister to appoint a certain number of councillors continued in the post-independence era and is one of the most contentious issues in the current system of local government, as shall be discussed in later chapters.
[128] Makumbe 1998: 20.
[129] See Mutizwa-Mangiza & Helmsing 1991: 5.
[130] As shall be discussed later in the chapter, in the post-independence era, all by-laws are subject to ministerial approval.
[131] Marsh *et al* 1974: 193.
[132] Rambanapasi 1992: 1502, Marsh *et al* 1974: 194-195, Rambanapasi 1992: 1502.
[133] Marsh *et al* 1974: 208.
[134] See Jordan 1984: 10. The Land Appointment Act of 1929 was the vehicle through which land was reserved for blacks and whites.

were not established at that time. The first local government units in communal areas, Native Boards, were established seven years later in 1931.[135] Native Boards were composed of African representatives, with chiefs and headmen serving as *ex officio* members. They served as mere advisors to agencies of the national government over the management of highly fragmented communal lands.[136] In 1937, more formal councils were created when the Native Boards were transformed into African (Native) Councils, which were chaired by native commissioners. African Councils were established by the Minister responsible for internal affairs upon the recommendation of the district commissioner. An African Councils Board was established in 1957 to supervise African Councils and advise the Minister responsible for internal affairs on matters relating to African councils.[137]

African councils were composed of a majority of members who were elected by local tax-payers, with chiefs and headmen as *ex officio* members.[138] The district commissioner[139] was the president of the council; a councillor could not be elected as the president of the council.[140] The Minister of Internal Affairs could suspend the entire council if the council failed to carry out its obligations.[141] Powers and functions of African Councils were greater than those of Native Boards. African Councils were charged with the provision and control of essential services to 'blacks', the development of the democratic inclinations of 'blacks', and the economic advancement of the areas under their jurisdiction.[142] They could make by-laws but such laws were only binding after approval by the Minister of Internal Affairs.

[135] Palley 1966: 660.
[136] RTI and Institute for a Democratic Alternative for Zimbabwe 2010: 18; Mutizwa-Mangiza 1991: 5, 54. In the view of the Rhodesian government the purpose of Native Boards was 'to "meet the legitimate desire for the united expression of native opinion", although it is generally acknowledged that the real intention behind their creation was to counteract independent political organisations among indigenous blacks' (Weinrich 1971: 14 cited in Mutizwa-Mangiza 1991: 54).
[137] African Councils Act No. 57/1971, Mutizwa-Mangiza 1991: 54.
[138] Every chief who was a member of the council was also a vice-president of the council. This position was of status and did not confer specific powers on the chiefs. See Department of Internal Affairs, Circular Letter No. 280/1958 cited in Marsh *et al* 1974: 217.
[139] The commissioner also controlled the occupation, settlement, and cultivation of land, the holding of public meetings in their districts and exercised jurisdiction over disputes between black Africans. Further, native commissioners managed museums and archives, voter's rolls and elections, libraries and the processing of identity documents. Chapter 63 General Administration Act. See also Marsh *et al* 1974: 227.
[140] See Ministry of Local Government 2013: 8. The colonial regimes feared that they would lose control over the native population if a councillor was to lead an African council. Hence, they relied on appointed officials, district commissioners, to maintain control over the native population.
[141] De Valk & Wekwete 1990: 89, Marsh *et al* 1974: 222.
[142] Marsh e*t al* 1974: 221. African councils could provide schools, clinics, roads, dip tanks and beer halls. Powers of councils were derived from the African Councils Act of 1957 and various council warrants which were issued by the Minister of Internal Affairs.

The source of revenue of African Councils included grants from the national government, user charges, property rates, licenses, motor vehicle taxes and borrowing from the national government.[143] Although African councils enjoyed various taxing powers, the absence of a viable resource base and poor flow of resources from national government undermined the delivery of public services to the native population.[144] They were ineffectual in practice and were viewed by many black Africans as colonial structures.[145] As a result, they were unpopular among the black population.[146] Although the African Councils Act of 1957 had decentralised more powers and functions to these councils, service provision remained poor and opportunities for participation and democracy at the local level were limited. However, African Councils remained an effective tool in the hands of the colonial government to control the African population and counteract independent political organisation among the native population.[147] As of 1979, a total of 220 African Councils had been established in communal areas. By 1980 (when independence was attained) the majority of African councils had collapsed under the combined pressure of financial insufficiency and war, and were under the administration of the Ministry of Internal Affairs.[148]

3.2.3.6 Institution of traditional leadership

The institution of traditional leadership, in the form of chiefs and headmen, played a central role in most communal institutions of local government and administration.[149] During the period of company rule by the BSAC (1890-1923), rural governance was left to traditional leaders. When Rhodesia was declared a British colony in 1923, with its own government, the institution of traditional leadership continued to play a central role in rural governance. However, interference by the colonial government in the operation of institutions of traditional leadership increased. Traditional tribes were amalgamated, the number of traditional leaders was reduced, and chiefs and headmen became government-appointed and -salaried officials.[150] Some of the powers of traditional leaders were abolished. The colonial government had very little if any respect for native culture, traditions and customs in the

[143] Marsh *et al* 1974: 219. See the Vehicle Registration and Licensing Act, 1970.
[144] Palley 1966: 662, Jordan 1984: 10, Native Councils Act of 1937. See Stewart *et al* 1994: 4 and Rambanapasi 1992: 1498.
[145] Passmore 1972: 52 cited in Mutizwa-Mangiza 1991: 54.
[146] Jordan 1984: 11.
[147] Mutizwa-Mangiza 1991: 54
[148] Jordan 1984: 11.
[149] De Valk and Wekwete 1990: 88, Mutizwa-Mangiza 1990: 426.
[150] Kuelder 1998: 154.

amalgamation of tribes and appointment of traditional leaders.[151] This did not last for long, as the colonial government realised that they could not implement their policies without the assistance of traditional leaders. The government sought measures to 'reinvent' the very traditions and customs they wanted to destroy. It embarked on legislative reforms and restored some of the powers of traditional leaders.[152] As shall be discussed later in the chapter, such a change in stance towards traditional leaders by the government was replicated in the post-independence era.

The African Affairs Act of 1927 made provision for the recognition and appointment of traditional leaders. Chiefs were given power to chair Tribal Land Authorities which controlled the use and occupation of tribal (communal) land.[153] Traditional leaders exercised limited criminal jurisdiction, solved disputes between black Africans and collected taxes on behalf of the national government.[154] Facing wide resistance from the native population, the colonial administration tried to legitimise its authority by using chiefs and headmen to control the black population and implement its policies.[155] Traditional authority was perverted to serve the interests of the colonial government. With rising African nationalism in the late 1950s and 1960s, the colonial government galvanised support for white rule from among African traditional leaders. Traditional structures were seen as potential allies of the colonial government against the nationalists and could be effective instruments for curbing the growth of nationalist movements in rural areas.[156] Like its post-independence successor, the colonial government used both the 'carrot and stick' methods to garner support from traditional leaders. Traditional leaders who were reluctant to implement colonial policies were removed from their positions.[157] Keulder succinctly notes how 'good behavior and fitness' decided the term of office of a traditional leader. [158]

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[151] Palley points out that as of 1964 almost half the Shona chiefs were not the proper heirs to the position, 1966: 476.
[152] Kuelder 1998: 154.
[153] Tribal Land Authorities consisted of the chief of the area and several other tribesmen as nominated by the chief according to tribal customs. See the Tribal Trust Land Act, 1967 and Land Tenure Act, 1969.
[154] See Section 18 African Affairs Act 1927, African Law and Tribal Courts Act of 1970, Marsh *et al* 1974: 229.
[155] Wekwete 1990: 40, Mutizwa-Mangiza 1991: 55. Traditional leaders monitored crimes, irregularities, epidemics and public unrest on behalf of the colonial government. As shall be discussed later, in the post-independent era, traditional leaders have continued to support the government of the day, in particular the ruling ZANU-PF.
[156] The same approach was adopted by the ZANUP-PF-led government to deal with rising support for the opposition MDC after 2000.
[157] See Keulder 1998: 141.
[158] See Keulder 1998: 141.

The Tribal Trust Land Act of 1967 restored land allocation powers to traditional leaders in order to garner their support for the UDI of 1965.[159] After the UDI, the colonial government increasingly involved the traditional authorities in national politics and relied significantly on them to implement its policies and thwart growing African nationalism.[160] Traditional leaders were given more autonomy, including executive and administrative power over their councils, the authority to preside over local community courts and the responsibility for land conservation.[161] The status of chiefs was improved as black African resistance against minority-rule intensified. Chiefs gained the status of Senators in 1969 and, in 1973, the Ministry of Internal Affairs stated that the 'chief embodied local government as well as the development authority for the whole African areas [sic]'.[162] In the 1970s, when armed resistance by black Africans was at its peak, close to 50 per cent of the established African councils were composed of appointed councillors who were nominated by the chiefs.[163] Provincial Assemblies of chiefs and the Council of Chiefs was established to provide a platform where the national government could engage with chiefs on a variety of matters regarding the interests of black Africans.[164] The Regional Authorities Act of 1973 established (African) regional structures consisting almost entirely of chiefs and headmen.[165] Makumbe argues that the elevation of the status and role of traditional leaders was not only undertaken to thwart African nationalism but also intended by the colonial government as a way of divesting itself of development responsibilities in African rural areas.[166] As a result of the nature of traditional authority, by independence in 1980 many black Africans had lost faith in the institution of traditional leadership.[167]

3.2.4 Supervision of local government

As observed above, the colonial system of local government was drawn along racial lines. At the national level, two institutions were established to oversee the activities of local

[159] Jordan 1984: 10. Under the UDI, the Rhodesia declared itself an independent state after failed attempts to obtain independence from Britain.
[160] Keulder 1998: 141, Jordan 1984: 10.
[161] Jordan 1984: 10.
[162] Rhodesia 1973 cited in De Valk & Wekwete 1990: 88.
[163] De Valk & Wekwete 1990: 88. See also Jordan 1984: 10.
[164] Palley 1966: 672, Marsh *et al* 1974: 226. See Council of Chiefs and Provincial Assemblies Act, 1961 (Act No. 58/1961). The council of chiefs did not have a direct role in local government, but could discuss local government and submit its views to the Minister.
[165] Keulder 1998: 163.
[166] Makumbe 1998: 21.
[167] See Keulder 1998: 141, 154.

government.[168] The Ministry of Internal Affairs was responsible for supervising local government structures in communal areas and African Townships (Native Purchase Areas) and the Tribal Trust Land. The Ministry of Local Government was charged with the supervision of local government structures in urban areas, whether for blacks or whites.[169] These ministries, especially the Ministry of Local Government, gave technical advice to local governments. The ministries supervised matters such as drawing of estimates and application of borrowing powers. However, the supervisory powers of the national government were somehow limited. For example, the national government could not dismiss town clerks and other senior officials. These senior officials could only be dismissed on a majority of vote by all the councillors at a meeting convened for that purpose.[170] It is argued that the Ministry of Local Government always adopted the principle of consultation rather than the coercive approach mostly favoured by the Ministry of Internal Affairs.[171] For example, the Ministry consulted UCs and RCs in any particular matter but on policy matters it dealt with the Local Government Association, which represented all elected local governments.[172]

As discussed above, local government in the colonial era developed and was organised according to the principle of 'separate development'. UCs and RCs, which were operational in areas inhabited by whites, enjoyed sound autonomy. In contrast, African Councils, Native Boards and African Advisory Boards, which were responsible for areas inhabited by blacks, had limited powers.[173] Consequently, different levels of service were provided in areas reserved for whites and areas inhabited by black Africans, with the former benefitting more than the latter. Chatiza argues that local government served little purpose in African areas mainly because it failed to provide vital public services or act as a platform for popular participation.[174] As a result of the racist character of local government, the local government system was hated by many Africans and genuine popular participation in the system by the black population was never achieved.[175] The colonial regime successfully managed to alienate the black population from their traditional leaders and local government.

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[168] See Palley 1966: 644.
[169] It is important to note that before 1962 all African local governments, urban and rural, were supervised by the Ministry of Internal Affairs (formerly the Native Affairs Department).
[170] Palley 1966: 644.
[171] Palley 1966: 644.
[172] Palley 1966: 644.
[173] Makumbe 1998: 19.
[174] Chatiza argues that 'local government institutions in African areas were not autonomous, did not pursue local interests, lacked local legitimacy and resources compared to those in European areas' (2010: 2).
[175] Mutizwa-Mangiza 1991: 395. See also Jordan 1984: 11.

4. The emergence of the post-colonial system of government

At independence, the ZANU-PF-led government inherited a tripartite system of local government of UCs, RCs and African Councils.[176] As noted above, this system was intended to further the exploitation and marginalisation of black Africans for the benefit of white Africans. Local government was racist, exploitative and subservient in character. Against this background, it was not only logical but justified for the black majority government to immediately after independence introduce reforms to correct the racially based system of government.[177] There was an urgent need to create local government structures which were more reflective of the new multi-racial society of independent Zimbabwe. Soon after independence in 1980, the black-led government declared its intention to promote national integration, decentralisation and participation.[178] In practice this took three forms.

First, new ministries of the national government were created and others were deconcentrated to the provincial and district levels. Among the newly created ministries was the Ministry of Local Government and Housing which took over the control of African councils from the former Ministry of Internal Affairs, and UCs and RCs from the Ministry of Local Government and Town Planning.[179] Second, a series of legislative enactments and directives were issued to democratise and strengthen the system of local government.[180] Participatory structures were also established to promote citizen participation in development and planning. The major policy and legislative reforms which are of interest to this study are captured in Figure 8 below. These legislative enactments and policy directives have shaped the status and development of the system of government. The adoption of the 2013 Constitution means that the nature of the system of government has also changed, requiring reforms to a number of pieces of legislation and policies on local government and other sectors.

Figure 8: Post-colonial reforms of the Zimbabwean decentralised system of government

1. Amendments to the District Councils Act (1980, 81 and 82)
2. Amendments to the Urban Councils Act
3. The Prime Minister's Directives on Decentralisation of 1984-85
4. The Rural District Councils Act of 1988

[176] Mutizwa-Mangiza 1990: 425.
[177] See Ministry of Local Government 2013: 8, Makumbe 1998: 19.
[178] Stewart *et al* 1994: 4.
[179] Mutizwa-Mangiza 1990: 427.
[180] Ministry of Local Government 2013: 8.

5. The thirteen principles of decentralisation of 1996
6. The Traditional Leaders Act of 1998, 2000
7. Constitution of Zimbabwe, 2013

4.1 District Councils Act (1980)

The African Councils Act was amended into the District Councils Act in 1980 (and again in 1981 and 1982), establishing District Councils governing the former Tribal Trust Lands and African purchase lands. The immediate aim of the reforms to the African Councils Act was to promote the reconstruction and rehabilitation of rural areas after the destructive effects of the liberation war. These reforms consolidated the previously fragmented authorities from over 220 to 55 administratively more viable District Councils (DCs).[181] The Act also aimed to promote democratic representation and participation and rural development by rationalising and strengthening the role of the District Council as an elected body.[182] To achieve this objective a wide range of powers and functions were transferred to DCs through individual warrants for each council.

The District Councils Act limited the role of traditional leaders by transferring land allocation and taxing powers from chiefs and headmen to elected DCs. In addition, the Act stripped the authority of traditional leaders to preside over village civil cases and established a new system of community courts under the Ministry of Justice.[183] Traditional leaders were stripped of their powers because they were considered to have supported the exploitation of black Africans by the white minority regimes in the colonial era. Although the reduction of the powers of traditional leaders was initially implemented as a form of retribution for their past collusion with the colonialists, it also signaled the intention of the post-independence government of promoting democratic governance at local level.[184] The District Councils Act also required DCs to be composed by a majority of elected members on the basis of one councillor per ward, with chiefs and headmen serving as *ex officio* members. The district administrator, formerly district commissioner, was made the chief executive officer of the

[181] Stewart *et al* 1994: 5, Mutizwa-Mangiza 1991: 56 and 1990: 426, Ndoro 2010: 321.
[182] De Valk & Wekwete 1990: 90, Rambanapasi 1992: 1512.
[183] Mutizwa-Mangiza 1991: 56, Rambanapasi 1992: 1512.
[184] Keulder 1998: 182, Makumbe 1998: 33.

council and stripped of the chairmanship role over DCs, with the position being filled by an elected member.[185]

4.2 Reforms to the Urban Councils Act

4.2.1 1980 Reforms

The Urban Councils Act of 1973 (hereafter referred to as the UCA) was amended in 1980 to remove racial discrimination pertaining to representation in UCs and tenure in urban areas.[186] The 'twin-city system'[187] was abandoned, with former African Townships and local government areas incorporated into UCs under a single tax-base. Rent-paying lodgers who were disenfranchised under the colonial urban local government system were allowed to vote in municipal elections.[188] The reforms also sought to redress the imbalances in economic development which were part of the local government system, including unequal access to public services by different races.

4.2.2 1996 and 2008 Reforms

At independence, UCs were led by ceremonial mayors who were elected by councillors from amongst the membership of the council.[189] In 1996, the UCA was amended to establish the post of an executive mayor directly elected by the citizens. The direct election of the executive mayor by the citizens was a mechanism designed to strengthen representative democracy and enforce local accountability.[190] The post of an executive mayor was later abolished in 2008 through the Local Government Amendment Act of 2008, which reintroduced ceremonial mayors in UCs. The central government cited abuse of power by executive mayors as the main reason behind its decision to reintroduce ceremonial mayors. Against this, it is argued that the abolition of executive mayors was a political move aimed at reducing the power of the MDC which commanded majority support in almost all urban areas.[191] At that time, the MDC had the highest number of officials occupying the post of an executive mayor relative to ZANU-PF. The Local Government Amendment Act also gave the

[185] Mutizwa-Mangiza 1991: 56.
[186] Jordan 1984: 15, Wekwete 1988: 20, Rambanapasi 1992: 1511.
[187] As stated above, the 'twin city concept' was a system where two separate residential suburbs were created for the whites and the black working class who lived in urban areas.
[188] Helmsing 1990: 101 in Makumbe 1998: 25.
[189] Jonga & Chirisa 2009: 177.
[190] Muchadenyika 2014: 125.
[191] See Jonga and Chirisa 2009: 177, Muchadenyika 2014: 125.

Minister the power to appoint a certain number of councillors to represent special interests on the council in urban areas.[192] As shall be discussed later, the appointment of special interest councillors was contentious and posed a great challenge to local democracy.

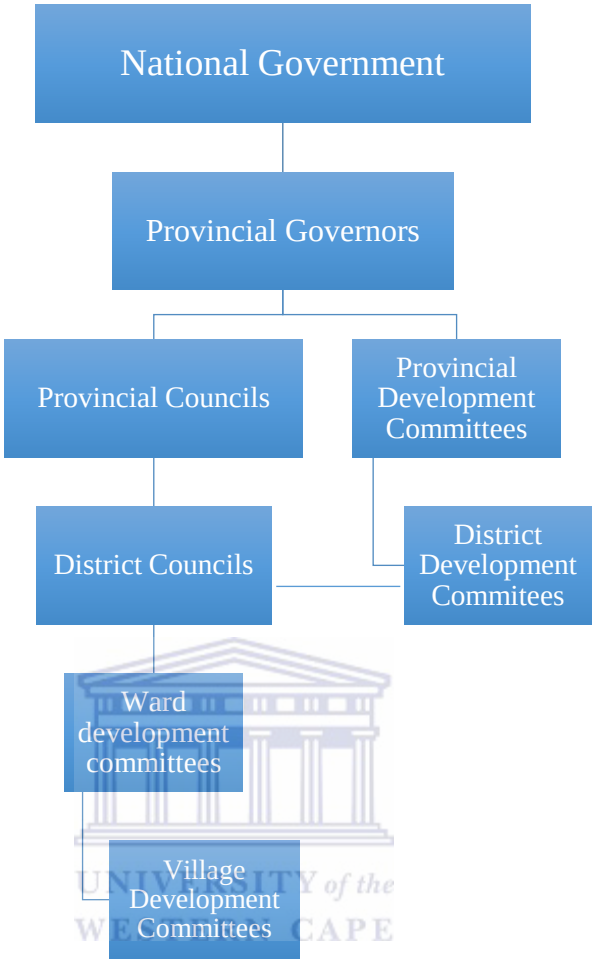
Similar to many African governments after gaining independence, Zimbabwe's majority-led government immediately recentralised administrative, political and financial powers. While achieving integration, the 1980 UCA Amendments eroded the autonomy of UCs by increasing both administrative and political control and oversight by the central government.[193] The reforms to the UCA emphasised the role of the Minister in relation to elections, borrowing powers, and financing and auditing of UCs. Although the viability of UCs was improved, the amendments had a double-edged impact since they tightened central government control over UCs.[194] The appointment of special interest councillors and the abolition of the post of executive mayor had the same effect of centralising power and undermining local democracy.

4.3 The Prime Minister's Directives on Decentralisation of 1984 and 1985

As highlighted above, at independence the government declared its intention to promote decentralisation and participation.[195] Four years later, the government through the Prime Minister issued a series of directives in pursuit of this objective. The directives came to be known as the Prime Minister's Directives on Decentralisation and in 1985 they received legal recognition through the Provincial Councils and Administration Act.[196] As shown in Figure 9 diagram below, the directives provided for the creation of 6000 Village Development Committees (VIDCOs), 1000 Ward Development Committees and 55 rural districts in the former eight administrative provinces of Zimbabwe.[197] Further, the directives established District Development Committees, Provincial Councils, Provincial Development Committees and the office of a Provincial Governor. They perhaps brought about the most significant changes to the post-independence system of local government in Zimbabwe prior to the adoption of the 2013 Constitution.

[192] See s 7, Local Government Laws Amendment Act, 2008.
[193] Makumbe 1998: 25.
[194] Makumbe 1998: 25.
[195] See Stewart *et al* 1994: 4.
[196] Provincial Councils and Administration Act [*Chapter 29:11*].
[197] Mutizwa-Mangiza 1990: 427, Mukumbe 1998: 28.

Figure 9: Structures established by the Prime Minister's Directives on Decentralisation of 1984 and 1985



The directives aimed to democratise the local government system particularly in the communal areas of Zimbabwe which lacked 'genuine' representative local structures in the colonial era.[198] This included promoting bottom-up governance by providing for the establishment of a hierarchy of representative bodies at the village, ward, district and provincial levels.[199] The directives also sought to provide a framework for coordinating government institutions in order to achieve participatory development.[200] Ideally, development planning was to start at the grassroots level (the village level) and feed into higher level structures. Structures such as District Development Committees, Provincial

[198] See Makumbe 1998: 27.
[199] Conyers 2003: 116, Wekwete 1990: 45.
[200] Wekwete 1990: 45, Chatiza 2010: 4, Mutizwa-Mangiza 1991: 385.

Councils, Provincial Development Committees and Provincial Governors were also given the task of coordinating government activities in their areas of jurisdiction.

In practice, the structures created by the directives failed to deliver on their mandate of facilitating participatory development, partly because they lacked financial resources and democratic representation.[201] For example, only four of the six members of the VIDCO were directly elected by the villagers. The other two members of the VIDCO were representatives of the women's and the youth leagues of ZANU-PF. The same applied to the ward level. Makumbe claims that the assumption was clear that 'every villager was a member of the ruling party, or that other parties or minority groups than those of the ruling ZANU-PF should not be expected to participate in the local government system'.[202] This is partly the reason why some scholars argue that the post-independence decentralised system of government was deliberately modeled on the structure of ZANU-PF with the primary objective of creating a one-party state in Zimbabwe.[203]

4.4 Rural District Councils Act (1988)

As discussed above, the colonial government created two separate local government institutions in rural areas, RCs for Europeans and African (Native) Councils for blacks. At independence, the government adopted this dual system of local government in rural areas. The system was abolished eight years after independence through the Rural District Councils Act of 1988 (hereafter referred to as the RDCA),[204] which created a unified system of local government in rural areas. The previous RCs and DCs were amalgamated into 55 Rural District Councils with re-organised functions.[205] The amalgamation was a way of doing away with the colonial legacy of 'separate development' based on race and to promote equitable distribution of public services and resources across the rural population.[206] Besides amalgamating RCs and DCs, the Act also introduced the special interests clause which allowed the Minister to appoint interest group councillors to accommodate European commercial farmers who would otherwise lose to the African majority in an open vote. The clause was also meant to accommodate farm and mine workers who were potentially

[201] Muchadenyika 2014: 124.
[202] Makumbe 1998: 29.
[203] Makumbe 1998: 29, Stoneman & Cliffe 1989: 79, Brand 1991: 85 in Makumbe 1998: 29.
[204] Rural District Councils Act [*Chapter 29: 13*].
[205] The newly amalgamated councils only became operational in 1993 due to a number of challenges, among them, lack of capacity.
[206] Stewart *et al* 1994: 6, De Valk & Wekwete 1990: 94, Ndoro 2010: 321.

excluded from being councillors, since a councillor had to be a rate- or rent-payer and these workers were unlikely to be such.[207]

Although the government argued that amalgamation was there to do away with the colonial legacy of 'separate development', some scholars believe that there were other motives behind it.[208] Rambanapasi claims that amalgamation was advanced with the 'desire to tap the local sources of finance inherent in colonial rural councils' unit land tax levied on European commercial farmers'.[209] Makumbe argues that amalgamation was advanced by the central government to resist the proposal to share revenue with local authorities, especially DCs which had no viable resource base and had to rely on central government grants for their operations.[210] Although there may have been a hidden agenda behind the amalgamation of RCs and DCs, it is submitted that amalgamation was necessary in view of development and equity concerns.

4.5 Thirteen Principles of Decentralisation (1996)

In 1991, the central government adopted and implemented the Economic Adjustment Programme, which focused on the creation of an enabling environment for greater economic growth through deregulation of the economy and decentralisation of local functions to local governments, among other measures. This was followed in 1996 by the adoption of Thirteen Principles of Decentralisation to guide the decentralisation of powers and functions to local authorities, in particular, rural district councils (rural local authorities). The principles covered a variety of areas including decentralisation of responsibilities and fiscal powers, capacity building and coordination of government activities, as captured in Figure 10 below.

Figure 10: Thirteen Principles of Decentralisation of 1996[211]

1. That decentralisation is necessary and desirable based on the clear understanding that it promotes and strengthens democracy and civic responsibility as citizens participate in their governance and development.

[207] Schou 2000: 125, Rambanapasi 1992: 1521. In the post-2000 era, the special interest clause has been one of the sources of controversy in the local government system, especially in UCs. The special interest clause will be analysed in Chapter Five.
[208] See Rambanapasi 1992: 1520, Jonga 2012: 130, Makumbe 1998: 20.
[209] Rambanapasi 1992: 1520. See also Jonga 2012: 130.
[210] Makumbe 1998: 20.
[211] Source: Discussion Paper on the Vision of Local Government in Zimbabwe, July 1999 (cited in Pasipanodya *et al* 2000: 20).

2. That decentralisation be defined and understood to mean the legislated transfer of functions and authority from central government to local authorities such as the rural district councils on a permanent basis.

3. There is need for all Ministries to use the same local institutions for the implementation and management of decentralised functions and not to create parallel or separate institutions.

4. That decentralisation is a process and not an event and, as such, it should be implemented cautiously and progressively, having regard to the human, financial and material capacities of the local authorities to whom the transfers would be made.

5. That in respect of all those activities and projects to be undertaken by local authorities, sector ministries retain the power and authority to set standards, monitor performance and consistency of national policies and standards, and intervene appropriately to ensure compliance.

6. That an inter-ministerial committee to manage decentralisation and capacity building be established.

7. That central government, in implementing decentralisation, shall strengthen financial, human and material resource capacities of rural district councils so as to make them effective institutions in the provision of the social and infrastructural services needed for suitable local development.

8. That central government will continue to be responsible for the provision of trunk services which impact upon more than one local authority area or are of a national character.

9. That the transfer of powers and functions by line Ministries to rural district councils be done by the line ministry concerned and that the Ministry of Local Government Rural and Urban Development will coordinate and facilitate this effort.

10. That all monies for recurrent and capital expenditure sourced by line ministries and earmarked for rural district councils be disbursed to the rural district councils soon after the promulgation of the Appropriation Act.

11. That all loans to rural district councils should be channelled through the Ministry of Local Government: Rural and National Housing.

12. That in Zimbabwe there be only two levels which collect taxes, levies and other user charges, namely central government and local authorities.

13. That the Public Service commission will manage the transfer of personnel from central

government to rural district councils where this happens as part of decentralisation.

It is submitted that, as far as decentralisation is concerned, the principles were void of substance. They did not signal any stronger intent towards decentralisation of 'real' powers to lower governments. This is supported by the fact that although the principles were adopted as government policy, they did not receive legal recognition. Consequently, most ministries and agencies of the national government withheld powers and responsibilities which were supposed to be decentralised to local authorities. Further, there is little if any evidence to suggest that policies of ministries and agencies of the national government were guided by the principles after 1996. The other challenge was that the principles emphasised the decentralisation of functions with little attention to decentralising adequate resources.[212] Even after the adoption and implementation of the principles, rural district councils still lacked the necessary powers to generate adequate revenue to meet their obligations.

4.6 Traditional Leaders Act 1998 and 2002

At independence, the administrative and judicial functions of traditional leaders were transferred to DCs and community courts, respectively.[213] In the 1980 and 1990s, traditional leaders continued to lobby the national government for the restoration of their powers. Although traditional leaders lost significant powers, they retained significant influence in communal areas, which created 'operational anxieties' for rural local government structures and processes.[214] Their potential to destabilise rural governance was therefore high. The combined effect of these two factors resulted in a major policy shift in the way the national government treated traditional leaders.[215] Through the Traditional Leaders Act of 1998 traditional leadership was recognised as an important institution of rural governance by restoring powers to allocate rural land and to try civil and criminal cases in rural areas, among other local governance obligations.[216] The Act also provided for the establishment of the Council of Chiefs and Provincial Assemblies of Chiefs, platforms where the national

[212] Pasipanodya *et al* 2000: 20.
[213] Mutizwa-Mangiza 1990: 427, Zimbabwe Institute 2005: 13.
[214] Keulder 1998: 202, Chatiza 2010: 16.
[215] See Keulder 1998: 202.
[216] S 5 Traditional Leaders Act [*Chapter 29: 17*].

government would consult with chiefs on issues affecting the institution of traditional leadership and inhabitants of communal areas.[217]

The Act was amended in 2002 and further provided for the establishment of village and ward assemblies which were composed of elected officials and traditional leaders.[218] The membership of the assemblies combined the previous VIDCOs and WADCOs with traditional leaders at the village and ward levels. The assemblies were charged with facilitating participatory development and the general governance of areas within their jurisdictions, such as cultural and land matters.[219] In a nutshell, the Act recognised the dual importance of election-based structures and traditional authority for rural governance. As shall be discussed in Chapter Five, the structures created by the Traditional Leaders Act are inclusive and participatory on paper but in practice traditional leaders as individuals dominate decision-making at ward and village levels.[220] Further, the assemblies are not participatory but merely a communication medium for government policy. This has had the effect of undermining local democracy.

4.7 Constitution of Zimbabwe 2013

The 2013 Constitution of Zimbabwe has undoubtedly brought about significant reforms to the decentralised system of government in the post-independence era even though, at the time of writing, the new multilevel system of government has yet to be implemented. The Constitution has created a multilevel system of government to realise various national and local goals, including development, democracy and sustainable peace.[221] This section will not discuss in detail the reforms brought about by the 2013 Constitution as these will be discussed in the succeeding chapters. It is submitted that the adoption of the 2013 Constitution has also meant that legislation governing the decentralised system of government has to be aligned with the new constitutional order.[222] The main pieces of legislation which require alignment with the Constitution include the Urban Councils Act, Rural District Councils Act and Provincial Councils and Administration Act.

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[217] See s 39 and s 36 Traditional Leaders Act.
[218] See Part V Traditional Leaders Act. The VIDCOs and WADCOs now serve as technical committees of the Village and Ward Assemblies, respectively. See Part V Traditional Leaders Act.
[219] See Part V Traditional Leaders Act.
[220] Sachikonye *et al* 2007: 90.
[221] See Preamble of chap 14, Constitution.
[222] See Ministry of Local Government 2013: 9.

5. The current multilevel system of government

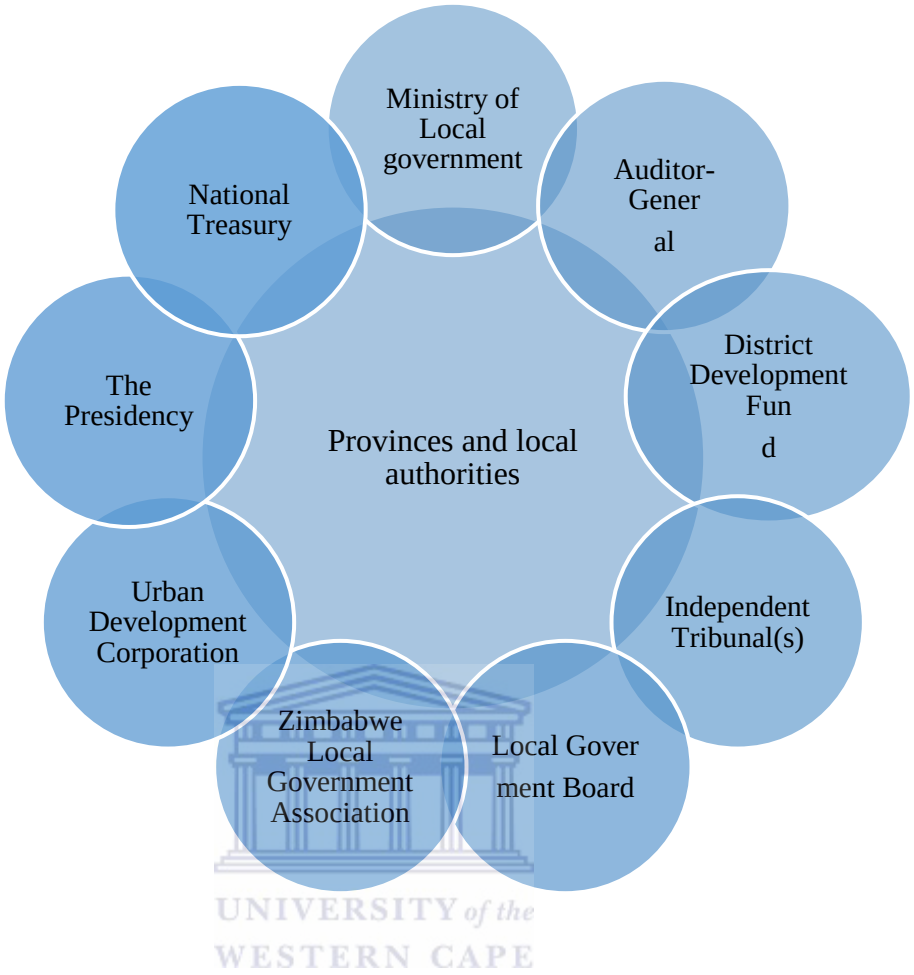
As highlighted above, Zimbabwe has adopted a unitary form of government with authority vested at three levels.[223] As shown in Figure 5 above, government is organised at the national, provincial and local levels. Section 5 of the Constitution provides that the tiers of government in Zimbabwe are the national government, provincial and metropolitan councils, and local authorities. This section will provide a brief overview of this new multilevel system of government.

5.1 National government

At the national level, governmental power is exercised by the executive, judicial and parliamentary arms of government. The executive arm exercises its powers through various ministries and agencies of the national government. The responsibilities of these agencies and ministries include the supervision of provincial and metropolitan councils and local authorities.[224] Ministries and agencies of the national government which are critical to the functioning of the multilevel system of government include the Ministry of Local Government, the Presidency, the National Treasury and the Local Government Board. Other institutions which supervise or have a direct relationship with lower tiers of government are the Office of the Auditor-General,[225] the District Development Fund, and the Independent Tribunal(s).[226] Figure 11 below shows the various institutions that have a direct relationship with provinces and local authorities.

[223] See s 1 Constitution.
[224] See Ministry of Local government 2013: 10.
[225] See s 309(2) Constitution.
[226] See s 278(2) Constitution.

Figure 11: Institutions with a direct relationship with provinces and local authorities



As will be discussed in detail in Chapter Eight, the national government exercises control over local authorities, mainly and directly through the Ministry of Local Government.[227] The Ministry provides the legislative and policy framework that governs the activities of provinces and local authorities. It is charged with the supervision of provincial and local governments as well as traditional leaders.[228] The Ministry has a mandate to create an enabling environment to enhance the capacity and capability of local authorities to deliver on their obligations.[229] Moreover, the Ministry is charged with leading the development and management of the local government sector, and representing the interest of local authorities at national and subnational levels.[230] Among other powers, the Minister has the power to direct certain policy and regulatory actions, approve or refuse to approve specific actions or

[227] See Keulder 1998: 183.
[228] Ministry of Local Government 2013: 13. See also Jonga 2012: 126.
[229] Ministry of Local Government 2013: 13.
[230] Chatiza 2010: 15.

projects, approve the use of borrowing powers, and intervene at subnational levels.[231] As will be observed in the following chapters, the use of these supervisory powers has been controversial and a significant challenge to local autonomy. Besides the formal control, the Ministry of Local Government acts in a coordinating capacity, establishing norms for service levels and urban development.[232] The Minister is required to report to Parliament on all matters relating to provinces and local authorities.[233]

As shall be discussed in Chapter Nine, the Ministry has offices at national, provincial and district levels which coordinate the activities of the national government, provincial governments and those of local authorities.[234] The deconcentrated offices of the Ministry also assume certain functions in cases where a local authority does not have competence in a particular area. For example, physical planning and civil protection competencies are not available in RDCs and therefore are provided by the national government through the Ministry of Local Government.[235] In cases of national disasters, the Ministry has a mandate to oversee disaster management in any local authority.

The Ministry also engages local authorities both formally and informally at political and administrative levels on matters affecting local authorities.[236] Some of the institutions which facilitate engagement between the national government and local authorities are the Association of Urban Councils (representing UCs) and Association of Rural District Councils (representing RDCs). In 2011, these two associations merged to form the Zimbabwe Local Government Association (ZILGA). The rationale for the merger was to enhance the capacity of organised local government to engage with the national government by representing local authorities as one combined voice. However, at the time of writing, the two associations had not yet fully merged and continue to operate semi-independently.

The central-local relations have not been constructive, especially since 2000 when a strong opposition party, MDC, emerged.[237] The situation has been precarious whenever a political party which controls the centre is different from the one controlling at the local level.[238] The Minister, equipped with unlimited powers bestowed on him under various Acts of Parliament,

[231] Ministry of Local Government 2013: 10, Chakaipa 2010: 33.
[232] Jordan 1984: 83, Ndoro 2010: 329. See also the Zimbabwe Institute 2005: 5.
[233] Ministry of Local Government 2013: 10.
[234] Ministry of Local Government 2013: 10.
[235] Chakaipa 2010: 34.
[236] Ministry of Local Government 2013: 14, Jordan 1984: 83.
[237] See Jonga 2012: 117, 131; Muchadenyika 2014: 125.
[238] Chakaipa 2010: 66.

has in certain cases overruled local authorities, raising concerns among scholars of local autonomy.[239] Some scholars argue that the Minister has used these powers to dismiss and suspend councillors aligned to MDC to settle political scores.[240] Between 2000 and 2014, the majority of councillors who were suspended or dismissed were aligned to MDC and in MDC-led councils. The appointment of a commissioners or caretakers to run local authorities by the Minister has also been controversial and political. As of July 2014, more than six mayors in UCs, mostly those aligned to the opposition political party, have been dismissed by the Minister.[241] The animosity which characterises central-local relationships between some local authorities (mostly those administered by MDC-led councils) and the national government is partly the reason why the decentralised system of government has failed to achieve national and local goals, for instance the delivery of basic services. It is therefore important to reform the central-local relationships which the 2013 Constitution has attempted to do, albeit with limited success to date.

5.2 Provincial governments

The 2013 Constitution requires that provinces of Zimbabwe be administered by Provincial and Metropolitan Councils, which make up the second tier of government.[242] At the time of writing, these councils have not been established.[243] The ZANU-PF-led government has not yet implemented the new multilevel system of government fully, among other reasons because of a lack of financial resources and political will. As shall be discussed in Chapter Five, provincial and metropolitan councils are composed of a combination of directly and indirectly elected and appointed officials.[244] All local authorities within a province are represented in the membership of the provincial or metropolitan council of that province.[245] Under the Lancaster House Constitution, provinces were governed by provincial councils chaired by provincial governors. Provincial governors were appointed by the President and represented the President at the provincial level. Provincial councils were largely coordinative structures of the national government at the provincial level with no 'real'

[239] Jonga 2012: 117, 130; Muchadenyika 2014: 125.
[240] The Centre for Peace Initiative in Africa 2005: 23.
[241] Chakaipa 2010: 40.
[242] See s 268-70 Constitution. See also Ministry of Local Government 2013: 10.
[243] See chap 14 Constitution.
[244] See s 268 and s 269 Constitution.
[245] See s 208(1) and s 269(1) Constitution.

powers and functions.[246] In addition to this coordinative role, the 2013 Constitution requires these councils to carry out socio-economic development in their respective provinces.[247]

5.3 Local Authorities

As highlighted above, the lowest tier of government is made up of urban and rural local authorities established to represent and manage the affairs of people living in urban and rural areas.[248] Local authorities together administer almost all of Zimbabwe's 390 757 square kilometres.[249] Rural local authorities (also known as rural district councils) administer the affairs of people in rural areas alongside the traditional leadership of chiefs and headmen.[250] There are a total of 92 local authorities broken down into various categories, as described below. While local authorities have constitutional recognition, they largely exercise powers delegated to them through various Acts of Parliament.[251]

5.3.1 Urban local authorities

The Urban Councils Act[252] is the principal act governing urban local government. The Act provides for the establishment, powers, functions and categories of urban local authorities (UCs). UCs are established by the President, who also determines their boundaries. The powers and functions of UCs can be categorised as permissive, those which local authorities may undertake; and mandatory, those that they have an obligation to undertake. There are four classes of UCs: namely, city councils, municipal councils, town councils and local boards (presented in descending order of status, powers, resources and functions).[253] As shown in the Table 3 below, there are 31 UCs, divided into four local boards, eleven town councils, nine municipal councils and seven city councils.[254] The status of an UC is determined by the national government. It is dependent on various factors, including size, population, infrastructure, services offered, economic status and social development.[255]

[246] See Pasipanodya *et al* 2000: 69.
[247] S 270(1) Constitution.
[248] See s 5 Constitution. See also Ministry of Local Government 2013: 10.
[249] ZimStat 2012: 13. Excluded areas include military, mining and wildlife areas as well as game reserves and national parks.
[250] See chap 15 Constitution.
[251] See chap 17 Constitution. See also Ministry of Local Government 2013: 9, 17.
[252] Urban Councils Act [*Chapter 29: 15*], hereafter referred to as the UCA.
[253] See Ministry of Local Government 2013: 9.
[254] Combined Harare Residents Association 2014: 14.
[255] Ministry of Local Government 2013: 9.

Table 3: Categories of urban local authorities

City Councils	Municipal Councils	Town Councils	Local Boards	Total
Harare	Chinhoyi	Chiredzi	Epworth	
Bulawayo	Chitungwiza	Chipinge	Hwange	
Gweru	Chegutu	Beitbridge	Chirundu	
Kadoma	Bindura	Gokwe	Ruwa	
Kwekwe	Gwanda	Norton		
Mutare	Kariba	Karoi		
Masvingo	Marondera	Lupane		
	Redcliff	Rusape		
	Victoria falls	Shurugwi		
		Plum Tree		
		Zvishavane		
Total 7	9	11	4	31

Source: Combined Harare Residents Association 2014: 15.

At the time of writing, UCs are led by a ceremonial mayor (or chairperson) who is elected from the members of the council.[256] The 2013 Constitution allows these councils to be led by an executive mayor provided that the mayor is directly elected by the citizens.[257] The administrative arm of UCs is led by a town clerk, in respect of city and municipal councils, or secretary in the case of town councils and local boards. The town clerk or secretary is supported by a team of departmental heads who are all appointed by the council with the consent of the Local Government Board. The main sources of revenue of UCs include charges for water services, refuse removal and sewerage; property rates; and fees on the processing of licenses, certificates and permits.[258] They also receive grants and can borrow money from the national government. UCs have not been able to generate sufficient revenue from these sources mainly due to the economic meltdown experienced in Zimbabwe and the fact that the taxes at their disposal tend to have weak resource-raising potential. As argued in

[256] See s 265(2) and s 277(2) Constitution.
[257] See s 277 read together with s 274(5) Constitution.
[258] See UCA.

Chapter Seven, the absence of adequate financial resources has had an adverse impact on their ability to provide basic services and to meet their development obligations.[259]

5.3.2 Rural local authorities

There are 60 rural local authorities (rural district councils) whose jurisdiction covers rural areas and service centres except military, mining areas, game reserves and national parks.[260] As discussed in paragraph 4.4 above, rural district councils (RDCs) were formed when RCs and DCs were amalgamated in 1988. The Rural District Councils Act (RDCA)[261] is the principal Act which governs the activities of RDCs. Unlike in UCs, there is only one category of RDCs. The list of all RDCs is provided in the Table 4 below.[262] RDCs are led by a chairperson who is elected from the membership of the elected council.[263] The administrative arm of an RDC is led by a chief executive officer who is appointed by the council with the consent of the Minister.[264] The chief executive officer is supported by a team of departmental heads, who are called officers.[265]

Table 4: List of rural local authorities

Beitbridge, Bikita, Bindura, Binga, Bubi, Buhera, Bulilima, Chamunika, Chegutu, Chikomba, Chimanimani, Chipinge, Chirumanzu, Chiredzi, Chivi, Gokwe North, Gokwe South, Goromonzi, Guruve, Gwanda, Gutu, Hurungwe, Hwange, Hwedza, Insiza, Kadoma, Kusil, Makonde, Makoni, Manyame, Marondera, Masvingo, Mazowe, Mbire, Mhondoro, Mberengwa, Mudzi, Murewa, Mutare, Mutasa, Mutoko, Muzarabani, Mwenezi, Ngezi, Nkayi, Nyaminyami, Nyanga, Pfura, Runde, Rushinga, Sanyati, Tongogara, Tsholotsho, Umguza, Umzingwane, Uzumba-Maramba-Pfungwe, Vungu, Zaka, Zivagwe and Zvimba

Source: Combined Harare Residents Association 2014: 15.

Unlike UCs, where municipal councils, town councils and local boards exercise different powers, RDCs have uniform powers and functions. These powers and functions are listed in

[259] See Coutinho 2010: 84
[260] Ministry of Local Government 2013: 9, Combined Harare Residents Association 2014: 15. Central government ministries and agencies, which are responsible for military, mining, wildlife, game reserves and national parks, are the responsible authorities for these areas in rural areas.
[261] Rural District Councils Act [*Chapter 29: 13*], hereafter referred to as the RDCA.
[262] Ministry of Local Government 2013: 9.
[263] See s 265(2) and s 277(2) Constitution, s 45(1) RDCA.
[264] See s 66(1) RDCA.
[265] See s 66(3) RDCA.

the first schedule of the RDCA.[266] RDCs finance their activities from revenue sources that include levies, user charges, property rates and intergovernmental transfers.[267] They raise 15 per cent of their revenue from their own sources and the remainder comes in the form of conditional grants from the central government.[268] The extent to which RDCs can function autonomously is limited by their heavy dependency on the central government for financial support. On paper, RDCs exercise a degree of devolved power, but in practice 'virtually all they seek to do has to be approved by the central government through the Minister'.[269] Most of the functions of RDCs reflect the areas of operations of deconcentrated agencies of the central government. Most RDCs are reluctant to carry out all of their functions due to limited resources and thus allow central government agencies to carry out those tasks.[270] The superior position of agencies of the central government, relative to RDCs, allows these agencies to dominate the delivery of services in rural areas.

5.3.3 The institution of traditional leadership

As discussed above, traditional leaders have had a role in rural local governance before independence and the post-colonial government has also aligned rural local government with chiefs, headmen and village heads.[271] A total of 269 chieftainships are recognised in Zimbabwe.[272] Chiefs are appointed by the President to preside over communities inhabiting communal and resettlement areas which are also governed by RDCs.[273] As will be discussed in Chapter Five, the harmonisation of the institution of traditional leadership and local elected structures has resulted in conflicts between traditional leaders and elected officials.[274]As highlighted above, the colonial government made use of traditional leaders to implement its policies and to control the black population in communal areas. Some scholars argue that the ZANU-PF led government has also 'sought the assistance of traditional leaders to influence both electoral and governance processes'.[275] In recent years, the ZANU-PF government

[266] See s 71 RDCA.
[267] See s 96, 75, 99(1), 98 RDCA.
[268] Mashumba 2010: 110. See also Schou 2000: 126.
[269] Makumbe 2010: 90.
[270] Chakaipa 2010: 46. For example, the District Development Fund, a central government agency, provides infrastructure in rural areas. The DDF has come under heavy criticism for failing to consult RDCs, who are the planning authorities, in rural infrastructural development and act like a parallel structure to RDCs (Zimbabwe Institute 2005: 6).
[271] Makumbe 2010: 88, Chakaipa 2010: 48.
[272] Chatiza 2010: 16.
[273] S 3(1) and (2)(*a*)(i) Traditional Leaders Act.
[274] The Centre for Peace Initiatives in Africa 2005: 23, Chatiza 2010: 12.
[275] Chakaipa 2010: 53; Makumbe 2010: 88, 93, 94.

sponsored the purchase of cars and construction of modern houses, with electricity and water, for chiefs. Although it is stated that the allocation of cars and construction of houses was to improve the well-being of chiefs, it is claimed that the real objective was to entice chiefs to organise support for the government and, in particular, ZANU-PF.[276] It is argued that Chiefs have made it extremely difficult for the MDC to operate in rural areas by threatening and punishing people who are seen to sympathise with political parties other than ZANU-PF.[277] Makumbe states that those few chiefs who have allowed the MDC to organise politically in their areas have been victimised by state agencies and threatened with withdrawal of government support.[278] Thus the argument that 'the institution of traditional leadership in Zimbabwe has gone through colonial and post-colonial acceptance, usage and political corruption' may be appropriate.[279]

Traditional leaders nonetheless still play an important role in facilitating the participation of citizens in development planning and implementation. Traditional leaders are an effective tool of communication due to the hierarchical organisation of traditional authority: chiefs, headmen and village heads.[280] It is therefore submitted that any effort to ignore traditional authority in rural governance is unconstructive and unsustainable as traditional leaders command considerably more support and respect in rural areas than elected officials. However, the major challenge remains of how to strike an appropriate balance between democratic governance and traditional authority in communal areas.

6. Conclusion

The origins of the decentralised system of government in Zimbabwe can be traced back as far as 1890 when the first modern system of local government was established. This system of local government was designed by the colonial government to serve the white population at the expense of blacks. It was racist, exploitative, fragmented and was used as a tool for colonial administration and ethnic division. As a result, many blacks hated local government in all its manifestations. Having adopted a decentralised system of government from the

[276] See Chakaipa 2010: 53, Makumbe 2010: 93- 4.
[277] See Makumbe 2010: 88, 93, 94. In some cases, chiefs have threatened supposed supporters of MDC with expulsion from their rural homes if they continue to support the MDC. In other cases, supporters of the MDC have been brought before the council of the chief on 'charges' of supporting the MDC. If convicted, they have been ordered to pay a fine in the form of goats and maize as an admission of guilt.
[278] Makumbe 2010: 94 (quoting the report of Zimbabwe Election Support Network).
[279] Chatiza 2010: 17.
[280] Chakaipa 2010: 53.

colonial regime which favoured whites at the expense of blacks, in 1980 the black-led government implemented reforms to democratise the system of local government and realise development. The national government decentralised more powers and functions to local authorities, especially rural local authorities. It has also re-centralised some of these powers particularly after the formation of the MDC. It is this 'discordant' decentralised system of government, which gives with one hand and takes with the other, that the 2013 Constitution in many respects reflects. The only difference is that unlike the Lancaster House Constitution, the 2013 Constitution mandates the national government to devolve powers and functions to provincial and local governments.[281] The requirement for devolution necessitates a review of the statutory and institutional framework governing the multilevel system of government. It will mostly require a change of culture and tradition in the way in which the national government treats provincial and local governments. This argument is elaborated in the following chapters.

[281] See Preamble of chap 14 Constitution.

Chapter 4

Establishment of provinces and local authorities

1. Introduction

As highlighted in the preceding chapter, Zimbabwe is divided into ten provinces which are administered by provincial and metropolitan councils. The provinces are further divided into municipal areas administered by a total of 92 local authorities. The manner in which provinces and municipal areas are established have consequences for development, democracy and sustainable peace. The same applies to the (re)determination of provincial and local boundaries. This chapter examines the establishment, dissolution and naming of provinces and local authorities in Zimbabwe. It critically assesses the (re)determination of provincial and local boundaries and wards. The chapter will discuss procedures applicable to provinces before examining those applicable to local authorities. In the last section, the chapter will discuss the legal nature of provincial and metropolitan councils and local authorities.

2. Provinces

2.1 Establishment

In Chapter Two it was contended that a multilevel system of government allows political groups which are unlikely to influence politics at national level to take part in politics and exercise a degree of political authority at subnational level while influencing decision-making at national level.[1] The positive effect of this arrangement is that sustainable peace is promoted by accommodating diversity and counteracting regional or ethnic marginalisation, which may threaten peace. As highlighted above, the nature in which provinces are established has significant implications on the extent to which a multilevel system of government can foster sustainable peace, democracy and development. Zimbabwe has joined the family of nations which have recognised provinces or regions in their respective constitutions.[2]

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[1] Jackson & Scott 2007: 5, 6; Braathen & Hellevik 2008: 7; and Sisk 2001: 74.
[2] These countries include South Africa, Kenya, and Ethiopia. Schedule 1A of the Constitution of South Africa provides the names of the nine provinces, the First Schedule of the Constitution of Kenya provides the names of the 47 counties, and Article 47(1) of the Federal Democratic Republic of Ethiopia recognises the names of the nine states.

Section 267(1) of the 2013 Constitution provides that the provinces into which Zimbabwe is divided are:

a) Bulawayo Metropolitan Province
b) Harare Metropolitan Province
c) Manicaland Province
d) Mashonaland Central Province
e) Mashonaland East Province
f) Mashonaland West Province
g) Masvingo Province
h) Matabeleland North Province
i) Matabeleland South Province, and
j) Midlands Province[3]

The recognition of these ten provinces in the 2013 Constitution was one of the heavily contested issues in the constitution-making process.[4] As discussed below, such recognition is significant for the extent to which the multilevel system of government can realise sustainable peace, development and democracy.

2.1.1 Controversy surrounding the names and numbers of provinces

In the outreach consultative programme carried out by COPAC for the formation of the Constitution, people expressed divergent views on the number and names of provinces Zimbabwe should have. Some proposed that Zimbabwe be divided into five provinces whereas others wanted the number of provinces to remain ten.[5] Others proposed different numbers all together. Those who proposed five provinces pushed for the demarcation of provincial boundaries largely on ethnic lines to create Mashonaland, Matabeleland, Manicaland, Midlands and Masvingo provinces.[6] The drawing of provincial boundaries mainly on ethnic lines could have potentially reinforced ethnic mobilisation and encouraged secession.[7] The names of provinces were also controversial. Some advocated for the naming of provinces after the dominant ethnic group in each province, natural monuments and natural resources in the province concerned and after cardinal points.[8] Others preferred to retain the

[3] S 267(1) Constitution.
[4] Constitution Select Committee (COPAC) 2012: 32.
[5] See COPAC 2012: 36.
[6] See COPAC 2012: 36.
[7] Brancati 2009: 10, 12; Siegle & O'Mahony 2010: 138.
[8] See COPAC 2012: 37.

names of provinces which were in use under the Lancaster House Constitution.[9] The three major parties comprising COPAC negotiated these controversial issues and resolved to retain the number and names of provinces which existed under the Lancaster House Constitution.[10] Five of the ten provinces, namely, Mashonaland Central, East and West, Matabeleland North, and South provinces, are named after the dominant ethnic group in that province.[11] Retaining old provinces may have served as a peace-building measure as it was likely to be met with less resistance.

2.1.2 Significance of constitutional recognition of provinces

The recognition of the provinces in the Constitution is significant for a number of reasons. It means that the numbers and names of provinces may not be changed without amending the Constitution, thus providing a security for their existence. As argued in Chapter Two, security of existence forms a critical component of political autonomy.[12] In this regard, the Constitution represents a radical shift from the Lancaster House Constitution where recognition of provinces was provided by an ordinary Act of Parliament.[13] The President could establish, assign a name and abolish a province at any time.[14] The existence of provinces was not guaranteed. It is submitted that section 3 of the Provincial Councils and Administration Act, which empowers the President to establish and abolish provinces, is inconsistent with the 2013 Constitution since the President no longer has such powers. This section must be repealed.

2.2 Demarcation of boundaries

The demarcation of internal boundaries in a state is often a contentious issue that has to be considered when designing a multilevel system of government.[15] The main reason is that internal boundaries have implications for, among other things, access to resources, viability of provinces, group identities, national integration, and efficiency.[16] The demarcation of provincial boundaries mainly revolves around two, usually contrasting issues. On the one

[9] See COPAC 2012: 37.
[10] See Number 5 Sixth Schedule, Constitution.
[11] Mashonaland and Matabeleland provinces are named after the *Shona* and *Ndebele* speaking people, respectively.
[12] See para 6.1.4. See also Kalin 1998: 1, Tarr 2011: 172-3, Steytler 2009: 410.
[13] The Provincial Councils and Administration Act.
[14] S 3 Provincial Councils and Administration Act.
[15] See Skaburskis 2004: 52 and Paddison 2004: 22-3.
[16] De Visser *et al* 2013: 267.

hand, there is the argument for functionality, usually associated with efficiency and economies of scale, and, on the other hand, the preservation of group identities.[17] International literature is inconclusive with regard to the demarcation of provincial boundaries. However, it can be deduced from the literature that the weight given to either functionality or preservation of group identities should be informed by the local environment, including historical factors.[18] A common feature worldwide is that demarcation of provincial boundaries is usually carried out by an independent body or Parliament following constitutionally or legally recognised set criteria.[19] Moreover, there is usually a legal requirement for the participation of citizens in any boundary (re)demarcation process.[20] In Zimbabwe, the (re)demarcation of provincial and district boundaries is a responsibility given to Parliament undertaken after consulting the Zimbabwe Electoral Commission (ZEC) and people of the provinces or districts concerned.[21] The roles of Parliament, ZEC and citizens are examined below.

2.2.1 Role of Parliament

As highlighted above, the old provinces and their boundaries were retained under the 2013 Constitution.[22] The Constitution directs Parliament to enact legislation fixing boundaries of provinces.[23] This means that the powers to (re)demarcate provincial boundaries may not be delegated to any other body as it is Parliament's primary law-making power.[24] Like the establishment of provinces, the determination of provincial boundaries under the 2013 Constitution marks a significant departure from the Lancaster House Constitutional order, where boundaries of provinces and districts were determined by the President.[25] The President could alter provincial boundaries at any time. The danger with that system was that

[17] De Visser *et al* 2013: 267. See also Baraki 2013: 32 and Fessha 2010: 111. Functionality refers to 'practical effects including the level of interconnectedness within a territory, indicated by the movement of people and goods, an integrated transport system, topographical features and economic coherence'.
[18] Baraki 2013: 233, De Visser *et al* 2013: 267. Ethiopia, for example, has adopted ethnicity as the primary base for organising the state. Similarly, regions in Belgium and Quebec in Canada are delineated on an ethnic base for historical and political reasons. South Africa, on the other hand, advances functionality as the basis for demarcating provincial boundaries although 'silently' preserving group identities. See De Visser *et al* 2013: 276-80 and Baraki 2013: 233.
[19] See Singiza & De Visser 2011: 33. In South Africa, Kenya and Ethiopia the (re)demarcation of provincial boundaries is carried out by Parliament.
[20] See De Visser *et al* 2013: 277.
[21] S 267 Constitution.
[22] See Number 5 Sixth Schedule, Constitution.
[23] S 267(1) Constitution.
[24] See s 134(a) Constitution. This means that the Provincial and Metropolitan Councils Draft Bill (August 2014), which purports to delegate the responsibility of establishing provincial boundaries, is unconstitutional.
[25] S 3(1) Provincial Councils and Administration Act.

there was no oversight of the powers to establish or abolish provinces. The President, as leader of a political party, could abolish a province to achieve political goals. Provincial boundaries could be manipulated in order to reduce the electoral power of opposition political parties (gerrymandering).[26] The removal of powers, from the President to Parliament, to determine the boundaries of provinces is commendable in the light of democracy since Parliament is a representative body.[27] It is submitted that section 3(1) of the Provincial Councils and Administration Act, which gives the President the power to determine and alter provincial boundaries, is unconstitutional. Hence, the section must be repealed.

It is argued, however, that the vesting of powers in Parliament to determine provincial boundaries may undermine the political autonomy of provinces. Although the existence of each province as a unit is guaranteed in the Constitution,[28] the boundaries of each province are not guaranteed. The national government, through Parliament, can redefine the size of provinces at any time. Thus, the size of each province will largely be determined by the ruling party or coalition of parties at national level. Such an arrangement may undermine stability at provincial level since the size of each province can be redefined each time there is a new ruling party or coalition of parties at the national level. Such action has an adverse impact on the autonomy of a province given that the size of the territory of a province is a significant indicator of its autonomy.[29] A preferable scenario would have been for the boundaries to be determined by an independent body, as suggested by a section of the public during the constitution outreach programme carried by COPAC.[30] Independent, non-political bodies are more likely to base decisions on the merits of proposed boundary proposals rather than on political or 'parochial' considerations.[31] They also have the advantage of providing balanced representation and development of institutional expertise and memory, which political bodies such as parliament may not adequately provide.[32]

[26] See Meligrana & Razin 2004: 237, Cameron 2004: 209.
[27] See Lindsey 2004: 61.
[28] See s 267(1) Constitution.
[29] See Paddison 2004: 22-5.
[30] COPAC 2012: 37.
[31] Lindsey 2004: 60. See also Singiza & De Visser 2011: 33.
[32] See Lindsey 2004: 60, Meligrana & Razin 2004: 234.

2.2.2 Role of the Zimbabwe Electoral Commission.

When (re)demarcating provincial and district boundaries, Parliament is required to consult the ZEC.[33] The ZEC is an independent institution established by the Constitution to administer elections and delimit constituencies and wards.[34] The rationale behind this constitutional requirement is that any (re)demarcation exercise on provincial and district boundaries has an impact on the administration of elections and delimitation of constituencies and wards. As such, the ZEC has to be given an opportunity to make representation on the proposed boundary changes.

2.2.3 Role of citizens

When dividing provinces into districts Parliament is required to consult citizens of the provinces and districts concerned.[35] Equal obligation is placed on Parliament when altering the boundaries of any district or province.[36] This constitutional requirement is commendable in the light of democratic aims as it ensures that citizens affected by any proposed (re)demarcation exercise have an opportunity to influence decisions relating to the (re)demarcation process.[37] The significance of such citizen involvement is that boundaries are fundamental to placed identities and can be used to preserve or break territorial attachments citizens may have.[38] It is submitted that the ability of the citizens to influence the (re)demarcation process largely depends on the methods of consultation and the time period given to the citizens to participate.[39] Thus, it is important that the legislation providing for (re)demarcation of provinces and districts involves appropriate mechanisms for consulting citizens and a 'reasonable' time period of such consultation. It is however submitted that the need for consultation should be balanced with costs and time considerations so that alteration of provincial and district boundaries does not become an unaffordable exercise.[40]

[33] S 267(2) Constitution.
[34] See s 239 Constitution.
[35] S 267(2) Constitution.
[36] S 267(2) Constitution.
[37] See s 267 Constitution. See Baraki 2013: 234.
[38] See Paddison 2004: 25, Meligrana & Razin 2004: 226.
[39] See Sisks 2001: 155, Smith 2007: 152.
[40] See Lindsey 2004: 57, Baraki 2013: 237.

2.2.4 Towards criteria for (re)demarcation of provincial boundaries

As highlighted above, the Constitution, while giving Parliament the power to (re)demarcate provincial and district boundaries, does not provide specific procedures to be followed when (re)demarcating provincial and district boundaries.[41] This means that Parliament has the discretion to decide the substantive criteria to guide the (re)demarcation process. In this section the chapter will discuss some of the factors which may be considered when (re)demarcating provincial and district boundaries.

2.2.4.1 Procedural criteria

It is argued that the process of (re)demarcation of boundaries should be transparent and participatory.[42] This means that there is a clear procedure to be followed requiring citizen participation. Participation can take the form of public hearings, referendums and opportunities for citizens and other interested stakeholders to put forward objections so that their interests and concerns are taken into account when (re)demarcating boundaries.[43] The procedural criteria should also require the consultation of any provincial or metropolitan council whose boundaries will be affected by any (re)demarcation exercise. This requirement, while not providing complete assurance to provinces that their interests as distinct units will not be vulnerable to action by the national government, at least gives them the chance to influence the demarcation exercise.[44] It is also an extension of cooperative governance required by the 2013 Constitution (as discussed in detail in Chapter Nine).[45]

2.2.4.2 Substantive criteria

As discussed above, the debate on determination of provincial boundaries revolves around functionality and the accommodation of group identity.[46] It is contended that the weight given to any of the two should be guided by the local environment. Since the Constitution is silent with respect to the substantive criteria for (re)demarcating provincial and district boundaries, it may be useful to refer to the Constitution Drafting Principles. The principles suggest that factors such as geography, economic factors, population, ethnicity, local language and

[41] S 267(2) Constitution.
[42] Singiza & De Visser 2011: 33.
[43] Singiza & De Visser 2011: 33.
[44] See Watts 2008: 78.
[45] See S 194(1)(g) Constitution.
[46] Baraki 2013: 233, De Visser *et al* 2013: 267.

cultural values could be considered when (re)demarcating provincial and district boundaries.[47] The principles however do not provide guidance on the weight to be attached to any of these factors.[48] It is submitted that all the factors listed above should be considered when (re)demarcating provincial boundaries. The weight given to economic factors, preservation of group identities, demography and geographical factors should depend on whether the province is wholly urban or a combination of urban and rural areas. In the case of Harare and Bulawayo provinces, which are wholly urban, there may be no value in giving prime consideration to preservation of group identity factors such as culture, language and ethnicity. These metropolitan provinces are made up by a diversity of groups even though they are primarily Shona and Ndebele, respectively. They are the economic hub of the country, and so urbanisation and development pressures will likely require (re)adjustment of the boundaries of these provinces into neighbouring provinces whenever efficiency or/and economies of scale demand it.

As for the other eight provinces, which are partially urban and rural, while consideration of economic, geographical and demographical factors is necessary they may be need to give prime consideration to preservation of group identity. If followed, this proposal will likely result in the adoption of more or less the same provincial boundaries, which are largely ethnic-based.[49] Although the current demarcation of provincial boundaries is not solely based on the 'principle of ethnic exclusivity,'[50] each ethnic group has a province in which it is the majority where is can advance its interests.[51] This does not mean however that Zimbabwe should follow the example of Ethiopia where the boundaries of the nine states are exclusively demarcated along linguistic and ethnic lines.[52]

[47] COPAC 2012: 33.
[48] COPAC 2012: 37.
[49] For example, the three Mashonaland provinces are named after the *Mashona* ethnic group which are dominant ethnic group in those provinces. The two Matabeleland provinces are named after the *Ndebele* ethnic group, which are the majority in those provinces.
[50] See Fessha 2010: 114.
[51] See De Visser *et al* 2013: 280; Fessha 2010: 114.
[52] See Watts 2008: 77. Fessha states that in Ethiopia, 'more than two-thirds of the people that live in five of the nine regional states, including Tigray, Amhara, Oramyia, Somalia and Afar, belong to a single ethnic group'. He further states that 'each of these states is also named after the name of the dominant ethnic group in each state' (2010: 201).

3. Local authorities

As discussed in the previous chapter, the local tier of government is made up of urban and rural local authorities.[53] The creation of different structures at the local level reflects asymmetric decentralisation, which is a major characteristic of the Zimbabwean multilevel system of government. Asymmetric decentralisation has been adopted as a response to the different environmental contexts that exist in urban and rural areas that may not be effectively managed by a uniform set of local structures with equal powers.[54] In this section, the chapter will examine the establishment of local authorities and the determination of boundaries and wards. As per the norm in this study, the discussion is divided into urban and rural local authorities.

3.1 Establishment of urban local authorities

The Constitution requires the establishment of urban local authorities to 'represent and manage' the affairs of people in urban areas.[55] It further permits the establishment of different classes of urban local authorities for different urban areas.[56] This is an extended form of asymmetric decentralisation since different structures are not only established for rural and urban areas but also within urban areas. The Constitution does not provide for how different classes of urban local authorities are to be established. Thus, Parliament has the discretion to determine the establishment of urban local authorities. The UCA makes provision for various classes of urban local authorities. In order of hierarchy, there are city councils, municipal councils, town councils and local boards.[57] The ranking reflects the status in terms of powers and functions, fiscal and administrative capacity, number of councillors and level of remuneration offered to council officials.[58] The discussion in this section is divided according to the different classes of urban local authorities.

3.1.1 City, municipal and town councils

The establishment of local authorities has implications on local democracy. Thus, it is important that citizens affected by any proposal to establish a new local authority are given

[53] See S 5 Constitution.
[54] See Ford 1999: 14, Bahl 1999: 10.
[55] S 274(1) Constitution.
[56] S 274(3) Constitution.
[57] See s 4 and s 6 UCA.
[58] See the UCA.

an opportunity to make representations on such a proposal given that it has significant consequences on their daily lives.[59] As will be discussed in Chapter Nine, cooperative governance also requires that governance decisions such as those relating to establishment of new local authorities should be made after all affected governments have been consulted. Such consultation is necessary to allow any affected government to make representations before decisions are taken that may impact on their institutional status, powers and functions.[60] In Zimbabwe, the establishment of municipal and town councils is an exercise undertaken by the President in consultation with the local authority concerned. It is important to note that there is no provision for the establishment of city councils. Legally, city councils are classified as municipal councils.

3.1.1.1 Role of the President in establishing municipal and town councils

The President has the power to establish a municipality or town.[61] Following the establishment of a municipality or town, the President may establish and assign a name to a municipal or town council to administer that municipality or town, respectively.[62] The actual establishment of a municipality, town, or of a council for a municipality or town occurs when the President issues the proclamation to that effect in the government gazette.[63] At any time after the establishment of a council, the President may alter its name. The President may also abolish that municipality or town council by merging it with another council or divide it to create more than one local authority.[64] Thus, the President has unfettered power to determine when to establish or abolish a municipal or town council.[65] When excessing the power to

[59] See the Aberdeen Principles 2005: 7.
[60] About the importance of intergovernmental consultation before establishment of a new subnational government, See Watts 2001: 39.
[61] S 4(1) UCA.
[62] S 4(1)(a)(c) UCA.
[63] A council will come into existence in at least 60 days after the publication of the proclamation.
[64] S 4 (2)(a)(d) UCA.
[65] See S 4(1) UCA. See also Clause 3 Urban Councils Amendment Bill, 2011. The Bill is a private member's bill which was brought before Parliament with an objective purportedly to reduce the powers of the national government over municipal and town councils so as to promote local democracy. The Minister responsible for local government, however, contested in court the introduction of the bill by a Member of Parliament, citing Article XX of the GPA which stipulated that during the course of the agreement only members of the executive could bring bills for consideration by Parliament. The Minister sought an order declaring the introduction of the bill null and void. The order was granted by the court. See *Chombo v Parliament of Zimbabwe and Other [2013] ZWSC 5(22 May 2013)*. Despite the court dismissal, the introduction of the bill shows at least that there is recognition that the powers of the national government over local government are too excessive and have to be reduced.

establish, assign a name or abolish a municipality or town the President is however required to consult any local authority concerned.[66] This requirement is discussed below.

3.1.1.2 Legal requirement to consult concerned local authority(s)

It was argued in Chapter Two that local governments are unlikely to perform effectively if their existence is in constant jeopardy by authorities on higher levels of government who may dissolve them at any time.[67] The question is whether the legal framework in Zimbabwe grants local authorities the opportunity to defend their existence. Before the President may establish a new municipality or town, he or she is required to consult any local authority(s) affected by the establishment of that municipality or town.[68] As argued above, such consultation is necessary to enable any concerned local authority to make representation on the proposed establishment of a new municipal or town council. It thus promotes cooperative government by preventing the national government from making decisions which materially affect a particular local authority without giving that local authority an opportunity to defend and advance its interests.[69] However, such a consultation requirement does not apply in relation to abolition of local authorities. This means that the UCA does not afford municipal and town councils an opportunity or right to defend their existence. To provide security of existence to each municipal and town councils, it is submitted that it is necessary to obtain the consent of the affected local authority before it can be abolished or have part of its area altered.[70]

3.1.1.3 Absence of a legal requirement for involvement of citizens

While the President is required to consult any local authority affected by the establishment or abolishment of a municipal or town council, the UCA does not require the President to consult citizens of the area concerned. Further, there is no obligation on the President to consult the citizens of the area concerned when naming or renaming a municipal or town council. The absence of such a requirement presents a challenge for local democracy given that the establishment, (re)naming or abolition of a municipal or town council directly affects the citizens.[71] It has implications for access to public services and accommodation of local

[66] S 4(1)(2) UCA.
[67] Kalin 1998: 1.
[68] S 4(1) UCA.
[69] Watts 2001: 39.
[70] See Clauses 3 Urban Councils Amendment Bill 2011.
[71] See the Aberdeen Principles 2005: 7.

identities, among other important local issues. With regard to the naming of local government units, 'there can be little doubt that a municipality's name is a significant expression of local identity and therefore local autonomy'.[72] Failure to consult citizens and communities on matters which affect their local identity is a danger to sustainable peace since it may be met with resistance. It is proposed that citizens of the area concerned should be consulted when establishing or abolishing a new local authority.[73] Similar requirements should apply to the (re)naming of a local authority.[74]

3.1.2 Local Boards

As mentioned in paragraph 3.1 above, local boards are the lowest category of urban local authorities, enjoying less autonomy than municipal and town councils. The UCA assigns to the President the power to establish local boards to administer local government areas.[75] Local government areas are those which are deemed unsuitable to be administered by an elected council because they lack the potential to raise revenue to sustain an elected body. They are indirectly administered by the national government through a board appointed by the Minister. The President also assigns and alters the name of a local board or local government area.[76] The actual establishment of a local board occurs when the President issues a proclamation to that effect in the *Gazette*. The President is required to consult any local authority concerned when exercising the power to establish and name a local government area and respective local board.[77] There is no equal obligation to consult citizens of the area concerned. The argument raised in paragraph 3.1.1.3 above with respect to the need to consult citizens when establishing local authorities also applies here.[78]

While the President has the power to alter the name of a local government area or local board, he or she may not exercise such powers without the consent of the relevant local board.[79] The same requirement applies to the abolition of a local board.[80] It is argued that these legal requirements provide some form of security of existence of each local board or local

[72] Steytler and De Visser 2009: 2-26.
[73] See Clauses 3 Urban Councils Amendment Bill 2011.
[74] See Steytler & De Visser 2009: 2-26.
[75] S 6(2)(a) UCA. See 6(1) UCA. Local government areas are areas which are not administered by any local authority but do require some form of local government.
[76] S 6(2)(a)(b) UCA.
[77] S 6(1) UCA.
[78] Clause 6 Urban Councils Amendment Bill. See also Steytler & De Visser 2009: 2-26.
[79] S 6(3) UCA.
[80] S 6(2)(d), 6(3) UCA.

government area. They provide safeguards against arbitrary abolition of local boards by the national government.[81] The question is why are such requirements providing some form of security of existence of local boards not applicable to municipal and town councils, which are high level local authorities? It may be necessary to give all local authorities this kind of security.[82]

3.1.3 Extended systems of local government

As argued above, local governments are unlikely to perform properly if their existence is in constant jeopardy by senior governments.[83] It was therefore argued in paragraph 6.1.4 of Chapter Two that the existence of each local unit should be guaranteed preferably in the Constitution or, failing which, in national legislation.[84] As observed below, the 2013 Constitution does not guarantee the existence of each local unity. It has recognised the extended systems of local government which existed in both the pre- and post-independence eras. In section 274(3) the Constitution states that 'two or more different urban areas may be placed under the management of a single local authority'.[85] The Constitution, however, does not provide clarification on how such a system of local government should be developed. Thus, Parliament has the discretion to determine the nature and procedure of establishing extended systems of local government. In terms of the UCA, extended systems of local government take three forms, namely:

- a system of local government between several local authorities,[86]
- a system of local government involving the exercise of the functions of a council in relation to one or more areas outside the council area,[87] or
- a system of local government combining elements of both systems.[88]

Extended systems of local government can be an effective way of dealing with different local environments in Zimbabwe. Such mechanisms may be useful, for example, in cases where it does not make economic sense to establish a local authority due to the absence of a 'real' tax

[81] Tarr 2011: 173, Kalin 1998: 1.
[82] See Kalin 1998: 1.
[83] See Kalin 1998: 1.
[84] Tarr 2011: 172.
[85] S 274(3) Constitution.
[86] S 5(1)(a) UCA.
[87] S 5(1)(b) UCA.
[88] S 5(1)(c) UCA.

base.[89] In such cases it may be rational to place two or more urban areas under the administration of one local authority to enhance revenue-raising potential and maximise economies of scale. For example, in the 1970s, the City of Salisbury (Harare) was given authority to administer the satellite urban area of St Marys before an independent council (Chitungwiza) was established for the area. In the post-independence era, the City of Harare has administered urban areas outside its boundaries, such as Epworth, Norton and Ruwa. Norton has since graduated to the status of a town council.

Section 5(1) of the UCA assigns to the President the power to establish extended systems of local government.[90] When establishing extended systems of local government, the President may remove and allocate powers from one local authority to another, determine the nature of representation on the council of the concerned local authority(s), and issue additional directives to give effect to the extended system of local government.[91] The President is required to consult any local authority affected by the establishment of an extended system of local government.[92] It is submitted that the powers of the President to remove and allocate powers from one local authority to another threaten the institutional integrity of local authorities. The power to determine the nature of representation on the council allows the President to tamper with democratic representation at the local level, contrary to the 2013 Constitution which seeks to promote local democracy.[93]

While the Constitution provides that two or more urban areas may be placed under the administration of a single local authority, it is argued that this does not mean that an elected council may be placed under the administration of another local authority.[94] This implies that a local authority may administer an area outside its boundaries which does not have an elected council. For example, a local government area can be placed under the administration of another local authority as it does not have an elected council. In such a case, the consent of the local authority which is to assume the management of the concerned urban area should be sought so that it has an opportunity to promote and defend its interests.[95] Thus, it is submitted

[89] For a detailed discussion on the importance of a tax base for local revenue raising efforts, see De Visser 2005: 42.
[90] The actual establishment of extended systems of local government occurs when the President issues a proclamation in the government gazette.
[91] S 5(1) UCA.
[92] S 5(1) UCA.
[93] See s 264(2) Constitution.
[94] See s 274(3) UCA.
[95] See Clause 5, 9 Urban Councils Amendment Bill.

that the powers to remove and allocate powers from one local authority to another and to determine the nature of representation on the council of the concerned local authority(s) should be reformed.

3.2 Establishment of rural local authorities

This section examines the establishment of rural local authorities (rural district councils). Rural local authorities are established to 'represent and manage' the affairs of people in rural areas.[96] There are a total of 58 rural local authorities whose boundaries coincide with the boundaries of administrative districts in rural areas. While recognising the role of rural local authorities, the Constitution does not provide guidance on how these authorities should be established. It leaves it to Parliament to determine their establishment.[97] As in urban local authorities, the Constitution allows the establishment of different classes of rural local authorities and the administration of two or more rural areas by a single rural local authority.[98] In its current form, the RDCA, which governs the activities of rural local authorities, only makes provision for one category of rural local authority. Hence, it is submitted that the RDCA may be inconsistent with the 2013 Constitution in this respect.

3.2.1 Role of the President to establish rural local authorities

The RDCA assigns to the President the power to establish rural local authorities.[99] As provided in the RDCA, the process of establishing a rural local authority begins with the President declaring any area within a province to be a district.[100] After creating a district, the President may establish a rural local authority for that district.[101] The President may also assign a name to that rural local authority.[102] At any time after declaring an area to be district, the President may abolish such a district.[103] It is argued that the provisions of the RDCA which give the President power to establish and abolish a district are inconsistent with the 2013 Constitution. As discussed in paragraph 2.2 above, the Constitution grants Parliament

[96] S 275(1) Constitution.
[97] See s 275(2) Constitution.
[98] S 275(3) Constitution.
[99] S 8(1)(a) RDCA.
[100] S 6(a) RDCA.
[101] S 8(1)(a) RDCA.
[102] S 8(1)(b) RDCA. The actual establishment of a rural district council for a district occurs when the President issues a proclamation, to that effect, in the Government *Gazette*. A rural local authority will come into existence in at least 60 days after the publication of the proclamation.
[103] S 6(c) RDCA.

the responsibility of (re)demarcating district boundaries.[104] It is submitted therefore that section 6(c) and section 8(1)(a) of the RDCA, which gives the President power to demarcate district boundaries, have to be aligned with the Constitution.

3.2.2 Legal requirement for citizen participation

The importance of citizen participation in the establishment of local authorities and the (re)demarcation of local boundaries was underscored above.[105] The RDCA requires the consultation of citizens of the area concerned before the President may exercise the power to establish a rural local authority.[106] As highlighted above, such consultation requirements are not applicable in urban areas. The RDCA makes provision for two consultation mechanisms. The Minister may establish a commission composed of residents of the area concerned to make recommendations to the Minister.[107] Alternatively, the Minister may take 'such steps which are reasonably necessary to give residents of the district notice of the proposal' to establish a rural local authority.[108] These two consultation procedures are examined below.

3.2.2.1 Establishment of a commission

The Minister may appoint a commission from residents of the district concerned to solicit their views on the proposed establishment of a rural local authority to administer that district.[109] Once established, the commission is required within six months (or a period determined by the Minister) to make recommendations to the Minister on the:

a) potentiality of the district for local government;
b) the extent of the proposed council area, in particular, whether or not it should extend to the whole district;
c) the ward boundaries within the proposed council area;
d) the number of councillors to be elected or appointed;
e) the need for area committees[110] for any area within the proposed council area;
f) the name of the proposed council area;

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[104] See s 267(2)(a) Constitution.
[105] See the Aberdeen Principles 2005: 7.
[106] S 9(1) RDCA.
[107] S 9(1) RDCA.
[108] S 9(2) RDCA.
[109] S 9(1) RDCA.
[110] An area committee is one of the committees which a rural local authority may establish. The committee is established to administer an urban area within the jurisdiction of a rural local authority. Area committees are discussed in detail in Chapter Five.

g) the headquarters of the proposed council and the number and location of, or need for, sub-offices within the proposed council area;
h) the staff required to carry out the functions of the proposed council;
i) where it is proposed to include within the proposed council area the whole or part of that area of any local authority, the allocation or apportionment of the assets, liabilities and staff of such a local authority;
j) any other matters relevant to the establishment of the proposed council.[111]

It is submitted that the establishment of a commission may enable citizens to influence the establishment of a local authority. However, the effectiveness of the commission, as a citizen consultation mechanism, may be undermined by a number of challenges. First, the factors to be considered when establishing a local authority are not coherent and do not present a rational foundation for the establishment of local authorities. The factors fall into three broad categories, namely those that relate to boundaries, names and wards; democratic representation on the council; and administrative requirements. While citizens may be consulted on the first category, there is no need to solicit their views on the last two groups, especially administrative requirements. Citizens are unlikely to be able to make sound proposals as the factors are too technical. For example, an ordinary citizen is unlikely to have the knowledge to ascertain how many employees a new local authority requires. On the other hand, citizens are able to present their views on issues such as names and boundaries of the new local authority. Hence, more coherent substantive criteria needs to be developed, which this chapter will attempt to do in paragraph 3.3.3 below.

The other challenge is the appointment of the commission from the residents of the district concerned. The question is whether ordinary citizens appointed by the Minister to form the commission will possess the technical knowledge to conceptualise complex issues associated with establishment of a new local authority. Can such a commission for example be able to make reasonable proposals about the transfer of assets between the 'old' local authority and the newly established one? It is suggested that the commission does not necessarily have to be appointed from citizens of the area concerned. Rather, the commission must be composed of experts in areas such as land-use planning, economics, finance and law. In practice, the Minister has 'rightly' appointed experts in these areas to determine the possibility of establishing a new local authority.

[111] S 9(1) RDCA.

Third, as highlighted above, members of the commission are appointed by the Minister. The appointment by the Minister means that the commission might lack the necessary independence required to carry out its duties effectively. It is argued that establishment of local authorities should be an independent process insulated from political influence.[112] The absence of such independence may compromise the objectivity of the commission and its ability to represent views from the citizens.[113] As proposed below, Parliament should consider giving an independent body the responsibility to explore the possibility of establishing a new local authority and soliciting citizens' views. This will give the process of establishing local authorities the necessary independence.[114]

3.2.2.2 Other consultation mechanisms

If the Minister does not appoint the commission discussed above, the RDCA requires the Minister is to take 'such steps which are reasonably necessary to give residents of the district concerned notice of the proposal' to establish and assign a name to a rural local authority.[115] Furthermore, the Minister is required to cause a notice to be published in at least three issues of a newspaper stating the proposal of the President to establish a local authority and inviting any objections to that proposal for not less than 30 days.[116] If any objections are raised with respect to the proposal to establish a new rural local authority, the President is obliged to consider them.[117] It is argued that this requirement strengthens local democracy since the President may not ignore any objections raised by the citizens. The use of newspaper as a communication medium may present challenges for effective citizen participation. A significant number of the rural populace is likely to have difficulties in accessing newspapers due to limited circulation in rural areas or inability to afford them.[118] Thus, broad-based citizen participation may not be achieved in such cases. It is suggested that in addition to newspapers, communication mediums such as radios and public consultation meetings should be utilised to solicit views of the citizens as they allow broad-based public consultation.

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[112] See Paddison 2004: 33, Skaburskis 2004: 41. See also Singiza & De Visser 2011: 33.
[113] See Mandondo & Mapedza 2003: 9.
[114] See Skaburskis 2004: 41.
[115] S 9(2) RDCA.
[116] S 9(2) RDCA. Among other issues, the Minister is required to specify in the notice the number of councillors; the proposed name of the council; the location of the proposed headquarters; and, where it is proposed to include the council area of any other local authority, the proposed allocation or appointment of the assets, liabilities and staff of that local authority.
[117] S 9(5) RDCA.
[118] See Mandondo & Mapedza 2003: 9.

However, it should be appreciated that such participatory processes may present significant financial and time costs for the government which it might not be able to afford.[119] Thus, a balance should be struck between the need for citizen participation and costs of resources.

3.3 Demarcation of boundaries

Local government boundaries are usually changed to respond to economic and political changes.[120] Further, local boundaries may be changed to maximise on administrative efficiency and to improve the responsiveness of local governments to needs of their constituents as well as to global changes.[121] The determination of local government boundaries usually revolves around a number of factors, including preservation of local or group identity, local democracy, functionality, efficiency and maximisation of economies of scale.[122] International 'best' practice suggests that the delimitation of local boundaries should be undertaken by an independent body. The rationale for independent authority was found by the Constitutional Court of South Africa to guard against political interference in the delimitation process.[123] The court argued that political interference in the delimitation of local boundaries can undermine any multi-party system of democratic government.[124] This is significant given that the 2013 Constitution of Zimbabwe seeks to promote the development of a multi-party democratic political system where different political parties are likely to be in charge of governments at various levels.[125] As argued above, independent non-political bodies are likely to take a more impartial approach to boundary reform than political bodies such as the executive or parliament.[126]

In paragraph 6.1.5 of Chapter Two an argument was made for the participation of citizens in the demarcation of local boundaries.[127] The argument is that local boundaries define the territory which provides space for everyday practice, but, critically, boundaries are also a vital component of self-identity.[128] The requirement that citizens should participate in any demarcation process may serve as a check on actions by 'aggressive' governments, whether

[119] See Skaburskis 2004: 51, Lindsey 2004: 57.
[120] Skaburskis 2004: 41, 51.
[121] Skaburskis 2004: 41, 51.
[122] De Visser *et al* 2013: 267, Baraki 2013: 232.
[123] See *Matatiele Municipality and Others v President of the RSA and Others* 2007 (1) BCLR 47 (CC) (hereafter referred to as *Matatiele* at para 41. See also Singiza & De Visser 2011: 33.
[124] *Matatiele* para 41.
[125] See s 3(2)(a) Constitution.
[126] See Maligrana &Razin 2004: 234.
[127] See the Aberdeen Principles 2005: 7, Lindsey 2004: 57.
[128] Cameron 2004: 215, Paddison 2004: 23.

local, provincial or national.[129] Failure to involve the citizens in boundary demarcation does not only present a challenge to local democracy but may be met with resistance from the citizens, thereby undermining sustainable peace.[130] The same requirement should apply to local authorities affected by any demarcation exercise, given that any changes to local territory diminishes or increases territorial control, a vital sign of local autonomy.[131] It may be useful to legally recognise both the procedural and substantive criteria of (re)demarcating local boundaries to promote transparency and to guard against any uncertainties surrounding an ad hoc system of demarcating boundaries.[132] Even though local autonomy is never absolute, the criteria should ensure that demarcation of local boundaries is fairer to the citizen and local authorities who are usually less powerful than senior governments.[133] To what extent does the (re)demarcation of local boundaries in Zimbabwe conform to this normative framework? The discussion that follows is divided into urban and rural local authorities.

3.3.1 Urban local authorities

The Constitution does not provide for the demarcation of local boundaries even though it recognises the role of urban local authorities.[134] This means that Parliament has the discretion to determine the procedure to be followed when (re)demarcating boundaries of urban local authorities. Parliament is not entirely free when determining factors to be considered when delimiting boundaries of urban local authorities. It is submitted that any delimitation of local boundaries should seek to advance objectives of devolution and principles of local government enshrined in the Constitution.[135] The relevant objectives and principles include:

a) to promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole;
b) to preserve and foster peace, national unity and indivisibility of Zimbabwe;
c) to recognise the right of communities to manage their own affairs and further their development;
d) to ensure the equitable sharing of local and national resources;

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[129] Lindsey 2004: 57.
[130] For example; in 2013, the merging of municipalities in the Free State province of South Africa was met with violent protest on issues relating to boundaries and merging of local government. See also *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others (CCT 41/07) [2008] ZACC 10; 2008 (5) SA 171 (CC); 2008 (10) BCLR 968 (CC) (13 June 2008).*
[131] Paddison 2004: 24. See also Skaburskis 2004: 39-41, Meligrana & Razin 2004: 230.
[132] See Singiza & De Visser 2011: 33.
[133] See Paddison 2004: 26.
[134] See Part 3, Chapter 14 Constitution.
[135] See s 264(2) and s 265(1) Constitution.

e) to ensure good governance by being effective, transparent, accountable and institutionally coherent;
f) secure public welfare; and
g) ensure the fair and equitable representation of people within their areas of jurisdiction.[136]

This means that the statutory framework providing for boundary demarcation should require demarcation of boundaries to advance these principles.

As at July 2014 the UCA had not been aligned with the 2013 Constitution. The Act provides for powers of the President to delimit the boundaries of municipal and town councils.[137] After (re)demarcating the boundaries of a municipal or town council, the President has the power to alter the boundaries of that municipal or town council.[138] As mentioned above, the President is also charged with the demarcation of boundaries of local government areas which are administered by local boards.[139] After delimiting boundaries of a local government area, the President may alter the boundaries of the area.[140] Thus, the (re)demarcation of boundaries of urban local authorities is an activity solely carried out by the President. While the President is an elected representative accountable both to the people and Parliament, partisanships may play a role in the final decision-making stage of the demarcation exercise given that the President is a political competitor aligned to a certain political party.[141] The threat of gerrymandering is high in cases where political office holders are involved in the (re)demarcation of local boundaries.[142] It is submitted that the principles and objectives of devolution and local government highlighted above are likely to be undermined under such a system.[143]

The role of the President in the demarcation process may present a danger to democratic governance, especially to a multi-party system.[144] For this reason, it is suggested that Parliament should consider giving the role of (re)demarcating local boundaries to an independent body with final decision-making powers, as is the case in South Africa.[145]

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[136] S 264(2) read together with s 265(1) Constitution.
[137] S 4(b) UCA.
[138] S 4(2)(c) UCA.
[139] S 6(2)(a) UCA.
[140] S 6 (2)(c) UCA.
[141] See Meligrana and Razin 2004: 237, Paddison 2004: 33.
[142] See Cameron 2004: 209.
[143] See s 264(2) read together with s 265(1) Constitution.
[144] *Matatiele* para 41.
[145] Concern about gerrymandering in the delimitation of local boundaries for the 1994-5 local elections in Johannesburg, Cape Town and Durban is argued to be one of the major reasons why the final Constitution of

Giving such a responsibility to an independent body does not only insulate the demarcation exercise from partisan influence but ensures that experts in boundary demarcation make rational demarcation decisions.[146] The role of an independent body in the determination of local boundaries nevertheless is not enough to guarantee the above-mentioned principles and objectives of devolution and local governance if not accompanied by 'appropriate' procedural and substantive criteria of (re)demarcating local boundaries. These criteria are explored below.

3.3.1.1 Procedural criteria

When (re)demarcating boundaries of a new urban local authority, the President is required to consult any local authority concerned and the ZEC.[147] Consultation with the ZEC is meant to allow the electoral body to make representations since any changes to local boundaries have implications on the administration of elections. As highlighted above, when altering boundaries of a local government area, the UCA requires the President to seek the consent of the relevant local board.[148] This requirement presents an element of federal theory where constituent units have to consent to any changes to their boundaries.[149] It is submitted that legislation should provide for consultation and not consent of local authorities, irrespective of category, in cases involving boundary (re)demarcation, given that Zimbabwe does not have a federal arrangement. The consultation is not only necessary to promote constructive relations among governments but also to allow local authorities to make representations on the proposed (re)determination of local boundaries.

It was stated above that while giving ZEC and any concerned local authority the opportunity to make representations, the President is not obliged to consult citizens of the area concerned when (re)demarcating local boundaries of municipal and town councils. The absence of such an obligation presents a challenge to local democracy since determination of local boundaries directly impacts on the lives of the citizens in the area(s) concerned.[150] Citizens or

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South Africa required the delimitation of local boundaries by an independent body. At the time, demarcation of local boundaries was overseen by provincial ministers for local government and the three cities were led by three different political parties. This meant that the ruling political party in the provinces had direct control over the delimitation processes and in the process undermined independence of the delimitation exercise. See Cameron 2004: 209. See also Singiza &De Visser 2011: 33.

[146] See Paddison 2004: 33; Skaburskis 2004: 41.

[147] S 4(2)(b)(d) UCA.

[148] S 6(3) UCA.

[149] See Watts 2008: 78.

[150] See Article 5 European charter of Local Self-Government; the Aberdeen Principles 2005: 7.

communities living close to local boundaries may be included or excluded from the jurisdiction of a local authority and their access to public services affected.[151] Such an impact justifies the argument that boundary (re)demarcation should not be left to be determined alone by officials of senior and junior governments or independent bodies.[152] Citizens and communities who are ultimately affected by demarcation decisions should also be involved.[153]

3.3.1.2 Substantive criteria

The UCA does not provide the substantive criteria for (re)demarcation of boundaries of urban local authorities except for factors to be considered for city status, as will be discussed in paragraph 4 below.[154] Thus, the President has wide discretion to determine the substantive criteria to guide the establishment of urban local authorities. It is submitted that the absence of such criteria is likely to reduce opportunities for the establishment of the 'appropriate' size of a local authority. Such a size is significant because it usually affects the range of functions that a local authority has the capacity to perform.[155] The absence of criteria brings into question the transparency of the process of (re)demarcating local boundaries in urban areas. It is therefore difficult for the public to hold public officials accountable for any decisions they make relating to local boundaries. As argued below, Parliament should establish substantive criteria for local boundary (re)demarcation.

3.3.2 Rural local authorities

As highlighted in paragraph 2.2 above, the boundaries of administrative districts are determined by Parliament after consultation with the ZEC.[156] In terms of section 6 of the RDCA, the President is responsible for establishing and assigning a name to a district as well as demarcating and altering the boundaries of a district. As argued above, this provision is inconsistent with the Constitution since Parliament is now charged with the division of provinces into districts. While the Constitution provides for the role of Parliament to determine the boundaries of districts, it does not prescribe how district boundaries are to be

[151] Paddison 2004: 35.
[152] See Paddison 2004: 35.
[153] See Singiza &De Visser 2011: 33.
[154] See First Schedule, UCA.
[155] For a discussion on the relationship between the size of subnational governments and their capacity to deliver on their functions, see Watts 2008: 72.
[156] S 267(2) Constitution.

(re)demarcated. Hence, Parliament has the discretion to determine how boundaries of districts should be delimited. The RDCA provides the procedural and substantive criteria to guide the establishment of districts, including their boundaries. In this section, the chapter will not discuss the criteria, as these have already been examined in paragraph 3.2.2.1.[157] The chapter however maintains that there is need to develop coherent substantive criteria for demarcating local boundaries.

3.3.3 Towards a substantive criteria of (re)demarcating local boundaries

As stated above, the UCA does not provide substantive criteria to guide the delimitation of boundaries of urban local authorities. It is submitted that the criteria is not only important in light of transparency and fairness but as a vital tool for creating the 'optimal' size of local authorities, that is, those that can deliver on their obligations efficiently and effectively.[158] Even though the RDCA provides substantive criteria for (re)demarcating boundaries of districts which are administered by rural local authorities, it was argued that the criteria fall short in a number of respects. It is against this background that this chapter proposes model criteria which can be considered when enacting legislation providing for the delimitation of local boundaries both in urban and rural areas. Legally recognising such criteria can ease the contentiousness usually associated with boundary demarcation and increase the objectivity of the process.[159] It is submitted that the procedural criteria should require the consultation of any local government unit directly affected by the establishment of a new local government unit or by any (re)demarcation process. As argued above, these requirements will provide some form of assurance to local authorities that their interests as distinct units will not be vulnerable to action by senior governments.[160] Further, the right of citizens and any other interested stakeholders to participate in the (re)demarcation process should be guaranteed so that their interests can be heard before boundaries are (re)demarcated.[161] A highlighted in paragraph 3.3.1 above, the (re)demarcation of local boundaries should seek to advance objectives and principles of devolution and local government.[162] In addition, establishing viable local authorities should involve considering a number of factors on the model of the

[157] See S 7(1) RDCA.
[158] See Watts 2008: 72, Paddison 2004: 31, Skaburskis 2004: 39.
[159] See Skaburskis 2004: 52. See also Singiza & De Visser 2011: 33.
[160] See Watts 2008: 78.
[161] See Singiza & De Visser 2011: 25, 33.
[162] S 264(2) read together with s 265(1) Constitution

Municipal Demarcation Act of South Africa.[163] The Act provides for the consideration of the following factors:

- the nature of local functions;
- the financial viability and administrative capacity of a local authority to perform its functions efficiently and effectively;
- topographical factors;
- the interdependence of people, communities and economies as indicated by existing and expected patterns of human settlement and migration, employment, the use of amenities, recreational facilities and infrastructure;
- the administrative consequences of proposed boundary demarcation on municipal credit worthiness, existing local authorities (including their council members and staff) and any other relevant factors;
- provincial and municipal boundaries;
- existing land-use, social, economic and transport planning;
- the need for coordinated delivery of services under a multilevel system of government; and
- traditional practices and customs.[164]

It is also submitted that when delimiting urban boundaries more weight should be put on functionality, efficiency and maximisation of economies of scale relative to preservation of local or group identities. Such distinct identities are likely to be weak in urban areas and the opposite is true for rural areas. Boundaries of traditional authorities should be considered when (re)demarcating boundaries of rural local authorities, given the strong relevance of traditional authority in rural governance in Zimbabwe.[165]

3.4 Delimitation of wards

It is argued that the delimitation of wards may be effectively carried out by an independent body (as opposed to a political body) relying on legally recognised criteria.[166] This has been recognised in the 2013 Constitution. The Constitution provides for the delimitation of wards by an independent body, the ZEC.[167] As highlighted above, the ZEC is established to administer elections and delimit wards and constituency boundaries, among other responsibilities.[168] In terms of the UCA and RDCA, the President is charged with the

[163] Local Government: Municipal Demarcation Act, Act No. 27 of 1998.
[164] See S 25 Municipal Demarcation Act. See also Skaburskis 2004: 43-7, Lindsey 2004: 66-8.
[165] For lessons on the relationship between local government boundaries and boundaries of traditional authority, see Singiza & De Visser 2011: 33.
[166] Steytler & De Visser 2009: 2-3.
[167] S 239(e) Constitution.
[168] See s 238 and s 239 Constitution.

delimitation of wards as well as alteration of the number of wards in an area of a local authority.[169] It is argued that the powers of the President to delimit wards are inconsistent with the 2013 Constitution, which gives the ZEC that responsibility. Thus, the provisions of the UCA and RDCA, which give the President power to delimit wards, should be repealed. The ZEC is required to abide by the criteria set in the Constitution when delimiting wards. In the following section, the chapter examines these criteria.

3.4.1 Procedural criteria

The ZEC undertakes the delimitation of wards and constituencies and submits the preliminary delimitation report to the President who must lay the report before Parliament within seven days.[170] Within 14 days after the report has been tabled before Parliament, the President, Lower House or Upper House may refer the report back to the ZEC for further consideration of any matter or issue.[171] Where a preliminary delimitation report has been referred back to the ZEC, the ZEC is required to give further consideration to the matter or issue raised.[172] The decision of the ZEC on the matter or issue is final. Therefore, although Parliament and the President have a role to play in the delimitation of wards, the ultimate responsibility and decision-making powers with regard to delimitation of wards rest with the ZEC.

Entrusting the ZEC with final decision-making power over the delimitation of wards goes a long way in ensuring that the delimitation process is insulated from political influences. After deciding on the matter, the ZEC must submit a final delimitation report to the President as soon as possible.[173] Within 14 days after receiving the final report of the ZEC, the President is required to publish a proclamation in the *Gazette* declaring the names and boundaries of wards and constituencies.[174] The involvement of a number of institutions in the delimitation of wards provides sufficient oversight mechanisms to prevent abuse of power. As argued in Chapter Eight, such oversight mechanisms should also be provided with respect to the use of supervisory powers over provincial and local government by the national executive.

[169] S 6(2)(c) UCA and s 8(1)(c) RDCA. S 4(1)(d) and s 4(2) UCA.
[170] S 161(7) Constitution.
[171] S 161(8) Constitution.
[172] S 161(8) Constitution.
[173] S 161(10) Constitution.
[174] S 161(11) Constitution.

3.4.2 Substantive criteria

The Constitution provides the substantive criteria for the delimitation of wards. Section 161(3) of the Constitution states that 'the boundaries of wards must be such that, so far as possible, at the time of delimitation equal number of voters are registered in each ward' of every local authority. When determining wards, the ZEC must ensure that 'no ward is divided between two or more local authority areas', or between two or more constituencies.[175] The ZEC is required, in respect of any area, to give due consideration to:

a) its physical features,
b) the means of communication within the area,
c) the geographical distribution of registered voters,
d) any community of interest between registered voters,
e) in the case of any delimitation after the first delimitation, existing electoral boundaries, and
f) its population.[176]

To give effect to the criteria, the ZEC may depart from the requirement that wards must have equal numbers of voters provided that no constituency or ward of a local authority has more than 20 per cent or fewer registered voters than other wards.[177] Thus, it is unconstitutional for a ward, at the time of delimitation, to have more than 20 per cent more or fewer registered voters than other wards in the same local authority. After delimiting wards, the ZEC must submit to the President a preliminary delimitation report who then tables it before Parliament within seven days.[178] The President or House of Parliament may refer the preliminary delimitation report back to the ZEC for further consideration, whose decision on the report is final. The ZEC must submit the final delimitation report to the President who (within 14 days) is required to publish a proclamation in the Gazette declaring the names and boundaries of the wards as finally determined by the Commission.[179]

[175] S 161(5) Constitution.
[176] S 161(6) Constitution.
[177] S 161(6) Constitution. In South Africa, Schedule 1(4) of the Municipal Structures Act (Act 117of 1998) provides that 'the number of registered voters in each ward, may not vary by more than 15 percent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality's segment of the national common voters roll by the number of wards in the municipality'. This means the chances of getting physically larger wards are higher in South Africa than in Zimbabwe since in Zimbabwe provision is made for 20 per cent.
[178] S 161(7) Constitution.
[179] S 161(11) Constitution.

It is submitted that the 20 per cent requirement ensures that there is comparable representation of citizens in councils by ensuring that the councillor-voter ratio does not vary significantly across the country. However, while there is need to maintain a comparable councillor-voter ratio such a requirement in certain cases may have negative implications on democratic representation on the council.[180] In sparsely populated areas, some councillors may represent physically large wards which may undermine effective representation of the whole ward on the council. Direct citizen participation, through mechanisms such as ward committees, is also likely to be difficult due to the practicalities of organising meetings, and this raises the question of how representative the committee can be for the entire ward area.[181] Nevertheless, the provision of criteria for the delimitation of wards in the Constitution is commendable. The advantage of recognising delimitation criteria in the Constitution is that the criteria may not be amended arbitrarily to suit political interests.

4. Change of local authority status

In paragraph 6.1.3.5 of Chapter Two it was contended that the role of local government in development and sustainable peace may be enhanced if the decentralisation of powers and resources to these lower governments takes into account the differences in environments and level of capacities at local level.[182] Such considerations will give rise to asymmetric decentralisation. It was also argued that asymmetric decentralisation should be accompanied by a system where local governments can 'graduate' from one category to another.[183] Further, the determination of such 'graduation' should be based on set criteria and carried out by an independent body, with citizens being given the opportunity to influence the process.[184] The graduation of local authorities from one category to another is a key feature of the Zimbabwean multilevel system of government. The 2013 Constitution does not provide guidance on any procedural and substantive criteria of change of local authority. As stated in paragraph 3.3.1 above, the Constitution however provides general principles of local government and objectives of devolution.[185] It is submitted that these principles and objectives should also guide the development of legislation providing for procedural and substantive criteria of change of local authority status.

[180] Smith &De Visser 2009: 20.
[181] Smith & De Visser 2009: 20.
[182] See Ford 1999: 14.
[183] See Fessha & Kirkby 2008: 12.
[184] See the Aberdeen Principles 2005: 7, Skaburskis 2004: 53.
[185] See s 264(2) and s 265(1) Constitution.

In terms of the UCA, local authority may 'graduate' from one category to another or from one class to another within the same category.[186] This means that a rural local authority can 'graduate' to a status of an urban local authority and local boards, municipal councils and town councils may 'graduate' to another class of urban local authority. In general, the change of local authority category improves the potential of a local authority to attract investment and raise revenue. Change of category or class also generally means that a local authority can appoint more workers, provide improved remuneration for both councillors and administrative officials, and assume more powers and functions.[187] In practice, change of local authority status has been initiated by local authorities, residents and the national government. As will be shown below, the ultimate decision on change of status rests with the national government irrespective of who requested it.

Since independence in 1980, only the municipal councils of Kwekwe and Masvingo have graduated from the category of municipal councils to city councils. Some rural local authorities have graduated to the status of urban local authorities, while within the urban category, town councils have graduated to municipal councils. Recently, Mpundawana Growth Point, which was part of Gutu Rural District Council, is reported to have been granted town status.[188] The request for the upgrade of Mpundawana Growth Point to a town council is reported to have been made by the Gutu Residents and Ratepayers Association. It is reported that the request was motivated by the need to attract investment, setting of modern facilities and raising of significant revenue which a town offers relative to a rural district council.[189] Following the requests, the national government set up a commission of inquiry to study the feasibility of the change of local authority status. The commission is reported to have recommended the upgrade and proposed boundaries for the new town.[190] The following section examines the procedural and substantive criteria for the upgrade of local authority status.

[186] See s 14 UCA.
[187] See Ministry of Local Government 2000: 19.
[188] *The Herald* 'Mupandawana granted town status' (2014).
[189] *The Herald* 'Mupandawana granted town status' (2014).
[190] *The Herald* 'Mupandawana granted town status' (2014).

4.1 Procedural criteria

In terms of the UCA, the process of changing local authority status begins with a local authority submitting an application to the Minister.[191] Upon receipt of the application, the Minister is required to appoint a commission of inquiry to determine the application and make recommendations on the change of council status.[192]After the commission has determined the application on the basis of relevant factors (detailed below), the Minister is required to table before Parliament the report of the commission of inquiry, on the basis of which Parliament makes the decision whether to grant the change of status.[193] If Parliament approves, the President 'may' accord change of local authority status.[194] The word 'may' suggests that the President has the discretion to change the status of a local authority or not to. It is submitted that the President should not have any discretion once Parliament has passed a resolution on the change of status.

The role of Parliament in change of local authority status can also be criticised on the grounds that it political survival rather than the best interests of local democracy usually takes precedence. Therefore, to guard against political interference, it is suggested that the responsibility to decide on any change of local authority status should be given to an independent body.[195] Such an independent body could take the model of the ZEC and be assigned responsibility over the establishment of local authorities and determination of their boundaries, as argued above. This proposal will reduce opportunities where local authorities which do not qualify for a change of status can have such an upgrade not for the benefit of the local people but for mere political reasons.

4.2 Substantive criteria

The commission of inquiry appointed to make recommendations on change of local authority status is required to consider matters listed in the First Schedule of the UCA, titled 'Matters

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[191] S 14(1)(2) UCA.
[192] S 14(3)(a) UCA. Councillors or employees of the council concerned may not be members of the commission. S 14(3)(b) UCA requires that, 'after the appointment of the commission, the Minister [must] publish in the Gazette and in three issues of a newspaper of the appointment of the commission, calling upon anyone who wishes to make representations to submit them to the commission before a date specified in that notice. The date may not be less than thirty days after the date of the first publication of the notice in the newspaper.'
[193] S 14(5) UCA.
[194] S 14(6) UCA. The actual change of status of a local authority occurs after the President has issued a proclamation to that effect in the Government Gazette.
[195] See Cameron 2004: 212.

to be considered for city status'.[196] In practice, the factors listed in the First Schedule have been considered for change of local authority status between categories or classes of local authorities. Besides matters listed in the First Schedule, the Commission may consider any other issues that it considers relevant.[197] For example, the Chakaipa Commission, which was appointed in 2000 to explore the possibility of granting city status to Masvingo Municipal Council, considered the ability of the council to comply with rules of financial management and service loans in addition to matters listed in the First Schedule.[198] The matters listed in the First Schedule can be grouped into three categories, namely, economic activity, public services, inherent features and demography.

4.2.1 Economic Activity

The examination of economic activities is an integral part of the process of assessing an application for change of local authority status. The commission of inquiry is required to consider:

- the extent of the influence of the local authority as a national centre for commercial, industrial, mining, agricultural, administrative and financial purposes;[199]
- the standard of marketing and shopping facilities and the range of specialist, professional, banking and other financial services provided in the area concerned;[200]
- the total value of property as shown in the valuation role and the ratios of the values of industrial, commercial and residential property;[201]
- the growth rate of the municipality with reference to valuation of buildings, commercial and industrial facilities; and [202]
- the extent to which the municipality provides employment opportunities for inhabitants of the area and the range and variety of employment opportunities provided.[203]

Economic activities in the relevant local authority area have a bearing on the fiscal capacity of the relevant local authority to finance its obligations.[204] As argued in paragraph 6.2.1.1 of Chapter Two, the ability of a local government unit to raise its own revenue to finance

[196] S 14(4) UCA.
[197] S 14(4) UCA.
[198] Ministry of Local Government 2000: 5.
[199] Number 5 First Schedule, UCA.
[200] Number 7 First Schedule, UCA.
[201] Number 3 First Schedule, UCA.
[202] Number 12 First Schedule, UCA.
[203] Number 2 First Schedule, UCA.
[204] See Skaburskis 2004: 47.

service delivery is important to promote local accountability.[205] Matters under the economic category cover a range of economic activity in the concerned local authority area. These factors are relevant to assess the adequacy of the tax base and fiscal capacity of the local authority.[206] An assessment of these factors will show whether the tax base will grow at the rate of growth of services needs or not.[207] Further, the examination of commercial, industrial, mining, agricultural, administrative and financial activities is particularly crucial to establish the diversity of the local economy, which is important for local revenue-raising. Creating fiscally sound local governments tends to favour larger units with more diverse economies.[208] This is significant because the 2013 Constitution requires each local authority to have a sound financial base.[209]

4.2.2 Public services

The public services category covers the range of local services which a local authority provides to cater for the requirements of the community.[210] In this category, attention is given to the level of performance when delivering local services such as fire-fighting, ambulances and public parking. The assessment criteria encompass an examination of the extent, quality and variety of educational amenities, educational facilities and recreational facilities.[211] The level of performance when delivering public services is a rational basis for deciding whether a local authority deserves to have its status upgraded. The major question is whether the local authority has the capacity to govern the area by delivering on its service delivery mandate and development obligations.[212] Are there spillovers in the delivery of certain local services? Are there economies of scale to maximise on? Satisfactory delivery of public services, among other factors, may be an indication that a local authority has the capacity to deliver and, thus, deserves an upgrade. The opposite may also be true.

4.2.3 Inherent features

The commission of inquiry is required to consider inherent features such as historical associations, religious significance, length of existence of the area and geographical

[205] See Bahl 1999: 10, UN-Habitat 2007: 9.
[206] See Skaburskis 2004: 50.
[207] See Skaburskis 2004: 48.
[208] See Skaburskis 2004: 48.
[209] S 264(2)(f) Constitution.
[210] Number 4 First Schedule, UCA.
[211] Number 4 First Schedule, UCA.
[212] See Skaburskis 2004: 50.

importance of the area.[213] The significance of some of these factors for a change of local authority status is questionable. For example, how does the consideration of the religious significance of an area or its length of existence assist in coming up with a rational decision of whether to grant change of local authority status? On the other hand, it is pertinent to consider the geographical significance of an area since it tends to have implications for economic development, including flow of economic activities. For example, local authorities which are geographically located close to border stations, such as Beitbridge, Chirundi and Plumtree, have had their status upgraded as the areas which they administer are important for the economy of the country.

The commission is further required to consider the extent to which the municipality is a centre for state services;[214] road, rail and air communication; postal and telecommunication services; the dissemination of information;[215] and tourism and tourist facilities.[216] These factors are crucial to determine whether a local authority qualifies for an upgrade of its status. The absence or presence of these factors is an important determinant for change of local authority status. For example, road and railway systems serve as important communication channels which a local authority requires for the purposes of delivering on its mandate and engaging with other governments. It is submitted that tourism and related facilities reflects the significance of the area, but it is not a primary determinant that should be considered on its own. Rather it should be examined as part of the economic activities in the area concerned.

4.2.4 Demographic factors

The commission of inquiry is required to examine the demographic composition of the concerned local authority area. When making recommendations on the proposed change of local authority status, the commission must consider the size and density of the population of the area concerned.[217] In particular, the commission must take into account the proportion of the population living in flats, private homes and other residential structures.[218] The commission of inquiry is also required to consider population growth rate in the area

[213] Number 9, 11, First Schedule, UCA.
[214] Law courts, police stations, prisons and others.
[215] Radios, television, newspapers and magazines.
[216] Hotels, motels, caravans and others. Consideration should also be given to the armed forces stationed in or around the area concerned.
[217] Number 1 First Schedule, UCA.
[218] Number 1 First Schedule, UCA.

concerned.[219] The size and density of the population are relevant factors in determining whether to grant a local authority change of status. The more populated a local authority area is the more likely it is to require a higher category local authority to meet the increasing demand for public services.

As highlighted above, the commission of inquiry may consider other factors it considers relevant in addition to those discussed above.[220] It is submitted that the matters to be considered for change of local authority status listed in the First Schedule of the UCA form a rational base for determining an application for change of local authority status. If followed, the criteria will enable coordinated upgrading of local authority status to deserving local authorities. The criteria encourage better performance from local authorities since change of local authority status means that a local authority will exercise more powers and functions. It is however argued the criteria require rationalisation as some factors are not relevant for a change of local authority status.

5. Legal nature of provincial and metropolitan councils and local authorities

5.1 Provincial and metropolitan councils

As discussed above, provincial and metropolitan councils are the middle tier of government.[221] In terms of the Provincial Councils and Administration Act, a provincial council is a body corporate with perpetual succession.[222] On its own, a provincial council is capable of suing and being sued and in general, capable of 'doing', 'suffering' and 'performing' 'all' things imposed on it by legislation.[223] As highlighted above, at the time of writing, the Provincial Councils and Administration Act had not been aligned with the Constitution by making provision for both provincial and metropolitan councils. It is submitted that it may no longer be correct to refer to provincial councils as body corporates as they are now constitutional bodies which owe their existence to the Constitution. Body corporates is a term usually used to refer to bodies established by statutes. Thus, it may be necessary to review the status of provincial councils as recognised in the Provincial Councils and Administration Act.

[219] Number 12 First Schedule, UCA.
[220] See S 14(4) UCA.
[221] See s 5 Constitution.
[222] S 12 Provincial Councils and Administration Act.
[223] S 12 Provincial Councils and Administration Act.

5.2 Local authorities

As highlighted above, the 2013 Constitution recognises local authorities as the lower tier of government.[224] The RDCA provides that a rural local authority is a body corporate with perpetual succession and, in its own name, capable of suing and being sued.[225] It further provides that a rural district council is generally capable of doing, suffering and performing all functions imposed on it by legislation.[226] There is no similar provision in the UCA which governs the activities of urban local authorities. This requires reform of these pieces of legislation to provide some consistency in the statutory framework. The envisaged single-piece local government legislation may be an effective way to achieve such consistency.

6. Conclusion

Parliament, the ZEC and the President all have a role to play in the establishment of provinces and demarcation of provincial boundaries and delimitation of wards. While the Constitution provides for the demarcation of provincial and district boundaries and delimitation of wards, it does not provide for the demarcation of local boundaries. It also does not prescribe how local authorities are to be established. In terms of the UCA and RDCA, the President and Minister play a central role in the establishment of both urban and rural local authorities. It was argued that this statutory framework does not adequately provide for citizen participation in the establishment of local authorities, even though such governance processes have great consequences on the lives of citizens. The UCA does not provide for the consultation of municipal and town councils when establishing a new local authority – contrary to the 2013 Constitution, which seeks to promote cooperative governance.[227] Some of the deficiencies identified in the statutory framework may be resolved if the statutory framework, the Provincial Councils and Administration Act, RDCA and UCA is aligned with the Constitution.

Once provinces and local authorities have been established, how do they govern? This question will be answered in the following chapter on governance structures and procedures of provinces and local authorities.

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[224] S 5 Constitution.
[225] S 12 RDCA.
[226] S 12 RDCA.
[227] See 194(1)(g) Constitution.

Chapter 5

Governance structures

1. Introduction

The previous chapter discussed the establishment of provinces and local authorities in Zimbabwe. This chapter examines governance structures and processes at the provincial and local levels against the normative framework set in Chapter Two. The key design features relevant for the purposes of this chapter are political and administrative autonomy, supervision and intergovernmental cooperation. The extent to which a multilevel system of government will promote development, democracy and sustainable peace depends in part on the nature of these governance structures and processes. The first section discusses the composition of provincial and metropolitan councils. It then examines the election, removal from office and responsibilities of chairpersons of provincial and metropolitan councils. In the following section, the chapter analyses the role of committees and administrative structures of provincial and metropolitan councils. After examining governance structures and processes at the provincial level, the chapter analyses similar structures and processes at the local level. In the last section, the chapter discusses the role of the institution of traditional leadership given that it is an important governance structure in rural local governance besides rural local authorities.

2. Provincial and metropolitan councils

2.1 Composition

It was contended in Chapter Two that a multilevel system of government may promote development, democracy and sustainable peace if certain design features form part of the legal and institutional design.[1] A legal and institutional design which guarantees political participation of the citizens was highlighted as one of these key features.[2] An important component of political participation is the direct election of local leaders by voters to foster local accountability, among other benefits.[3] It was further contended that subnational governments be as representative as possible of the diversity of society, especially

[1] See para 6.
[2] See Universal Declaration on Democracy 1997: 2, the Aberdeen Principles 2005: 6.
[3] See Bahl 1999: 61, Manor 1999: 37.

marginalised groups.[4] As will be observed, the composition of provincial and metropolitan councils complies with this normative framework, although not adequately. It was highlighted in Chapter Three that non-metropolitan and metropolitan provinces are administered by provincial and metropolitan councils, respectively.[5] As shown in the diagram below, the composition of these two councils is slightly different.

2.1.1 Provincial councils

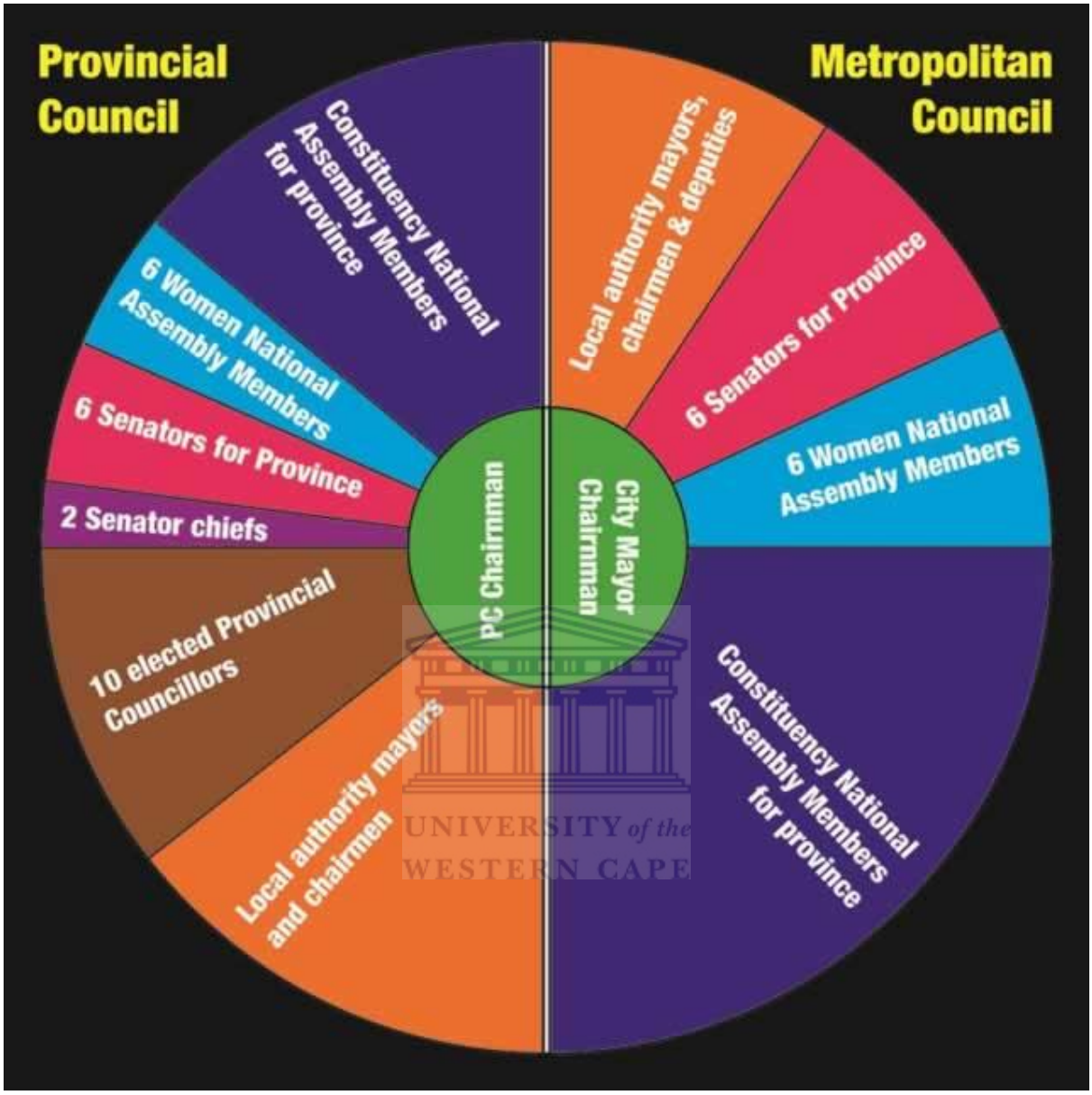
As shown in Figure 12 below, provincial councils are composed of officials directly and indirectly elected. Section 268(1) of the Constitution provides that a provincial council consists of:

- the chairperson of the council;
- members of the National Assembly in the province;
- six women National Assembly Members from the province;
- six senators from the province
- two senator chiefs;
- mayors and chairpersons of local authorities in the province; and
- ten directly elected councillors.[6]

The president and deputy president of the National Council of Chiefs are also members of the provincial council in their respective provinces.[7] Section 14(1) of the Provincial Councils and Administration Act provides for the composition of provincial councils by provincial governors, mayors, chairpersons, councillors, chiefs and individuals who are appointed by the President.[8] The President no longer has powers to appoint members of the provincial council under the 2013 Constitution. It is submitted that section 14(1) is inconsistent with the 2013 Constitution. Hence, the section should be aligned with the Constitution.[9]

[4] See Bockenforde 2011: 16, the Aberdeen Principles 2005: 6.
[5] See para 5.2.
[6] The councillors are elected under a party list system of proportional representation which is based on the votes cast for candidates representing political parties in the province concerned in the general election for Members of the National Assembly. For an individual to be elected as a councillor on the provincial council, he or she should be qualified for election as a Member of the National Assembly. See s 268(2)(3) Constitution.
[7] S 268(1)(d) Constitution.
[8] S 14(1) Provincial Councils and Administration Act.
[9] See Musekiwa 2014: 2.

Figure 12: Composition of provincial and metropolitan councils



2.1.2 Metropolitan council

Metropolitan councils are composed of:

- members of the National Assembly in the province;
- six women National Assembly Members from the province;
- six senators from the province;
- the mayors and deputy mayors and the chairpersons and deputy chairpersons of all local authorities in the province; and

- the mayor of the city in the province.[10]

In the case of Harare Metropolitan Province, the mayor of Harare and the mayor or chairperson of the second-largest local authority make up the metropolitan council, while in Bulawayo Metropolitan Province the mayor of Bulawayo is the chairperson of the metropolitan council.[11] Unlike in provincial councils, there is no provision for ten elected provincial councillors and chiefs in the composition of metropolitan councils. The argument is that since there are no distinct chieftainships in metropolitan provinces, unlike in other provinces, there is no need to make provision for the representation of chiefs in these provinces.

2.1.3 General Analysis

The 2013 Constitution strives to deepen representative democracy at the provincial level. It is submitted however that the Constitution falls short of fully promoting democracy since it does not give citizens in the province an opportunity to directly elect their leaders at provincial level.[12] While members of the National Assembly are elected officials, they are not directly elected to be members of the provincial council. The same applies to mayors and chairpersons of local authorities. Chiefs are also not elected by the citizens but by their respective provincial assemblies to sit on provincial councils. The ten councillors are the only members of the provincial council who are directly elected by citizens.[13] They are however not present in metropolitan councils. The method of electing the ten councillors is commendable in light of democracy since it guarantees the representation of women, who often lack representation in decision-making structures in government. The ten councillors are elected under a party list system of proportional representation in which male and female candidates are listed alternately, every list being headed by a female candidate.[14] This method of election guarantees women representation on the provincial council.

The domination of provincial and metropolitan councils by indirectly elected officials brings into question the accountability of members of the provincial council to the citizens of the

[10] S 269(1)(c)(d)(e)(f) Constitution.
[11] S 269(1)(a)(b) Constitution.
[12] See Moyo 2013: 152; the Aberdeen Principles 2005: 6, 8; Article 3(2) European Charter of Local Self-Government.
[13] See Musekiwa 2014: 3.
[14] See S 268(3)(b) Constitution.

province.[15] Members of Parliament are more likely to commit themselves to the activities of the national government, while mayors and chairpersons are more likely to commit themselves to their local authorities than to the provincial or metropolitan council as a government structure.[16] However, it is argued that even though the majority of members of the provincial and metropolitan councils are not directly elected officials, they are nonetheless democratically elected representatives.[17] These officials might not be directly accountable to the provincial electorate but are however accountable to their constituencies within the province. Thus, they have legitimacy to govern which they derive from their constituencies. It is submitted that even though the democratic gains represented by the 2013 Constitution are limited, in as far as composition of provincial and metropolitan councils is concerned, they nevertheless provide a foundation upon which representative democracy at the provincial level can be nurtured.[18]

2.2 Termination of membership

It was contended in Chapter Two that the legal framework governing a multilevel system of government should guard against arbitrary removal from office of elected officials of the subnational governments by officials of senior government(s).[19] The 2013 Constitution provides safeguards against arbitrary removal from office of members of provincial and metropolitan councils. Members of Parliament and councillors cease to be members of the provincial or metropolitan council if they cease to be Members of Parliament or a local authority, respectively.[20] A provincial councillor ceases to be a member of the provincial council only in circumstances set out in section 129 of the Constitution,[21] which applies to Members of Parliament.[22] Members of provincial and metropolitan councils may not be

[15] See Bahl 1999: 5.
[16] Chigwata & De Visser 2013: 3.
[17] Chigwata & De Visser 2013: 3. See also Chatiza 2014: 4, Makumbe 1996: 42.
[18] See Chigwata & De Visser 2013: 3, Chatiza 2014: 4, Musekiwa 2014: 2, Musekiwa & Mandiyanike 2013: 2, Moyo 2013: 148.
[19] See para 6.1.1.3. See also Bland 2010: 55.
[20] S 268(4)(a)(b) Constitution. See s 129 Constitution.
[21] In terms of section 129 of the Constitution, a seat of a Member of Parliament becomes vacant on the dissolution of Parliament; upon the Member resigning his or her seat by notice in writing to the President of the Senate or to the Speaker, as the case may be; upon the Member becoming President or Vice-President; upon the Member becoming President of the Senate or Speaker or a member of the other House; or if the Member ceases to be qualified for registration as a voter, among other circumstances. The seat of a mayor, chairperson or councillor becomes vacant in the same circumstances: any reference to the Speaker or President of the Senate being construed as a reference to the Minister. As discussed in detail in Chapter Eight, mayors, chairpersons and councillors may be removed from office by an independent tribunal. See s 278 Constitution.
[22] S 268(4)(c) Constitution.

removed from office except on these grounds. This requirement has provided safeguards to members of provincial and metropolitan councils which were not available under the Lancaster House Constitution.[23] Under the Lancaster House Constitution the President could remove some members of provincial councils from office at any time.[24] It is submitted that section 16 of the Provincial Councils and Administration Act, which provides for the removal from office of some members of the provincial council by the President, is inconsistent with the 2013 Constitution.[25] Thus, the section should be aligned with the Constitution.[26]

2.3 Election of the chairperson

Among other matters, democracy means that public officials at subnational level are primarily accountable to the citizens of the area they administer.[27] One of the mechanisms of promoting local accountability of public officials is by ensuring that public officials are directly elected by the citizens in the area concerned. As submitted in Chapter Two, the direct election of local leaders provides voters with an opportunity to evaluate their performance and gives such leaders the legitimacy to govern, which is important for building sustainable peace.[28] As will be observed below, the 2013 Constitution strives to reap these benefits associated with the direct election of leaders at subnational level.

2.3.1 Provincial councils

Unlike the Lancaster House Constitution, which made provision for the appointment of provincial governors by the President to chair provincial councils,[29] the 2013 Constitutions requires provincial councils to be chaired by chairpersons.[30] The chairperson is elected by the provincial council on its first sitting after every general election from a list of at least two qualified persons submitted by the political party which gained the highest number of National Assembly seats in the province concerned.[31] This means that the chairperson of the

[23] See Bland 2010: 55.
[24] See paragraph 5.2 of Chapter Three. See also s 16 Provincial Councils and Administration Act.
[25] S 16(1)(e) Provincial Councils and Administration Act.
[26] See Chatiza 2014: 4, Musekiwa 2014: 3.
[27] See Bardhan & Mookherjee 2006: 13.
[28] See para 6.1.1.1. See also Bahl 1999: 5, 61; Smith 2007: 111-13.
[29] S 3(1) Provincial Councils and Administration Act.
[30] S 272(1) Constitution.
[31] S 272(1)(a) Constitution. If there is no political party which gained the highest number of National Assembly seats, the party which received the highest number of votes cast in the province in the general election for Members of the National Assembly recommends the names of individuals for appointment as the chairperson. Political parties are required to recommend for appointment as chairperson of a provincial council individuals who are qualified for election as a Member of the Senate. See s 272(1)(b) and s 272(2) Constitution.

provincial council does not necessarily have to be a member of the provincial council. The implication of this method of electing chairpersons is that chairpersons of provincial councils are not going to be directly accountable to the citizens of their respective provinces but to the political parties which recommended their appointment.[32] The changes brought about by the 2013 Constitution in the election of chairpersons of provincial councils means that section 3(1) of the Provincial Councils and Administration Act is inconsistent with the new constitutional order. The section provides for the appointment of provincial governors (who, as stated above, previously chaired provincial councils) by the President.[33] Thus, the section has to be aligned with the Constitution.[34]

The 2013 Constitution has reduced the powers of the President since he or she no longer has the power to appoint chairpersons of provincial councils and thus limits the scope for (re)deployments of party cadres by the President.[35] Under the Lancaster House Constitution, the appointment and role of provincial governors reflected that they were agencies of the national government at the provincial level.[36] Through provincial governors the President had effective control of the provinces.

2.3.2 Metropolitan councils

The metropolitan council of the Metropolitan Province of Harare is chaired by the Mayor of the City of Harare.[37] The mayor or chairperson of the second-largest urban local authority in Harare Metropolitan Province is the deputy chairperson of the Harare Metropolitan Council.[38] The Metropolitan Province of Bulawayo is chaired by the Mayor of the City of Bulawayo.[39] The role of mayors in chairing metropolitan councils presents a democratic benefit since they are indirectly elected officials, unlike provincial governors who are appointed officials.[40] The major question nonetheless is whether the mayors will be able to deliver on both positions of the chairperson of the metropolitan council and that of a mayor. Mayors are likely to deliver on both roles given that they have only ceremonial duties at the local level which gives them enough time to deal with provincial matters.

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[32] See Human Rights Bulletin 2012: 3.
[33] S 4(1) Provincial Councils and Administration Act.
[34] See Musekiwa 2014: 3.
[35] Moyo 2013: 153, Chigwata & De Visser 2013: 3, 5. See also Keulder 1998: 183, Makumbe 1996: 111.
[36] See Makumbe 1996: 40, Chatiza 2014: 4, Musekiwa & Mandiyanike 2013: 8.
[37] S 269(1(b)(i) Constitution.
[38] S 269(1)(b)(ii) Constitution.
[39] S 269(1(a) Constitution.
[40] S 4(1) Provincial Councils and Administration Act.

2.3.3 Ministers of State for provincial affairs

After the harmonised elections held in July 2013, the President in terms of powers bestowed on him by the Constitution appointed a number of ministers to oversee various portfolios.[41] Ten of these ministers, known as Ministers of State for Provincial Affairs (provincial ministers), are charged with overseeing governance in the ten provinces. The position of provincial minister is not provided for in the Constitution, nor are they elected.[42] A number of questions can be raised with regard to this development given that the Constitution makes provision for chairpersons of provincial council who more or less are expected to exercise similar responsibilities. What is the relationship between chairpersons of provincial and metropolitan councils, and provincial ministers? Will the two structures operate as parallel structures at the provincial level? Are provincial ministers former provincial governors by another name?[43] What is the implication of the role of provincial ministers on decentralised governance?

The exact role of provincial ministers is known to the President, but their exact relationship with provincial and metropolitan councils is unclear.[44] However, three independent views on their role are offered here. Provincial ministers could be temporary positions established to fill the governance void before the establishment of provincial and metropolitan councils.[45] As highlighted in Chapter Three, as of July 2014, provincial and metropolitan councils had not been established, for they were awaiting enactment of the relevant legislation. This means that once the councils have been established, provincial ministers will be abolished. The other view is that, once provincial councils have been established, provincial ministers will be appointed as chairpersons of these councils.[46] This option is only feasible in eight non-metropolitan provinces where, after the 2013 Presidential Elections, ZANU-PF received the highest number of parliamentary seats in these provinces, therefore giving it the right to recommend individuals for appointment as chairpersons of provincial councils.[47] In the metropolitan provinces of Harare and Bulawayo provinces, on the other hand, the MDC has

[41] See s 104 Constitution.
[42] See Machingauta *et al* 2014: 18.
[43] See Machingauta *et al* 2014: 18.
[44] See Machingauta *et al* 2014: 18.
[45] See Local Governance Community Capacity Building and Development Trust 2014: 6.
[46] This implies that, in respect of non-metropolitan provinces, provincial ministers are chairpersons of provincial councils 'in-waiting'.
[47] S 272(1)(a)(b) Constitution. In addition, persons appointed as chairpersons of provincial and metropolitan councils must qualify to be elected as a senator.

the right to recommend names of individuals for appointment since the party received the highest number of parliamentary seats after the 2013 Presidential Elections. Thus, this probability depends on election outcomes.

The other view is that provincial ministers could have been established to act as a parallel structure of governance at provincial level along with provincial and metropolitan councils. This view is supported by the fact that unlike former provincial governors (who reported to the President through the Minister responsible for local government), provincial ministers report directly to the President.[48] If this is the accurate explanation, while perhaps motivated by the need to ensure greater coordination of government activities at the provincial level, the role of provincial ministers presents a significant challenge to decentralised governance and is arguably against the spirit of devolution enshrined in the 2013 Constitution. Provincial ministers are likely to compete with provincial and metropolitan councils – the constitutional bodies established to administer provinces.[49] Tension between these two structures is likely to develop especially in provinces where different political parties occupy the position of the provincial minister and chairperson of the provincial and metropolitan councils, or command majority in the provincial or metropolitan council.

2.4 Removal from office of the chairperson of the provincial or metropolitan council

As argued above, it is important for local democracy that senior governments do not arbitrarily remove officials of subnational governments from their positions.[50] Elected officials at subnational level should be removed from office after following due process of the law. The 2013 Constitution protects chairpersons of provincial councils from being arbitrarily removed from their positions. It provides for four ways in which the chairperson of the provincial council can vacate his or her position.[51] A chairperson of the provincial council vacates his or her office:

a) after tendering a resignation to the provincial council,[52]
b) on the day on which the provincial council first meet after a general election,
c) if he or she becomes disqualified to be a member of the provincial council, or

[48] See Local Governance Community Capacity Building and Development Trust 2014: 7.
[49] Chigwata & De Visser 2013: 18.
[50] Bland 2010: 55.
[51] S 272(8) Constitution.
[52] S 272(5) Constitution.

d) upon removal by the provincial council or an independent tribunal.

This shows that the national government plays no role in removing a chairperson of provincial councils from office. The Constitution does not provide such protection for chairpersons of metropolitan councils. In fact, the Constitution does not detail how chairpersons of metropolitan councils may be removed from office. As will be discussed in Chapter Eight, the Constitution provides for the removal of mayors by an independent tribunal.[53] Once the mayor has been dismissed, he or she automatically loses the position of chairperson of the metropolitan council. The question is whether the mayor as the chairperson of the metropolitan council can be removed from office. While there is no explicit constitutional provision providing for the removal of chairpersons of metropolitan councils, it is submitted that chairpersons of metropolitan councils should be removed from office in similar circumstances which apply to chairpersons of provincial councils. Further, it is argued that once a chairperson of the metropolitan council is removed from office he or she should automatically lose his or her position as mayor. This is to avoid a situation where the chairperson of the metropolitan council is removed from office but remains the mayor at the local level. What follows is a discussion of the removal of chairpersons by the provincial council and an independent tribunal.

2.4.1 Removal from office by the provincial council

A chairperson of the provincial council may be removed from office upon a resolution passed by at least two-thirds of the total membership of the provincial council.[54] The power of the council to remove the chairperson of the council is a commendable development since it has the potential to foster the accountability of the chairperson to the provincial council.[55] It may also foster better performance on the part of chairpersons since they risk being voted out by members of the provincial council if they underperform.[56] It is submitted that section 8(2)(b) of the Provincial Councils and Administration Act, which provides for the removal of chairpersons of provincial councils from office by the President, is inconsistent with the 2013 Constitution. The President no longer has such powers. In that way, the 2013 Constitution has reduced the scope for politically motivated removal from office of chairpersons of provincial

[53] See s 278(2) Constitution.
[54] S 272(6)(c) Constitution.
[55] See also Smith 2007: 202.
[56] Chigwata & De Visser 2013: 5.

councils.[57] It has provided safeguards for chairpersons which were not available to provincial governors. Thus, section 8(2)(b) should be aligned with the Constitution.[58]

2.4.2 Removal from office by an independent tribunal

The chairperson of the provincial council may be removed from office by an independent tribunal established in terms of an Act of Parliament.[59] The independent tribunal may remove chairpersons of the provincial councils only on the grounds of:

a) inability to perform the functions of their office due to mental or physical incapacity;
b) gross incompetence;
c) gross misconduct;
d) conviction of an offence involving dishonesty,
e) corruption or abuse of office; or
f) wilful violation of the law, including a local authority by-law.[60]

As at July 2014, like all other structures related to provincial and metropolitan councils, the tribunal had not been established yet. The removal from office of political office-bearers such as the chairperson of the provincial council by an independent tribunal is a new phenomenon in the Zimbabwe. The role of the tribunal ensures independent review of the conduct of chairpersons. It is also an effective mechanism of ensuring that elected officials at subnational level are not removed from office by senior governments for mere political reasons.[61] As will be argued in Chapter Eight, there is a need for legislation to provide content to these grounds as they are broadly captured in the Constitution.[62] It is also not clear whether the tribunal will monitor the day-to-day activities of the chairpersons of provincial council or whether the tribunal will operate like a court where a citizen or organisation has to lodge a complaint before it can investigate the conduct of a chairperson. There is also the possibility of overlap between the role of the provincial council and that of the tribunal. The overlap is examined below.

[57] Moyo 2013: 153, Chigwata & De Visser 2013: 5.
[58] See Musekiwa 2014: 2.
[59] S 272(6) Constitution. The Constitution requires the establishment of an independent tribunal to exercise the function of removing chairpersons of provincial council from office.
[60] S 272(7) Constitution.
[61] See Bland 2010: 55.
[62] See para 7.4.2.

2.4.3 Overlap between the role of the provincial council and independent tribunal

There is potential for confusion of roles between the provincial council and the independent tribunal with respect to the removal from office of chairpersons. As mentioned above, the provincial council may remove the chairperson of the provincial council on a resolution supported by at least two-thirds of the total membership of the council.[63] The challenge is to define the boundaries of power of the provincial councils and independent tribunal to remove chairpersons. Does the power of the provincial councils include removal of chairpersons based on those grounds applicable to the tribunal? In practical terms, if the provincial council found the chairperson guilty of corruption may it remove the chairperson from office on that ground, which is one of the grounds upon which the tribunal may remove chairpersons from office? Another scenario could be the failure by the chairperson to implement decisions of the provincial council due to gross incompetence. Could the council dismiss the chairperson in such a scenario, given that 'gross incompetency' is a ground upon which the tribunal may remove the chairperson from office? It is submitted that such conduct by the provincial council will amount to an encroachment into the functional area of the tribunal, which is constitutionally protected. Instead, it is suggested that the role of the provincial council should be limited to the removal of chairpersons on any other grounds than those which apply to the independent tribunal.[64] The role confusion may be reduced if the removal of chairpersons by the provincial council is limited to one ground. The council should only remove the chairperson of the provincial council from office if it no longer has confidence in the chairperson based on political judgements. In all other cases, the council should refer the matter for the attention of the independent tribunal.

2.5 Functions of chairpersons of a provincial or metropolitan councils

The Constitution directs Parliament to enact a law providing for the functions of chairpersons of provincial and metropolitan councils.[65] At the time of writing, the relevant act had not been enacted. Under the Lancaster House Constitution, provincial governors were charged with chairing provincial councils. They also exercised other responsibilities, including:

[63] See s 272(5)(c) Constitution.
[64] See s 272(7) Constitution.
[65] S 273(1)(b) Constitution.

a) coordinating the activities of various agencies of the national government operating at the provincial level,[66]
b) coordinating the formulation and implementation of development plans in their provinces,[67] and
c) performing any other functions within or on behalf of their provinces that may be conferred upon them by law. [68]

It is proposed that in addition to these duties, chairpersons of provincial and metropolitan councils should be given responsibilities that reflect the wide range of functions which provincial and metropolitan councils are supposed to carry out under the 2013 Constitution.[69] For example, chairpersons could oversee the preparation and implementation of policies, including budgets, of the council. This responsibility is vital given that each provincial or metropolitan council is entitled to a certain share of nationally raised revenue which it should spend on various socio-economic programmes.[70] Chairpersons could also supervise the administrative arm of the council to ensure effective implementation of policies. If the national government assigns law-making powers to provincial and metropolitan councils, the chairpersons could initiate laws for approval by the council.

2.6 Committees of provincial and metropolitan councils

It was contended in Chapter Two that subnational governments may respond better to the demands of their localities if they are authorised to determine as far as possible their own internal structures.[71] It was further contended that such authority to determine internal structures allows subnational governments to adapt their structures to local needs and to ensure effective management.[72] The 2013 Constitution has given provincial and metropolitan councils the authority to establish various committees to effectively discharge their functions.[73] While giving provincial and metropolitan councils the power to determine the number of such committees, the Constitution specifies that such committees 'must' be presided over by provincial councillors, as in the case of provincial councils.[74] It is suggested

[66] S 10(a)(b) Provincial Councils and Administration Act.
[67] S 10(c) Provincial Councils and Administration Act.
[68] S 10(d) Provincial Councils and Administration Act.
[69] See s 270(1) Constitution.
[70] The equitable share will be discussed in para 4.2 of Chapter Seven.
[71] See para 6.3.3. See also UN-Habitat 2009: 12.
[72] UN-Habitat 2007: 8.
[73] S 271 Constitution.
[74] S 271 read together with s 268(1)(h) Constitution. In metropolitan councils, s 271 provides that the committees 'must' be presided over by a member appointed in term of section 269(1)(h) of the Constitution.

that in metropolitan councils the committee should be presided over by mayors, deputy mayors, chairpersons and deputy chairpersons of local authorities.[75] The autonomy given to provincial and metropolitan councils to establish their internal governance structures is commendable. It will allow each provincial or metropolitan council to adapt its governance structures to the needs of its province.[76]

2.7 Administrative structures

The 2013 Constitution gives Parliament the discretion to decide whether provincial and metropolitan councils should exercise any form of authority over internal administrative structures and procedures.[77] Thus, as under the Lancaster House Constitution, the autonomy of provincial and metropolitan councils to set their internal administrative structures and procedures is not guaranteed.[78] The situation has to a certain extent been changed by the 2013 Constitution.[79] The Constitution upgraded provincial and metropolitan councils from being mere extensions of the national government to governments in their own right.[80] Therefore, it is submitted that provincial and metropolitan councils should be given the authority to establish their own administrative structures.[81] Further, national legislation should provide the framework within which provincial and metropolitan councils exercise such authority. For example, the legislation may provide for the establishment of the post of an administrative head who will be supported by a team of other administrative officials. Other administrative officials may lead sub-administrative structures as determined by the provincial or metropolitan council. To foster accountability of the administrative officials to the council, it is suggested that the head of administration should be appointed by the council.[82] The

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Such a section does not exist. It is submitted that such inconsistency should be regarded as a 'typo-error' rather than a substantive omission.

[75] See s 269(1)(f) Constitution.

[76] See Chatiza 2014: 5.

[77] S 273(1)(a) Constitution.

[78] See Machingauta *et al* 2014: 30. Under the Lancaster House Constitution, the Provincial Councils and Administration Act made provision for the establishment of provincial development committees and other committees. These committees were composed of a majority of officials of the national government placed at the provincial level, some of members appointed by the Minister and senior officials of local authorities in the province concerned. They were the technical arm of the provincial council but were mainly responsible for provincial development planning and implementation. The domination of the committees by officials of the national government meant that provincial councils were merely extensions of the national government, with no administrative autonomy. See ss 26, 31, 26(1)(2) and 28 Provincial Councils and Administration Act. See also Keulder 1998: 188; Makumbe 1996: 49.

[79] See Preamble of Chapter 14 Constitution, Musekiwa 2014: 4.

[80] See s 5 Constitution.

[81] Chatiza 2014: 5. See also Musekiwa 2014: 4, the Aberdeen Principles 2005: 9.

[82] See Local Government Project, CLC 2008: 29-36.

administrative head should be given the responsibility to appoint other administrative officials. This proposal will mean that each council will have its own administrative structure independent of the national government.[83] It will promote effective implementation of policies of provincial and metropolitan councils since the administrative officials will be directly accountable to the council and not to the national government.

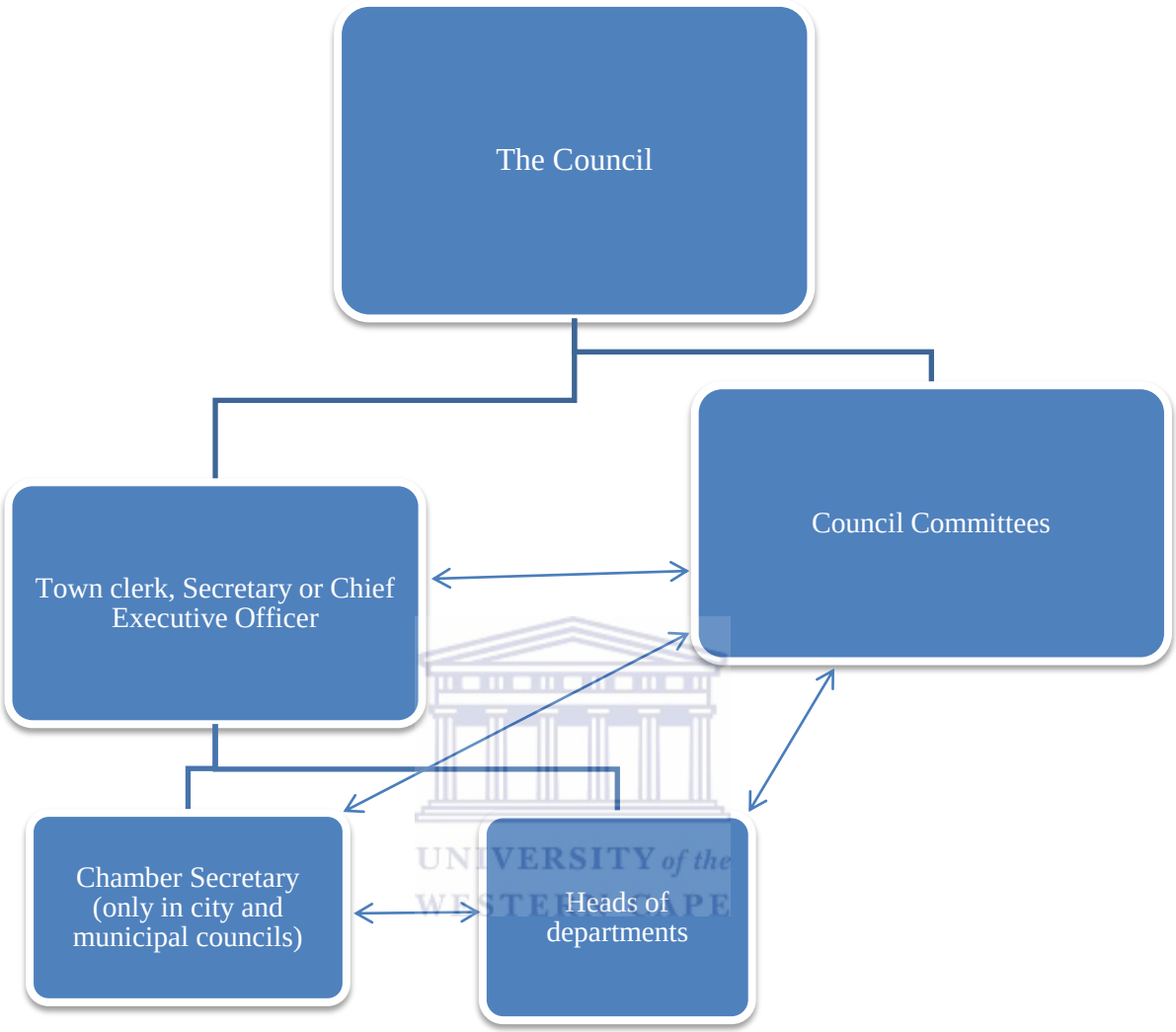
Having examined governance structures at the provincial level, the chapter will proceed to analyse similar structures at the local level.

3. Local Authorities

Local authorities in Zimbabwe are governed by an elected council which exercises both legislative and executive powers.[84] As shown in the diagram below, in exercising these powers, a council is required to organise itself into various committees. The council is supported by administrative officials, led by the town clerk in the case of city and municipal councils. In town councils and local boards the council is supported by an administrative arm led by a secretary, while in rural local authorities it is led by the chief executive officer. The mayor is the political head in city and municipal councils, whereas in town councils, local boards and rural local authorities it is the chairperson. The council, the mayor or chairperson, committees of the council and the administrative arm of a local authority council are the main governance structures at the local level. These structures will be examined in this section.

[83] The Provincial and Metropolitan Councils Draft Bill has given provincial and metropolitan councils such authority.
[84] See s 38 UCA and s 8(1) RDCA.

Figure 13: Governance structures of a local authority



3.1 The Council

3.1.1 Composition of a council

It was contended in Chapter Two that officials at local level should be elected by the voters within the area concerned.[85] As highlighted above, the direct election of local leaders by the voters fosters the accountability of such officials to the citizens and can enforce better performance of local leaders.[86] The 2013 Constitution has recognised the need to have local leaders directly elected by the voters. It requires that 'all' members of local authorities

[85] See para 6.1.1.1. See also the Aberdeen Principles 2005: 6, 8; Article 3(2) European Charter of Local Self-Government.
[86] See UN-HABITAT 2007: 3; Bahl 1999: 5, 61.

(councillors) be directly elected by registered voters within the areas which the local authorities are established to administer.[87] Thus, unlike under the Lancaster House Constitution where some councillors were elected and others were appointed by the Minister,[88] the 2013 Constitution seeks to advance local democracy as it only makes provision for directly elected councillors.[89]

The system of appointment of a certain number of councillors by the Minister was not only undemocratic but controversial.[90] Although the appointed councillors could not vote, their role in council undermined democratic governance. There are allegations that the Minister (ab)used the power to appoint a certain number of councillors by appointing individuals aligned to ZANU-PF as special interest councillors, at the expense of targeted groups.[91] These allegations are supported by an empirical study carried out by De Visser and Mapuva in 20 major urban local authorities.[92] They found that out of 57 appointed councillors in these urban local authorities only 2 were affiliated to the MDC while 55 were aligned to ZANU-PF.[93] The controversy surrounding the appointment of councillors clearly indicates there was tension between the notion of democratically elected councils and the central appointment of ministerial representatives to that council.[94] Thus, the 2013 Constitution is commendable in this regard as it has resolved this tension. It is submitted that section 4A of the UCA and section 11 of the RDCA, which provides for the composition of councils by elected and appointed councillors, is now inconsistent with the Constitution.[95] Hence, the provisions have to be aligned with the Constitution so that provision is made for directly elected councillors only.[96]

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[87] S 265(2) Constitution. See also s 274(2) and s 275(2)(b) Constitution. Councillors are elected under the first-past-the-post electoral system.
[88] S 4A UCA and Ss 11, s 31 RDCA.
[89] See Chatiza 2014: 1, 4; Musekiwa 2014: 7; Mandiyanike 2013: 2, 8; Sims 2013: 23.
[90] Sims 2013: 17. The system of appointing councillors in urban local authorities was only introduced in 2008. In rural local authorities the appointment of special interests councillors dates back to the pre-independence era. Appointed councillors are ideally appointed to represent specific interests of certain groups – such as women, business communities and the disabled – on the council of a local authority, which may not be adequately protected or represented through the ballot.
[91] Mandondo & Mapedza 2003: 12, Sims 2013: 17-18.
[92] See De Visser & Mapuva 2013: 170-1.
[93] De Visser & Mapuva 2013: 13. The survey also reveals 'arbitrary implementation' of the special interests clause given the inconsistency in the numbers of appointed councillors in local authorities and the failure by the Minister to appoint councillors in some local authorities. There is no positive evidence to suggest that the appointment of councillors to represent specific interests, such as marginalised groups, has resulted in improved participation of such groups.
[94] Chigwata & De Visser 2013: 5.
[95] See also s 31 RDCA. See Machingauta *et al* 2014: 20.
[96] See De Visser & Mapuva 2013: 173, Musekiwa 2014: 2.

3.1.2 Qualifications of councillors

In paragraph 6.1.1.1 of Chapter Two it was contended that rules governing the election of councillors should prescribe a minimum level of educational qualifications for a councillor so that capable individuals are elected into office. In Zimbabwe, a person is qualified to be elected as a councillor if he or she:

a) is a citizen of Zimbabwe,
b) has attained the age of twenty-one years,
c) is enrolled in the voters roll for the council area concerned, and
d) is not disqualified in terms of section 19(2) of the Electoral Act.[97]

This means that anyone with or without primary and/or secondary education may be elected as a councillor. In practice, most councillors possess basic literacy qualifications but are less educated compared to senior administrative officials of local authorities.[98] A study carried out by Bland in 2010 found that more than 14 per cent of councillors had no more than a primary school education and only 20 per cent had a university degree, diploma or certificate.[99] It revealed that most local authorities have councillors with low education levels. This brings into question the ability of these councillors to effectively deliver on their mandate, especially where this involves technical issues such as budgets and strategic plans.[100]

It is argued that a majority of councillors lack the competence to conceptualise, formulate, manage and evaluate policies, programmes and legislation, including holding administrative officials accountable for their actions.[101] Such incapacity adversely impacts the ability of a local authority to discharge its mandate. It is further argued that this challenge has provided administrative officials with an excuse for making decisions for the people, a duty which should be carried out by elected officials.[102] Political parties have not implemented effective measures to redress this problem as they are reluctant to nominate candidates for election as councillors based on qualifications. Instead, nomination is based on popularity and allegiance

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[97] S 119(1) Electoral Act s 185/2013. Section 119(2) of the Electoral Act disqualifies a person from being nominated as a councillor on a number of grounds, including: membership of another local authority, membership of Parliament, conviction of an offence involving dishonesty and suspension in terms of the UCA and RDCA.
[98] Mandondo & Mapedza 2003: 14.
[99] Bland 2010: 3. In the study, 250 local government officials in 15 local authorities were interviewed.
[100] Pasipanodya *et al* 2000: 27. See also Bland 2011: 343.
[101] Sachikonye *et al* 2007: 94.
[102] See Makumbe 1996: 112.

to the party. Hence, it is submitted that legislation should provide for minimum levels of education so that only capable individuals are elected to fill the positions of councillors.

3.1.3 Remuneration of councillors

It was contended in Chapter Two that some of the problems of decentralisation, such as corruption, may be minimised if senior governments exercise effective supervision of local governments.[103] One way of supervising local governments is by setting limits for the remuneration of office-bearers at local level to guard against resource-wastage.[104] In Zimbabwe, the national government not only has the power to set such limits but determines whether any form of remuneration should be given to councillors in a particular local authority. In terms of the UCA and RDCA, local authorities may provide a monthly personal allowance to councillors only with the consent of the Minister.[105] The rate of the personal allowance is determined by the council but may not exceed a sum prescribed by the Minister. Local authorities may not provide a personal allowance to a councillor who fails to attend council proceedings for a period exceeding 30 consecutive days.[106] Further, they may not provide a personal allowance to a councillor in any circumstances in which a by-law or standing order of the council prohibits such payment.[107] It is submitted that while the powers of the Minister to set salary scales are essential, the Minister should not have the power to determine whether each local authority should provide monthly personal allowances to its councillors or not, as that would undermine the predictability of the regulatory framework. Furthermore, there are opportunities for abuse of these powers since the Minister has wide discretion. It is suggested that the requirement for the consent of the Minister should be abolished.[108] However, the Minister should retain the power to set salary and remuneration scales.

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[103] See para 5.1. See also the Aberdeen Principles 2005: 9.
[104] See Eaton & Schroeder 2010: 175.
[105] S 112(1) UCA and s 54(1) First Schedule, RDCA. Appointed councillors were entitled to the same benefits in every respect as if they were elected councillors. The Minister may also grant authority to an urban council to pay pensions to councillors and ex-councillors in special circumstances. S 113 UCA.
[106] S 112(2)(a) UCA and s 54(2)(a), First Schedule, RDCA.
[107] S 112(2)(b) UCA.
[108] See Clause 15 Urban Councils Amendment Bill 2011 (a private members bill introduced to reduce the powers of the central government over local authorities so as to promote local democracy).

3.2 Internal proceedings

It was contended in Chapter Two that local governments may respond better to the demands of their localities if they are authorised to determine as far as possible their own internal proceedings.[109] The authority of local authorities in Zimbabwe to determine their internal proceedings will be examined in this section. Attention is given to the role of the mayor or chairperson, council meetings, the privileges and immunities of councillors and the rules governing their conduct. The section also seeks to examine the extent to which the internal proceedings of local authorities provide for accountable, transparent and participatory governance.

3.2.1 The mayor or chairperson

As highlighted above, city and municipal councils are led by a mayor, while town councils, local boards and rural local authorities are led by a chairperson. This section examines the election, functions, term of office, remuneration and removal from office of mayors and chairpersons.

3.2.1.1 Election

The 2013 Constitution makes provision for the role of ceremonial mayors or chairpersons but does not prohibit the establishment of the post of an executive mayor or chairperson.[110] It gives Parliament the discretion to determine whether there should be executive mayors or not. In the event that Parliament decides to establish the post of an executive mayor or chairperson, the Constitution requires such mayors or chairpersons to be directly elected by voters.[111] The position of executive mayors is not new to Zimbabwe. It was highlighted in Chapter Three that at independence urban local authorities were led by ceremonial mayors.[112] In 1996, the UCA was amended to establish the post of a directly elected executive mayor to strengthen representative democracy and enforce local accountability.[113] It is argued that ZANU-PF had almost a total majority in all urban local authorities and therefore it had nothing to fear by creating the office of a popularly elected executive mayor.[114] In 2008, the

[109] See para 6.3.3. See also UN-Habitat 2009: 8, 12.
[110] See s 274(5) and s 277(2) Constitution.
[111] S 274(5) Constitution.
[112] See para 4.2.2. See also Jonga & Chirisa 2009: 177.
[113] Kamete 2006: 259. See also Chakaipa 2010: 61, Muchadenyika 2014: 125.
[114] Kamete 2006: 259.

post of executive mayor was abolished and replaced by that of a ceremonial mayor. The national government cited abuse of power, mismanagement and unsustainable remuneration packages of executive mayors (at the expense of service delivery) as the primary reasons behind its decision to reintroduce ceremonial mayors.[115] Jonga and Chirisa however argue that the abolition of executive mayors was a political move aimed at reducing the power of the MDC which commanded majority support in almost all urban local authorities since the elections of the early 2000s.[116] Despite the controversy associated with the abolition of executive mayors, it is recommended that Parliament should consider establishing the post of an executive mayor to promote local accountability and efficiency, especially in large local authorities.[117] A small executive led by the mayor has the 'ability to act more quickly, efficiently and responsively than a large legislature'.[118] Under such a system, the local legislature 'acts as a check on the powers of the executive, and is able to ensure that the executive act in a manner consistent with its mandate'.[119] The local legislature can 'call both the executive and administration to account and is able to stimulate debate on policy issues and probe the implementation process.'[120] Under such a system, although their roles are distinct, both the executive and legislature had important role to play in enhancing local democracy and accountability and ensure that the local authority delivers on its service delivery and development mandates.[121] These advantages may be minimal in small councils: for example, those which have less than 15 councillors. In such councils, decisions may be taken as efficiently in plenary as through the establishment of a separate executive, as smaller forums tend to make decisions faster.[122] Besides the accountability and efficiency benefits discussed above, executive mayors have the advantage of giving a face to local government and creating a strong focal point for local politics, which is not available under a system of ceremonial mayors.[123] Thus, it is submitted that national legislation should provide for the role of executive mayors in large local authorities such as city and municipal councils while other local authorities may be administered by ceremonial mayors.

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[115] See Chakaipa 2010: 61, Jonga & Chirisa 2009: 177.
[116] Jonga & Chirisa 2009: 177. See also Muchadenyika 2014: 125.
[117] Chigwata & De Visser 2013: 6. Machingauta *et al* 2014: 21. See also Musekiwa 2014: 3, Musekiwa & Mandiyanike 2013: 8.
[118] White Paper on Local Government, South Africa 1998.
[119] White Paper on Local Government 1998.
[120] White Paper on Local Government 1998.
[121] See White Paper on Local Government 1998.
[122] White Paper on Local Government 1998.
[123] See White Paper on Local Government 1998.

Ceremonial mayors or chairpersons, on the other hand, are elected by councillors at the first meeting of the council following a general election.[124] Unlike under the Lancaster House Constitution where a non-councillor could be elected a mayor or chairperson, the 2013 Constitution requires ceremonial mayors and chairpersons to be elected by councillors from among the membership of the council.[125] It is submitted therefore that section 103(1) of the UCA, which allows councillors to elect a non-councillor to be a mayor or chairperson, is inconsistent with the Constitution. Thus, the provision has to be aligned with the Constitution by providing for the election of the mayor or chairperson by councillors from among the membership of the council.[126]

3.2.1.2 Functions

Mayors or chairpersons carry out only ceremonial duties and do not have executive decision-making powers.[127] They preside over meetings of the council and in the event of an equality of votes on any matter before the council, the mayor or chairperson has a casting vote in addition to a deliberative vote.[128] Outside the council chamber, the mayor is the political head who represents the local authority to the public by attending civic and other functions at which his or her presence has been requested. The mayor usually leads the delegation of the local authority when engaging with the national government or any other stakeholders. As head of the local authority, the mayor (and the town clerk) usually signs documents of the local authority and issues press statements reflecting the council's views and decisions.[129] The deputy mayor (or chairperson) performs the functions of the mayor (or chairperson)

[124] S 277(2) Constitution. See also s 103(1) UCA and s 45(1) RDCA. In rural local authorities, the Minister may also appoint the chairperson or vice-chairperson if the council fails to elect a chairperson or vice-chairperson. See s 45(2) RDCA. After electing a mayor or chairperson, councillors are required to elect a deputy mayor or deputy chairperson. A council may also elect an acting mayor or chairperson whenever the mayor and deputy mayor or chairperson and deputy chairperson are unable to carry out their duties. In rural local authorities, the Minister may also appoint an acting mayor or chairperson on behalf of the council. S 104(3) UCA and s 45(7) RDCA.

[125] S 265(2) Constitution. See Musekiwa &Mandiyanike 2013: 12.

[126] See Musekiwa 2014: 2.

[127] Chairpersons, who head local boards and rural district councils, have always exercised ceremonial functions and never had executive decision-making powers. See Mushamba 2010: 103.

[128] S 104(1) UCA. The mayor or chairperson may not exercise a casting vote for a council resolution to borrow money; see s 290(2)(a) UCA. A mayor or chairperson may also not exercise a casting vote when a person presiding over a meeting to elect a mayor or chairperson, deputy mayor or deputy chairperson is not a member of the council. S 103(7) UCA.

[129] See Jordan 1984: 31.

whenever the mayor (or chairperson) is absent, incapacitated to carry out or fails to undertake his or her duties.[130]

As highlighted above, the national government may establish the post of an executive mayor and require the council to delegate some of its executive decision-making powers to such mayors.[131] In that case, the critical question becomes: how does the mayor as an individual exercise the executive decision-making powers especially given that in large local authorities additional political capacity may be needed? There are two broad options which can be borrowed from South Africa, which has fairly developed local political structures.[132] The first is to allow the Mayor to constitute a mayoral committee by appointing a limited number of councillors to serve on the committee. In this case, the mayor delegates responsibilities to members of the committee but would remain accountable to council for the executive functions to the local authority.[133] This option has the advantages of an individual executive, such as decisiveness and increased public visibility.[134] The second option is to require the council to elect a collective executive ('executive committee') chaired by the mayor. Under this system, the council delegates executive decision-making powers to the executive committee.[135] By 'spreading responsibility for executive functions across a number of councillors the [executive committee] can act as an effective method for building the capacity of emerging political leadership'.[136] It is submitted that national legislation could make provision for both the individual and collective executive options. In the event that the post of the executive mayor is established, it is recommended (on the South African model of local government) that provision should be made for the position of the speaker who should play a separate role to that of the mayor, including presiding over meetings of the council.[137] Effective oversight of the executive by the legislature requires the executive mayor not to be involved in chairing activities of the legislature such as presiding over council meetings.

[130] S 104(2) UCA.
[131] S 274(5) Constitution.
[132] See White Paper on Local Government 1998.
[133] See White Paper on Local Government 1998.
[134] See White Paper on Local Government 1998.
[135] The mayor may not take executive decisions as an individual.
[136] See White Paper on Local Government, 1998.
[137] See s 36-41 Municipal Structures Act, Act No. 117 of 1998, South Africa.

3.2.1.3 Term of office

It was contended in Chapter Two that the term of office of mayors (in particular, executive mayors) should be limited to reduce chances of local authoritarianism.[138] The term of office of a mayor, chairperson, deputy mayor and deputy chairperson runs concurrently with the term of office of the President for a period of five years.[139] The Constitution does not explicitly limit the term of office of mayors and chairpersons, nor do the UCA and RDCA. It however limits the term office of the President to a maximum of two five-year terms.[140] It is submitted that national legislation should limit the term of office of mayors and chairpersons of local authorities to a maximum of two five-year terms, similar to the President. Limiting the term of office of mayors will be particularly important if Parliament decides to establish the post of executive mayors. Local authoritarianism is likely to develop under a system of unfixed terms of office.[141]

3.2.1.4 Remuneration

Mayors and chairpersons (as well as their deputies) of urban local authorities are paid a monthly allowance to cover general and personal expenses.[142] The monthly allowance is determined by the council but may not exceed the rate prescribed by the Minister. It is submitted that the powers of the Minister to set a maximum limit for any form of remuneration of mayors and chairpersons falls within the framework of supervision, which is necessary to prevent corruption and resource-wastage at the local level.[143] The RDCA is silent about the remuneration of chairpersons or deputy chairpersons in rural local authorities, although provision is made for the remuneration of councillors in general.[144] It is suggested that a single piece of legislation should regulate the remuneration of councillors in all local authorities, taking into account the differences at local levels, including ability to remunerate political leaders and the class and category of local authority.

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[138] See para 6.1.1.3. See also Bland 2010: 57.
[139] See s 277(1)(a) read together with s 143 Constitution.
[140] See s 91 Constitution. See Musekiwa 2014: 5-6.
[141] See Bland 2010: 57.
[142] S 105(1) UCA. Urban local authorities are required to pay an allowance to a deputy mayor, deputy chairperson or councillor if, in an acting capacity, he or she performs the duties of the mayor or chairperson for a period exceeding 14 days. The acting allowance is determined by the council. See s 105(2) UCA.
[143] Eaton & Schroeder 2010: 175. Supervision will be discussed in detail in Chapter Eight.
[144] First Schedule, RDCA.

3.2.1.5 Removal and vacation from office

As argued above, officials of senior governments should not arbitrarily remove locally elected officials from office as that would undermine local democracy.[145] To safeguard local officials it may be necessary to recognise in legislation the grounds upon which local officials may be removed from office. In addition, it was contended in Chapter Two that there is need for oversight mechanisms on the exercise of such supervisory powers.[146] The 2013 Constitution has recognised the need to protect locally elected officials given the historical context where local leaders were unjustifiably removed from their positions by the national government.[147] It is claimed that since the year 2000 some mayors were either suspended or dismissed from office for mere political reasons.[148] Jonga argues that most of the mayors who were suspended or dismissed by the Minister since independence were aligned to the MDC.[149] As will be argued in Chapter Eight, such politically motivated suspensions or dismissal of local officials could have occurred given that the UCA and RDCA gives the Minister unlimited powers to intervene in local affairs.[150] These powers have been reformed by the 2013 Constitution, which provides for the manner in which a mayor or chairperson may be removed from office.[151] As shall be discussed in detail in Chapter Eight, a mayor or chairperson does not vacate his or her seat except on these grounds.[152] It is submitted therefore that section 114 of the UCA and section 157 of the RDCA, which provides for the removal from office of a mayor or chairperson by the national government, is inconsistent with the Constitution and have to be repealed.

3.2.2 Council meetings

This section discusses procedures relating to council meetings in both urban and rural local authorities. In particular, the section examines the calling and adjourning of meetings, minutes of proceedings, quorum, decision-making, validity of decisions and resolutions of a council. The examination will be carried against the backdrop of design features set in

[145] See Bland 2010: 55.
[146] See para 6.6.3.2. See also the Aberdeen Principles 2005: 8, Eaton and Schroeder 2010: 172.
[147] See Musekiwa and Mandiyanike 2013: 9, Local Governance Community Capacity Building and Development Trust 2014: 13.
[148] See Kamete 2006: 257, Jonga 2012: 122, Jonga & Chirisa 2009: 167-8.
[149] Jonga 2012: 122.
[150] See para 7.4.1.
[151] See s 278 Constitution.
[152] See para 7.4.2. See also s 278(3) Constitution.

Chapter Two, primarily citizen participation, accountability, transparency and administrative autonomy.

3.2.2.1 Calling and adjourning of meetings

The first meeting of a council is held at a place and date determined by the Minister.[153] After the first meeting, the council decides the date and time of its meetings as well as the regulation of its proceedings.[154] However, the council is required to hold ordinary meetings as soon as practicable after each general election and thereafter at least once a month.[155] The mayor is required to call a special meeting of the council within 14 days at the request in writing by not less than one-third of the total membership of the council or of six councillors.[156] The chamber secretary,[157] in the case of city and municipal councils, and the secretary, in town councils and local boards, is charged with keeping minutes of all proceedings of the council and its committees.[158] In rural local authorities, minutes of the council are kept by the chief executive officer.[159] It is submitted that the regulation of who should keep minutes of the council is unnecessary and undermines administrative autonomy. It should be left to each individual council to determine who should keep minutes of proceedings of the council and its committees. While regulating the keeping of minutes, the UCA and RDCA does not make provision for how the public will be notified of meetings of the council. The absence of such a requirement may undermine citizen participation since citizens are unlikely to have the information relating to council meetings.[160] It is submitted that legislation should require the chamber secretary or equivalent official in other local authorities to notify the public of the time, date and venue of every meeting of the council.[161] This is necessary to allow the public to make decisions relating to participation in council and committee meetings.

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[153] S 84(1) UCA.
[154] S 84(1) UCA.
[155] S 84(1) UCA and s 46(1) RDCA.
[156] S 84(3) UCA and s 46(3) RDCA.
[157] The role of the chamber secretary will be discussed in detail in para 4.1.2 below.
[158] S 88(1) UCA.
[159] S 51(5) RDCA.
[160] See Ford 1999: 13, the Aberdeen Principles 2005: 7.
[161] See s 19(a) Municipal Systems Act, Act No. 32 of 2000, South Africa. The requirement should apply to urgent meetings of the council unless time constraints make it impossible. Notification may be done through newspapers and radio.

3.2.2.2 Quorum

In urban local authorities, more than one-third of the total membership of a council constitutes a quorum.[162] In rural local authorities, a quorum is constituted by not less than one-third of the total number of councillors entitled to sit on the council, in addition to the chairperson.[163] The rationale behind the differences in quorum requirements between urban and rural authorities cannot be clearly justified. If there are not enough councillors to form a quorum, the Minister has the power to appoint caretakers or commissioners to act as the council until the council has enough councillors to form a quorum or a new council has been elected.[164]

3.2.2.3 Decision-making

At any meeting of the council all councillors present at that meeting are obliged to vote on any matter which is put to the vote.[165] This implies that a councillor may not abstain from voting on any issue before the council. There is no similar requirement in rural local authorities. It is submitted that this requirement should be abolished as it is undemocratic to oblige councillors to vote on every issue before the council. Councillors should be allowed to abstain from voting if they so decide. In both urban and rural local authorities all matters or questions arising before the council are decided by a resolution passed by a majority of the vote cast.[166] A council, on a resolution passed by two-thirds membership of the council, may hold a ballot or call a meeting of voters to ascertain their views on any matter which is before the council.[167] It is submitted that this provision promotes direct citizen participation in council affairs. The problem, however, is its feasibility, especially in large local authorities such as Harare, which has over two million residents.[168] In practice, more than 75% of decisions in both council and committee are taken unanimously and without discussion.[169] In

[162] S 85(1) UCA. In the case of council, the total membership of which is not an integral multiple of three, one-third is construed as a reference to one-third of the number next above that of such total membership which is an integral multiple of three. See s 85(2) UCA.
[163] S 47 RDCA. In the absence of the chairperson, the deputy chairperson or any person appointed to by an acting chairperson should be present.
[164] See s 80(1) UCA and s 158(1) RDCA. These powers are discussed in detail para 7.5 of Chapter Eight.
[165] S 84(2)(a) UCA. See also s 86(1)(2) UCA and s 49(1)(2) RDCA.
[166] S 84(2)(c) UCA, s 46(2) RDCA. However, the chairperson of the rural district council may not have a casting vote where the question concerns the retraction or alteration of a previous resolution of the council.
[167] S 318(1)(a) UCA.
[168] ZimStat 2012: 25. This explains why there is a heavy demand for public infrastructure in this province compared to other provinces.
[169] See Jordan 1984: 29.

the council, most issues before the council will have been dealt with by the relevant committee of the council (discussed below) and any differences among councillors are usually ironed out before the council meeting. As for committees, decisions are normally taken based on information and recommendations made by administrative heads of departments. In situations where a matter has been raised for discussion, there is a general tendency to try and find a consensus rather than resort to a vote.[170]

3.2.2.4 Alteration or rescission of council resolutions or decisions

A council may alter or rescind any of its resolutions.[171] A notice of motion to rescind or alter the resolution has to be supported by not less than one-third of council membership.[172] In rural local authorities, the Minister may direct a council to rescind or alter any resolution passed at a meeting of the council.[173] As shall be argued in paragraph 5.7 of Chapter Eight, these powers of the Minister undermine the 'right to govern' which local authorities enjoy under the 2013 Constitution.[174]

3.2.2.5 Public access to council proceedings

Effective accountability and citizen participation requires that decision-making processes at local level be open and transparent.[175] Hence, it was submitted in Chapter Two that the legal framework should provide for mechanisms to foster transparency, including opening the meetings of legislative assemblies as well as their committees to the public and media.[176] The statutory framework governing council procedures in Zimbabwe strives to uphold such transparency requirements, although not sufficiently. A council is required to open its meetings to the public and media, except in circumstances where a council decides that a matter can be more 'conveniently and advantageously discussed in private'.[177] The closure of meetings for the sake of convenience and advantage may trump the right to access of information recognised in the 2013 Constitution.[178] While it may be necessary that some

[170] See Jordan 1984: 29.
[171] S 89(1)(a)(i) UCA and s 52(1)(a) RDCA. A resolution may not be rescinded or altered at a subsequent meeting of the council unless a committee has recommended such action.
[172] S 89(1)(a)(i) UCA and s 52(1)(a) RDCA. See also ss 89(1)(b), 89(4) UCA and s 52(1)(b)RDCA.
[173] S 52(3) RDCA.
[174] Eaton & Schroeder 2010: 180. See s 276 Constitution.
[175] See Ford 1999: 14, the Aberdeen Principles 2005: 7.
[176] See para 6.1.6. See also Bardhan & Mookherjee 2006: 13, UN-HABITAT 2007: 3.
[177] S 87 UCA and s 50(1) RDCA.
[178] S 62 Constitution.

matters are discussed in private, it is submitted that legislation should regulate the matters which can be discussed in private and not leave it to each council or committee to decide whether an issue should be discussed in public or not. In other words, the regulatory framework must be set higher than convenience and advantage. It is submitted that meetings deliberating on critical issues such as by-laws, budget, performance management systems and local plans (district development plans) should be open to the public and media.[179]

The UCA and RDCA provide that any resolution taken by a council in a closed meeting has full effect as any resolution of the council.[180] To foster transparency, minutes of proceedings of a council and of its committees are open for inspection by the public.[181] In urban local authorities, the minutes of council proceedings relating to staff matters, matters of internal or national security, acceptance of tenders, or any other matter determined by a council or its committee are not open for public inspection.[182] It is submitted that this requirement undermines transparency as it gives councils broad powers to declare some minutes of the council classified information. It is based on these minutes that the public can hold councils accountable and thus their categorisation as classified information undermines transparency and accountability. In rural local authorities such restriction only applies to minutes of proceedings of a finance committee, relating to any legal proceedings or property negotiations which a local authority is or may be party to.[183] There seems to be no rationale behind these differences in disclosure of meetings in urban and rural local authorities. It is suggested that similar disclosure requirements of information should apply in both urban and local authorities since equal levels of transparency and accountability are required in all local authorities, irrespective of category.[184]

3.2.3 Rules governing the conduct of councillors

The UCA and RDCA do not provide a specific code of conduct for councillors. In practice, councils with guidance from national policies have adopted their own code of conduct which is only applicable to their councillors. The UCA and RDCA however provide certain rules which govern the conduct of councillors to promote integrity. These rules are discussed in

[179] See s 20 Municipal Systems Act, South Africa.
[180] S 87(2) UCA and s 50(2) RDCA.
[181] S 51(6) RDCA and s 88(5) UCA.
[182] S 88(5) UCA.
[183] S 51(6) RDCA.
[184] See the Aberdeen Principles 2005: 7.

this section. The rules seek to ensure that councillors carry out their duties in the best interests of the local authority. Further, they are designed to engender the accountability of councillors not only to the council but also to the citizens in their respective localities. The rules are discussed below.

3.2.3.1 Provision of professional services

Section 108 of the UCA provides that mayors or councillors (and their partners, employees and employers) may not provide professional services for or against the council and, if they do so, they are guilty of an offence and liable to a fine or imprisonment or both.[185] The RDCA does not provide similar rules for councillors in rural local authorities. The Minister may impose or remove restrictions involving the provision of professional services 'if in his opinion' the interests of the inhabitants of the council area require that the restrictions be imposed or removed.[186] It is argued that these powers of the Minister are too wide and prone to political abuse. For example, these powers could be used to reward councillors aligned to the party which the incumbent Minister is belongs to or vice versa. It is suggested that the circumstances upon which the Minister may impose or remove restrictions should be recognised in law.[187]

3.2.3.2 Provision of goods and services

In urban local authorities, a councillor may not provide any service to their local authority unless he or she has notified the council of the extent of his or her interest in the matter.[188] Further, a councillor is not permitted to sell or hire any goods to the local authority unless he or she has notified the council of the extent of his interests in the matter.[189] It is therefore important that the council determines the extent of the conflict of interest and make a

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[185] Such services include the services of a legal practioner, medical practioner, estate agent, auctioneer, valuer, auditor and other professional services. However, a councillor may provide medical-related services on a council resolution supported by more than two-thirds of the councillors and if approved by the Minister. It is submitted that this role of the Minister constitutes unnecessary supervision and therefore should be abolished. A mayor or councillor may not act as agent for any other person before a valuation board, a board appointed by the Minister to hear objections or a licensing authority (constituted in terms of the Shop Licensing Act [*Chapter 14: 17*]) whose area of jurisdiction falls within the council area. See s 109 UCA.

[186] S 108(6) UCA. These restrictions also apply to a partner, employee or spouse of a mayor or councillor and a company of which a mayor or councillor is a member.

[187] See Bardhan & Mookherjee 2006: 13.

[188] S 108(4)(b) UCA. These restrictions also apply to a partner, employee or spouse of a mayor or councillor and a company of which a mayor or councillor is a member.

[189] S 108(4)(a) UCA.

decision as to whether the councillor may provide the service(s). There are no similar rules in rural local authorities highlighting the inconsistency in the statutory framework.

3.2.3.3 Disclosure of interests and recusal from attending a meeting

In both urban and rural local authorities councillors and members of committees of the council are required to disclose their interests and recuse themselves from any meeting or proceedings of the council or committee, as the case might be, in which they have a pecuniary interest.[190] A similar restriction applies in cases involving contracts or matters where a partner or any person acting on behalf of a councillor or committee member has a direct or indirect pecuniary interest.[191] These requirements are commendable as they seek to promote integrity and accountability at the local level. The major challenge seems to be the enforceability of this rule given that the Minister is primarily charged with its enforcement. The Minister may not be able oversee the implementation of this rule in all local authorities. Hence, it is submitted that, besides the Minister, every council should have the power to enforce this rule to ensure even enforcement across all local authorities. The Minister has the power to remove the requirement of recusal in certain situations.[192] It is submitted that these powers of the Minister are prone to abuse and therefore should be abolished. In practice, councillors are often hesitant to declare their interest and recuse themselves in council proceedings in which they have interests. Some councillors have sought to use their positions to influence council proceedings for their own private benefit or for the benefit of close associates.[193] Corruption is prevalent in tender procedures and the allocation of residential, commercial and industrial stands.

3.2.3.4 Development of national code of conduct for councillors

The rules governing the conduct of councillors are not consistent for both urban and rural local authorities. This may present challenges to the effective enforcement of these rules. It is submitted that a national code of conduct which applies to all councillors should be

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[190] S 107 UCA and s 48(1) RDCA. This requirement does not apply in 'relation to an interest in a contract or other matter which a councillor or other member of a committee may have as an inhabitant of the council area or an ordinary consumer of public services; an interest in a matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered by the council to members of the public'; or any case where the requirement for recusal has been removed by the Minister.

[191] Deliberate failure to declare interest and recuse oneself from a meeting or any proceeding of the council or committee of a council is an offence liable to a fine or/and imprisonment. See s 107(5) and s 48(5) RDCA.

[192] S 107(1)(4) UCA and ss 48, 48(4) RDCA.

[193] See Chakaipa 2010: 40.

developed.[194] Such a code should seek to promote integrity, accountability and transparency at the local level.[195] The code should stress that the councillor as an individual has no formal authority and only the council has the power to take decisions and issue instructions to its staff.[196] Thus, the council may not delegate any powers to a councillor as an individual. The exception to this rule is the mayor as well as the chairperson of a committee.[197] The current arrangement where each local authority develops its own code of conduct informed by relevant legislation and policies is not effective in promoting integrity and accountability at local level as evidenced by high a number of cases involving abuse of office, corruption and abuse of resources by councillors.[198]

The other important question is who should be charged with the enforcement of the code of conduct. It is submitted that the responsibility of enforcing such a code should be given to the Mayor given that there is no provision for the role of the speaker in the council.[199] In South Africa, it is the responsibility of the speaker to enforce the code of conduct for councillors.[200] If the mayor fails to act on a suspected case of misconduct by a councillor, the Minister should have the power to enforce the code of conduct. It is also important that the code of conduct is publicised as much as possible to allow citizens to enforce it. In other words, citizens should be able to trigger enforcement of the code of conduct.

3.3 Committees of the council

A council is required to organise itself into various committees. The committees of the council work closely with the responsible administrative department(s).[201] In general, decision-making is often vested in committees, while the full council decides on general policy issues.[202] The UCA and RDCA make provision for the establishment of different committees in urban and rural local authorities. These will be examined in this section following the urban-rural distinction.

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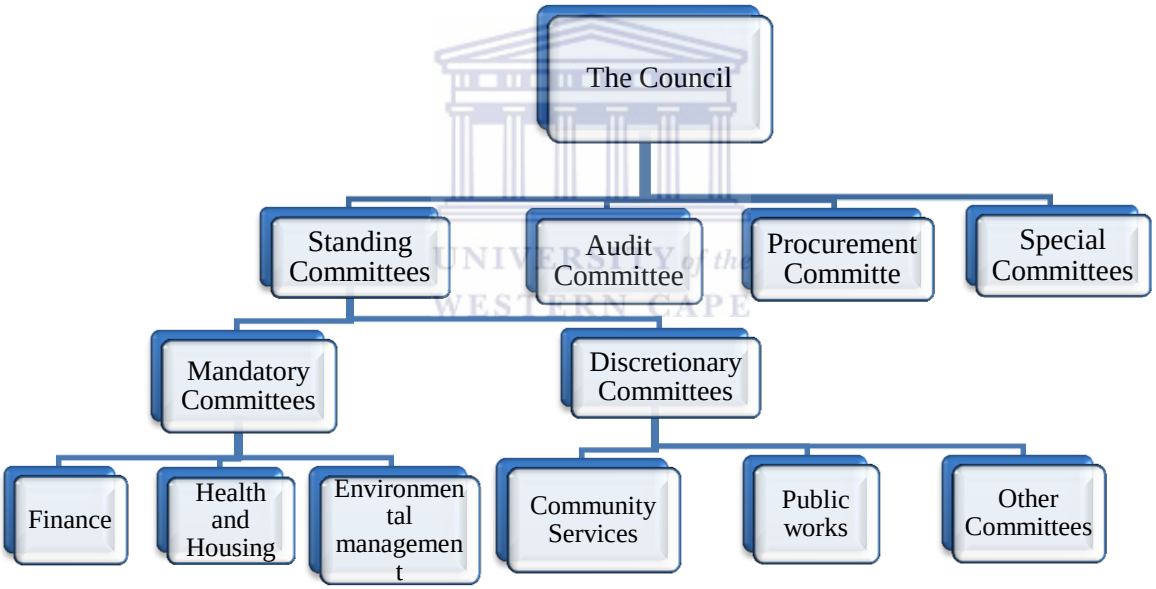
[194] See UN-Habitat 2007: 3.
[195] UN-Habitat 2007: 3.
[196] Jordan 1984: 28.
[197] Jordan 1984: 28.
[198] See Jordan 1984: 24-6.
[199] See UN-Habitat 2007: 3.
[200] See s 37(e) Municipal Structures Act, South Africa.
[201] Davison 2001: 148.
[202] Ndoro 2010: 322, Feltoe 2006: 142, Davison 2001: 148, Jordan 1984: 20.

3.3.1 Urban local authorities

The UCA makes provision for the establishment of standing, audit and special committees. Urban local authorities must also establish a procurement board. Standing committees are charged with policy development and overseeing a specific policy or sectoral area. If they have been delegated the power to do so, a standing committee may take decisions, but if not they make recommendations to the council, which ultimately takes decision.[203] Audit committees are established to oversee local expenditure and public property. The procurement committee is charged with making recommendations to the council in relation to procurement of goods and services. The organisation of the council into committees is presented in the diagram below.

Figure 14: Committees of an urban local authority



3.3.1.1 Standing Committees

The UCA provides that a council may appoint standing committees on finance, health, community services, public works, housing and environment management committees,

[203] Jordan 1984: 20.

among other matters.[204] As shown in Figure 13 above, the finance, health and housing, and environmental management committees are mandatory.[205] Thus, local authorities do not have discretion whether to establish these committees or not. The functions of these mandatory committees are also prescribed. A finance committee is responsible for overseeing the financial affairs of the council in accordance with standing orders and by-laws of the council.[206] A health and housing committee is charged with overseeing local expenditure in the health and housing sectoral areas.[207] An environmental management committee oversees the formulation and implementation of policies to preserve the environment in the council area.[208] The council may establish other standing committees, such as community services and public works, in addition to the mandatory committees. They may also combine mandatory and non-mandatory committees. For example, health could be combined with environment, and housing with the community services committee.

The total number of members of each standing committee is determined by the council but may not be less than three.[209] A member of a standing committee ceases to be a member of the committee after the general election held for the council or if the member ceases to be a councillor.[210] Thus, like establishment and role, the composition of standing committees as well as their proceedings (as observed below) is highly regulated. A standing committee may close its meetings to members of the public or of the council, except to the town clerk and the mayor.[211] Like the council, each standing committee meets at least once in each calendar month. It is at these regular meetings that most of the work of the council is carried out.[212] In these regular committee meetings, departmental heads submit policy proposals which are interrogated by the respective committees before a recommendation is made to the council for a final decision. They also submit reports or information relating to the implementation of various policies, programmes and projects by the local authority. If the committee has

[204] S 96(1) UCA. At the first meeting of the council after a general election of councillors, a council is required to review the work of each standing committee during the previous year. After this review, the council may reappoint such standing committees or appoint different standing committees. See s 96(8) UCA.
[205] See s 96 UCA.
[206] S 96(2) UCA.
[207] S 96(3) UCA. The committee may also develop policies relating to health and housing if required to do so by the council.
[208] S 96(4) UCA.
[209] S 96(9) UCA. At its first meeting, a standing committee must elect a chairperson and deputy chairperson. The committee may at any time elect one of its members to fill a vacant position of chairperson or deputy chairperson. S 96(6) UCA.
[210] S 96(7) UCA.
[211] S 96(10)(11) UCA.
[212] Jordan 1984: 23.

delegated authority to make decisions, it may make a decision upon which the departmental head will take action after the meeting.[213]

From the discussion above, it can be observed that the nature and role of standing committees is highly regulated. Even though urban local authorities have discretion to establish standing committees, they must establish the finance, health and housing and environment management committees. The question is whether such limitation of local discretion is necessary. It is submitted that the setting of a framework within which urban local authorities must establish local structures is consistent with a supervisory framework that allows local government to play a role in development, democracy and sustainable peace. However, the establishment, composition, role and proceedings of standing committees are highly regulated, leaving local authorities with little discretion to adapt these structures to their local environments.

3.3.1.2 Audit Committees

Every council is required to establish an audit committee which may not include in its membership the mayor, deputy mayor, chairperson, deputy chairperson or chairperson of other committees of the council.[214] The functions of an audit committee are to:

a) inquire into and report upon the manner in which the finances of the council, its assets and human resources are being used;
b) ascertain whether the funds and assets of the council are applied to the purpose intended and are consistent with any regulations and standing orders issued by the council or the Minister;
c) call for information, explanations and evidence in respect of any matters involving auditors' observations;
d) receive and consider reports of internal and external auditors and make appropriate recommendations to the council; and
e) recommend to the council appropriate methods of investing money, and custody of any other properties of the council.[215]

The audit committee may only report its activities to the council.[216] Every council is required to pay due regard to any recommendation(s) made by its audit committee, even though the

[213] Jordan 1984: 23. See also Chaikaipa 2010: 67.
[214] S 97(1)(2) UCA. These elected officials and non-members may also not attend any meeting of an audit committee. See s 97(2)(3) UCA. The committee functions parallel to the internal audit unit made up of administrative officials.
[215] S 98(1) UCA.
[216] S 98(2) UCA.

council does not necessarily have to act according to such recommendation(s).[217] The audit committee is an important structure for fostering horizontal accountability at the local level as it provides independent oversight over local expenditure.[218] Its independence is promoted by the requirement that the mayor, deputy mayor, chairperson, deputy chairperson or chairperson of other committees of the council may not be involved in its activities, as well as by the requirement that the audit committee may only report its activities to the council.

However, the independence of the audit committee (and therefore its effectiveness as a tool of horizontal accountability) may be undermined by the requirement that the audit committee may have to report to the national government if directed to do so by the Minister.[219] The Minister has the power to direct any audit committee to submit its report to the national government and the committee is required to comply with the directive.[220] As will be discussed in Chapter Eight, based on the report of the committee and other relevant information, the Minister may intervene in local affairs, for example, by issuing a directive to address the identified financial problems.[221] These powers of the Minister are consistent with the old constitutional order when local authorities were essentially extensions of the national government. The 2013 Constitution has upgraded the status of local authorities from extensions of the national government to a tier of government.[222] This makes it inappropriate for the Minister to call upon the audit committee, as a structure of a local authority, to report to the national government. Accordingly, it is submitted that an audit committee should solely report to its council and not to the national government.

3.3.1.3 Special committees

A council may at any time establish special committees to carry out specific tasks but it may not delegate any powers to such committees.[223] A special committee may be composed solely of councillors or by councillors and non-councillors, provided that the chairman of the committee is a councillor and that members of the committee are not less than three.[224] In practice, councils have appointed special committees to deal with a number of issues,

[217] S 98(3) UCA.
[218] See the Aberdeen Principles 2005: 8
[219] S 98(2) UCA.
[220] S 98(2) UCA.
[221] See para 7.9.
[222] See s 5 Constitution.
[223] Ss 100(1)(a)(2), 100(1)(f) UCA. The council determines the number of members of the committee which make up a quorum. S 100(1)(d) UCA.
[224] Ss 100(1)(a)(b), 100(2) UCA. See also s 100(5) UCA.

including management of land, remuneration of administrative officials and conduct of administrative officials. Large local authorities tend to appoint special committees more frequently than smaller local authorities mainly because of the high magnitude and diversity of issues which they have to deal with compared to smaller local authorities.

3.3.1.4 Procurement committee

The UCA makes provision for the establishment of a municipal procurement board.[225] The committee is responsible for arranging tenders and for making recommendations to the council in regard to the acceptance of tenders and the procurement of goods, materials and services.[226] The procurement board has been succeeded by a procurement committee established in terms of section 14(1) of the Procurement Regulations.[227] The procurement committee is set up by the town clerk, town secretary or the chief executive, as the case may be.[228] The committee is headed by a Head of Department and may not have councillors in its membership.[229] It is charged with the adjudication of all tenders of a local authority and making recommendations to the town clerk, town secretary or chief executive officer, as the case may be. The regulations make provision for the role of the national government-controlled State Procurement Board (SPB) in municipal procurement processes of a value that exceeds US$ 10 000.[230] Before the enactment of the regulations the national government played no role in municipal procurement processes. The establishment of the SPB role in municipal procurement was based on the argument that municipal procurement boards were duplicating the role of the SPB, although at local level.[231] It was also believed that establishing the SPB would curb corruption in municipal procurement processes and ensure that local authorities receive value for money in tender processes.[232] The role of the SPB raises two critical questions. Where should the procurement powers be located, at the national or local level? Have local authorities managed to receive value for money through the SPB?[233]

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[225] S 210(1)(2)(3) UCA.
[226] S 210(1)(2)(3) UCA.
[227] Procurement (Amendment) Regulations, 2012 No. 17.
[228] The role of town clerks, secretaries and chief executive officers will be discussed in para 4 below.
[229] The role of heads of departments will be discussed below.
[230] See s 6-10 Procurement Regulations.
[231] Bulawayo Progressive Residents Association (BPRA) 2010: 3.
[232] Musanzikwa 2013: 125.
[233] See the Zimbabwe Broadcasting Corporation 'State Procurement Board under scrutiny' 2014. This question will be answered in Chapter Seven.

The creation of a multilevel system of government suggests that while senior governments may supervise the conduct of junior governments, each government at every level is directly in charge of its spending decisions, including procurement of goods and services.[234] This is particularly important to promote the accountability of each government to the voters. When local procurement powers are centralised, local accountability is also undermined as it is unjustified to hold local authorities accountable for non-fulfilment of legislative mandates when procurement decisions are made at the centre. It is only when spending decisions (including procurement) are decentralised that citizens are likely to hold local authorities more accountable. Therefore, it is submitted that local procurement powers should be decentralised while the role of the national government be limited to setting a framework within which the powers must be exercised.

The question of whether local authorities have managed to receive value for money since the inception of the SPB in municipal procurement processes is a critical one. Besides playing a role in local procurement, the SPB handles the procurement of all ministries and departments of the national government.[235] Thus, the board has a huge responsibility which in some cases it has not been able to discharge efficiently, especially given that it is not only understaffed but also alleged to have unqualified employees.[236] It is also argued that the procedures of the SPB are highly bureaucratic, making swift decision-making difficult.[237] As a result, in some cases the board has taken too long to approve and award tenders not only referred by local authorities but also by ministries and departments of the national government.[238] This has caused delays in the procurement of key goods and services, such as water treatment chemicals, and has therefore impacted adversely on service delivery.[239] It is also alleged that the SPB is riddled with corruption and nepotism.[240] Musanzikwa claims that most of the people tasked with the responsibility for making procurement decisions at the board are incompetent.[241] Under these circumstances, tenders have controversially been awarded to underserving bidders (companies) that do not have the capacity to deliver goods and

[234] See Bahl 1999: 61, Eaton & Schroeder 2010: 180.
[235] See *the Newsday Newspaper* 'Minister blasts State Procurement Board' 2014.
[236] *The Zimbabwe Broadcasting Corporation* 'State Procurement Board under scrutiny' 2014, *the Sunday Mail* 'SPB deals cost Treasury millions' 2014.
[237] *The Newsday* 'Minister blasts State Procurement Board' 2014.
[238] BPRA 2010: 6, Musanzikwa 2013: 125. See also *Newsday* 'Minister blasts State Procurement Board' 2014.
[239] BPRA 2010: 6. See *the Newsday* 'Minister blasts State Procurement Board' 2014.
[240] *The Zimbabwe Broadcasting Corporation* 'State Procurement Board under scrutiny' 2014, BPRA 2010: 6.
[241] Musanzikwa 2013: 125.

services.[242] A combined effect of these challenges is that government as a whole has lost millions through procurement decisions of the SPB.[243] It is thus submitted that local authorities have not managed to receive value for money through the SPB. As argued above, local procurement powers should be decentralised to local authorities while the national government oversees the exercise of such powers.[244] This not only has the advantage of allowing swift decision-making but also improves local accountability.

3.3.2 Rural local authorities

Like urban local authorities, rural local authorities are required to organise themselves into various committees. Whereas urban local authorities must establish only three 'mandatory' committees, rural local authorities must establish a total of five mandatory committees. Thus, rural local authorities have limited administrative autonomy compared to their urban counterparts. Furthermore, as observed below, the nature of committees in rural local authorities differs. Some committees are responsible for oversight and policy development while others have an implementation role which they undertake with oversight from the council. As shown in Figure 15 below, a council is required to establish a finance committee, town board, roads committee, ward development committee and rural development committee.[245] In addition to these mandatory committees, the council may establish other committees as well as subcommittees of parent committees.[246] This section discusses the establishment, composition and functions of various committees of the council in rural local authorities.

[242] See *the Sunday Mail* 'SPB deals cost Treasury millions' 2014. It is also alleged that high-ranking politicians use their clout to influence tender processes so that companies they are linked to get tenders. See Musanzikwa 2013: 125, the *Sunday Mail* Newspaper 'SPB deals cost Treasury millions' 2014.
[243] *The Sunday Mail* 'SPB deals cost Treasury millions' 2014.
[244] See Musanzikwa 2013: 125.
[245] The chairperson of the council is an *ex officio* member of every committee appointed by the council but may not vote. A council member may not be elected chairperson unless he or she has been specifically elected to that committee. See s 63(2) RDCA.
[246] The powers vested in a committee may be exercised at any duly convened meeting thereof at which no less than one half of all members, but not less than two, are present. The presence of the chairperson of the council solely in his capacity as an *ex officio* member of the committee should be disregarded. S 63(3) RDCA.

Figure 15: Committees of a rural local authority

3.3.2.1 Finance committee

Every council must establish a finance committee.[247] The committee consists of a certain number of councillors (not exceeding five) appointed by the council and a certain number of councillors (not exceeding four) appointed by the Minister.[248] It is submitted that the power of the Minister to appoint certain members of the finance committee is no longer consistent with the 2013 Constitution where local authorities have a 'right to govern'.[249] That right should be construed to also mean the right of local authorities to determine the composition of their committees without the involvement of the national government. Therefore the power of the Minister to appoint some members of a committee of the council should be abolished.

The finance committee is responsible for overseeing the spending of public resources by the council. The committee may develop policies, rules and laws for approval by the council, which regulates the financial affairs of the local authority.[250] It is also required to submit to an ordinary meeting of the council an interim report detailing the financial transactions and

[247] S 55(2) RDCA.
[248] S 55(2) RDCA. The persons or councillors who are appointed by the Minister may not exceed one fewer than the total number of elected councillors.
[249] See s 276(1) Constitution.
[250] S 55(1)(b) RDCA. At least once every three months or at shorter intervals the committee is required to submit to an ordinary meeting of the council a schedule of all payments made by or on behalf of the council or committee of the council. The council may also direct the committee to submit the schedule of all payments more regularly. S 55(4) RDCA.

affairs of the council, as soon as possible after the end of every financial year.[251] Unlike in urban local authorities, a council in rural local authorities may not take any action on matters relating to the financial affairs of the council until the finance committee has had an opportunity to consider and report upon the matter to the council.[252] It is submitted that since the council delegates powers to its committees it should have the power to exercise delegated power if it so desires. Unlike the UCA, the RDCA does not make provision for the establishment of audit committees in rural local authorities.[253] It is submitted that this is another form of inconsistency in the regulatory framework which should be addressed, especially given that audit committees are important tools of fostering horizontal accountability.

3.3.2.2 Town Board

Every council with a town area must establish a town board to administer the town area.[254] It consists of the councillors elected for the town wards which constitute the town area concerned and a certain number of persons or councillors who are appointed by the Minister.[255] The argument raised above in relation to the powers of the Minister to appoint some members of a committee also applies here. The town board, unlike the finance committee, has an implementation rather than an oversight role. Oversight of the activities of the town board is directly provided by the council. A council must delegate to a town board the powers held by the council that are solely concerned with the town area for which the town board is appointed.[256] For example, the council may delegate to a town board powers relating to lighting, parking, advertising hoardings, pollution control and fire brigades. However, the council may not delegate the power to impose levies, rates, rents or charges; borrow money; expropriate property or make by-laws. A town board may undertake functions such as roads, bridges, dams, drains, sewers, sewerage works, water and pollution if authorised by the Minister, in consultation with the council concerned.[257] It is submitted that the role of the Minister should be reformed so that the council is given discretion to decide whether to delegate such powers to its town board. A town board may graduate to the status

[251] S 55(5) RDCA.
[252] S 62(9) RDCA.
[253] See s 97 UCA.
[254] S 57(1) RDCA. A town area is an area declared to be a town under a proclamation. See para 3.1.1.1 of Chapter Four.
[255] S 57(1) RDCA.
[256] S 57(2) RDCA.
[257] S 57(2)(b) RDCA.

of an urban local authority. For example, Beitbridge Town Council was formerly a town board of a rural local authority but graduated to the status of a town council.

3.3.2.3 Roads Committee

Every council must establish a roads committee consisting of a certain number of councillors who are appointed by the council and a certain number of other persons or councillors who are appointed by the Minister.[258] As argued above, these powers of the Minister should be abolished since local authorities are no longer extensions of the national government under the 2013 Constitution.[259] A road committee considers all matters relating to the construction and maintenance of roads in the council area.[260] The council must delegate to the road committee powers relating to the construction and maintenance of roads.[261] This shows that the council has limited administrative autonomy since it does not have discretion to decide whether to delegate powers or not. Akin to other committees, the council may not delegate the power to impose levies, rates, rents, charges, borrow money, expropriate property or make by-laws. With the consent of the Minister, the council may also delegate to a roads committee powers over bridges, dams, parking, omnibuses, ferries and aerodromes.[262] It is submitted that a council should have the power to delegate powers to its roads committee without seeking the approval of the Minister. A council may not take any action on matters relating to roads or on any other delegated responsibilities until the roads committee has had an opportunity to consider and report upon the matter to the council.[263] It can be argued that as the delegating authority, the council should be able to exercise any of the delegated powers without any hindrance. Thus, this requirement should be abolished.

3.3.2.4 Ward Development Committees

A ward development committee (WADCO) is charged with preparing and submitting a ward development plan to the rural district development committee (discussed below) before the 31 March of each year. It consists of the councillor for the ward and the chairperson and secretary of every village development committee (VIDCO) and neighbourhood development

[258] S 58(2) RDCA. Members who are appointed by the Minister may not be equal to the total number of councillors appointed by the council.
[259] See ss 5, 276(1) Constitution.
[260] S 58(1) RDCA.
[261] S 58(3) RDCA.
[262] S 58(4) RDCA.
[263] S 62(9) RDCA.

committee in the ward.[264] The WADCO is chaired by the councillor of the ward. VIDCOs and neighbourhood development committees are elected by citizens of a village or neighbourhood, respectively. The Minister has the power to appoint the WADCO in the case of a ward where there is neither a VIDCO nor a neighbourhood development committee.[265] WADCOs are required to prepare and submit a ward development plan to the rural district development committee (discussed below) before 31 March of each year.[266]

As discussed in Chapter Three, WADCOs and VIDCOs are some of the structures which were created in terms of the Prime Minister's Directive on Decentralisation of 1984/85.[267] These structures were intended to provide people at the grassroots level with a platform to participate in development planning and implementation in their respective areas.[268] The effectiveness of the VIDCOs and WADCOs has been undermined by limited citizen participation in the activities of these structures.[269] As discussed below, citizens tend to pay more attention to traditional structures rather than to WADCOs and VIDCOs. The national government, through the Traditional Leaders Act, tried to address this challenge by combining elected and traditional structures to form ward and village assemblies, as discussed below.

3.3.2.5 Rural district development committees

In every council there is a rural district development committee (RDDC) which consists of:

a) the district administrator (DA);
b) the chairperson of [each]… committee established by the council;
c) the chief executive officer of the council and such other officers of the council as the council may determine;
d) the senior civil officer in the district of the Zimbabwe Republic Police, the Zimbabwe National Army, and the President's Department;
e) the district head of each Ministry and department of a Ministry within the district that the Minister may designate; and

[264] S 59(1) RDCA. A VDC or neighbourhood development committee is elected by the citizens within the village or neighbourhood, as the case may be.
[265] S 59(1) RDCA. The Minister may also appoint members of a ward development committee whenever the ward development committees cannot be constituted due to lack of representation. S 59 (2) RDCA.
[266] S 59(3) RDCA.
[267] See para 4.3.
[268] Makumbe 1998: 28.
[269] Makumbe 1996: 50.

f) persons representing other organisations and interests [as designated by] the Minister.[270]

The RDDC is established to assist in the development of the local authority area through coordinated development planning.[271] Section 60(5) of the RDCA provides the functions of RDDCs as follows:

a) to consider ward development plans submitted to it [by ward development committees];
b) to make recommendations to the council on matters to be included in the annual development and other long-term plans for the district within which the council area is situated;
c) to prepare the annual district development plan for approval by the council and assist in the preparation of other long-term plans for the council area;[272]
d) when instructed to do so by the council, to investigate the implementation of the annual development and other long-term plans for the council area; and
e) to exercise such other functions in relation to the annual development and other long-term plans for the district as may be assigned to it from time to time by the council.

The DA presides over all meetings of a RDDC.[273] RDDCs undertake an important development planning and implementation role. The potential of RDDCs to advance local priorities is limited by its composition.[274] As highlighted above, the RDDC is chaired by the DA who is accountable to the national government and not to the council or local citizens.[275] The role of the DA puts into question the intent of the national government to democratise local government structures. While RDDCs are important institutions for development planning and implementation, they may have limited scope for popular participation as they are dominated by officials of the national government.[276] This therefore means that these committees are more accountable to the national government than to local authorities or to the local people.

[270] S 60(1) RDCA.
[271] Feltoe 2006: 134.
[272] The district development plan must be prepared and presented to the council before 31 May every year. The plan is approved in a joint meeting of the RDDC and the council, which is chaired by the chairperson of the council. When approving the plan, only councillors may vote. After approval, the plan is forwarded to the provincial development committee for inclusion in the provincial plan. See s 60(6)(9)(10)(12) RDCA.
[273] S 60(4) RDCA. In the absence of the district administrator, the members of the rural district development committee present must elect a district head of a ministry or agency to preside at the meeting.
[274] Keuder 1998: 188. Makumbe 1996: 49.
[275] Mandondo & Mapedza 2003: 14. See Sachikonye *et al* 2007: 94.
[276] Mandondo & Mapedza 2003: 14, Chakaipa 2010: 45, Rambanapasi 1992: 1521.

3.3.2.6 Other committees

A council may establish an area committee to exercise any functions of the council within any area of urban land within the council area.[277] Besides the area committee, a council may appoint other committees, whether of a general, specific or local nature.[278] The committees are composed of two or more councillors and non-councillors who are registered voters in the area of the local authority.[279] The council may delegate to these committees some of its powers except the power to impose levies, rates, charges, borrow money, expropriate property or make by-laws.[280] The Minister also has the power to direct a rural local authority to establish a committee and delegate functions to such a committee.[281] It is submitted that these powers of the Minister are inconsistent with the new constitutional order.[282] The 'right to govern' which local authorities enjoy means that the Minister may not direct a rural local authority to establish committees. Hence, it is submitted that these powers of the Minister should be reformed.

Committees are important governance structures in both rural and urban local authorities.[283] They provide an opportunity for active participation in decision-making of the council by each councillor.[284] In urban local authorities, standing committees deliberate on a variety of issues within their portfolios before a council can make resolutions on those issues. They play an important oversight role over the activities of administrative officials. As observed above, in rural local authorities some committees play an oversight role, some an implementation role and others are designed to promote participatory governance and bottom-up planning. The ability of committees to deliver on their mandate has been hampered by insufficient resources, especially around infrastructural projects. Participation and development planning committees such as VIDCOs and WADCOs have not been effective, partly due to limited citizen participation in their activities.[285] RDDCs have been most effective in formulating

[277] S 56(1) RDCA.
[278] S 62(1) RDCA. A council may also appoint one or more sub-committees which report to the parent committees on such matters determined by the parent committee; see s 64(2) RDCA. If a rural local authority has been designated as a natural resources conservation committee, the council may appoint one or more natural resources conservation subcommittees to exercise functions relating to natural resources. See S 61 RDCA.
[279] S 62(3) RDCA. The number of non-councillors may not exceed the number of councillors.
[280] S 62(1)(ii)(a) RDCA. A council may also not delegate the power to acquire, maintain, develop or dispose property, unless authorised by the Minister. S 62(1)(ii)(b) RDCA.
[281] S 62 RDCA.
[282] See S 276(1) Constitution.
[283] See Chakaipa 2010: 39.
[284] See Chakaipa 2010: 39.
[285] Makumbe 1996: 50.

local plans, although such plans lack popular initiatives as planning is driven by officials of the national government stationed at the local level rather than by local officials. This has brought into question the ability of the multilevel system of government to facilitate bottom-up development planning.[286]

4. Administrative structures of local authorities

The previous section examined the role of the council, internal proceedings at local level and the committee system. This section analyses the administrative arm of a local authority which is charged with implementation of policies and by-laws, among other responsibilities. It discusses the relationships that exist between the administrative arm and the council. It will be argued that local authorities should have the authority to determine their administrative establishment in order to adapt them to local needs and ensure effective management, among other goals.[287] The discussion is divided between urban and rural local authorities.

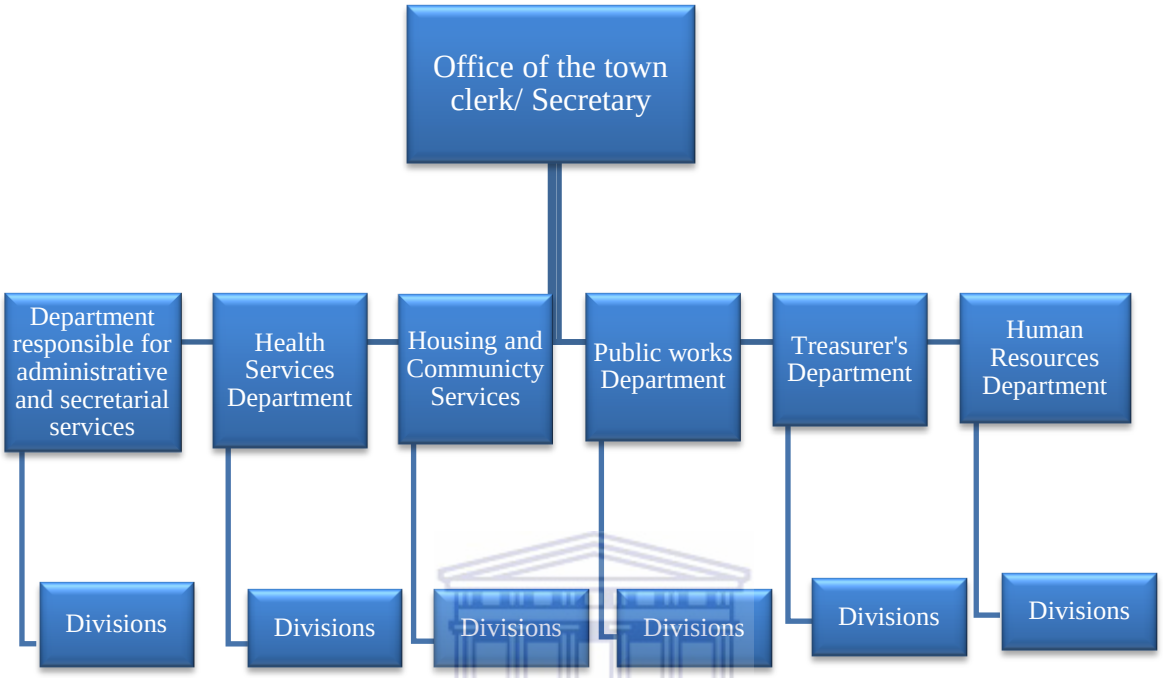
4.1 Urban local authorities

As highlighted in Chapter Four, there are three classes of urban local authorities, namely city, municipal and town councils as well as local boards.[288] The administrative arm of city or municipal councils is led by a town clerk, while that of local boards and town councils is led by a secretary. As shown in Figure 15 below, the town clerk or secretary is supported by a team of departmental heads. The town clerk and heads of department have an executive and advisory role.[289] Heads of department report and recommend action to be taken, through the town clerk, to the responsible standing committee of the council or directly to the council.[290] While urban local authorities have discretion to establish administrative departments, city and municipal councils must establish the department responsible for administrative and secretarial services.[291] Thus, urban local authorities have some measure of autonomy in as far as establishment of administrative services is concerned. The most common departments in urban local authorities include the administrative and secretarial services, health services, housing and community services, engineering services, finance and human resources. As

[286] See Mandondo & Mapedza 2003: 14, Chakaipa 2010: 45, Rambanapasi 1992: 1521.
[287] Article 6(1) European Charter of Local Self-Government.
[288] See para 3.1.
[289] Jordan 1984: 32.
[290] Jordan 1984: 20.
[291] See s 133(1) UCA.

shown in the diagram below, these departments are divided into various divisions responsible for various policy areas.[292]

Figure 16: Administrative arms of an urban local authority



4.1.1 Office of the town clerk or secretary

As will be discussed in detail in Chapter Six, the town clerk is appointed by the council with the consent of the Local Government Board.[293] The town clerk is the accounting officer directly accountable to the council. The town clerk serves as the link between the council and its administrative arm. As the chief advisor of the council, the town clerk attends all committee and full-council meetings. The council makes policies and by-laws which the town clerk implements. The UCA provides that the town clerk is responsible for the proper administration of the council, managing the operations and property of the council, and supervising and controlling the activities of the employees of the council in the course of their employment.[294] The council may impose additional responsibilities on the town clerk.

[292] See Jordan 1984: 21.
[293] S 132(1) UCA. See para 5.1.1 of Chapter Six. The Local Government Board is appointed by the Minister to oversee personnel and administrative issues in urban local authorities. The role of the board is discussed in detail in Chapter Six and Eight.
[294] S 136(1) UCA.

4.1.2 Department responsible for administrative and secretarial services

As highlighted above, every city and municipal council is required to establish a department responsible for administrative and secretarial services. The department is headed by the chamber secretary who is appointed by the council with the consent of the Local Government Board.[295] Unlike city and municipal councils, local boards and town councils do not include the position of a chamber secretary. The duties of a chamber secretary are carried out by the secretary (head of the administrative arm) of the local authority. Like all other heads of departments, the chamber secretary is accountable to the council through the town clerk. The chamber secretary is responsible for preparing and distributing minutes of the proceedings of a council and its committees as well as agendas and notices of any mayoral, council or committee meetings.[296]

4.1.3 Other departments

As highlighted above, urban local authorities have the discretion to establish other administrative departments. In practice, the number of departments in a local authority is determined by the class,[297] size and nature of services provided by a local authority. There is a general pattern in most local authorities to group related functions under one department as a way of streamlining operations to minimise administrative costs.[298] City and municipal councils tend to have more departments than town councils and local boards. As will be discussed in Chapter Six, departments are headed by senior officials (heads of departments) who are appointed by the council with the consent of the Local Government Board.[299] As mentioned above, when discharging their functions, administrative departments work closely with the responsible committee of the council.[300]

[295] S 133(2) UCA.
[296] S 137(1) UCA. The chamber secretary may also carry out any other duties which may be assigned to him from time to time by the town clerk, including administrative duties. Whenever the office of the town clerk is vacant or the town clerk is absent, incapacitated, or fails to act, the chamber secretary will perform the functions conferred upon the town clerk. This means that whenever the town clerk is for whatever reason unable to carry out his/her duties, the chamber must immediately assume the role of the town clerk. See s 137(2) UCA.
[297] Whether city council, municipal council, town council or local board.
[298] See Jordan 1984: 20.
[299] S 134(1) UCA. See para 5.1.1.
[300] See para 3.3.1.

4.1.4 Delegation of powers to employees

A council may delegate to an employee some of its powers and may likewise amend or withdraw any delegation of powers.[301] A council however may not delegate:

a) powers conferred upon it by any acts other than the UCA except when the proposed delegation has been approved by the Minister responsible for the administration of the enactment concerned and any conditions fixed by that Minister have been complied with;
b) any power conferred by model building by-laws, which have been adopted by or on behalf of the council, to grant a relaxation or waiver except when the by-law expressly provides that the power may be delegated or the Minister has consented to such delegation.[302]

The power to review the exercise of any power by an employee exercising delegated authority may also not be delegated.[303] It is submitted that the requirement that local authorities may not delegate powers conferred on them by sectoral legislation undermines local autonomy. It is further submitted that once powers and responsibilities have been decentralised through sectoral legislation, local authorities should have full discretion to exercise those powers (including delegating such powers) within the framework set by the national government. As contended in Chapter Two the setting of a national framework does not require the approval of higher tiers of government before local authorities can exercise decentralised responsibilities.[304] The delegation of any powers to an employee does not preclude the council from exercising the delegated powers.[305] A council may amend or rescind any decision of any employee exercising delegated authority.[306] The amendment or withdrawal of any delegation may however not invalidate anything done in pursuance of a decision lawfully taken by the employee before the date of such amendment or withdrawal.[307]

[301] S 145(1) UCA.
[302] S 145(1)(i)(ii) UCA.
[303] S 145(1)(iv) UCA.
[304] See para 6.6.1. See also Eaton & Schroeder 2010: 175, De Visser 2005: 44.
[305] S 145(3) UCA. Any person aggrieved by the decision of another exercising delegated authority may appeal the decision. See s 145(2) UCA.
[306] S 145(3) UCA.
[307] S 145(1)(v) UCA.

4.2 Rural local authorities

As highlighted above, the administrative arm of a rural local authority is led by the chief executive officer (CEO).[308] This section examines the role of the chief executive officer before discussing the delegation of powers in rural local authorities.

4.2.1 Role of the Chief Executive Officer

Like the town clerk, the CEO is responsible for implementing decisions of the council, including by-laws and policies. As discussed in Chapter Six, the CEO is appointed by the council with the consent of the Minister.[309] The CEO is supported by a team of other officers who lead various administrative departments, such as finance, health and public works.[310] Like the CEO, the officers are also appointed by the council with the consent of the Minister.[311] As will be argued Chapter Six, this role of the Minister in the appointment of the CEO and other officers undermines administrative autonomy. It was contended in Chapter Two that administrative autonomy determines in part the role which local authorities play in development as it ensures that local authorities have control over their bureaucracies responsible for implementing policies.[312] Thus, it is crucial that local authorities have administrative autonomy if they are to play a role in the realisation of development.

4.2.2 Delegation of powers to employees

A council may delegate to any of its administrative officials some of its powers, but such delegation does not preclude the council from exercising the delegated powers.[313] However, a council may not delegate to administrative officials any power which the Minister has directed should not be delegated.[314] Any power conferred upon the council by any other body than the RDCA may also not be delegated unless the proposed delegation has been approved by the Minister responsible for the administration of the enactment concerned and any conditions fixed by that Minister are complied with.[315] The argument raised above in paragraph 4.1.3 with respect to the power of the national government to approve delegation

[308] S 66(1) RDCA.
[309] See para 5.2. See also 66(1) RDCA.
[310] See S 66(3)(a) RDCA.
[311] See S 66(3)(a) RDCA.
[312] See para 6.3.1. See also Bahl 1999: 5, Bardhan & Mookherjee 2006: 13, Eaton & Schroeder 2010: 174.
[313] Ss 69(1) and 69(6) RDCA. A council, with the consent of the Minister, may also delegate to the chairperson or an officer of the council the power to appoint or dismiss employees. See s 68(1) RDCA.
[314] S 69(2)(a) RDCA.
[315] S 69(2)(b) RDCA.

also applies here. A council may not delegate power to amend or rescind a decision taken by an officer or employee exercising delegated authority or to review decisions taken by officers or employees exercising delegated authority.[316]

A council may amend or withdraw any delegation of powers.[317] The Minister may also direct a council to amend or withdraw any delegation of powers.[318] It is submitted that such powers of the Minister limit the authority of rural local authorities to determine their internal procedures. It is further submitted that such powers are contrary to the 'spirit' of devolution enshrined in the 2013 Constitution which seeks to create stronger local authorities with 'all' the powers necessary to govern.[319] Arguably, the 'right to govern' includes the right to determine delegation of powers with limited control from the national government. A council may at any time amend or rescind a decision of an employee exercising delegated authority.[320] As in urban local authorities, any amendment or withdrawal may not affect the validity of anything done in pursuance of a decision lawfully taken by the officer or employee concerned before the amendment or withdrawal.[321]

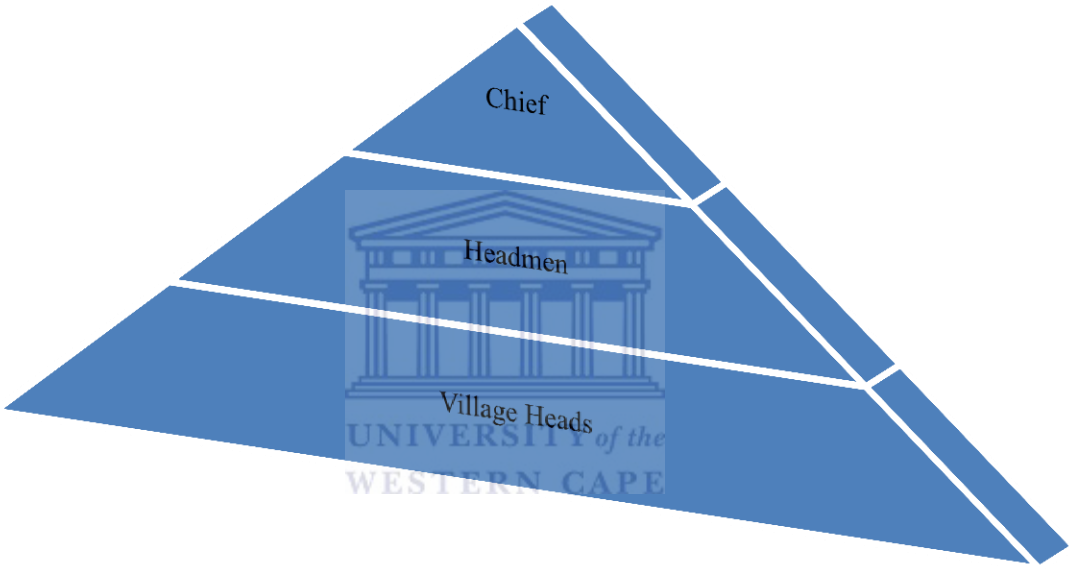
5. The Institution of traditional leadership

For people who reside in communal areas the most immediate form of local government is the institution of traditional leadership, rather than elected rural local authorities.[322] Thus, a discussion of rural local government will not be complete without discussing the role of traditional leaders, especially given that the two institutions share some responsibilities. Chiefs are also *ex officio* members of the council. The discussion is however limited to the appointment and functions of chiefs and their relationship with councils.[323] As shown in Figure 17 below, in order of hierarchy, the institution of traditional leadership comprises chiefs, headmen and village heads. The village head leads the village, the lowest administrative structure. The village head reports to a headman, a sub-chief who controls

[316] S 69(2)(c) RDCA.
[317] S 69(3) RDCA.
[318] S 69(3) RDCA.
[319] See S 276(1) Constitution.
[320] S 69(4) RDCA. Any person aggrieved by a decision of an officer or employee exercising delegated authority may bring the matter to the appropriate head of department in the first instance and, failing satisfaction, to the council for review. S 69(5) RDCA.
[321] S 69(3) RDCA.
[322] Matyszak 2010. See also Madhekeni & Zhou 2012: 29. See also Ndoro 2010: 323, Makumbe 2010: 88.
[323] Headmen and village heads are not the primary focus of this section as they act as supportive structures of chiefs. See ss 8 and 9 Traditional Leaders Act.

several village heads. Several headmen report to the chief.[324] In a district, there are usually more than one chief. As highlighted in Chapter Three, there are a total of 272 chiefs, 452 headmen and an estimated 25 000 village heads. The hierarchical organisation of the institution of traditional leadership makes the institution an effective tool for communication between government and citizens.[325] The role of traditional leaders is primarily governed by the Traditional Leaders Act. As discussed in detail below, the relationship between the traditional leaders and councillors is not cordial since significant governance powers and remuneration packages were restored to traditional leaders in 2002.[326]

Figure 17: Organisation of the institution of traditional leadership



5.1 Appointment of chiefs

Section 283 of the 2013 Constitution directs Parliament to enact legislation providing for the appointment and removal from office of chiefs by the President. The Constitution requires such appointment to be made on the recommendation of the provincial assembly of chiefs through the Minister responsible for traditional affairs.[327] The President approves the remuneration and benefits of chiefs.[328] It is argued that the appointment of chiefs by the President means that chiefs are likely to be 'controlled' and accountable to the national

[324] Musekiwa 2012: 242.
[325] Musekiwa 2012: 240.
[326] See Musekiwa 2012: 242.
[327] S 283 Constitution. The consultation of the provincial assembly also applies with respect to the removal, suspension and resolution of disputes relating to appointment, removal and suspension of chiefs.
[328] S 284(1) Constitution.

government and the ruling political party, in particular.[329] This claim may be supported by evidence from the colonial and post-colonial eras, which suggests the alignment of chiefs to the government of the day.[330] Thus, due to the method of appointment, chiefs are not accountable to the local people but to the President who appoints them.[331] A chief may not be elected as a councillor, Member of Parliament or President unless he or she has ceased to occupy the position of chief.[332] The question is whether this requirement infringes on the political rights of traditional leaders.[333] It is submitted that the requirement does not prevent traditional leaders from seeking election as a councillor, Member of Parliament or President. It merely requires that before a traditional leader may seek a political office, he or she must relinquish the position of a traditional leader.[334]

5.2 Powers and functions

The importance attached to the institution of traditional leadership in the Zimbabwean multilevel system of government is reflected by the constitutional recognition of the responsibilities of traditional leaders. The 2013 Constitution provides that traditional leaders have the following responsibilities in their areas of jurisdiction:

a) to promote and uphold the cultural values of their communities and, in particular, to promote sound family values;
b) to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines;
c) to facilitate development;
d) in accordance with an Act of Parliament, to administer communal land and to protect the environment;
e) to resolve disputes amongst people in their communities in accordance with customary law; and
f) to exercise any other functions conferred or imposed on them by Act of Parliament.[335]

The Constitution further provides that, 'except as provided in an Act of Parliament, traditional leaders have authority, jurisdiction and control over the Communal Land or other areas for which they have been appointed, and over persons within those Communal Lands or

[329] Keulder 1998: 179.
[330] See para 3.2.3.6 of Chapter Three.
[331] Makumbe 2010: 93.
[332] S 45 Traditional Leaders Act.
[333] S 67 Constitution.
[334] See Makumbe 2010: 99.
[335] S 282(1) Constitution.

areas'.[336] Thus chiefs have significant functions relating to land, the environment, culture, facilitation of development and resolution of disputes. It is particularly their role relating to land and environment that has created conflicts with rural local authorities given the ambiguity in the division of responsibilities on these functional areas between the two institutions. This argument is elaborated in Chapter Six.[337]

The Constitution states that, when performing their functions, '[chiefs] are not subject to the direction or control of any person, except as may be prescribed in an Act of Parliament'.[338] Chiefs are further required to be apolitical and may not further the interests of any political party.[339] In practice, Sachikonye *et al* argue that most chiefs openly align themselves with the government, and ZANU-PF in particular.[340] Like the colonial governments, ZANU-PF appears to use both 'carrot' and 'stick' methods to acquire the allegiance of chiefs.[341] Matyszak alleges that the government, through structures such as the army, have used various coercive measures to garner the support of chiefs.[342] His allegations are supported by Makumbe who highlights that chiefs were directed to support ZANU-PF and prevent the MDC from mobilising political support in their jurisdictions.[343] It is further argued that chiefs who failed to follow these directives were/are allegedly threatened with harassment and withdrawal of their monthly allowances, vehicle support scheme and other benefits. As a result, most if not all chiefs have complied with the directives.[344] Makumbe claims that some chiefs have made it extremely difficult for opposition political parties to mobilise political support in rural areas.[345]

The ZANU-PF-led government also uses the 'carrot' method, in which benefits are offered to acquire the allegiance of chiefs.[346] Some of the benefits that are offered include a monthly allowance, a subsidised vehicle purchasing scheme, monthly fuel allocation, drilling of boreholes and electrification of the homes of chiefs.[347] In return, it is argued that chiefs are

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[336] S 282(2) Constitution.
[337] See para 4.5.3.3.
[338] S 282(3) Constitution.
[339] S 281(2) Constitution. See also 46(1) Traditional Leaders Act.
[340] Sachikonye *et al* 2007: 91. Musekiwa 2012: 242. See also The Centre for Peace Initiatives in Africa 2005: 23.
[341] See Makumbe 2010: 88, 93.
[342] Matyszak 2010.
[343] Makumbe 2010: 94. See also The Centre for Peace Initiatives in Africa 2005: 23.
[344] Matyszak 2010 & Makumbe 2010: 98. See also Mandondo & Mapedza 2003: 12.
[345] Makumbe 2010: 93.
[346] See Musekiwa 2012: 242.
[347] See Makumbe 2010: 92.

tasked to play the role of 'political commissars' for ZANU-PF.[348] It is claimed that prior to the 2008 Presidential Elections the annual conferences of chiefs endorsed President Mugabe as their presidential candidate.[349] This shows that the 'carrot' method was effective in ensuring that chiefs advance the political interests of ZANU-PF. As stated above, the 2013 Constitution prohibits chiefs from aligning themselves with a certain political party whilst they are occupying the position of a chief, a requirement which most chiefs are not complying with. At the time of writing, some chiefs have openly declared that they supported the elevation of the wife of the President to lead the Women's League of ZANU-PF, indicating the alignment of the institution with ZANU-PF. Surprisingly, the open alignment of chiefs with ZANU-PF does not appear to damage the legitimacy of traditional leadership among rural citizens.[350]

5.3 Relationship with rural local authorities

5.3.1 Role in council

The RDCA does not provide for the role of chiefs in council proceedings.[351] However, there is a culture in rural local government which developed prior to independence where chiefs are treated as *ex officio* members of councils with no voting powers.[352] Chiefs are given the platform to address the council especially on issues which concern their powers and functions or the customs and traditions of people living in their jurisdictions. This is commendable given that chiefs and rural local authorities administer the same jurisdiction. It is submitted that this culture should be legally recognised so as to provide greater clarity as to the role of chiefs in the council, along the lines of the Municipal Structures Act of South Africa.[353]

5.3.2 Role in village and ward assemblies

Village and ward assemblies represent the quest in the decentralised system of government to integrate the institution of traditional leadership with democratically elected officials. They were introduced by an amendment to the Traditional Leaders Act in 2001. In each rural

[348] The Centre for Peace Initiatives in Africa 2005: 23, Matyszak 2010, Sachikonye *et al* 2007: 91.
[349] Matyszak 2010. See also Ndoro 2010: 323 and Makumbe 2010: 93. See s 46(1) Traditional Leaders Act.
[350] Musekiwa 2012: 242.
[351] The Constitution provides for representation of chiefs in the Senate and on provincial councils. See ss 120(1)(b), 268(1)(c) Constitution.
[352] Makumbe 2010: 90.
[353] See s 81 Municipal Structures Act, South Africa. The Act requires each municipal council, before taking a decision on any matter directly affecting the area of a traditional authority, to give the leader of the authority the opportunity to express a view on the matter.

village, there is a village assembly which is composed of all the inhabitants of the village who are over the age of 18 years.[354] The village assembly is chaired by the village head and is responsible for the general administration of the village, including cultural and land matters. The assembly elects and supervises the VIDCO, its technical arm.[355] The village assembly also reviews and approves any development plans of the village, including those prepared by the VIDCO, before they are sent to the WADCO for incorporation into the Ward Development Plan.[356]

In every ward of a rural local authority, there is a ward assembly which is composed of the councillor of the ward and headmen and village heads within the ward.[357] The chairperson is elected by members of the ward assembly. The functions of the ward assembly are similar to those of a village assembly except that the ward assembly is responsible for a much larger jurisdiction than a village assembly. In addition, the ward assembly oversees the work of village assemblies and reviews and approves development plans submitted by village assemblies before submission of such plans for incorporation into the rural district development plan (as shall be discussed in paragraph 5.4 of Chapter Nine).[358] The assemblies have not been effective in delivering on their mandate, partly because they are dominated by traditional leaders. They are not participatory but vehicles used by traditional leaders to impose their 'will' on the rural populace.

5.3.3 Relationships with councillors

As stated earlier, the relationship between traditional leaders and councillors is not cordial.[359] This has been attributed to a number of reasons. First, the existence of the institution of traditional leadership parallel with elected rural local governments has created 'conflicting claims of legitimacy and uneasy co-existence between councillors and chiefs'. There is mistrust between chiefs and councillors which makes it difficult to build constructive relations. Ndoro argues that 'to traditional leaders, councillors are a challenge to their hegemony, prestige and authority'.[360] She further asserts that given an option, traditional

[354] S 14(1) Traditional Leaders Act.
[355] VIDCOs previously established by the Prime Minister's Directives on Decentralisation.
[356] S 15 Traditional Leaders Act. See Feltoe 2006: 139.
[357] S 18(1) Traditional Leaders Act. The Minister, in consultation with the rural local authority concerned, may combine a number of wards for the purpose of establishing a ward assembly.
[358] S 18(3) Traditional Leaders Act. See Feltoe 2006: 139.
[359] The Centre for Peace Initiatives in Africa 2005: 23.
[360] Ndoro 2010: 323.

leaders would prefer to be the sole local government structure in communal areas.[361] This is evidenced by the fact that chiefs and councillors often trade accusations of abuse of power and non-compliance with laws, customs and traditions.[362]

There is perceived unfair remuneration, with chiefs receiving better remuneration packages compared to councillors. At the time of writing, chiefs are reported to receive US$ 300 while councillors in rural local authorities are paid less than US$ 200 per month.[363] Chiefs are also allowed to keep fines imposed on offenders in their traditional courts in addition to the salaries and allowances they are entitled to.[364] The huge differences in salaries, allowances and other benefits could be one of the reasons causing growing tension as councillors feel side-lined, lower in status and discriminated against relative to chiefs. At the same time, chief tends to command more respect from rural communities than councillors do.[365] As a result, councillors are overshadowed by chiefs in rural local government, in the process raising tensions with councillors. The tension which exists between chiefs and councillors has the potential to destabilise rural local government. It is against this background that it is suggested that there is a need to redefine the relationship between chiefs and councillors. The redefinition should focus on division of responsibilities between chiefs and rural local authorities (councillors) and the improvement of remuneration packages of councillors, among other issues.[366]

6. Conclusion

This chapter discussed the governance structures of provincial and metropolitan councils and local authorities. It paid particular attention to the composition, powers and functions of various governance structures at the provincial and local levels. It was observed that the governance structures and processes at both provincial and local levels were designed to sustain centralisation of power at the national level, a characteristic of the Lancaster House Constitution. Among other weaknesses, the rights of citizens to elect local leaders and to participate in important governance processes are limited. The 2013 Constitution has somehow tried to reverse the over-centralisation of power and to advance local democracy.

[361] Ndoro 2010: 323.
[362] See Ndoro 2010: 323.
[363] See *the Newsday* 'Chiefs demand same treatment as judges' 2014.
[364] At the time of writing, people appearing before the traditional court are required to pay US$500 for their case to be heard. See *the Newsday* 'Chiefs demand same treatment at judges' 2014.
[365] See The Centre for Peace Initiatives in Africa 2005: 24.
[366] See Makumbe 2010: 97-8.

For example, the Constitution has abolished the power of the national government to appoint local leaders. At the time of writing, the Provincial Councils and Administration Act, UCA and RDCA have not been aligned yet with the Constitution. The implication is that some of the democratic benefits which the 2013 Constitution ushered in have not been realised yet. However, as at July 2014, efforts to develop new legislation are being spearheaded by the Ministry of Local Government. Having discussed the governance structures at provincial and local levels, the next chapter will examine the powers and functions of provincial and local governments.

Chapter 6

Powers and functions

1. Introduction

The previous chapter discussed the governance structures of provincial and metropolitan councils as well as those of local authorities. This chapter examines the division of responsibilities across the three tiers of government with a particular focus on the powers and functions of provincial and metropolitan councils and local authorities. As contended in paragraph 6.1.3 of Chapter Two, subnational governments can play a role in the achievement of national and local objectives such as development, democracy and sustainable peace, especially if they have original, relevant, clearly demarcated and 'differentiated' responsibilities. In the first section of the chapter, the study discusses the key constitutional principles, values and objectives which (as argued in this chapter) should inform the division of responsibilities among the three tiers of government. This is followed by an examination of the responsibilities and administrative authority of provincial and metropolitan councils. In the third section the chapter analyses the responsibilities of local authorities, before discussing the administrative authority of these authorities.

2. Division of responsibilities across the three tiers of government

As highlighted in Chapter Three, Zimbabwe is a unitary state[1] which signifies some form of aggregated power at the national centre.[2] In principle, this means that 'all' governmental powers are assigned by the Constitution to the national government. The Constitution does not have a system of 'enumerated powers' where the powers of all tiers of government are explicitly enumerated in the Constitution. It, however, lists the responsibilities of provincial and metropolitan councils.[3] The unitary nature of the Zimbabwean state means that the residual powers reside with the national government. While it is appreciated that governmental powers are vested in the national government, it is submitted that there are important constitutional values, objectives and principles which require the national

[1] See s 1 Constitution.
[2] See Bockenforde 2011: 35.
[3] See Musekiwa & Mandiyanike 2013: 8. See Bockenforde 2011: 48 for a discussion of a system of enumerated power.

government to decentralise some of its responsibilities to lower governments.[4] These will be examined below.

2.1 Principles of devolution and decentralisation

The 2013 Constitution lists devolution and decentralisation as one of the founding values and principles of the Constitution.[5] Founding values and principles have been found to constitute higher norms which are so fundamental to a constitutional legal order as to be incapable of amendment, either at all or except by special majority.[6] These principles and values set positive standards with which all law must comply to be valid.[7] Thus, they influence the drafting and interpretation of legislation and how the common law is developed. It is contended that the listing of devolution and decentralisation as one of the founding values and principles (as opposed to any other provision in the Constitution) is therefore significant. It is submitted that devolution and decentralisation are principles which should inform the interpretation of the Constitution and other laws.[8]

Although devolution is generally categorised as one of the forms of decentralisation,[9] the Constitution has recognised both devolution and decentralisation as modes of diffusing power to lower tiers of government. The recognition of both devolution and decentralisation emphasises the importance which the Constitution attaches to devolution as opposed to other forms of decentralisation, such as delegation and deconcentration.[10] Even though the Constitution recognises devolution as one of the fundamental principles, it however does not itself devolve 'real' powers and functions to provincial and metropolitan councils and local authorities.[11] As discussed below, the Constitution merely instructs the national government to devolve power to lower tiers of government under certain circumstances.[12] This highlights the unitary nature of the state as identified in section 1 of the Constitution.

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[4] See S 3(2)(I) Constitution.
[5] S 3(2)(l) Constitution.
[6] Roederer 2011:13-18. Such limitation to constitutional amendment has grown to be known as the 'basic structure doctrine'. For a discussion on the doctrine, see *Indira Nehra Gandhi v Raj Narain* 1975 SC 2299, para. 2461.
[7] See Roederer 2011:13-18.
[8] See Roederer 2011:13-18.
[9] See Chapter 1 on the difference between devolution and other forms of decentralisation, such as delegation and deconcentration.
[10] See Moyo 2013: 154.
[11] Sims 2013: 2, 13; Freedom House 2012: 5; Moyo 2013: 154.
[12] See also s 264(1) Constitution.

2.2 Preamble of Chapter 14

Chapter 14 is arguably one of the most important chapters of the 2013 Constitution of Zimbabwe. The significance of the chapter is reflected by the fact that it is the only chapter of the Constitution which has a preamble of its own. The Preamble reads:

> Whereas it is desirable to ensure: (a) the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism; (b) the democratic participation in government by all citizens and communities of Zimbabwe; and (c) the equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas; there must be devolution of power and responsibilities to lowers tier of government in Zimbabwe.

The Preamble of Chapter 14 entrenches devolution (as opposed to other forms of decentralisation) as the mode of diffusing governmental power from the national government to lower tiers of government. Although such diffusion may be limited to pursing the achievement of certain national and local goals, it shows that the national government will not exercise governmental powers by itself or merely deconcentrate or delegate such powers. Some of its powers 'must' be devolved to provincial and metropolitan councils and local authorities. The Preamble carries in itself a constitutional instruction to the national government to devolve power to lower level governments to preserve national unity, promote democratic participation, engender equitable allocation of resources and prevent exclusion of certain communities, among other objectives. It provides the foundation upon which devolution is based.[13] While the Preamble signifies a strong intent for devolution, the rest of Chapter 14 does not devolve substantive powers to lower governments.[14] Instead, the chapter in various provisions instructs Parliament to devolve powers to provincial and metropolitan councils and local authorities. This role of Parliament implies that devolution is likely to be vulnerable to political party politics as Parliament is a political body.[15]

2.3 Instruction to devolve power

The Preamble of chapter 14 is further given effect by section 264(1) of the Constitution, which requires the national government to devolve power.[16] The section states that 'whenever

[13] See Moyo 2013: 148, Machingauta *et al* 2014: 6.
[14] See Freedom House 2012: 35, Sims 2013: 13.
[15] See Freedom House 2012: 35.
[16] See Moyo 2013: 154.

appropriate', the national government must devolve powers and responsibilities to provincial and metropolitan councils 'which are competent' to carry out those responsibilities 'efficiently and effectively'.[17] This provision is particularly important because it envisages further devolution of powers and responsibilities to provincial and metropolitan councils and local authorities, in addition to what the Constitution has explicitly allocated to provinces and local authorities.[18] Three important questions can be raised from this provision. When does it become 'appropriate' to devolve power and responsibilities? When does a provincial or local government become 'competent' to carry out any devolved task? Who determines that it has become 'appropriate' or 'competent'? This requires an examination of the meaning of these terms and intent of the constitutional framers.

2.3.1 Meaning of 'whenever appropriate'

The Constitution requires the national government to devolve power to provincial and metropolitan councils and local authorities 'whenever' it becomes 'appropriate'.[19] This is a constitutional instruction to devolve power under certain circumstances. The Constitution however does not provide guidance on when it becomes 'appropriate' to devolve power.[20] It is important that national legislation clarifies all these 'grey' areas, in particular by providing 'criteria to objectively adjudge when the conditions have been made for the devolution of powers and responsibilities to take place'.[21] As argued in detail below, the national government should devolve powers and functions to provincial and metropolitan councils so as to give effect to the 2013 Constitution which provides a framework for such devolution. What is required is for Parliament to enact legislation devolving powers to lower governments to give effect to the constitutional framework for devolution captured in Chapter 14.[22] The question of when the national government should devolve powers and responsibilities is also one determined by competency levels at provincial and local levels.

[17] S 264(1) Constitution.
[18] Chigwata & De Visser 2013: 9.
[19] S 264(1) Constitution.
[20] De Visser & Chigwata 2013: 11, Machingauta *et al* 2014: 6. The lack of such guidance may have adverse effects on the implementation of the newly established multilevel system of government.
[21] Machingauta *et al* 2014: 6. See Chatiza 2014: 6, Musekiwa 2014: 4, Local Governance Community Capacity Building and Development Trust 2014:12. The Provincial and Metropolitan Councils Administration Draft Bill of August 2014 has failed in this respect as it does not provide clear guidance on devolution of power to provincial and metropolitan councils.
[22] See De Visser & Chigwata 2013: 11.

2.3.2 Meaning of 'competent'

Besides the question of 'whenever appropriate', the Constitution requires devolution of power and responsibilities to provincial or local governments which are 'competent' to carry out devolved responsibilities 'efficiently and effectively'.[23] Such case by case devolution is likely to result in asymmetric decentralisation, which is necessary given that subnational governments are unlikely to have equal capacity and resources to deliver on their responsibilities and any other obligations.[24] The challenge nevertheless is determining when a provincial council, metropolitan council or local authority has become 'competent' to carry out its tasks 'efficiently and effectively'.[25] The issue of competency implies the capacity of a subnational government to deliver on decentralised responsibilities. This provision raises the question of what has come to be known at the 'capacity conundrum'.[26] The dilemma is whether capacity should be developed at subnational level before decentralisation of responsibilities, or vice versa, or whether the two processes should be carried out simultaneously. It is often argued that decentralisation should not take place until the necessary capacity exists at subnational level.[27] This argument is commonly relied upon as an excuse by national governments not to devolve powers to subnational governments or to justify retaining central control.

Shah argues against the decentralisation of powers and functions to subnational governments depending on capacity or competency levels.[28] For him, 'administrative capacity to develop and maintain modern organisational practices such as budgeting, auditing and accounting systems is no doubt important but should not be considered as a barrier to decentralisation provided that citizen participation and transparency in decision-making is ensured'.[29] The argument is that technical capacity can be borrowed from senior governments who also have an obligation to support junior governments to ensure that they have the capacity to deliver on decentralised responsibilities.[30] Further, it is only the pressure of decentralisation which

[23] S 264(1) Constitution.
[24] For a detailed discussion of the relevance of asymmetric decentralisation, see para 6.1.3.5 of Chapter Two.
[25] De Visser & Chigwata 2013: 11, Machingauta *et al* 2014: 6.
[26] Ribot 2004: 59.
[27] See Shah 2004: 38, Conyers 1990: 30 in Ribot 2004: 54, Ribot 2004: 61.
[28] Shah 2004: 38.
[29] Shah 2004: 38.
[30] See Shah 2004: 38.

motivates subnational governments to recognise their own potential, demonstrate their real abilities and learn from their mistakes.[31]

Chatiza argues that the fact that the 2013 Constitution has provided a framework for devolution indicates that there will be immediate devolution of powers to provincial and local governments soon after its adoption.[32] This means that instead of making devolution of powers and responsibilities conditional on the basis of competency or capacity at subnational level, it is the responsibility of the national government to ensure that each provincial and local government has the capacity to carry out decentralised tasks.[33] After all, capacity sometimes follows power, that is, officials at provincial and local levels learn from exercising power. Moreover, the 'capacities needed cannot be separated from the kinds of obligations and mandates accompanying those power transfers'.[34] Capacity is likely to develop once the necessary powers and responsibilities have been decentralised. Thus, it is submitted that devolution of powers and responsibilities to provincial and metropolitan councils and local authorities in Zimbabwe is immediate rather than deferred to a later time.[35] The argument is that much capacity at provincial and local levels is needed, but its absence is not an excuse for inaction by the national government.

2.3.3 Who determines that a provincial council, metropolitan council or local authority has become 'competent'?

The question of who determines that a provincial or local government has become 'competent' is also vital. The Constitution however does not provide guidance on who decides when it is 'appropriate' to devolve power.[36] The nature of the Zimbabwean multilevel system of government suggests that it is the national government which has that responsibility given that it is the most senior government.[37] Does this mean that an individual provincial or local government may not claim that it has become 'appropriate' for it to exercise additional powers? It is submitted that subnational governments may use intergovernmental forums, Parliament or even the courts and claim that it is competent to

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[31] See Conyers 2000: 30 in Ribot 2004: 64.
[32] Chatiza 2014: 6. See Moyo 2013: 148.
[33] See Musekiwa 2014: 8.
[34] Ribot 2004: 59.
[35] See Musekiwa 2014: 7, UN-Habitat 2007: 4. However, an incremental approach to devolution of power may be most suitable for Zimbabwe given the country's unstable economic environment.
[36] De Visser & Chigwata 2013: 11, Machingauta *et al* 2014: 6. The lack of such guidance may have adverse effectson the implementation of the newly established multilevel system of government.
[37] See ss 1 and 5 Constitution.

exercise additional powers. Lobbying for the decentralisation of additional powers in intergovernmental forums and Parliament relies on persuasive instruments. The use of the courts is based on the rationale that the Constitution instructs the national government to devolve additional powers to lower governments.[38]

2.4 Objectives of devolution

It is submitted that the 2013 Constitution requires the division of responsibilities across the three tiers of government to be guided by the objectives of devolution of powers and responsibilities to provincial and metropolitan councils and local authorities captured in section 264(2) of the Constitution. The objectives are:

a) to give powers of local governance to the people and enhance their participation in the exercise of the powers of the State and in making decision affecting them;
b) to promote democratic, effective, transparent, accountable and coherent government in Zimbabwe as a whole;
c) to preserve and foster the peace, national unity and indivisibility of Zimbabwe;
d) to recognise the right of communities to manage their own affairs and to further their own development;
e) to ensure the equitable sharing of local and national resources; and
f) to transfer responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.[39]

These objectives envisage the devolution of 'significant' powers to provincial and local levels that are relevant for the realisation of a number of goals, including democracy, development and sustainable peace.[40] For instance, the 'right of communities to manage their own affairs' should be construed to mean that provincial and local governments are assigned responsibilities which are relevant for the management of provincial or local affairs.[41] As discussed in Chapter Eight, objectives such as the need to preserve and foster the peace, national unity and indivisibility of Zimbabwe points towards the supervisory role of the national government to ensure that the exercise of devolved powers does not undermine sustainable peace. Hence, it is submitted that the objectives must guide the process of

[38] See Preamble Chapter 14 and S 264(1) Constitution.
[39] S 264(2) Constitution.
[40] De Visser & Chigwata 2013: 11.
[41] See Moyo 2013: 154.

devolution, especially development of legislation in trying to balance the need for local autonomy and the requirement for supervision.[42]

It has been observed in this section that whereas the Constitution provides intent for devolution it does not itself devolve 'real' powers and functions to provincial and metropolitan councils and local authorities.[43] The implication of this is that without providing for the powers and functions to be devolved, there is likely to be a continuation of the practice under the Lancaster House Constitution where power was centralised at the centre with subnational governments mainly acting as agents of the national government.[44] Unlike the Lancaster House Constitution, though, the 2013 Constitution mandates the national government to devolve powers and functions. It is submitted therefore that there is a need to develop legislation to give effect to the devolution framework enshrined in the 2013 Constitution.[45] Internationally recognised principles such as the principles of subsidiarity, UN-Habitat Guidelines on decentralisation and strengthening of local authorities, the Aberdeen Principles and the European Charter of Local Self-Government can inform the division of responsibilities across the three tiers of government.[46]

Having examined the constitutional basis for the devolution of powers and functions, the following section examines the powers and functions of provincial and metropolitan councils. The major question is whether the responsibilities are original, relevant, clearly demarcated and differentiated. The extent to which provincial and metropolitan councils have final decision-making powers over their responsibilities will also be assessed.

3. Provincial and Metropolitan Councils

Section 270(1) of the Constitution provides that provincial and metropolitan councils are responsible for social and economic development of their respective provinces, including:

a) planning and implementing social and economic development activities in its province;
b) coordinating and implementing governmental programmes in its province;

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[42] See Machingauta *et al* 2014: 9.
[43] See Sims 2013: 2, 13; Musekiwa 2014: 4; Moyo 2013: 148.
[44] See Freedom House 2012: 5.
[45] See Chatiza 2014: 10; Musekiwa 2014: 4, 7; Local Governance Community Capacity Building and Development Trust 2014: 13.
[46] On division of responsibilities, see Stigler 1953, 'Stigler's Menu'; Olson 1969, 'Fiscal equivalency'; Oates 1972: 55, 'Decentralisation Theorem'; Shah 2004: 8-9. For a detailed discussion of division of responsibilities across levels of government, see para6.1.3.2 of Chapter Two.

c) planning and implementing measures for the conservation, improvement and management of natural resources in its province;
d) promoting tourism in its province, and developing facilities for that purpose;
e) monitoring and evaluating the use of resources in its province; and
f) exercising any other functions, including legislative functions, that may be conferred or imposed on it by or under an Act of Parliament.[47]

While section 270(1) provides for the responsibilities of provincial and metropolitan councils, there is no provision in the Constitution which explicitly gives these councils the powers necessary to undertake socio-economic development. It is not conceivable that the Constitution can assign a responsibility to a particular tier of government without the necessary powers required to undertake the responsibility. The only rational conclusion one can make is that the power of provincial and metropolitan councils to undertake socio-economic development is implied in section 270(1). This conclusion is supported by the fact that the Constitution only requires Parliament to enact legislation providing for the manner in which the councils may exercise their functions.[48] It is submitted that this does not amount to an instruction to provide for the content and powers but the manner in which socio-economic development should be carried out. Thus, the powers to undertake socio-economic development are implied in section 270(1). The other challenge is that the Constitution does not go on to define the term socio-economic development or explain what it entails. Thus, an interrogation of the term is required, which will be followed by a general assessment of the responsibilities of provincial and metropolitan councils.

3.1 Defining socio-economic development

As highlighted in paragraph 2.1 of Chapter Two, economic development is concerned with economic growth and is measured using economic indicators such as gross national product, inflation rate, unemployment rate and gross domestic product.[49] Social development on the other hand is concerned with qualitative aspects of human life, reflected by factors such as equity, social cohesion, social mobility, participation and cultural identity.[50] Thus socio-economic development is multidimensional, geared towards improving people's socio-economic welfare both in qualitative and quantitative terms. Given this multi-dimensional nature of socio-economic development, the question is whether provincial and metropolitan

[47] S 270(1) Constitution.
[48] S 270(2) Constitution.
[49] Soubbotina & Sheram 2000: 9, 96.
[50] Soubbotina & Sheram 2000: 9.

councils have the competence to carry out all responsibilities which have implications for socio-economic development.[51] For instance, can they adopt policies and spend budgets on functional areas such as water supply, health, sanitation and housing which have implications for socio-economic development?

Provincial and metropolitan councils are unlikely to adopt and implement policies which have a significant impact on socio-economic development unless the national government devolves additional responsibilities to them. Their role may be limited to development planning, coordination and implementation, as was the case under the Lancaster House Constitution.[52] This argument is supported by the fact that the Constitution does not grant provincial and metropolitan councils any resource-raising and legislative powers.[53] Such powers are necessary if provincial and metropolitan councils are to undertake functions which have implications on socio-economic development. It is submitted however that provincial and metropolitan councils may undertake responsibilities which have significant consequences on socio-economic development. What is required is for national legislation to specify the exact functions which these councils should undertake. Some of these functions might currently be undertaken by the national or local governments but may be better exercised by the councils. For example, provincial planning, provincial cultural matters, provincial tourism and management of certain natural resources may be better undertaken by provincial and metropolitan councils than by other tiers of government.

The argument that provincial and metropolitan councils do not have resource-raising and law-making powers does not justify why these councils should not undertake significant responsibilities. The Constitution does not close the door for the councils to exercise these powers at it leaves it to Parliament to decide on whether these councils should exercise such powers.[54] It is submitted that the national government should devolve significant powers and responsibilities to provincial and metropolitan councils as the Constitution envisages that these councils will play a key role in the socio-economic development of their respective provinces and not merely a planning and coordinating role. As highlighted above, the Constitution provides some of the responsibilities which provincial and metropolitan councils

[51] See De Visser & Chigwata 2013: 12, Machingauta *et al* 2014: 15.
[52] See S 13 Provincial Councils and Administration Act.
[53] See Sims 2013: 2, Freedom House 2012: 35.
[54] The Provincial and Metropolitan Councils Administration Draft Bill (August 2014) has not made provision for such powers, signalling that these councils will remain largely coordinative structures. See s 8 of the Bill.

may undertake to realise social and economic development in their respective provinces.[55] These responsibilities are examined in detail below.

3.1.1 Planning and implementing social and economic development activities

Provincial and metropolitan councils are responsible for planning and implementing social and economic development activities in their provinces.[56] This seems to suggest that the role of these councils may be limited to planning and implementing programmes to achieve social and economic development.[57] Nonetheless, it is submitted that the Constitution may not have created a government with the responsibility of only assisting other governments without its own unique role to play. If that were the case, then provincial and metropolitan councils would have not been recognised in the Constitution as a tier of government but perhaps just an agency of national or/and local governments. It can be argued that the fact that the Constitution recognised these councils as governments means that they have a significant role to play in socio-economic development. Thus, the role of the councils is not limited to development planning but extends to adoption and implementation of policies to further socio-economic development.

3.1.2 Coordinating and implementing governmental programmes

Provincial and metropolitan councils are also charged with coordinating and implementing 'governmental programmes'.[58] It is however not clear whose programmes provincial and metropolitan councils are tasked with coordinating and implementing given that government is organised at the national, provincial and local levels.[59] Are these programmes of the national government or provincial and metropolitan councils, or those of local authorities, or of all governments? It is submitted that since provincial and metropolitan councils are composed of members from both the national and local governments they should coordinate and implement programmes of government (whether national, provincial and local) in the province.[60] It is argued that it appears from their composition that these councils have an intergovernmental relations role to play rather than carrying out distinct powers and

[55] See s 270(1) Constitution.
[56] S 270(1)(a) Constitution.
[57] Machingauta *et al* 2014: 15.
[58] S 270(1)(b) Constitution.
[59] See s 5 Constitution.
[60] See Nkomo 2014, *the Southerneye* 'Devolution: metropolitan, provincial councils must have real power'.

functions.[61] Yet section 264(1) of the Constitution mandates the national government to devolve powers to these councils. These two requirements taken together do not make for a coherent constitutional picture of the actual role and function of provincial and metropolitan councils.[62] This requires national legislation to clarify the exact place and role of provinces. However, it is submitted that the intergovernmental relation element which these councils have does not prevent them from exercising distinct powers and functions relating to socio-economic development.

3.1.3 Conservation, improvement and management of natural resources

Provincial and metropolitan councils are responsible for planning and implementing measures for the conservation, improvement and management of natural resources in their respective provinces.[63] It is not clear whether these councils have 'real' decision-making powers with respect to the conservation, improvement and management of natural resources.[64] Their role seems to be limited to assisting the national and local tiers of government in formulation and implementation of policies to conserve, improve and manage natural resources. It is however submitted that the role of these councils may not be limited to assisting the national and local governments. In fact, the councils have the power to adopt and implement programmes to conserve, improve and manage natural resources. For example, a council may adopt and implement programmes to reduce deforestation and environmental degradation in its province. This means that provincial and metropolitan councils have the right to reject certain commercial exploitation of local resources to preserve the environment.[65] Such a right include the right to determine who exploits natural resources for commercial or any other purposes.[66] Further, the councils can be involved in the determination of beneficiaries from the exploitation of natural resources in their respective provinces. They should be entitled to a certain portion of revenue generated from such exploitation of natural resources.

It submitted that to effectively carry out the conservation, improvement and management of natural resources, the national government should consider devolving executive and resource-

[61] Machingauta *et al* 2014: 16. Moyo 2013: 152. See para 2.1 of Chapter Five for a discussion of the composition of these councils.
[62] De Visser & Chigwata 2013: 13, Machingauta *et al* 2014: 16.
[63] S 270(1)(C) Constitution.
[64] See Veritas Zimbabwe Constitutional Watch 10/2014, Machingauta *et al* 2014: 16.
[65] See Ribot 2004: 66.
[66] See Ribot 2004: 66.

raising powers to provincial and metropolitan council(s) to empower them with real decision-making power.[67] The effective conservation, improvement and management may require that provincial and metropolitan councils exercise legislative powers so that they are able to make rules and laws regulating, for instance, conservation of natural resources.[68] It may also require that the councils raise revenue to implement their policies.

3.1.4 Tourism

Provincial and metropolitan councils have the responsibility over tourism in their respective provinces.[69] The question is whether their role is limited to promoting tourism and developing facilities for that purpose or having full competency over tourism. The Constitution suggests that the role of provincial and metropolitan councils is limited to promoting and developing facilities for promoting tourism.[70] Promoting tourism encompasses a variety of activities, including setting up centres, employing individuals and establishing agencies for that purpose. Developing facilities is a significant responsibility which may involve creating infrastructure to accommodate and cater for the needs of tourists. Promoting and developing facilities for tourism will likely require financial resources.

It is submitted that even though provincial and metropolitan councils are entitled to a portion of nationally raised revenue in each year, it is necessary to allow the councils to retain some of the revenue generated from tourism-related activities.[71] This is particularly necessary to establish a close link between consumption of tourism services and payment of such services at the provincial level.[72] For example, the councils can be allowed to keep a certain percentage of money paid by tourists.[73] The councils could also be given the power to levy a tourism tax or/and hotel tax. Thus, it is submitted that the national government should devolve to the provincial level the necessary revenue-raising powers related to tourism to

[67] See S 264(1) Constitution. See also ss 183 and 198 Law Society Draft Constitution.
[68] See Veritas Zimbabwe Constitutional Watch 10/2014. See s 183 Law Society Draft Constitution.
[69] S 270(1)(d) Constitution.
[70] S 270(1)(d) Constitution.
[71] See s 198 Law Society Draft Constitution, s 164(3) National Constitutional Assembly Draft Constitution. Revenue-sharing by the three tiers of government is discussed in detail in para 4 of Chapter Seven.
[72] See para 6.2.1.1 of Chapter Two.
[73] De Visser & Chigwata 2013: 14.

allow the council to raise revenue necessary to promote tourism and developing facilities for that purpose.[74]

3.1.5 Monitoring and evaluating the use of resources

The Constitution requires provincial and metropolitan councils to monitor and evaluate the use of resources in their respective provinces.[75] The question is, are these resources at the disposal of the national, provincial or local government which the councils are required to monitor their use? What should these councils do with the outcome of such evaluation? Can they hold the national or local government accountable for its use of resources or should they rather aim at coordinating the use of resources? The Constitution does not provide clarity on these issues.[76] It is submitted that provincial and metropolitan councils should monitor and evaluate the use of all public resources in the province.[77] This implies that the council will monitor how national ministries and departments and local authorities are spending public resources in the province, especially with regard to the realisation of socio-economic development. It must also monitor the use of its own resources in the province. The councils should be given the power to bring to the attention of the responsible Minister, mayor, Auditor-General and other relevant institutions any improper spending or use of public resources by the responsible ministry, agency or local authority in the province concerned.

3.1.6 Additional powers

A provincial and metropolitan council may exercise additional powers and functions, including legislative powers that may be conferred or imposed on it by or under an Act of Parliament.[78] This provision raises a number of questions. For example, what does assignment of powers and functions 'by' or 'under' an Act of Parliament mean? Is the assignment of legislative powers necessary and, if so, how should it be carried out? Should the national government assign additional executive responsibilities on provincial and metropolitan councils?

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[74] The Provincial and Metropolitan Councils Draft Bill (August 2014) does not assign additional responsibilities to these councils, but it does give the Minister power to assign additional functions to provincial and metropolitan councils. See s 43 of the Bill.
[75] S 270(1)(e) Constitution.
[76] See Veritas Constitutional Watch 10/2014.
[77] Machingauta *et al* 2014: 17, De Visser & Chigwata 2013: 14. See also Sims 2013: 14.
[78] S 270(1)(f) Constitution.

3.1.6.1 Assignment of powers and functions 'by' or 'under' an Act of Parliament

A provincial or metropolitan council may exercise additional powers and functions that may be conferred or imposed on it 'by or under' an Act of Parliament.[79] This provision gives Parliament the discretion to determine if a provincial and metropolitan council should exercise any additional responsibilities and their nature.[80] Further, Parliament has the discretion to assign varying powers and functions to different provincial or metropolitan councils.[81] Parliament may assign additional powers and functions to a provincial or metropolitan council by following two methods. It may confer powers and functions 'by' means of an Act of Parliament. This means that the relevant Act of Parliament directly assigns powers and functions to a particular provincial and metropolitan council. After such an assignment, the relevant provincial or metropolitan council generally does not require any other authorisation to exercise or undertake the assigned powers or functions, respectively.

Parliament may confer powers and functions to a provincial or metropolitan council 'under' an Act of Parliament.[82] This implies that Parliament will authorise a particular body to assign additional powers and functions to a provincial or metropolitan council. For example, Parliament can authorise the President or Minister to assign powers and functions to a provincial and metropolitan council. The critical question is whether Parliament can give 'blanket' powers to the President or Minister to assign powers and functions to a provincial or metropolitan council? Are there any limitations to what Parliament can delegate with respect to the assignment of powers and functions to provincial and metropolitan councils? These questions are interrogated below.

3.1.6.2 Assignment of legislative functions

The Constitution does not grant legislative powers to provincial and metropolitan councils.[83] It envisages that provincial and metropolitan councils may exercise legislative powers by giving Parliament the power to confer or impose legislative powers on these councils.[84] It is submitted that there are limitations to the manner in which Parliament may delegate legislative powers. First, it is submitted that Parliament may not delegate the power to assign

[79] S 270(1)(f) Constitution.
[80] See Musekiwa 2014: 4, Musekiwa & Mandiyanike 2013: 8.
[81] See S 270(1)(f) Constitution.
[82] S 270(1)(f) Constitution.
[83] See Musekiwa & Mandiyanike 2013: 9.
[84] See S 270(1)(f) Constitution.

legislative powers to the President or Minister as the executive is not vested with primary law-making powers. Thus, if Parliament resolves to assign legislative powers to a provincial or metropolitan council, it has to do so itself. There are also limitations to the assignment of legislative powers to a provincial or metropolitan council. It is submitted that Parliament may not delegate its primary law-making power as that would be unconstitutional.[85] The Act of Parliament providing for the assignment of legislative powers 'must specify the limits of the power, the nature and scope of the [law] that may be made, and the principles and standards applicable to the [law]'.[86] This implies that Parliament may not give to a provincial or metropolitan council unlimited power to make laws.

Having dealt with legal requirements pertaining to assignment of legislative powers to provincial and metropolitan councils, the question is whether the ability of the councils to deliver on their mandate and obligations will be enhanced if these councils have some legislative powers. It is submitted that to enable the councils to effectively carry out socio-economic development, it may be necessary to allow the councils to exercise legislative powers.[87] Some of the responsibilities of provincial and metropolitan councils require them to exercise some regulatory role which cannot be effectively carried out without legislative powers. An example stated above is conservation of the environment, which may be effectively carried out if the councils make laws and rules regulating the interface between human beings and the natural environment.[88] Effective management of natural resources may also require these councils have the power to formulate and implement their own laws.[89] Other areas where provincial and metropolitan councils may make laws include provincial tourism, soil conservation and provincial planning.[90] It is submitted that effective implementation of policies on these functional areas require that the councils exercise legislative powers. The decentralisation of legislative powers to the provincial level is also necessary to enable the realisation of the constitutional 'right of communities to manage their

[85] S 134(a) Constitution.
[86] S 134(d) Constitution.
[87] See Veritas Zimbabwe Constitutional Watch 10/2014, s 164(3) National Constitutional Assembly Draft Constitution, s 183 Law Society Draft Constitution. See also Nkomo 2014, *the Southerneye* 'Devolution: metropolitan, provincial councils must have real power'
[88] See s 183 Law Society Draft Constitution, Veritas Zimbabwe Constitutional Watch 10/2014.
[89] Nkomo 2014, *the Southerneye* 'Devolution: metropolitan, provincial councils must have real power'.
[90] See s 171 National Constitutional Assembly Draft Constitution.

own affairs and to further their development'.[91] It is highly unlikely that communities at provincial level can fully exercise that right without any legislative powers.

3.1.6.3 Assignment of executive functions

Besides assigning legislative powers, Parliament may assign additional executive functions to a provincial or metropolitan council.[92] This may take place by an Act of Parliament or under an executive act. In the first case, Parliament itself assigns additional executive functions to a provincial or metropolitan council. In the second scenario, Parliament may give a member of the executive (for example, President or Minister) the power to assign additional executive functions to a provincial and metropolitan council. It is submitted that Parliament may not give 'blanket' powers to the President or Minister with respect to assignment of functions to a provincial or metropolitan council. Under the 2013 Constitution, no institution of government has unlimited powers as that may contravene the founding values and principles of the Constitution, including rule of law, principle of separation of powers and accountability.[93] Thus, for example, it is unconstitutional for Parliament to give the President or Minister 'blanket' powers to assign additional responsibilities to provincial and metropolitan councils. The Act of Parliament giving the President or Minister power to assign functions should explicitly provide for what executive powers can be assigned and when such an assignment can take place.

The argument does not end with how additional executive functions can be assigned to a provincial or metropolitan council. It extends to the question of whether additional executive functions should be decentralised to the provincial level. As highlighted above, the Preamble of Chapter 14 requires devolution of powers and responsibilities to the provincial level 'whenever' preservation of national unity, prevention of secession, democratic participation and equitable allocation of national resources requires it. This therefore means that the socio-economic responsibility which the Constitution has imposed on these councils is not the sole responsibility which the councils may undertake. The councils may have to undertake other responsibilities to preserve national unity, prevent secession, promote democratic

[91] See s 264(2)(d) Constitution.
[92] See s 270(1)(f) Constitution.
[93] See s 3 Constitution.

participation and ensure equitable allocation of national resources.[94] However, it may be naive to argue that additional executive functions should be given to these councils even before they have been established. The starting point will be to establish the councils and once they have been established, an assessment should be carried out of what additional functions may be decentralised to the provincial level.[95] In the following section, the chapter provides a general assessment of the powers and functions of provincial and metropolitan councils.

3.2 General assessment

It was contended in paragraph 6.13 of Chapter Two that subnational governments are likely to assist in the realisation of national and local goals such as development, democracy and sustainable peace if they have original, relevant, clearly demarcated, and 'differentiated' powers as well as final decision-making powers over their responsibilities. In this section the chapter examines the extent to which the responsibilities of provincial and metropolitan councils comply with this normative framework.

3.2.1 Are the powers and functions original?

It was contended in paragraph 6.1.3.1 of Chapter Two that subnational governments are likely to play a meaningful role in the achievement of national and local goals, such as development, democracy and sustainable peace, if they have original powers.[96] As mentioned above, the Constitution enumerates the responsibilities of provincial and metropolitan councils with powers to carry these responsibilities implied in section 270(1).[97] This constitutional recognition of the powers and responsibilities of provincial and metropolitan councils has provided the highest form of protection of the powers and responsibilities of the councils. The national government may not recentralise the responsibilities of provincial and metropolitan councils without amending the Constitution. However, original powers and responsibilities by themselves are not enough to enhance the role of provincial and metropolitan councils in the realisation of development, democracy and sustainable peace if they are not relevant for the achievement of these goals.

[94] See Preamble Chapter 14 Constitution. See also Nkomo 2014, *the Southerneye* 'Devolution: metropolitan, provincial councils must have real power', s 183 Law Society Draft Constitution.
[95] See Chigwata & De Visser 2013: 9.
[96] See De Visser 2005: 79.
[97] See s 270 Constitution.

3.2.2 Are the powers and functions relevant?

It was submitted in paragraph 6.1.3.2 of Chapter Two that subnational governments are likely to play a central role in development, democracy and sustainable peace if their powers and functions are relevant for the realisation of these national and local goals.[98] As mentioned above, provincial and metropolitan councils are responsible for socio-economic development in their respective provinces.[99] It was highlighted above that socio-economic development is geared towards improving people's socio-economic welfare both in qualitative and quantitative terms. Thus, provincial and metropolitan councils have responsibilities with a direct relationship to the realisation of development.

Responsibilities of provincial and metropolitan councils such as tourism and management of resources may improve economic growth, create employment and provide opportunities for citizen participation in the economy.[100] This may result in improvement in the well-being of the citizens, which usually tends to reduce impetus towards violent conflict and therefore engenders sustainable peace. It is submitted that the extent to which the responsibility of socio-economic development is relevant for development, democracy and sustainable peace depends on the extent to which the councils are allowed to carry out substantive functions rather than merely overseeing the implementation of national programmes. Therefore, as argued above, provincial and metropolitan councils should be allowed to carry out 'real' responsibilities pertaining to socio-development development and other responsibilities which the national government is encouraged to devolve the provincial level.[101]

3.2.3 Are the powers and functions clearly demarcated?

As argued in paragraph 6.1.3.3 of Chapter Two the extent to which the responsibilities of provincial and metropolitan councils are clearly demarcated has implications for the role which these governments can play in the realisation of development, democracy and sustainable peace.[102] The 2013 Constitution has not provided clarity with regard to the socio-economic responsibility of provincial and metropolitan councils.[103] As discussed above, socio-economic development encompasses a number of aspects, from the provision of public

[98] See World Bank 2000: 109, Eaton & Schroeder 2010: 169.
[99] See Section 270(1) Constitution.
[100] See Soubbotina & Sheram 2000: 9, 96.
[101] See Sims 2013: 2, Moyo 2013: 152. See also s 183 Law Society Draft Constitution.
[102] See Musekiwa &Mandiyanike 2013: 4.
[103] Musekiwa & Mandiyanike 2013: 9, Musekiwa 2014: 4.

services such as health, water supply and housing to the creation of employment. This makes it difficult to delineate the functional competency of these councils given that some of the responsibilities which have implications for socio-economic development are carried out by the national and local governments.[104] Hence, it is submitted that the responsibilities of provincial and metropolitan councils are not clearly demarcated.[105] This further brings into question the effective functioning of the entire multilevel system of government.[106] The Constitution seems to suggest that some of the functions which have implications on socio-economic development which were carried out by the national and local governments, under the Lancaster House constitutional order, should be assigned to provincial and metropolitan councils. These include: provincial planning, nature conservation, soil conservation, provincial recreation, provincial tourism and provincial amenities. Thus, it is submitted that national legislation should provide for clear division of responsibilities among the three tiers of government. This is in line with one of the objective of devolution which is to promote transparent government.[107]

3.2.4 Do provincial and metropolitan councils have final decision-making powers over their responsibilities?

In paragraph 6.1.3.4 of Chapter Two it was contended that the extent to which subnational governments have final decision-making powers over their functions is also important for the role which they may play in the realisation of development, democracy and sustainable peace.[108] In Zimbabwe, the extent to which provincial and metropolitan councils can make final decisions relating to socio-economic development is constrained in a number of ways. While the councils may formulate plans to realise socio-economic development, provincial and metropolitan councils do not have resource-raising powers. As discussed in paragraph 2 of Chapter Seven, this implies that the councils are wholly funded by the national government through intergovernmental grants. Thus, the national government will make the final decision making role in determining programmes which are implemented at provincial

[104] See Veritas Constitutional Watch 10/2014.
[105] See Musekiwa & Mandiyanike 2013: 13.
[106] See Musekiwa & Mandiyanike 2013: 4.
[107] S 264(2)(b) Constitution.
[108] Article 4 (4) of The European Charter of Local Self-Government champions local autonomy and states that powers given to local governments must be full and exclusive.

level by virtue of controlling the national 'purse'.[109] Independent decision-making at provincial level requires that provincial and metropolitan councils have autonomous revenue-raising powers. The ability of provincial and metropolitan councils to make final decisions relating to socio-economic development is also constrained by the fact that there is no clear assignment of responsibilities to these councils, as contended above.[110] It is submitted that a clear assignment of authority to provincial and metropolitan councils can go a long way in ensuring that the councils make final decisions on their responsibilities, despite greater reliance on the national government for funding.[111] This may also promote transparent governance.[112]

3.2.5 Are the powers and functions 'differentiated'?

It was argued in paragraph 6.1.3.5 of Chapter Two that it is useful to have a multilevel system of government that recognises differences at subnational level by diffusing varying powers and responsibilities to subnational governments depending on the individual circumstances of each subnational government and the area it is in charge of.[113] While creating different structures to govern provinces (in provincial and metropolitan councils),[114] the Constitution has assigned to provinces equal powers and functions of fostering socio-economic development. The Constitution however allows the development of a 'differentiated' model of assigning powers and functions to provincial and metropolitan councils. It empowers the national government to devolve additional powers to provincial and metropolitan councils depending on a number of variables, including competency levels and development needs of each provincial or metropolitan council.[115]

3.3 Administrative authority

The previous section discussed the powers and functions of provincial and metropolitan councils. This section establishes whether provincial and metropolitan councils have

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[109] The fact that provincial and metropolitan councils do not have resource-raising powers also means that they are not independent of the national government and that the higher tier of government is likely to determine their priorities through the national purse.
[110] See Bardhan & Mookherjee 2006: 13, Shah 2004: 7.
[111] See National Planning Commission 2011: 386, Word Bank 2000: 124
[112] See S 264(2)(b) Constitution.
[113] Ford 1999: 14, UN-Habitat 2007: 4. The explicit recognition of differences between jurisdictions simultaneously requires a clear set of rules about when a subnational government graduates from one status to another. See Bahl 1999: 10, Eaton & Schroeder 2010: 174.
[114] See Ss 268 and 269 Constitution.
[115] See s 264(1) Constitution.

administrative authority given that it is important to the role which subnational governments can play in development, democracy and sustainable peace. As discussed in paragraph 6.3 of Chapter Two, administrative authority entails the power of subnational governments to hire, fire, and remunerate employees as well as to determine their internal administrative procedures. The section is divided in two parts, the first part devoted to personnel issues and second to internal administrative procedures.

3.3.1 Authority over personnel issues

The 2013 Constitution does not assign to provincial and metropolitan councils the power to manage their personnel. It leaves it to the national government to determine the appointment, condition of services and removal of employees of provincial and metropolitan councils through an Act of Parliament.[116] This means that, as under the Lancaster House Constitution, the autonomy of provincial and metropolitan councils to appoint, discipline and dismiss their staff is not guaranteed.[117] The national government may decentralise or recentralise such powers at any time. This may undermine the stability of the multilevel system of government and therefore the ability of provincial and metropolitan councils to deliver on development, democracy and sustainable peace objectives. Indications are that the national government is considering assigning to provincial and metropolitan councils authority to hire administrative officials.[118] This would be a positive move since authority over personnel issues can be effective in promoting direct accountability of staff at provincial level to their provincial or metropolitan councils and allow these governments to better respond to local needs and opportunities. Direct accountability of the administrative arm to provincial governments is important for effective policy implementation by provincial and metropolitan councils.[119] If provincial and metropolitan councils are given powers to appoint their own staff, the question is what will happen to provincial administrators (PAs) who previously provided technical support to provincial councils? PAs could be incorporated into the bureaucracy of each

[116] S 273(1)(d) Constitution. See also s 270(2) Constitution
[117] See Sims 2013: 2, Machingauta *et al* 2014: 30, De Visser & Chigwata 2013: 18.
[118] See s 42 Provincial and Metropolitan Councils Draft Bill (August 2014). The Bill has assigned to provincial and metropolitan councils the authority to hire the clerk of the council and any supporting staff. It makes provision for the role of the Minister in approving the termination of employment of the clerk of the council and the determination of the terms of employment of supporting staff by the Minister responsible for finance. It is submitted that in pursuance of the devolution 'spirit' enshrined in the Constitution the role of the national government should be limited to setting the national framework involving conditions of employments and not extend to the hiring or firing of staff.
[119] See UN-Habitat 2007: 3. See also Nkomo 2014, *the Southerneye* 'Devolution: metropolitan, provincial councils must have real power'.

provincial or metropolitan council in the relevant province.[120] Alternatively, PAs could continue serving as deconcentrated offices of the Ministry responsible for local government charged with coordination of national programmes at provincial level. This alternative would require greater clarity of roles of PAs, on the one hand, and the administrative officials of provincial or metropolitan council, on the other.

3.3.2 Conduct and conditions of employment of employees

The Constitution regulates the conduct of employees of provincial and local governments. Employees of provincial and metropolitan councils and local authorities are required to act in accordance with the Constitution and any Act of Parliament.[121] They may not be office-bearers of any political party.[122] They may also not act in a partisan manner, further the interests of any political party or cause, prejudice the lawful interests of any political party or cause, or violate the fundamental rights or freedoms of any person.[123] The Constitution directs Parliament to enact legislation to ensure the political neutrality of employees of provincial and metropolitan councils and local authorities.[124] Given the history of the involvement of some employees of subnational governments in advancing the cause of political parties in Zimbabwe, the regulation of the conduct of employees of provincial and metropolitan councils and local authorities will ensure that employees of these councils concentrate on their core mandate of serving the public.[125]

3.3.3 Internal administrative procedures

The 2013 Constitution does not allocate to provincial and metropolitan councils the power to determine their internal administrative procedures. Instead, Parliament has been given the discretion to decide the internal administrative procedures of provincial and metropolitan councils.[126] Thus, the autonomy of provincial and metropolitan councils to determine their internal administrative procedures is not guaranteed as the national government may

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[120] See Nkomo 2014, *the Southerneye* 'Devolution: metropolitan, provincial councils must have real power'
[121] S 266(1) Constitution.
[122] S 266(3) Constitution.
[123] S 266(2) Constitution.
[124] S 266(4) Constitution.
[125] De Visser & Chigwata 2013: 19. The Provincial and Metropolitan Councils Administration Draft Bill (August 2014) has not regulated the conduct of employees, neither has it provided for the general conditions of employment of employees of these councils. Thus, it is submitted that the Bill in its current form fails to adequately give effect to the Constitution.
[126] S 273(1)(a) Constitution. See Sims 2013: 13.

recentralise and decentralise such authority at any time.[127] It can be argued that the absence of the constitutional protection of the administrative autonomy of provincial and metropolitan councils will permit the national government to interfere with internal administrative procedures of provincial and metropolitan councils.[128] It is submitted that provincial and metropolitan councils should be given some discretion to set up their internal administrative procedures to enable them to adjust these to suit their local environments and respond better to opportunities.[129] For example, the councils can be given the power to determine the nature of departments they may establish, how such departments should be composed, the functions of such departments and the delegation of powers to any of its administrative officials.

4. Powers and functions of local authorities

The previous section discussed the responsibilities of provincial and metropolitan councils. In this section the chapter examines the responsibilities of local authorities. The section will begin by examining the constitutional framework for the assignment of responsibilities to local authorities. It then examines the responsibilities of local authorities as provided by various Acts of Parliament.[130]

4.1 Constitutional framework

The 2013 Constitution has repositioned the role of local authorities in the multilevel system of government despite the fact that it does not enumerate their responsibilities. As under the Lancaster House Constitution, the responsibility to determine the responsibilities of local authorities remains with the national government.[131] Thus, the powers and responsibilities of local authorities may not be original as they are not guaranteed in the Constitution.[132] The implication of the lack of constitutional recognition of the powers and responsibilities of local authorities is that (re)centralisation of power cannot be stopped on the basis of the Constitution.[133] It is submitted that the absence of guaranteed powers and functions of local authority may be a major weakness of the multilevel system of government and so undermine

[127] See De Visser & Chigwata 2013: 18, Machingauta *et al* 2014: 30.
[128] De Visser & Chigwata 2013: 18.
[129] See Chatiza 2014: 5. The Provincial and Metropolitan Councils Administration Draft Bill has provided for a highly regulated regime with little discretion in as far as the determination of internal administrative procedures of these councils is concerned. See Part VI of the Bill.
[130] These Acts are the UCA, RDCA, Regional Town and Country Planning Act [*Chapter 29:12*], Traditional Leaders Act and other sectoral legislation.
[131] S 276(2) Constitution.
[132] See Sims 2013: 13, De Visser & Chigwata 2013: 15, Musekiwa& Mandiyanike 2013: 8.
[133] De Visser & Chigwata 2013: 15, Machingauta *et al* 2014: 21. See the Freedom House 2012: 35.

the ability of local authorities to deliver on development, democracy and sustainable peace objectives.[134] However, unlike under the Lancaster House Constitution, Parliament is not entirely free when assigning responsibilities to local authorities under the 2013 Constitution.[135] It is bounded by the founding values and principles of the Constitution, the Preamble of Chapter 14, objectives of devolution and principles of local government listed in the Constitution.[136] In addition, section 276(1) of the Constitution provides that

> subject to th[e] Constitution and any Act of Parliament, 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 has all the powers necessary for it to do so.

This provision resembles section 151(4) of the Constitution of South Africa which provides that a municipality has a 'right to govern … on its own initiative … the local affairs of its community'.[137] As discussed in detail below, this provision seems to allocate powers directly to local authorities.[138] The provision requires a thorough analysis, which this section strives to provide.

4.1.1 Meaning of 'right to govern'

As stated above, the Constitution provides that a local authority has a 'right to govern' the local affairs of the area for which it has been established. Although higher tiers of government are to exercise governmental power, the Constitution does not use the 'right to govern' terminology. This implies that the Constitution emphasises the existence of a local authority entitlement that can be legitimately claimed and defended in terms of the 2013 Constitution.[139] This claim to exercise power is supported by the use of the term 'right' which, as in the South African context, is used to refer to local governments and not to other senior governments. The use of the verb 'govern', which again does not appear elsewhere in the Constitution, denotes a regulatory and policy-making role.[140] In the South African context 'right to govern' was construed to mean more than the right to implement and administer law

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[134] See Sims 2013: 15.
[135] See Machingauta *et al* 2014: 22, Musekiwa & Mandiyanike 2013: 2.
[136] See Musekiwa 2014: 4.
[137] S 151(3) Constitution, South Africa.
[138] De Visser & Chigwata 2013: 11.
[139] See Chigwata & De Visser 2013: 9, Veritas Zimbabwe, Constitutional Watch 9/2014. For a discussion of the South African context, see Steytler & De Visser 2011: 22-44.
[140] See Steytler & De Visser 2011: 22-44.

but also involves the formulation and implementation of its own laws and policies.[141] Therefore, while local authorities in Zimbabwe do not have enumerated powers in the Constitution, they have a constitutionally guaranteed claim to a 'right to govern' the areas for which they have been established. The claim originates from the 'right' which the Constitution expressly grants to local authorities. Hence, it can be argued that section 276(1) of the Constitution seems to grant local authorities original powers to regulate and adopt and implement their own policies and laws, in addition to implementing policies and laws of higher governments.[142] Nonetheless, unlike the South African context,[143] the 'right to govern' of local authorities in Zimbabwe is not only limited by the Constitution but also by national legislation. This then significantly reduces the constitutional protection offered by this provision.[144] However, it is maintained that unlike the Lancaster House Constitution, the 2013 Constitution requires that local authorities exercise significant powers and enjoy a certain measure of local autonomy.[145] As discussed in detail in Chapter Eight, this means that some of the 'excessive' supervisory powers which were assigned to the Minister under the Lancaster House Constitution (such as the power to reverse, suspend and alter council resolutions) should be reformed so that the 'right to govern' of a local authority can be protected and promoted.[146]

4.1.2 Meaning of 'on its own initiative'

A local authority does not only have a right to govern but it has a right to do so 'on its own initiative'.[147] Governing 'on its own initiative' means that local authorities no longer rely on national and provincial governments to govern. The 2013 Constitution has ushered in a new era where local authorities are not merely implementers of national government policies but can actually formulate and implement their own policies.[148] Thus, in principle, local authorities do not have to wait for instructions from the national government to govern. The difficulty with this reasoning is that local authorities do not have original powers. They

[141] Steytler & De Visser 2011: 22-44.
[142] See Veritas Zimbabwe, Constitutional Watch 9/2014
[143] In South Africa, the 'right to govern' of a municipality is only limited by the Constitution, thereby providing greater protection to municipalities.
[144] De Visser & Chigwata 2012: 11, Machingauta *et al* 2014: 8.
[145] See Local Governance Community Capacity Building and Development Trust 2014: 12, Veritas Zimbabwe, Constitutional Watch 9/2014, Machingauta *et al* 2014: 8, Moyo 2013: 148.
[146] See Machingauta *et al* 2014: 22. On the contrary, the Local Authorities Draft Bill (August 2014) has not reduced the excessive powers of the Minister which he enjoyed under the UCA and RDCA.
[147] S 276(1) Constitution.
[148] See Musekiwa & Mandiyanike 2013: 2. See also Steytler & De Visser 2011: 22-45 for a discussion of the South African context.

actually do rely on national legislation for them to govern.[149] It is submitted nevertheless that the 2013 Constitution requires the development of new legislation which assigns to local authorities power not only to implement national policies but also to formulate and implement their own policies and laws.[150]

4.1.3 Meaning of 'the local affairs'

A local authority has a 'right to govern' the 'local affairs' of the people within the area for which it has been established.[151] In principle, this could mean that a local authority has the power to undertake 'all' responsibilities and exercise 'all' powers which directly affect the lives of people within its jurisdiction. This reasoning assumes that the authority of local authorities is not bounded by that of higher tiers of government. This assumption is not correct since the conduct of local authorities is not only limited by the Constitution but also by national legislation.[152] This means that what local authorities may do within their respective jurisdictions is determined and limited by the national government. Such a view is supported by section 276(2) of the Constitution, which gives the national government the power to determine and confer functions on local authorities.

It is submitted nonetheless that local authorities should be assigned full responsibility in matters which affect the interest of local citizens so as to capitalise on 'efficiency' benefits associated with a multilevel system of government.[153] Such assignment should be informed by the historical context in Zimbabwe with regard to the role of urban and rural local authorities. It was highlighted in paragraphs 3.2.3.1 and 3.2.3.4 of Chapter Three that in the colonial period urban and rural local authorities, respectively, had competency over 'purely' local functions. In the post-independence era, the local authorities have retained the majority of these functions. Indications are that the national government will allow local authorities to continue carrying out these responsibilities.[154] This will be a positive development given that local authorities should be in charge of 'real' functions that are relevant for development, democracy and sustainable peace.

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[149] See Sims 2013: 13.
[150] See Musekiwa 2014: 6, Veritas Zimbabwe, Constitutional Watch 9/2014.
[151] S 276(1) Constitution.
[152] See S 276(1) Constitution.
[153] See UN-Habitat 2007: 6.
[154] See s 16 and Second Schedule Local Authorities Draft Bill (August 2014).

4.1.4 Meaning of 'all powers necessary' to govern

The Constitution provides that a local authority has 'all' the powers necessary to govern on its own initiative the local affairs of its people.[155] This means that under the 2013 Constitution local authorities have a legitimate constitutional claim to exercise certain governmental powers if such powers are necessary to govern the affairs of the people within their jurisdictions.[156] This marks a departure from the Lancaster House constitutional order where local authorities did not have any basis to claim powers from the national government.[157] Local authorities could only exercise those powers which the national government had assigned to them.

It is submitted however that under the 2013 Constitution a local authority may claim authority from the national government if such authority is necessary in order for that local authority to govern on its own initiative the local affairs of its people.[158] It follows from this line of argument that local authorities may approach the Constitutional Court to the challenge constitutional validity of national legislation which significantly takes away the powers they require to govern (on their own initiative) the local affairs of their people.[159] Such legislation may be declared unconstitutional as it contravenes section 276(1) of the Constitution. It is further submitted that local authorities may also make use of intergovernmental relations structures and Parliament to lobby the national government to decentralise the necessary powers which they require to effectively exercise their 'right to govern'. It is suggested that when enacting legislation providing for the powers and functions of local authorities, national government should give local authorities powers and functions which are relevant, clearly demarcated and 'differentiated,' with final decision-making power to execute those functions.[160]

[155] S 276(1) Constitution.
[156] See Local Governance Community Capacity Building and Development Trust 2014: 12, Chigwata & De Visser 2013: 9, Veritas Zimbabwe, Constitutional Watch 9/2014.
[157] Musekiwa & Mandiyanike 2013: 2.
[158] See Veritas Zimbabwe, Constitutional Watch 9/2014.
[159] See Chigwata & De Visser 2013: 8.
[160] See UN-HABITAT 2007: 4, the Aberdeen Principles 2005: 6, Article 4(3) European Charter of Local Self-Government. The article further provided that the 'allocation of responsibility to another [tier of government] should weigh up the extent and nature of the task and requirements of efficiency and economy'.

4.2 Statutory framework

Having examined the constitutional framework for the assignment of powers and functions to local authorities, this section assesses the statutory framework which provides for the powers and functions of local authorities. The section will establish whether the statutory framework is consistent with the 2013 Constitution as well as the normative framework discussed in paragraph 6.1.3 of Chapter Two. In the first part, the section discusses the powers and functions of urban local authorities before discussing those for rural local authorities. The last part provides a general assessment of the powers and functions of local authorities. The UCA and RDCA are the primary pieces of legislation that currently provide for the powers and functions of urban and rural local authorities, respectively. The Acts make distinction between mandatory and permissive powers and functions of local authorities. Mandatory powers and functions are those that are basic and to be carried out by all local authorities.[161] These include: provision of water and roads, provision of health services, refuse removal, sanitation and drainage services, establishment of cemeteries, provision of houses and serviced stands, and planning and implementation of plans.[162] Permissive powers and functions are those matters which local authorities may undertake. These include: operation of business enterprises, provision of markets and taverns and establishment of community development schemes.[163] The discussion in this chapter is not structured on this categorisation between mandatory and permissive functions but on the category of local authority (whether urban or rural).

4.3 Urban Local Authorities

The national government has assigned various powers and functions to urban local authorities including the power to make and implement laws and policies. These powers and functions are examined in this section against the normative framework set in Chapter Two and the 2013 Constitution. The section begins by examining legislative powers followed by executive powers before discussing incidental powers of urban local authorities. The section then discusses the assignment of powers and responsibilities to local boards.

[161] Masuko 1996: 51.
[162] See Masuko 1996: 51.
[163] See Masuko 1996: 52.

4.3.1 Legislative powers

The 2013 Constitution does not assign legislative powers to local authorities. The Constitution however envisages that local authorities will exercise the power to make by-laws since it recognises that the national government may confer such powers to local authorities.[164] It is submitted that the national government should assign the power to make by-laws to urban local authorities as these powers are necessary for them to effectively 'represent' and 'manage' the affairs of people in urban areas.[165] As observed below, the UCA gives urban local authorities the power only to propose by-laws. The Act further limits the exercise of law-making powers by urban local authorities to matters listed in its Third Schedule, as provided in the table below.[166]

Table 5: Matters in respect of which urban local authorities may make by-laws

General	Control of any service, institution or thing; control of collections; inspections; fees, offences and penalties
Proceedings of the councils and financial matters	Proceedings at meetings; disclosure of documents and publication of proceedings; financial; contracts; tenders; capital development funds; estates account; and allowances for municipal councillors
Control over property	Protection of council property; vegetation; conservation of natural resources; congregation, entry and parking on council property; permits of certain activities on council land; removal of unauthorised buildings on council land; advertisements; depreciation of property; overcrowding; regulation and control of occupation and use of land or buildings; excavations; masts and poles; hedges and trees; fire places and chimneys; cooking and washing facilities; occupation or use of buildings; dangerous or neglected buildings; public holidays; and fire-fighting equipment and fire-escapes
Planning, construction and use of buildings	Location and situation; plans, specifications and structural calculations; nature, design and appearance of buildings; drainage and sewerage provisions; water suppliers; materials and

[164] See s 276(2)(a) Constitution.
[165] See ss 5 and 275(1) Constitution.
[166] S 227 UCA.

and structures	construction; conduct of building operations; inspections, samples and tests; temporary structures; use of buildings; completion of buildings; use of scaffolding, hoarding or protective devices; numbering of buildings; and administration of by-laws relating to certain matters
Roads, public places and traffic	Work in the vicinity of roads; scaffolding and decorations on roads; gatherings and noises in roads; prevention of the use of sidewalk for unauthorised purposes; trees, shrubs, etc., in relation to roads and traffic; regulation of use of roads; obstruction of roads and other public places; processions and public meetings; driving stocks; parking of vehicles; loading and unloading of vehicles; use of warning vehicles; regulating and licensing of cycles and certain other vehicles; taxi-cabs and omnibuses; drivers of taxi-cubs; and omnibuses.
Amenities and facilities	Sanitary conveniences; parks, recreation grounds, caravan parks, camping grounds etc.; boating establishments; and crèches
Water	General; pollution of water; wells and boreholes
Electricity	Supply of electricity to consumers; cutting of electricity and recovery of charges; inspections and testing; meters; and prevention of interference
Sewerage, effluent and the removal of refuse and vegetation	Sewerage; sanitary fittings; effluent and refuse removal; cleansing of private sewers, streets and yards; crops, vegetation, rubbish and waste material
Animals	Keeping of animals, reptiles and birds; disease-carrying animals, insects and vermin; noxious insects; public riding stables and kennels; dog tax; slaughter of animals and slaughter-houses; dipping tanks; and stock pens
Food, food premises or vehicles and markets	Sale and supply of food; premises, vehicles and employees; food introduced from outside council area; market gardens; and markets
Trade, occupations	Dangerous trade; employment bureaux and compulsory examination

and other activities	and treatment of workers; disinfection and fumigation; infectious diseases; hawkers and street vendors; electricians; plumbers and drain-layers; hairdressers; launderers, cleaners and dyers; funeral parlours and mortuaries; boarding-houses and public auctions
Nuisances	General; horns, bells etc.; use of loudspeakers; and objectionable advertisements, etc.
Functions, performances, events and amusements	Performances dangerous to the public; amusements and open-air events
Fires, combustible materials and explosives	Fires; bonfires and burning vegetation; and combustible or inflammable material and explosives

Source: Third Schedule, Urban Councils Act

As shown in the above table, urban local authorities may legislate on quite a variety of matters. The degree to which urban local authorities have autonomy to legislate on these matters has consequences for the ability of these authorities to 'govern on their own initiative', as required by the Constitution.[167] Thus, it is important to analyse the legislative process including the making and adoption of model by-laws at the local level.

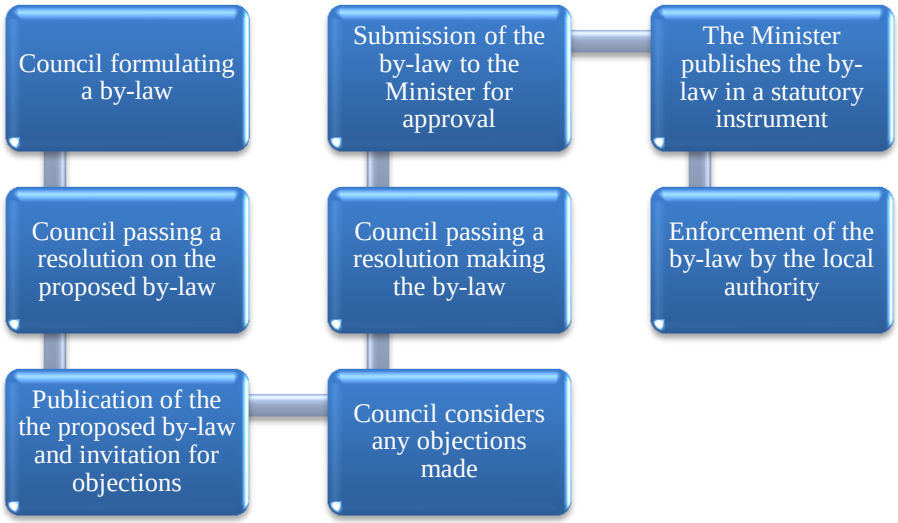
4.3.1.1 Law-making process

As shown in Figure 18 below, the law-making process begins with a council formulating draft by-laws which are forwarded to the full council for a resolution.[168] After the proposed draft by-laws have been passed by the council, they are published for public comment.[169] If there are any objections made, the council is required to consider those objections before passing a resolution approving the proposed by-laws.[170] After the proposed by-laws have been passed by the council, they are forwarded to the Minister for approval.[171] A by-law may not be enforced by a local authority unless approved by the Minister through a statutory

[167] See s 276 Constitution. See also Pasipanodya *et al* 2000: 49.
[168] See s 228(1)(5) UCA.
[169] S 228(5) UCA.
[170] S 228(7) UCA.
[171] S 228(7) UCA.

instrument. When considering a proposed by-law the Minister may withhold approval of the by-laws, amend the by-laws or approve part of the by-laws.[172]

Figure 18: Law-making processes at the local level



It is submitted that the power of the Minister to approve by-laws limits the legislative autonomy of local authorities. Legislative autonomy is important for local democracy because it is through by-laws that the council advances the preferences and aspirations of the local populace.[173] The question is whether the power of the Minister to approve by-laws is consistent with the 2013 Constitution which gives local authorities 'right to govern' (arguably, which includes right to make laws independent of the national government).[174] It is submitted that a council is an elective assembly whose legislative powers should not be circumscribed by requiring the approval of by-laws by the Minister. This requirement significantly limits local authorities' 'right to govern' on their 'own initiatives'.[175] Thus, it is argued that these powers of the Minister should be abolished and local authorities be assigned full responsibility to make their own laws.[176]

[172] S 229(2) UCA.
[173] See De Visser 2005: 272.
[174] S 276(1) Constitution.
[175] See s 276(1) Constitution.
[176] See s 280 Law Society Draft Constitution.

4.3.1.2 Model by-laws

The Minister may formulate model by-laws on matters specified in Part IV of the Third Schedule of the UCA, namely planning, construction and use of buildings[177] and structures.[178] At first glance, the power of the Minister to make model by-laws does not constrain the legislative powers of urban local authorities since they have the option to adopt a model by-law either in its entirety or adopt parts of it.[179] What limits the legislative autonomy of local authorities is the power of the Minister to adopt a model by-law or parts of a model by-law on behalf of a council.[180] These powers of the Minister not only undermine the legislative autonomy of a local authority but also allow the Minister to exercise the legislative authority on behalf of a local authority.[181] It is submitted that such supervisory powers of the Minister are no longer in conformity with the 2013 Constitution, which requires local authorities to represent and manage the affairs of people within their jurisdictions by adopting and implementing laws, among other ways.[182]

4.3.1.3 The making and adoption of by-laws by the Minister

If the Minister considers that a matter should be regulated by by-laws, he or she may direct a council to make a by-law on that matter.[183] If the council concerned fails to make the concerned by-laws within the specified time period, the Minister may make or adopt a model by-law on behalf of that council.[184] All by-laws made or adopted by the Minister are legal and a council must implement them.[185] It is submitted that such intervention powers go beyond supervision as they enable the Minister to encroach on the legislative competence of local authorities, as discussed in detail in Chapter Eight. The Minister does not only have the power to direct the council to exercise its legislative powers in a certain way but may also assume the legislative powers.

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[177] S 232(3) UCA. See S 232(1) UCA.
[178] S 232(1) UCA.
[179] S 232(2) UCA.
[180] See S 233 UCA.
[181] S 232(3) UCA.
[182] See s 5, s 276(1) Constitution.
[183] S 233(1) UCA.
[184] S 233(1)(b) UCA. If the Minister proposes to make by-laws on behalf of the council, he/she is required to cause a notice to be published, inviting objections and describing the general effect of the proposed by-laws and the area which such by-laws will apply. S 233(2) UCA.
[185] S 233(4) UCA.

It is submitted that whereas urban local authorities may make by-laws over a number of matters areas, their legislative autonomy is limited in a variety of ways. The major question is whether the Minister has the power to encroach on the legislative terrain of local authorities under the 2013 constitutional order. It was argued above that while the Minister may supervise the exercise of legislative powers at the local level such powers should not extend to approving by-laws. It is submitted that local authorities now have a 'right to govern' which includes the power to make by-laws to govern their areas. This means that there should not be any form of review of the exercise of legislative authority by the national government.[186] If there are any concerns with the exercise of legislative authority by a local authority the Minister should approach the courts so that they can declare the by-laws illegal or unconstitutional.

4.3.2 Executive powers

Executive powers allow subnational governments to implement their own laws and policies as well as those of senior governments.[187] Urban local authorities have the power to formulate and implement their own policies and laws.[188] They can also implement policies and laws of senior governments. Urban local authorities have executive decision-making powers over a variety of matters, including: the acquisition, alienation and expropriation of land; construction of sidewalks; sewerage and drainage; water supply and treatment; parking, omnibus and other transport services; fire brigade; numbering of houses and naming of roads; closure or deviation of entrances to roads; production and supply of electricity; and street lighting.[189] In addition to these, the Regional Town and Country Planning Act has given them competency over land-use planning and development control.[190] Section 198(1) of the UCA provides the general powers and functions of urban local authorities. In terms of this section, urban local authorities have the power to carry out any or all of the matters set out in the Second Schedule of the UCA. These matters are provided in the Table 6 below.

[186] See De Visser 2005: 272.
[187] See Steytler & De Visser 2011: 22-44.
[188] Mushumba 2010: 104.
[189] See Part X, XI, XII, XIII, XIV; and Ss 200, 204, 205, 212, 214, 216 and 217 UCA. Urban councils have the power to make by-laws in respect of matters specified in the Third Schedule of the UCA or anything which is incidental to their powers in terms of the UCA. S 227(1) UCA.
[190] See the Regional Town and Country Planning Act.

Table 6: The general powers of urban local authorities

1. Land, buildings and works	28. Maternity and child welfare services
2. Open spaces	29. Family planning services
3. Recreational facilities.	30. Charitable institutions
4. Showgrounds	31. Maintenance allowances
5. Trees	32. Funerals
6. Conservation of natural resources	33. Grants to charities, sports, etc.
7. Cultivation and farming	34. Grants to local authorities
8. Grazing	35. Educational institutions
9. Clearing of land	36. Youth centres
10. Stock pens and dip tanks	37. Employment bureaux
11. Slaughter-houses	38. Libraries, museums, theatres, public halls, botanical and zoological gardens.
12. Markets and agricultural produce	
13. Sale of products	39. Orchestras and bands
14. Conduct of liquor undertakings	40. Aerodromes and helicopter stations
15. Manufacture and sale of *mahewu*	41. Boats
16. Application of controlled liquor monies	42. Publicity
17. Charges	43. Public entertainment
18. Plant and machinery	44. Congresses
19. Roads, bridges, dams, etc.	45. Courses for councillors and employees
20. Decorations and illuminations	46. Subscriptions to associations
21. Advertising hoardings	47. Travelling expenses
22. Public conveniences	48. Loans to employees for transport
23. Effluent or refuse removal and treatment	49. Insurance
24. Control of pests	50. Mementoes
25. Hospitals and clinics	51.Coats of arms and seals
26. Ambulances	52. Freedom of the municipality
27. Creches	53. Monuments, statutes and relics

Source: Second Schedule, Urban Councils Act

Urban local authorities are in charge of a variety of important responsibilities which have consequences for the realisation of development and sustainable peace. Some of the responsibilities such as water supply, health and maternal services and refuse removal have

implications for the achievement of national and local goals including development and sustainable peace. As argued in paragraph 4.2.1 of Chapter Two, responsive service delivery by local authorities, particularly the delivery of basic services, can prevent conflicting groups from resorting to the use of violence. The reason is that there is little impetus for armed conflict in situations where citizens believe government is concerned about and responsive to their needs.[191] Responsive service delivery is likely to improve the living conditions of the citizens and reduce the risk of conflict.[192] Thus, urban local authorities have responsibilities which allow them to undertake a key role in the realisation of development and sustainable peace. However, as will be argued below, the assignment of relevant powers and responsibilities to local authorities is not enough. The powers and responsibilities also have to be original, 'differentiated', clearly demarcated, and local authorities should have final decision-making powers over such responsibilities.[193]

4.3.3 Incidental powers

Urban local authorities may exercise incidental powers. Section 198(3) of the UCA provides that a council 'shall have the power to do any act or thing which, in the opinion of the council, is necessary for administering or giving effect to any of its by-laws'. This provision should not be interpreted as giving additional powers to local authorities. Rather, the provision gives effect to the powers and functions which have already been assigned to local authorities through various Acts of Parliament. The Minister may also authorise a local authority to carry out 'any act or thing' which in his or her opinion is necessary that the council be able to do or carry out.[194]

4.2.4 Assignment of responsibilities to local boards

Unlike other classes of urban local authorities whose powers are allocated to them directly by the UCA and other sectoral legislation, the powers and functions which a local board may exercise are determined and assigned by the Minister. The Minister through a warrant actually confers or imposes on a local board all or any of the powers, privileges, duties or responsibilities conferred or imposed on city, municipal and town councils in terms of the

[191] Siegle & O'Mahony 2010: 135.
[192] Jackson & Scott 2007: 5. Improvements in service delivery minimises dissatisfaction with the state and may prevent inter-group conflict over service provision.
[193] See the institutional design section in chap 2.
[194] S 198(2) UCA. Urban local authorities have also the power to enter into partnerships with the central government, another subnational government(s) or the private sector for the better carrying out of their functions. S 223(1) UCA.

UCA.[195] When conferring powers to a local board the Minister is required to specify the provisions of the UCA or regulations thereof which will apply to that local board and the local government area for which it has been established.[196] At any time after the establishment of a local board, the Minister may alter the warrant of that local board at the request or with the consent of the local board.[197] The Minister may also direct that a local board be deemed to be a council and in such event, the local government area for which the local board has been established will be deemed to be a council area.[198] Such a local board will be deemed competent to exercise the legislative and executive powers assigned to city, municipal and town councils. It can be observed that the Minister has wide powers with respect to local boards. The Minister can assign, reassign and remove responsibilities to/from a local board. Thus unlike city, municipal and town councils, which have a certain measure of security over their powers and functions, local boards do not have such security. Such a system undermines predictability in terms of powers and functions of local boards which is necessary for the effective performance of these responsibilities.

4.4 Rural local authorities

Like their urban counterparts, rural local authorities have a variety of powers and functions. These will be examined in this section, beginning with legislative powers, followed by executive and incidental powers. The examination is carried out on the basis of the normative framework set in Chapter Two and the 2013 Constitution.

4.4.1 Legislative powers

Section 276(2) of the Constitution provides that an Act of Parliament may confer functions on rural local authorities, including the power to make by-laws, regulations and rules.[199] As with urban local authorities, the Constitution envisages that rural local authorities will exercise legislative powers. The RDCA confers legislative powers on rural local authorities on matters similar to those provided for urban local authorities.[200] In addition to these matters, rural local authorities may make by-laws on bush fires, fisheries, fences, agricultural

[195] S 6(4)(e) UCA.
[196] S 6(4)(e) UCA. The Minister may impose restrictions or modifications when specifying the provisions of the UCA or regulations thereof, which will apply to the local board and the local government area.
[197] S 6(6) UCA.
[198] S 6(4)(d) UCA.
[199] S 276(2)(a) Constitution.
[200] Second Schedule, RDCA.

and related services, animal diseases and obstruction of water flow.[201] Thus, rural local authorities may make by-laws on a myriad of matters. The legislative process applicable to urban local authorities discussed above is also applicable to rural local authorities.[202] The difference is that if any proposed by-law affects the functions of the roads committee, town board or area committee of a rural local authority, the council is required to give that particular committee the opportunity to consider and report upon the by-laws before it can pass a resolution on the by-law.[203] Thus, in this respect rural local authorities have little discretion in relation to how they exercise their powers compared to their urban counterparts.

As with urban local authorities, by-laws may not be binding unless approved by the Minister through a statutory instrument.[204] Further, the Minister may make model by-laws for any matter for which rural local authorities may make by-laws.[205] A council may make by-laws, adopting wholly or in part and with or without modification any model by-laws.[206] As with urban local authorities, the Minister may direct a council to make a by-law or adopt a model by-law on any matter which a council may make by-laws.[207] If the council does not abide by such a directive within the specified period, the Minister may make or adopt by-laws on behalf of the council.[208] The argument raised above with respect to the power of the Minister to assume legislative powers of a council is also applicable here.

4.4.2 Executive powers

Rural local authorities have the power to formulate and implement policies and laws as well as to implement laws and policies of senior governments. Section 71(1) of the RDCA assigns to rural local authorities the power to undertake matters set out in the First Schedule of the RDCA. The schedule lists matters which are similar to those provided by the Second Schedule of the UCA, discussed in paragraph 4.3.2 above. In addition to these matters, the schedule lists other matters, namely: bush fires, fences, agriculture and other services, animal diseases, facilities for animals, fisheries, lighting, drains and sewerage works, water,

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[201] Second Schedule, RDCA.
[202] See s 88(4) RDCA.
[203] S 88(3) RDCA. See para 3.3.2 of Chapter Two for a discussion of the role of committees.
[204] S 90(4) RDCA.
[205] S 91(1) RDCA.
[206] S 91(2) RDCA.
[207] S 94(1)RDCA.
[208] S 233(1)(b) UCA. If the Minister proposes to make by-laws on behalf of the council, he/she is required to cause a notice to be published, inviting objections and describing the general effect of the proposed by-laws and the area to which such by-laws will apply. S 233(2) UCA.

obstruction of water flow and pollution. The RDCA also confers developmental functions on rural local authorities, namely to:

a) promote the development of the council area;
b) formulate policies, both long-term and short-term, for the council area;
c) prepare annual development and other plans for the council area;
d) monitor the implementation of development plans and policies within the council area; and
e) exercise any other functions in relation to development that may be conferred upon it by or in terms of th[e RDCA] or any other enactment. [209]

It can be observed that rural local authorities have power to carry out a number of functions. Even though rural local authorities have a variety of responsibilities, in practice most of them do not carry out all these responsibilities.[210] Usually, rural local authorities lack the financial resources, human resources and technical capacity to carry out all their responsibilities. Hence, they limit their operations to the provision of a few public services while allowing various agencies and ministries of the national government to deliver on other responsibilities, especially with regard to infrastructural development.[211] It is suggested that these agencies and ministries of the national government should continue to provide these public services in rural areas given lack of capacity by most rural local authorities. However, it is submitted that the legislation should clarify the circumstances in which national agencies may assume local functions in rural areas. Furthermore, necessary support mechanisms should be provided to rural local authorities so that they are in a position to fully exercise their autonomy and undertake all their functions.[212]

4.4.3 Incidental powers

Unlike urban local authorities, rural local authorities may only exercise incidental powers with the approval of the Minister. The Minister may authorise a rural local authority to carry out 'any act or thing' which in 'his opinion' is incidental to the exercise of the council's powers.[213] Further, the Minister may authorise a rural local authority to carry out 'any act or thing' which in 'his opinion' is necessary or desirable in the interests of the inhabitants of the

[209] S 74(1) RDCA. S 18 of the Local Authorities Draft Bill (August 2014) has assigned similar functions to all local authorities.
[210] Chakaipa 2010: 46.
[211] Chakaipa 2010: 46.
[212] See Steytler 2009: 410.
[213] S 71(2)(a) RDCA.

council area.[214] This shows that urban local authorities have more discretion compared to rural local authorities in that they don't have to seek the approval of the Minister to exercise incidental powers.[215]

4.5 General assessment

In paragraph 6.1.3 of Chapter Two a case was made for the decentralisation of original, relevant, clearly demarcated, and 'differentiated' local powers and functions. In addition, it was contended that higher tiers of government should not encroach on the terrain of local governments without any legal basis or by going beyond setting 'operating frameworks'.[216] The extent to which local governments have final decision-making powers over their responsibilities was highlighted as also crucial for the role which local government can play in development, democracy and sustainable peace.[217] In this section, the chapter provides a general assessment of the powers and functions of local authorities discussed against this normative framework.

4.5.1 Are the powers and functions original?

As in many other British influenced traditions, the powers of local authorities are not provided for in the Constitution.[218] Although the Constitution states that local authorities have a 'right to govern' the local affairs of their people and have 'all the necessary powers' to do so, it does not itself allocate any distinct powers and functions to local authorities.[219] It leaves it to the national government to determine the powers and responsibilities of local authorities. As argued above, the lack of constitutional recognition and protection of the powers of local authorities mean that (re)centralisation of power cannot be stopped on the basis of the Constitution.[220] Due to this lack of constitutional protection of local powers and functions, the national government has recentralised some key local responsibilities.[221] Soon after independence the national government recentralised the production and provision of electricity. It created the Zimbabwe Electricity Distribution Company, which is now charged

[214] S 71(2)(b) RDCA.
[215] The Local Authorities Draft Bill (August 2014) seeks to eliminate this difference by providing for equal powers for both urban and rural local authorities. See Part IV Local Authorities Draft Bill. This is against the principle of asymmetric decentralisation put forward in para 6.1.3.5 of Chapter Two.
[216] See Bahl 1999: Rule number 6. Supervision through will be discussed in detail in chap 8.
[217] See Kalin 1998: 2, Bahl 1999: 5.
[218] Olowu 2010: 101.
[219] See S 276(1) Constitution.
[220] Madhekeni & Zhou 2012: 22.
[221] The Zimbabwe Institute 2005: 4.

with the production and supply of electricity. In 2005, the national government recentralised the provision of water and sewerage removal and treatment functions. Again, it created a parastatal, Zimbabwe National Water Authority, to provide water and dispose of sewerage. The recentralisation of the water and sewerage removal functions was attributed to the incapacity of local authorities to deliver on these functions. These parastatals failed to deliver these core public services.[222] In both cases, local authorities were deprived of much needed revenue.[223] It is against this background that during the constitution review process arguments were made for the enumeration of the powers and functions of local authorities in the Constitution to address the threat of recentralisation of these responsibilities by the national government.[224] Unfortunately, the 2013 Constitution did not go far in providing a distinct list of the powers and functions of local authorities.

4.5.2 Are the powers and functions relevant?

In paragraph 6.1.3.2 of Chapter Two an argument was made for the relevance of local powers and functions for development, democracy and sustainable peace given that what local governments can achieve depends on the responsibilities and powers they have.[225] As observed above, urban and rural local authorities have competency over a variety of responsibilities including water supply, land-use planning, provision of health and education services, sanitation, refuse removal, transport services and roads. There is no doubt that these responsibilities are relevant even though some of the matters listed in the Second Schedule and First Schedule of the UCA and RDCA, respectively, are not 'real' powers and functions. These include travelling and acting allowances, courses for councillors and employees, allowance for councillors and committee members, maintenance allowances, and subscriptions to associations. It is suggested that these matters be regulated somewhere and

[222] A study carried out by Jonga and Chirisa in 2009 revealed that during the period 2006 to 2008, when the central government was responsible for the supply of water and sewerage removal and treatment, the delivery of these services further deteriorated. Jonga & Chirisa 2009: 173. Water supply was erratic due to the shortages of water treatment chemicals and burst water pipes. These challenges reduced the quality and quantity of water supply to citizens. In the same period, sewerage removal service was poor and raw sewerage was flowing in streets in most urban areas. The erratic water supply and poor sewerage removal services contributed to the cholera outbreak which claimed more than 3000 lives and affected thousands more. This case shows that the central government is not always in a better position to deliver on recentralised functions. Madhekeni and Zhou have argued therefore that local authorities have largely operated at the 'behest' of party polities. Madhekani & Zhou 2012: 22.

[223] See Coutinho 2010: 74.

[224] Olowu 2010: 101.

[225] World Bank 2000: 109. The assignment of functions to subnational governments can be based on considerations such as economies of scales, cost-benefit spillovers and proximity to beneficiaries. See Shah 1999: 20.

not provided under the schedule(s), which provides for the powers and functions of local authorities.

As highlighted above, local authorities have been assigned the provision of essential public services including the provision of water, health and sanitation services. It was argued in paragraph 4.2.1 of Chapter Two that the effective delivery of these public services to various communities by local authorities can reduce impetus towards violent conflict.[226] On the other hand, failure by local authorities to provide these services efficiently and effectively may also increase impetus towards violent conflict, as evidenced by events in South Africa.[227] Thus, it is important that once responsibilities have been assigned to local authorities, they deliver services that meet the expectations of the people both in quantity and quality. For example, local authorities (with assistance from higher governments) should ensure that all citizens have equal access to basic public services such as water supply and sanitation. Local authorities in Zimbabwe are failing to meet these expectations given that service provision is erratic and poor.[228] Thus, while local authorities have the relevant responsibilities to build sustainable peace, they are underperforming. This is likely to undermine their role in sustaining peace in Zimbabwe.

While local authorities have responsibilities which if effectively undertaken may contribute to sustainable peace, they have other powers and functions which are directly linked to building sustainable peace. Local functions such as educational institutions, public entertainment, decorations and illuminations, funerals and public sanitary conveniences allow local authorities to determine their immediate environment.[229] Even though local authorities do not determine the education curriculum, they at least administer some schools and crèches within their jurisdiction. This allows each local authority and its citizens to exercise a measure of self-rule which, as argued in paragraph 4.2.2 of Chapter Two, allows local groups to exercise self-determination.[230] Self-determination offered to local groups may enhance

[226] Siegle & O'Mahony 2010: 135. In Chapter Two it was argued that improvement in service delivery minimises dissatisfaction with the state and may prevent inter-group conflict over service provision. See Jackson & Scott 2007: 5.
[227] Service delivery protests in South Africa, which are often violent in nature, are mostly linked to failure by municipalities to deliver services (both in quantity and quality terms) that meet the expectations of the people. See De Visser &Powell 2012.
[228] See Sims 2013: 15.
[229] See the First Schedule and Second Schedule of RDCA and UCA, respectively.
[230] See Tarr 2011: 180.

national cohesion and undermine feelings of neglect among ethnic groups, contributing to the building of sustainable peace.[231]

Local authorities also have competence over mementoes, coats of arms and seals, monuments, statues and relics.[232] These powers may seem trivial but they can be significant in building sustainable peace at the local level. They are examples of symbolic codes which may be effective in accommodating local identity.[233] For example, competency over determination of coats of arms and seals allow each local authority to define or protect its unique identity. If they are distinct local groups, as is the case in some local authorities, such groups have the political space at local level to practice their customs and religious beliefs.[234] This may reduce conflict among groups competing to advance their respective interests.[235] Thus, it is submitted that while relevant for development, the powers and functions of local authorities are also relevant for building sustainable peace by accommodating distinct local identities.

4.5.3 Are the responsibilities clearly demarcated?

It was contended in paragraph 6.1.3.3 of Chapter Two that the effective performance of decentralised functions by local governments requires clear division of responsibilities among tiers of government.[236] As highlighted above, the responsibilities of local authorities are provided for by various Acts of Parliament. Mashumba is of the view that most functions of local authorities in Zimbabwe are clearly demarcated.[237] To the contrary, it is submitted that a number of functional areas are not clearly divided between the national government and local authorities.[238] It is difficult, for example, to delineate competency of each tier of government in the health and education functional areas. The division of responsibilities between traditional leaders and rural local authorities remains ambiguous. In this section the chapter will interrogate the problem of ambiguity in the division of responsibilities, focusing on the

[231] Jackson & Scott 2007: 5.
[232] See the First Schedule and Second Schedule of RDCA and UCA, respectively.
[233] See Fessha 2010: 35, 44.
[234] See Fessha 2010: 36.
[235] See Siegle & O' Mahony 2010: 135. For Schou and Haug, the 'accommodation of national minorities holds the key to stability' and to reassuring minorities that they will not be dominated by the majority (2005: 21).
[236] See Olowu 2010: 112, Bardhan & Mookherjee 2006: 13, National Planning Commission 2011: 386, Shah 2004: 7.
[237] Mashumba 2010: 109.
[238] See also Martin & Nyamayaro-Musandu 2004: 18.

health and education sectors as well as the division of responsibilities between rural local authorities and traditional leaders.

4.5.3.1 Health

The provision of health services is a competency which is shared between the national government and local authorities. Local authorities have the power to provide health services, including the provision of primary health care, ambulances, clinics, maternal services, and hospitals.[239] The challenge is in identifying the competency boundaries of local authorities. For example, does the competency cover the provision and operation of clinics and dispensaries, including medical staff in these institutions? Does it include the authority to determine health fees? The practice has been that the national government, through the ministry responsible for health, determines the health fees which are payable in health institutions administered by local authorities. As discussed below, the national government approves the hiring and firing of senior medical staff in all health institutions run by local authorities. It also pays the salaries of medical staff in clinics that are run by small urban and rural local authorities. In these small urban and rural local authorities, health drugs are also purchased through the national government medical stores.[240] The national government is also expected to provide funding to local authorities for provision of primary health care, especially to indigent people.

The division of responsibilities in the health sector is ambiguous, which results in overlaps of tasks between the national and local governments. Such overlaps have negatively affected the delivery of health services. It is submitted that there is a need to clarify which tier of government is responsible for the hiring, firing and remuneration of health personnel and the purchasing of drugs and determining health fees. Further clarity is required with respect to the tier of government which has competency over clinics, hospitals, ambulances and other health-related services. As will be discussed in the following chapter, it is important that there is greater clarity on the tier of government which has the responsibility to finance health-related expenditure to reduce unfunded mandates.[241] This is important to promote transparent

[239] See Second Schedule, UCA and First Schedule, RDCA. Although urban and rural district councils have the power to provide hospitals, clinics and other health-related services, in practice they have confined themselves to the provision of specialised hospitals, clinics, maternity services and ambulance services. For example, the Cities of Harare and Bulawayo provide and operate specialised infectious hospitals.
[240] Pasipanodya *et al* 2000: 88.
[241] See Musekiwa & Mandiyanike 2013: 4.

governance, as required by the 2013 Constitution.[242] It is recommended that while local authorities can administer clinics and hospitals, the national government should provide a health grant to cover the payment of salaries and purchase of medical drugs.[243] The national government should also retain the management of referral hospitals.

4.5.3.2 Education

Local authorities have the responsibility to 'provide, operate and maintain schools and other educational institutions and facilities and amenities connected therewith and for such purposes to levy and collect fees and other charges'.[244] It is not clear whether these are primary or secondary schools, or both. These issues are not clearly provided in the legislative framework. In practice, urban local authorities and the private sector provide primary school facilities in urban areas. Secondary school facilities are provided by urban local authorities, national government, private sector and church organisations. In rural areas, rural local authorities provide secondary school facilities, while the provision of primary school facilities has been decentralised to school development committees and church organisations. Despite the decentralisation of the education function, the national government continues to pay teachers, determine the curriculum and set fee structures in both urban and rural areas.[245]

While it has been argued that local functions are clearly delineated,[246] it is however submitted that there is a need for a clear division of responsibilities with respect to some functions, especially health and education. As argued above, the lack of clarity in the division of some responsibilities between national and local governments has resulted in role confusion and, in some cases, unfunded mandates. The result has been poor service delivery and, in some cases, no service provision at all.[247] In areas of shared responsibility such as education and health, greater clarification of the role of each tier of government is necessary.[248] The 2013 Constitution requires transparent governance which among other things means that powers and functions are clearly divided among governments at various levels.[249]

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[242] See S 264(2)(b) Constitution.
[243] The argument is explored in detail in para 3.3.4 of Chapter Seven.
[244] Number 45 Second Schedule, RDCA and Number 35 Second Schedule, UCA.
[245] Pasipanodya *et al* 2000: 88.
[246] Mushumba 2010: 109.
[247] Pasipanodya *et al* 2000: 21.
[248] Pasipanodya *et al* 2000: 21.
[249] S 264(2)(b) Constitution.

4.5.3.3 Division of responsibilities between rural local authorities and traditional leaders

As highlighted in paragraph 5.3.3 of Chapter Three, rural areas are administered by rural local authorities alongside the institution of traditional leadership, which comprises chiefs, headmen and village heads. The division of responsibilities between these two institutions is not clear with respect to certain functional areas, especially land and environmental preservation. The Constitution allocates the power to administer communal land to traditional leaders.[250] Such powers are exercised subject to any Act of Parliament. The Traditional Leaders Act provides that chiefs have the responsibility to prevent any unauthorised settlement or use of communal land.[251] In terms of the Communal Lands Act, communal land may be occupied or used for agricultural or residential purposes only with the consent of the rural local authority established for the area concerned.[252] When granting consent to the occupation and use of communal land, rural local authorities are required to consider customary law relating to the allocation, occupation and use of land in the area concerned. They are also mandated to 'consult and co-operate' with the chief appointed to preside over the community concerned.[253] While the Communal Lands Act suggests that rural local authorities are the custodians of land within their jurisdiction, the Traditional Leaders Act allocate to chiefs some power over communal land. It is therefore difficult to identify a clear demarcation of competency of rural local authorities, on one hand, and traditional leaders, on the other, in relation to land matters.

The division of responsibilities between rural local authorities and traditional leaders is also ambiguous with respect to environmental conservation, cultivation, grazing and farming. The Constitution assigns to traditional leaders the power to protect the environment subject to an Act of Parliament.[254] The Traditional Leaders Act requires traditional leaders to ensure that natural resources are used and exploited in terms of the law.[255] In particular, the Act requires traditional leaders to control over-cultivation, overgrazing, and the indiscriminate destruction

[250] S 282(1)(d) Constitution.
[251] S 5(1)(g) Traditional Leaders Act. Communal land is occupied in accordance with Part III of the Communal Land Act [*Chapter 20: 4*].
[252] S 8(1) Communal Lands Act.
[253] S 8(2) Communal Lands Act.
[254] S 282(1)(d) Constitution.
[255] S 5(1)(l) Traditional Leaders Act.

of flora and fauna.[256] As discussed in paragraph 4.4.2 above, rural local authorities have power to carry out a number of functions, including conservation of natural resources, clearing of land, cultivation and farming, fisheries, trees and bush fires.[257] This suggests that both rural local authorities and traditional leaders have competency over the preservation of the environment in communal areas.

The absence of clear division of responsibilities with respect to land and environmental matters has created a number of operational challenges, including the duplication of duties, conflict of interests and power struggles between traditional leaders and rural local authorities. Conflict of interests and power struggles are mostly common in relation to the allocation of scarce resources such as land and grazing pastures.[258] In some cases, traditional leaders have acted like parallel governments in rural areas. It is therefore submitted that there is a need for a clearer delineation of competency (through legislation) between rural local authorities and traditional leaders which should be informed by respect for the institution of traditional leadership while promoting democracy through elected rural local authorities.[259] In addition, ways promoting harmonisation of the role of rural local authorities and traditional leaders in rural local government should be explored.

4.5.4 Do senior governments abide by the rules of decentralisation?

In paragraph 6.1.3 of Chapter Two it was contended that the effective functioning of a multilevel system of government depends in part on the willingness of senior governments to abide by the rules of decentralisation.[260] It was also submitted that in cases where the national government has decentralised certain powers and functions to lower tiers of government through various statutes, the national government should not assume such powers without

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[256] S 5(1)(l) Traditional Leaders Act.
[257] See First Schedule, RDCA.
[258] Zimbabwe Institute 2005: 13. The current division of power between rural district councils and traditional leaders, and the resultant conflict, has provided a 'platform for traditional leaders and local government officials to trade accusations of abuse of power, and non-compliance with law, customs and traditions'. Madhekeni & Zhou 2012: 29.
[259] See Musekiwa 2014: 5, Local Governance Community Capacity Building and Development Trust 2014: 13. Madhekeni and Zhou (2012: 25) argue for much more integrated rural local governance between elected structures, rural local authorities, and traditional authority, chiefs and headmen so as to reduce conflicts between the two structures.
[260] Bahl 1999: Rule number 6. These rules may relate to fiscal decentralisation, involving taxing powers, budget autonomy; the right to set tax rates and expenditure autonomy; political decentralisation, involving decentralisation of powers and functions and locally elected leaders; and administrative decentralisation, involving giving subnational governments the right to hire, fire and discipline their staff as well as to set internal administrative procedures. These design features will be analysed in the succeeding chapters in the context in Zimbabwe.

amending the relevant Act. The ability of the national government to abide by the rules of decentralisation is argued in this study to constitute an extended concept of rule of law. This concept has been at the centre of debates on multilevel governance in Zimbabwe. Despite the challenge of ambiguity with respect to certain responsibilities of local authorities discussed above, there are certain responsibilities of local authorities which are clearly demarcated. Although legislation clearly allocates these responsibilities to local authorities, in practice the national government has carried out these responsibilities.[261] Water supply and sewerage removal and treatment are examples.

The UCA and RDCA assign to local authorities the power to supply water and to remove and treat sewerage.[262] Despite this legislative assignment, in 2005 the Minister issued a directive recentralising water supply and sewerage removal functions. As stated above, the Minister cited lack of capacity at local level as the reason for the recentralisation of these responsibilities.[263] The national government did not even amend the UCA and RDCA when it recentralised the water and sewerage management functions, bringing into question the rule of law in the country.[264] This is an indication that in certain cases the national government has failed to abide by its own rules of decentralisation. It is submitted that when responsibilities are decentralised the national government should not carry out such responsibilities. Constitutional recognition of local powers and functions would have been an effective deterrent to this culture of recentralisation of responsibilities, even without amending the relevant Acts. Unfortunately, as stated above, while giving local authorities the 'right to govern', the 2013 Constitution does not enumerate the powers and responsibilities of local authorities.[265] The implication of this lack of constitutional recognition is that the culture of recentralisation of local powers and functions is likely to continue.

4.5.5 Do local authorities have final decision-making power over their responsibilities?

It was contended in paragraph 6.1.3.4 of Chapter Two that the extent to which local governments have final decision-making powers over their responsibilities is important for

[261] Pasipanodya *et al* 2000: 21.
[262] See Number 34, Second Schedule, RDCA and Part VIII, UCA.
[263] Mashumba 2010: 109.
[264] The supply of water and management of sewerage was handed back to local authorities in 2008 after ZINWA failed to deliver on these responsibilities.
[265] See Chapter 14, Constitution.

the role which they can play in development, democracy and sustainable peace.[266] Local authorities in Zimbabwe lack final decision-making power over the majority of their responsibilities. Decision-making is limited in a variety of ways. There are a number of functional areas where local authorities may not make decisions without the approval of the Minister. For example, with respect to estate development the exercise of powers by local authorities is subject to the consent of the Minister. Urban local authorities have the power to lay out and service any land and to construct buildings for residential, commercial or industrial purposes.[267] Before an urban local authority may exercise these powers, the council is required to submit the proposal to exercise such power to the Minister for approval.[268] This requirement shows that although local authorities have competency over estate development, they do not have final decision-making powers over estate development in their areas.

In other functional areas where local authorities may make decisions, the Minister has the power to reverse, suspend, and rescind resolutions, decisions or actions of local authorities.[269] Moreover, the Minister may give directions to local authorities with respect to policy formulation and implementation.[270] These powers of the Minister together limit the final decision-making powers of local authorities over most of their responsibilities. A local authority may propose policies in response to the preferences and needs of its citizens but such a proposal runs the risk of not being approved or modified by the Minister. As shall be argued in Chapter Eight, these supervisory powers of the national government significantly undermine the autonomy of local authorities and therefore their ability to contribute fully to the realisation of national and local goals such as development. Hence, it is submitted that such powers should be reformed so that local authorities are given some measure of local autonomy necessary if they are to deliver on development, democracy and sustainable peace goals.[271]

[266] See Article 4(2) European Charter of Local Self-Government, Kalin 1998: 2, Bahl 1999: 5.
[267] S 205(1) UCA and S 86(1)(a) RDCA. Local authorities may sell, exchange, lease, donate or permit the use of land or buildings and improvements for residential, commercial or industrial purposes. Moreover, urban local authorities can purchase or hire land or building(s) for the purposes of estate development. S 205(2) UCA and s 86(2) RDCA.
[268] S 86(3) RDCA.
[269] S 314 UCA. These supervisory powers of the Minister are discussed in detail in Chapter Eight.
[270] S 313 UCA.
[271] See S 209(2) Constitution.

4.5.6 Are the powers 'differentiated'?

It was highlighted in paragraph 6.1.3.5 of Chapter Two that local governments are unlikely to have equal capacity to deliver on their responsibilities and obligations.[272] Thus, it was contended that it may be useful to have 'differentiated' assignment of powers and functions to local authorities.[273] Zimbabwe has adopted such a multilevel system of government. As highlighted in paragraph 3 of Chapter Four, the Constitution provides for the establishment of different categories and classes of local authorities.[274] It further requires the devolution of powers and responsibilities to local authorities which are 'competent' to carry out those responsibilities 'efficiently and effectively'.[275] This implies that some local authorities may exercise more powers than others depending on their level of capacity.

The UCA, RDCA and other sectoral Acts provide for a 'differentiated' approach of assigning powers and functions to local authorities. While both urban and rural local authorities have competency over more or less similar functional areas, they also have unique functional areas. Urban local authorities have been assigned responsibilities which may be considered to be 'urban' in nature, whereas rural local authorities have competency over responsibilities which can be classified as 'rural' – for instance, bush fires and animal diseases.[276] In the urban local authority category, city and municipal councils have competency over more functional areas and enjoy wide discretion relative to town councils when undertaking their responsibilities. Town councils have competency over more responsibilities and some measure of discretion compared to local boards when carrying out these responsibilities.[277] Even though the assignment of responsibilities to local authorities under the 2013 Constitution is expected to be through a single primary local government Act, it is submitted that the 'differentiated' approach of assigning responsibilities to local authorities should be maintained to take into account differences at local level.[278]

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[272] See National Planning Commission 2011: 387. Further, local authorities are likely to administer jurisdictions with varying demographic composition, among other contextual differences.
[273] UN-Habitat 2007: 4, Ford 1999: 14. The explicit recognition of differences between jurisdictions simultaneously requires a clear set of rules about when a subnational government graduates from one status to another. See Bahl 1999: 10, Eaton & Schroeder 2010: 174.
[274] See s 274 and s 275 Constitution.
[275] S 264(1) Constitution.
[276] Refer to the tables of functions of urban and rural district councils discussed above.
[277] Town councils have powers which are allocated to them directly by Acts of Parliament, whereas the powers of local boards are assigned and determined by the Minister.
[278] Mushamba 2010: 120. In contrast, the Local Authorities Draft Bill (August 2014) is proposing to assign equal powers to local authorities irrespective of category or class. See Part IV, Local Authorities Draft Bill.

5. Administrative authority of local authorities

The previous section discussed the general powers of local authorities. This section examines the administrative authority of local authorities. Administrative authority entails the power of local governments to hire, fire, remunerate and discipline employees as well as to determine their internal administrative procedures.[279] As argued in paragraph 6.3 of Chapter Two, administrative authority frees local government from relying on higher levels to implement local policies and allows local governments to adapt their internal administrative procedures to the local environment.[280] Like the Lancaster House Constitution, the 2013 Constitution is silent on the administrative authority of local authorities.[281] The Constitution leaves it to national government to decide whether local authorities should exercise authority over their administrative establishment.[282] It however regulates the conduct of employees of local authorities in a similar way to employees of provincial and metropolitan councils.[283] As argued above, the absence of the constitutional protection of administrative authority means that local authorities do not have guaranteed administrative authority.[284] Even if the national government gives local authorities administrative authority through legislation, it may revoke such authority at any time. It is submitted that the absence of guaranteed administrative authority may undermine the ability of local authorities to deliver on development, democracy and sustainable peace especially in cases where national legislation allows unrestricted involvement of senior governments in local affairs. As will be observed below, this weakness is evident in the UCA and RDCA, which regulate personnel and administrative issues of local authorities.

The section will begin by assessing the power of local authorities over their personnel establishment before discussing their power to determine internal administrative procedures. The last part of this section will examine the role of the Local Government Board in personnel and administrative establishments at the local level as it has significant implications for the administrative authority of local authorities.

[279] See Eaton & Schroeder 2010: 174, Bahl 1999: 61.
[280] See UN-Habitat 2009: 12, Article 6(1) European Charter of Local Self-Government.
[281] Machingauta *et al* 2014: 31.
[282] See s 276(2), s 279 Constitution.
[283] See s 266 Constitution.
[284] See De Visser & Chigwata 2013: 18, Machingauta *et al* 2014: 31.

5.1 Urban local authorities

The UCA makes provision for a separate process of appointing, disciplining and dismissing senior and junior employees. Senior employees are the town clerk (or secretary), chamber secretary, head or deputy head of a department or such other employee that may be prescribed.[285] The discussion in this section follows this division between senior and junior employees.

5.1.1 Appointment of senior employees

Senior employees of urban local authorities are appointed by the council with the consent of the Local Government Board (the Board).[286] The appointment of the head of department responsible for health (medical officer) is carried out by the council with the consent of not only the Board but also the Minister responsible for health.[287] The process of recruiting senior employees begins with a council recommending to the Board the names of suitable candidates. The Board then interviews the prospective candidates whom it may approve and disapprove for appointment.[288] In cases where the Board disapproves the appointment of a person(s) recommended by a council, the council concerned is required to recommend another list of names for appointment.[289] If a period of two months lapses since the Board notified the council of its refusal to approve a person for appointment and the council has not recommended any other person(s) who meets the approval of the Board, the Board is required to refer the matter to the Minister for consideration.[290] The decision of the Minister on the matter is final.[291] It is submitted that urban local authorities do not have the autonomy to appoint their senior employees. Their role is limited to proposing names of individuals for appointment as senior officials. As observed above, the final decision regarding the recruitment of senior officials rests with the Board and in some cases, with the Minister. Besides weakening the autonomy of urban local authorities, the role of the Board in the appointment of senior employees has also resulted in excessive delays in filling senior

[285] S 131 UCA.
[286] See ss 132, 133 and 134 UCA. The role of the Board is discussed in detail below.
[287] S 134 UCA. See s 7 Public Health Act [*Chapter 15:9*].
[288] S 135(1) UCA. If the Board refuses to appoint a person(s) so recommended, it is required to give the reasons for such refusal to the council. See S 135(2) UCA.
[289] S 135(3) UCA.
[290] S 135(3) UCA.
[291] S 135(4) UCA.

positions as local authorities wait for approvals from the Board.[292] As a result, vacancies in some local authorities go unfilled for long periods of time, in the process impacting adversely on the operations of the local authority.

5.1.2 Conditions of service of senior officials

Conditions of service of senior employees are determined by the council with the consent of the Board and national government. Section 138 of the UCA provides that 'no council shall fix or alter the conditions of service of its employees' except with the approval of the Minister responsible for Labour. The Board in consultation with the Minister and the Minister responsible for finance determines the pension, medical aid, funeral expenses and other benefits of all employees of urban local authorities.[293] In 2013 the Minister announced the introduction of performance contracts for senior employees of all local authorities in line with the requirements of the economic blue-print of the government, Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZimAsset).[294] The contract is signed between the Minister and every senior employee. This implies that senior employees of local authorities are accountable in part to the national government for their performance. All senior employees were required to have signed the performance contract by 31 December 2013. The Minister is reported to have stated that senior employees of local authorities who fail to meet their targets as stipulated in the contract risk being fired by the national government.[295] It is submitted that these performance contracts should have been signed with the council rather than with the national government to engender the accountability of senior employees to the council.

5.1.3 Disciplinary measures applicable to senior employees

5.1.3.1 Suspension of senior employees

A mayor or chairperson may suspend a town clerk (or secretary) from office if it appears that the town clerk is guilty of such conduct that is not desirable and should not be permitted to carry on his or her work.[296] The mayor or chairperson is required to notify the council in writing of such suspension and cause the suspension to be reported to the council at the first

[292] Pasipanodya *et al* 2000: 208.
[293] Ss 146 and 147 UCA.
[294] *The Sunday Mail* 'Government slashes salaries of town clerks' 2013.
[295] See *the Sunday Mail* 'Government slashes salaries of town clerks' 2013.
[296] S 139(3)(a) UCA.

opportunity.[297] After receiving a report of suspension of the town clerk, the council must conduct an inquiry into the circumstances of the suspension.[298] Based on the outcome of the inquiry the council may lift the suspension, reprimand the town clerk, reduce the salary payable to the town clerk, impose a fine recoverable through deductions from the salary of the town clerk, or discharge the town clerk.[299] The disciplinary procedures which apply to the town clerk with respect to suspension also apply to other senior employees.[300] The exception is that the suspension of other senior employees is carried out by the town clerk, with the mayor or chairperson mandated to report the suspension to the council for investigation.[301] Thus, urban local authorities have the power to institute disciplinary proceedings against their senior employees, as discussed below, including dismissal of such employees.

5.1.3.2 Discharge of senior employees

A council may discharge a senior official 'upon notice of not less than three months; or summarily on the ground of misconduct, dishonesty, negligence or on any other ground that would in law justify discharge without notice'.[302] The council is required to seek the consent of the Board before discharging any senior official.[303] The head of department of health may only be discharged by the council with the approval of the Board and the Minister responsible for health.[304] Thus, urban local authorities do not have the autonomy to dismiss their senior officials as the final decision rests with the Board and the national government. Some urban local authorities have lost huge sums of money in compensation to senior employees who were dismissed or suspended by the council without following the correct procedures. In some cases, the Minister has ordered the reinstatement of senior officials with full salary and benefits after they have been suspended or dismissed by the council. For instance, in January 2014, the Minister ordered the reinstatement of the town clerk of Harare who had been

[297] S 139(3)(b) UCA.
[298] S 139(40(a) UCA. Where a town clerk has been suspended, his or her suspension, unless earlier lifted, terminates when the council has decided not to discharge him or after six months has lapsed, whichever occurs sooner. During the period of his suspension, the town clerk is not entitled to his salary in respect of that period but he or she may be paid such an allowance, not exceeding the amount of his salary, as the council may fix. If the town clerk is not subsequently discharged, he or she is entitled to the full amount of his salary or wages and any allowances that would otherwise have been paid to him in respect of the period of his suspension, less any allowance paid to him. See s 139(5) UCA.
[299] S 139 (4)(b) UCA.
[300] See s 140 UCA.
[301] See s 140 UCA.
[302] Ss 139(1) and 140(1) UCA.
[303] Ss 139(2) and 140(2) UCA.
[304] S 140(2) UCA.

suspended by the mayor.[305] It is submitted therefore that the limited administrative authority of urban local authorities undermines their ability to manage their own affairs. It is further submitted that such a limitation is inconsistent with the 2013 Constitution which gives local authorities the 'right to govern', which arguably includes the right to appoint, discipline and dismiss employees.[306]

5.1.4 Appointment and conditions of service of other (junior) employees

Urban local authorities have the power to appoint junior employees. Junior employees are appointed by the council on the recommendation of the town clerk or secretary, as the case may be.[307] Thus, urban local authorities have significant autonomy to appoint junior employees since the appointment is carried out by the council on the recommendation of the town clerk or secretary. Such autonomy nevertheless has been limited by the national government through a directive issued by the Minister. In terms of a directive titled 'Ministerial Directive on Employment' of 29 September 2010, the Minister directed all local authorities to seek the approval of the Minister before they appoint any staff member.[308] Thus, the powers of local authorities to appoint junior employees have in fact been taken away by this directive. It is submitted that the directive go beyond regulation (setting a general framework) as it requires a specific act, that is, approval of the Minister before any appointments can be made.[309] It is further submitted that this directive is inconsistent with the 2013 Constitution which gives local authorities the 'right to govern', which includes the right to appoint staff.[310]

5.1.5 Disciplinary procedures applicable to junior employees

5.1.5.1 Suspension of junior employees

If it appears to a head of department that an employee who is not a senior employee of the council has been guilty of such conduct that it is desirable that that employee should not be

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[305] *The Sunday Mail* 'Chombo reinstates Mahachi' 2014.
[306] See 276(1) Constitution.
[307] S 141(1) UCA. A council may appoint uniformed employees for the purposes of assisting in the control and protection of the property under the control of the local authority as well as to assist the police in the enforcement of the Municipal Traffic Laws Enforcement Act [*Chapter 29: 10*]. See s 142 UCA.
[308] Ministry of Local Government, 'Ministerial Directive on Employment', ' To all Local Authorities' Reference CX/154, 29 September 2010 (available on copy with the author).
[309] See paragraph 6.6.1 of Chapter Two. See also Eaton & Schroeder 2010: 175, De Visser 2005: 44.
[310] S 276(1) Constitution.

permitted to carry on his or her work, he or she may suspend the employee from office.[311] When disciplining junior employees, local authorities with a registered code of conduct of employees are required to abide by that code. On the other hand, local authorities without a registered code of conduct are required to discipline their employees in terms of the Labour Relations Act.[312] Thus, local authorities have autonomy to discipline junior employees, especially those local authorities which have their own code of conduct. Such a measure of local autonomy is line with 2013 Constitution which requires that local authorities enjoy a certain measure of discretion.[313] This is a positive move as it incentivises the formulation of local policies such as codes of conduct. It is recommended that local authorities which fully exercise their powers to make policies should be rewarded with more autonomy.

5.1.5.2 Dismissal of junior employees

Urban local authorities have the power to dismiss their junior employees.[314] A council may at any time discharge a junior employee upon notice of not less than three months.[315] An employee may also be discharged summarily on the ground of misconduct, dishonesty, negligence or any other ground that would in law justify discharge without notice.[316] The exception is the discharge of a health inspector which requires the approval of the Minister responsible for health. The powers of urban local authorities to discharge junior employees have been reviewed by the courts in a number of labour disputes. For instance, in *Silas Luthingo Rusvingo vs City of Harare*,[317] the High Court had to determine whether urban local authorities may dismiss their employees following procedures other than those provided by section 141 of the UCA. The Court declared that the City (like any other urban local authority) cannot conduct any disciplinary proceedings otherwise than in accordance with the provisions of section 141 of the UCA.[318] Further, the court decided that, as a creature of the statute, the City 'is not …at liberty to ignore set procedures when it feels like ignoring them

[311] S 141(4)(a) UCA. After suspending, the head of department concerned is required without delay to notify the town clerk or secretary, as the case may be, of such suspension. Upon receipt of notification from the head of department, the town clerk or secretary must cause the suspension to be reported at the first opportunity to the council. Following the notification by the town clerk or secretary, the council is required to follow the disciplinary procedures applicable to senior employees of the council, discussed above. See s 141(4)(5)(6) UCA.
[312] Pasipanodya *et al* 2000: 209.
[313] See S 276(1) Constitution.
[314] S 141 UCA.
[315] S 141(2) UCA.
[316] S 141(2) UCA.
[317] *Silas Luthingo Rusvingo vs City of Harare HH 132-2004, HC 10637/02*.
[318] *Silas Luthingo Rusvingo vs City of Harare*, page 9.

and setting up its own unlegislated disciplinary rules and subjecting its employees to such'.[319] This judgement provides valuable lessons to urban local authorities that they may not conduct any disciplinary proceedings other than in terms of section 141 of the UCA.

5.2 Rural local authorities

Like the UCA, the RDCA provides for separate procedures for the appointment of senior and junior employees of rural local authorities. These procedures are examined in this section, beginning with those applicable to senior employees and followed by those for junior employees.

5.2.1 Senior employees

Senior employees of rural local authorities are referred to as 'officers'.[320] These include the chief executive officer (CEO), treasurer, engineer, medical officer or any other head of department. As highlighted in paragraph 4.2.1 of the previous chapter, the CEO is the administrative head of a rural local authority. The CEO is appointed by the council with the consent of the Minister.[321] If a rural local authority fails to appoint a CEO, the Minister may appoint a member of the public service as the CEO.[322] Other officers are also appointed by the council with the consent of the Minister.[323] It is submitted that the role of the Minister in the appointment of the CEO and other officers means that rural local authorities do not have autonomy to appoint their senior employees. In practice, the role of the national government has caused excessive delays in filling senior positions as council awaits the approval of the Minister.[324] The operations of local authorities are severely undermined in such delays.

5.2.2 Junior employees

Rural local authorities have the power to appoint junior employees necessary for the effective discharge of their responsibilities.[325] However, no employee may be appointed or promoted to occupy such a position as the Minister may designate without the approval of the

[319] *Silas Luthingo Rusvingo vs City of Harare*, pg 9.
[320] S 65 RDCA.
[321] S 66(1) RDCA.
[322] S 66(2) RDCA.
[323] S 66(3) RDCA.
[324] Pasipanodya *et al* 2000: 208.
[325] S 66(3) RDCA.

Minister.[326] Thus, the autonomy of rural local authorities to appoint staff is not only limited with respect to the appointment of senior employees but also junior employees. A council may delegate to the Chairman or officer of the council the power to appoint and dismiss employees. In both cases, the approval of the Minister is required.[327] It is submitted that while urban local authorities have a certain measure of autonomy with respect to their personnel issues, rural local authorities have no discretion at all. Almost all decisions relating to personnel issues have to be approved by the Minister. This is contrary to the new constitutional order which requires local authorities to exercise some discretion when managing their affairs, including personnel issues.[328] The 2013 Constitution gives local authorities the 'right to govern', which should be construed to include authority to determine personnel establishment.[329] It is submitted therefore that the powers of the Ministers over personnel establishment in rural local authorities should be reformed. In particular, the role of the Minister should be limited to setting the national framework, for example, comprising minimum skills required for appointment to certain positions.

5.2.3 Conditions of service and disciplinary procedures

The conditions of service of employees and officers of rural local authorities are fixed by the council with the approval of the Minister.[330] Thus rural local authorities have limited autonomy to set the conditions of employment of their employees. The 2013 Constitution requires that rural local authorities enjoy some measure of discretion to determine the conditions of service of their employees.[331] Thus, the role of the Minister must be redefined to allow rural local authorities to determine the conditions of service of their employees within a framework determined by the national government.[332] When it comes to disciplining employees, rural local authorities with a registered code of conduct are required to abide with the code when disciplining their employees. Those without a registered code of conduct are required to discipline their employees in terms of the Labour Relations Act.[333] Thus, like their urban counterparts, rural local authorities have the autonomy to develop their own codes of

[326] S 66(3) RDCA.
[327] S 68 RDCA.
[328] See ss 5, 264(2), 274 and 275 Constitution.
[329] See s 276(1) Constitution.
[330] S 67(1) RDCA. When setting the conditions of service the Minister is required to consult the Public Service Commission and the Parastatals Commission. See s 67(1) RDCA.
[331] See s 276(1) Constitution.
[332] The setting of frameworks is discussed in detail in para 4 of Chapter Eight.
[333] Pasipanodya *et al* 2000: 209.

conduct for their employees. However, few rural local authorities have exercised this autonomy.

5.3 Internal administrative procedures of local authorities

As stated above, authority over the determination of internal administrative procedures allows local authorities to adjust their bureaucracies to suit their local needs and to ensure effective management.[334] The question is, do local authorities have such authority? The UCA and RDCA regulate the setting of internal administrative procedures of urban and rural local authorities, respectively. This section will not discuss in detail the establishment of internal administrative structures of local authorities and related procedures as these were discussed in section 4 of Chapter Five. However, the chapter maintains that local authorities have limited autonomy to determine their internal administrative procedures, a development which is likely to undermine their role in development, democracy and sustainable peace.

5.4 Role of the Local Government Board

Administrative authority of urban local authorities cannot be fully understood without analysing the role of the Local Government Board. The Board has a critical role to play in overseeing the activities of urban local authorities.[335] The purpose of the section is to establish the implications of the role of the Board on the administrative authority of local authorities. The assessment of the role of the Board is particularly necessary given that the national government is proposing retaining the Board under the 2013 constitutional order.[336] The Board is not a creature of the Constitution but established in terms of the UCA, with competency only over urban local authorities.[337] Indications are that the national government is going to give the Board competency over all local authorities, including rural local authorities.[338]

[334] See UN-Habitat 2009: 12.
[335] Chakaipa 2010: 54.
[336] See Part VIII Local Authorities Draft Bill (August 2014).
[337] S 116(1) UCA.
[338] See s 81 Local Authorities Draft Bill (August 2014).

5.4.1 Composition

The Board consists of seven members who are appointed and removed from office by the Minister.[339] In terms of section 124 of the UCA, the Minister may give the Board policy directives of a 'general character' as he or she may consider requisite in the 'national interests'.[340] Thus, the Minister exercises significant influence over the Board by virtue of having the power to appoint, discipline, and determine the terms of employment of members of the Board. Further, the power to give directives to the Board is also critical. This brings into question the independence of the Board from the Minister and its ability to carry out independent oversight over the activities of urban local authorities.

5.4.2 Powers and responsibilities

The Board has various powers over personnel issues and general administrative organisation in urban local authorities. Its responsibilities are:

a) to provide guidance for the general organisation and control of employees in the services of councils;
b) to ensure the general well-being and good administration of council staff and the maintenance thereof in a high state of efficiency;
c) to make model conditions of service for the purposes stated in (a) and (b) for adoption by councils;
d) to make model regulations stipulating the qualifications and appointment procedures for senior officials of councils;
e) to approve the appointment and dismissal of senior officials;
f) to conduct inquiries into the affairs and procedures of councils;
g) to exercise any other functions that may be imposed or conferred upon the Board in terms of the [UCA] or any other enactment.[341]

In the exercise of its functions the Board has the power to require submission of any information or records as well as the power to summon and examine any witnesses.[342] It has equal powers to those conferred upon commissioners in terms of the Commissions of Inquiry Act[343] other than the power to order a person to be detained in custody.[344] If it considers that

[339] Ss 116(2), 120 UCA. The Minister appoints one of the seven members to be the chairperson of the board and the another to be the vice-chairperson. Members of the board hold office for a period not exceeding four years, as determined by the Minister. The Minister determines terms of employment and remuneration of members of the board. See ss 117(1)(2) and 118 UCA.
[340] S 124 UCA.
[341] S 123(1) UCA.
[342] S 123(2) UCA.
[343] [*Chapter 10:7*].

there are grounds to suspect an employee of a local authority has committed misconduct in terms of his or her conditions of service, the Board may direct the local authority to institute disciplinary proceedings.[345] With the approval of the Minister, the Board may make by-laws providing for matters which in its 'opinion are necessary or convenient' for the better carrying out of or giving effect to its functions.[346] Urban local authorities have the discretion to adopt, wholly or in part and with or without modifications, these model by-laws.[347] It is submitted that the power of the Board to make model by-laws does not undermine local autonomy since urban local authorities have the discretion to adopt such by-laws.

5.4.3 Implications of the role of the Local Government Board on administrative autonomy

It is submitted that the role of the Board constrains the autonomy of urban local authorities with respect to the hiring, firing, remuneration and disciplining of senior officials. Although the Board may provide the necessary checks and balances, it is submitted that it should not have the power to strike down decisions of local authorities with regard to appointment, disciplining and dismissal of staff. Its role should be limited to reviewing the decisions of local authorities. If the Board does not agree with the decision of a local authority to appoint, dismiss or discipline certain individuals, it should refer the decision back to the local authority for reconsideration.[348] In cases of an impasse between the Board and the local authority, the Board should be given the power to refer the decision to the courts for resolution. In this way, administrative authority of urban local authorities will be protected.

As highlighted above, the Board only has supervisory powers over urban local authorities and not rural local authorities.[349] In rural local authorities, the functions of the board are carried out by the Minister.[350] If it is to be admitted that the Board plays a crucial role in providing independent oversight over the activities of urban local authorities, then it is submitted that it should exercise that role over all local authorities. The argument is that independent oversight is not only required in urban local authorities but also in rural local authorities. This implies that the powers of the Minister over personnel issues in rural local authorities should be

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[344] S 123(3) UCA.
[345] S 128(1) UCA.
[346] S 129(1) UCA.
[347] S 130 UCA.
[348] Pasipanodya *et al* 2000: 217.
[349] See Part VIII UCA.
[350] See Part IX RDCA.

transferred to the Board so that there is predictability in the supervision of all local authorities with particular reference to personnel and administrative organisation.[351] To enhance its independence, it is suggested that members of the board should be appointed in the manner in which members of independent commissions are appointed.[352] The powers of the Minister to issue policy directives to the board should be limited. This could be done by abolishing the condition of 'national interest'[353] and providing in explicit terms the nature of the directives the Minister can issue and when the Minister can do so.

5.4.4 Ineffective Board

As highlighted in paragraph 5.4.2 above, the Board has the responsibility to provide general guidance on staff establishment of urban local authorities which may include setting the salary scale for senior employees.[354] Setting of salary scales is particularly necessary to ensure that employees are remunerated in line with economic developments and ensure that local authorities are able to pay such salaries and benefits. The Board has hitherto not been able to deliver on this responsibility effectively. Despite the presence of the Board, most urban local authorities pay huge salaries and benefits to their senior employees whilst they are failing to pay salaries of junior employees on time. It is reported that some senior employees of local authorities are earning as much as US $16 000 per month, while these local authorities are failing to meet the service delivery expectations of their communities.[355] The Minister intervened to correct the unsustainable salaries that were being paid to senior employees of urban local authorities. In 2013, the Minister issued a directive slashing the salaries of senior employees of local authorities by 50 per cent.[356] In addition, the Minister directed that remuneration of any employee of local authorities may not exceed US $8000, including benefits. Thus, the Board has not been effective in promoting sound human resource management at the local level. This is mainly attributed to the absence of human and financial resources.[357] The Board is funded through the Ministry of Local Government. The financial resources allocated by the Ministry have been inadequate for the Board to effectively discharge its mandate. The Board also lacks adequate support staff required to

[351] See Bahl 1999: Rule number 6 on the importance of predictable local responsibilities.
[352] Machingauta *et al* 2014: 36.
[353] S 124 UCA.
[354] See s 123(1) Constitution.
[355] *The Sunday Mail* 'Government slashes salaries of town clerks' 2013.
[356] *The Sunday Mail* 'Government slashes salaries of town clerks' 2013.
[357] Chakaipa 2010: 55.

carry out its mandate.[358] Against this background it is suggested that if the role of the Board is to be maintained (as the ongoing policy review suggests), there is need to review its role with a view to strengthening its supervisory capacity.[359]

5.4.5 Relevance of the Local Government Board under the 2013 Constitution

As highlighted above, under the 2013 Constitution local authorities have a 'right to govern' the local affairs of their communities with 'all' the powers necessary to do so.[360] A local authority is unlikely to fully exercise its 'right to govern' without control over personnel establishment and its internal administrative procedures. It is submitted therefore that the 'right to govern' includes administrative authority.[361] This implies that the role of the Board may be inconsistent with the new constitutional dispensation where local authorities have 'all' the powers necessary to govern.[362] It is submitted that under the 2013 Constitution local authorities should hire, fire, remunerate and discipline staff without reference to the national government.[363] There is however no political will to abolish the Board so as to give local authorities administrative authority. Thus, strengthening the capacity of the Board and improving its independence are the more realistic reforms. In the event that the Board is retained, it is suggested that its role should be limited to setting national frameworks[364] and not extend to approving individual decisions of every local authority pertaining to personnel and administrative establishment. In that way, local authorities will exercise a certain measure of local discretion which is necessary if they are to play a role in the realisation of development, democracy and sustainable peace.

6. Conclusion

In this chapter it was argued that a multilevel system of government is more likely to realise development, democracy and sustainable peace if the powers and responsibilities assigned to each level of government are original, relevant, clearly demarcated, and differentiated. In addition, subnational governments should have final decision-making powers over their

[358] Chakaipa 2010: 55.
[359] Local Governance Community Capacity Building and Development Trust 2014: 7, Machingauta *et al* 2014: 36. See Part VIII Local Authorities Draft Bill (August 2014).
[360] See s 276(1) Constitution.
[361] See Machingauta *et al* 2014: 31.
[362] See Musekiwa 2014: 6.
[363] See Musekiwa 2014: 6, Local Governance Community Capacity Building and Development Trust 2014: 7.
[364] For example, the framework could comprise salary scales, minimum qualifications for appointment to certain positions and a broader personnel establishment structure.

responsibilities so that they are in a position to better respond to the demands of their localities. It was observed in this chapter that provincial and metropolitan councils have original powers although they are ambiguous. Thus, it was submitted that national legislation should clarify this ambiguity by providing for clearly demarcated powers in line with the 'spirit' of devolution central to the 2013 Constitution. It was submitted that local authorities have been assigned responsibilities which are powers and relevant for the realisation of development, democracy and sustainable peace. The potential of local authorities to deliver on these goals is undermined by the fact that the powers and functions are not original and in some other cases not clearly demarcated. Furthermore, local authorities have little final decision-making authority over the majority of their responsibilities. It was also observed that provincial councils and local authorities have limited administrative autonomy. Indications are that the national government intends to give provincial and metropolitan council a certain measure of administrative autonomy.[365] The same cannot be said for local authorities. The national government intends to increase its control over the administrative establishment of local authorities, mainly through the Local Government Board.[366] It is submitted that the lack of administrative autonomy at local level is likely to undermine the role of local authorities to deliver on development, democracy and sustainable peace goals. Thus, the national government is advised to give local authorities administrative autonomy. The ability of provincial and local governments to deliver on development, democracy and sustainable peace goals also depends on the resources which they have. This will be examined in the following chapter on finance.

[365] See Part V11 Provincial and Metropolitan Councils Draft Bill (August 2014).
[366] See Part VIII Local Authorities Draft Bill (August 2014).

Chapter 7

Finance

1. Introduction

The previous chapter examined the powers and functions of provincial and metropolitan councils and local authorities. This chapter discusses how provincial and metropolitan councils and local authorities finance the delivery of their responsibilities. It examines the revenue-raising and spending powers of provincial and metropolitan councils and local authorities. The chapter argues that what provincial and metropolitan councils and local authorities can achieve depends in part on the fiscal resources they have as well as the discretion which they have to spend such resources. It is therefore of critical importance that significant resource-raising and spending powers are devolved to the provincial and local levels. The chapter begins by examining the revenue-raising and spending powers of provincial and metropolitan councils before discussing similar powers at the local level. It then analyses the intergovernmental grant system designed to complement the subnational resource-raising effort.

2. Provincial and Metropolitan Councils

In paragraph 6.2.1.1 of Chapter Two it was contended that once expenditure has been assigned among governments at various levels, the assignment of taxing powers becomes critical in matching expenditure needs with revenue needs at various levels of government.[1] It was further argued that, among other considerations, the assignment of taxing powers between the national and provincial governments should reflect the principles of efficiency in tax administration, equity, benefit-pay principle[2] and fiscal need of each level of government.[3] This will usually result in corporate, personal, progressive and value-added taxes, and custom duty being assigned to the national government. Provincial governments are likely to be assigned residence-based taxes, sales taxes, excises, supplementary income taxes, congestion tolls and benefit charges such as payroll taxes, vehicle taxes, business

[1] Shah 1994: 29.
[2] The benefit-pay principle requires the establishment of a close link between consumption and payment of a particular public service. This is likely to be achieved if the level of government which is responsible for the delivery of a particular public service has the power to collect user-charges in respect of the consumption of that service.
[3] See Shah 1994: 8, Zhou & Chilunjika 2013: 234.

registrations and poll taxes, among others. The question of whether provincial and metropolitan councils should be assigned any taxing powers is one of the key issues which characterised debates relating to devolution during the constitution-review process.[4] This question will be examined in this section.

2.1 Resource-raising powers

In paragraph 6.2.1 of Chapter Two an argument was made for the decentralisation of resource-raising powers to subnational governments so that they can have independent revenue streams.[5] Besides providing independent revenue streams, the assignment of resource-raising responsibility to subnational governments has the advantage of promoting local accountability.[6] It may also provide incentives for subnational governments to provide local public services in a more cost effective way than would be the case when subnational governments are wholly funded by the national government through intergovernmental grants.[7] Thus, decentralising resource-raising powers to the subnational level has both democratic and development benefits. Zimbabwe has not sought to maximise these benefits by devolving resource-raising powers to the provincial level, as the discussion on the constitutional and statutory framework for resource-raising and spending powers at the provincial level will show.

2.1.1 Constitutional framework

Like the Lancaster House Constitution, the 2013 Constitution does not assign resource-raising powers to provincial and metropolitan councils.[8] It nonetheless does not prevent the national government from decentralising resource-raising powers to provincial and metropolitan councils. The Constitution provides that a provincial or metropolitan council may exercise any other functions that may be conferred or imposed on it by or under an Act of Parliament.[9] This may include resource-raising responsibility. Thus, the question of whether provincial and metropolitan councils should exercise any resource-raising powers is determined by the national government. It is submitted that devolution in the 2013 Constitution may be limited as provincial and metropolitan councils do not have

[4] Sims 2013: 12.
[5] See the Aberdeen Principles 2005: 8.
[6] See Shah 1994: 16.
[7] See Shah 1994: 16.
[8] See Musekiwa & Mandiyanike 2013: 9.
[9] S 270(1)(f) Constitution.

constitutionally protected revenue-raising powers.[10] This is likely to undermine the role of these councils in development, democracy and sustainable peace as such a role requires that they enjoy a certain measure of financial autonomy which is likely to be promoted if the councils exercise some resource-raising responsibility.[11] One of the objectives of devolution in the Constitution is 'to transfer responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council'.[12] A 'sound financial base' implies that each provincial or metropolitan council has sufficient resources to enable it to carry out its responsibilities and obligations. While intergovernmental grants may go a long way in ensuring that provinces have a financial base, they are unlikely to be adequate to meet the financial needs of each council. Hence, it is submitted that the national government must devolve resource-raising powers to provincial and metropolitan councils which have potential to raise sufficient resources.

2.1.2 Statutory framework

The Provincial Councils and Administration Act does not assign resource-raising powers to provincial councils.[13] If the Act is not amended to provide for resource-raising powers of provincial and metropolitan councils the implication is that these councils are going to be entirely dependent on the national government for funding.[14] This brings into question the ability of provincial and metropolitan councils to secure adequate funding to meet their obligations and development needs, as required by the Constitution.[15] As submitted above, the national government must devolve resource-raising powers to provincial and metropolitan councils which have potential to raise sufficient resources given that the Constitution requires each provincial or metropolitan council to have a 'sound financial base'.[16] Alternatively, the national government could make use of intergovernmental grants to ensure that each provincial or metropolitan council has a 'sound financial base'.[17] The 100 per cent funding of these councils through intergovernmental grants however has democratic and efficiency

[10] Musekiwa 2014: 3.
[11] See UN-Habitat 2007: 8.
[12] S 264(2)(f) Constitution.
[13] Indications are that the national government is not going to grant provincial and metropolitan councils any resource-raising powers. See the Provincial and Metropolitan Councils Draft Bill (August 2014).
[14] See Machingauta *et al* 2014: 23.
[15] Musekiwa and Mandiyanike 2013: 12.
[16] S 264(2)(f) Constitution.
[17] See Machingauta *et al* 2014: 22.

weaknesses.[18] Provincial and metropolitan councils are likely to be more accountable to the national government than to the local people.[19] Further, there will not be any incentive for efficient spending at provincial level as there is no close link between revenue-raising and expenditure of revenue. Hence, it is suggested that while intergovernmental grants can be relied upon to complement subnational resources, provincial and metropolitan councils should be given resource-raising powers so that they can at least raise a portion of their financial resources.[20]

2.1.3 Devolving resource-raising powers to the provincial level

As in most countries, the national government in Zimbabwe controls the most lucrative sources of revenue such as personal, income, and value-added taxes.[21] The need to mobilise sufficient resources to undertake redistribution and macroeconomic stabilisation has been cited as one of the reasons behind the retention of the most lucrative sources of revenue by the national government.[22] It has also been argued (rightly so) that decentralising high yielding taxes such as customs duty and excise duty to the subnational level could create distortions in the economy.[23] Hence, it is argued that such resource-raising powers should be retained by the national government.[24] Resource-raising powers such as vehicle registration and licensing, tourism, toll fees, business licensing, fuel levies, liquor licensing and proceeds from natural resources however could be devolved to the provincial level as they are less likely to cause distortions in the economy. As argued in paragraph 6.2.5 of Chapter Two (and discussed in detail below), while there is rationality in allowing the national government to retain high yielding taxes, it is of critical importance to ensure the resultant mismatch between expenditure and revenue at subnational level is addressed by a responsive system of intergovernmental grants.

[18] See Bahl 1999: 61, Watts 2001: 33.
[19] See Shah 1994: 16.
[20] See Muchadenyika 2014: 138. On the importance of independent revenue streams, see UN-Habitat 2007: 9.
[21] Zhou & Chilunjika 2013: 243, Pasipanodya *et al* 2000: 110.
[22] Ministry of Local Government 'Budget Guidelines for 2010: All Local Authorities' 2009: 9.
[23] See Marumahoko & Fessha 2011: 46. It may also create challenges with equal treatment of citizens.
[24] See Marumahoko & Fessha 2011: 46.

2.2 Provincial expenditure

2.2.1 Constitutional framework

The 2013 Constitution does not explicitly assign spending powers to the provincial and metropolitan councils. It however guarantees provincial and metropolitan councils (and local authorities) not less than five per cent of nationally raised revenue in each year.[25] This implies that under the new constitutional order provincial and metropolitan councils have the power to spend revenue by virtue of being entitled to a certain portion of nationally raised revenue. Such spending powers may be widened through legislation if the national government decides to assign revenue-raising powers to these councils. It is submitted that in line with the devolution 'spirit' of the 2013 Constitution, the national government should devolve more spending powers to the councils so that they can respond to the needs of the people in their respective provinces. They should have the power to formulate and implement provincial budgets to advance socio-economic development.[26] Such powers could be assigned through national legislation in order to promote the realisation of the constitutional right of communities in each province to manage their own affairs and to further their development.[27] It is submitted that communities are unlikely to fully exercise their right to manage their own affairs at provincial level if provincial and metropolitan councils do not have wide spending powers.

2.2.2 Statutory framework

As discussed in the previous chapter, the 2013 Constitution has assigned socio-economic development responsibilities to provincial and metropolitan councils.[28] The question of whether provincial and metropolitan councils should have spending power by formulating and implementing budgets to realise socio-economic development becomes critical.[29] Under the Lancaster House constitutional order, the Provincial Councils and Administration Act did not make provision for spending powers of provincial councils. As highlighted in paragraph 3.1 of Chapter Six, the role of provincial councils was limited to development planning and coordinating the implementation of national policies in their respective provinces. These

[25] See S 301(3) Constitution.
[26] See Sims 2013: 24, Musekiwa & Mandiyanike 2013: 9.
[27] See S 264(2)(d) Constitution.
[28] See S 270(1) Constitution.
[29] See Musekiwa & Mandiyanike 2013: 9.

responsibilities could be carried out without spending powers. Thus, the Act did not assign such powers to provincial councils. Under the 2013 Constitution provincial and metropolitan councils are responsible for socio-economic development in their respective provinces.[30] In addition, the councils may exercise additional powers and functions given that the national government has an obligation to devolve powers and responsibilities.[31] The responsibility of socio-economic development (and other responsibilities which the councils may undertake) is unlikely to be realised if provincial and metropolitan councils do not have spending powers. Thus, as argued above, the national legislation should make provision for the spending powers of provincial and metropolitan councils by giving them the power to formulate and implement their own budgets.

This section discussed the resource-raising and spending powers of provincial and metropolitan councils. It was observed that provincial and metropolitan councils do not have constitutionally assigned resource-raising powers. The national government may however devolve such powers to the provincial level. It was also argued that although the 2013 Constitution does not explicitly assign to provincial and metropolitan councils spending powers, implicitly the councils have such powers by virtue of an entitlement to nationally raised revenue (in each year) which they must spend in their respective provinces.

3. Local Authorities

Having examined the resource-raising powers at the provincial level, this section examines the resource-raising and expenditure powers of local authorities. Particular attention is given to the raising of revenue through user-charges, licensing fees, taxes and borrowing. The section will examine the potential of these resource-raising powers to mobilise sufficient revenues needed by local authorities to deliver on their mandates and development needs. The question is whether local authorities have financial autonomy, which is crucial for the role of local authorities in realising development, democracy and sustainable peace.[32] The last part of the section deals with local expenditure, including formulation and implementation of budgets.

[30] See S 270(1) Constitution.
[31] See S 264(1) Constitution.
[32] See UN-Habitat 2007: 8.

3.1 Resource-raising powers

In paragraph 6.2.1 of Chapter Two an argument was made for the decentralisation of resource-raising powers to local governments to enable these governments to raise revenue to finance their obligations.[33] It was also contended that the guiding principle when designing a fiscal system is that 'finance follows function' so that local governments are in charge of resource-raising powers that can raise financial resources commensurate with their responsibilities.[34] Following the principles of tax assignment discussed in Chapter Two, local governments can be assigned taxes that are non-mobile in nature, including property taxes, tolls on local roads, taxes on fairs and markets, poll taxes and user-charges.[35] Local authorities in Zimbabwe have been assigned some of these resource-raising measures through various Acts. Before discussing these measures, the chapter will analyse the constitutional framework for the assignment of resource-raising powers to local authorities.

3.1.1 Constitutional framework

The 2013 Constitution does not explicitly assign resource-raising powers to local authorities, but also does not prevent local authorities from exercising such powers.[36] Thus, as at the provincial level, the question of whether local authorities should exercise taxing powers is determined by the national government. It is submitted therefore that the 2013 Constitution does not offer strong protection of the financial autonomy of local authorities which, as argued in paragraph 6.2.1 of Chapter Two, defines in part the role which local authorities can play in the realisation of development, democracy and sustainable peace.[37] The Constitution, however, envisages national government allocating resource-raising powers to local authorities.[38] It provides that an 'Act of Parliament may confer functions on local authorities, including the power to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objects and responsibilities'.[39]

Musekiwa and Mandiyanike argue that the 2013 Constitution has given local authorities original resource-raising powers in the form of rates and taxes.[40] Conversely, it is submitted

[33] See UN-Habitat 2007: 8-9.
[34] World Bank 2000: 124. See also Bahl 1999: 7, Article 9(2) European Charter of Local Self-Government.
[35] Shah 1994: 8. See Zhou & Chilunjika 2013: 234.
[36] See Machingauta *et al* 2014: 22-3.
[37] See Machingauta *et al* 2014: 23.
[38] Machingauta *et al* 2014: 22.
[39] S 276(2)(b) Constitution.
[40] Musekiwa & Mandiyanike 2013: 10.

that the power to determine whether local authorities should exercise any resource-raising powers rests with the national government. Thus, any resource-raising powers which may be assigned to local authorities are not original. However, unlike the Lancaster House Constitution, the 2013 Constitution encourages the national government to decentralise resource-raising powers to establish 'a sound financial base' for each local authority.[41] It is suggested that national government should decentralise resource-raising powers capable of raising significant revenue to the local level.[42] This will enable local authorities to mobilise revenue required for them to carry out their objects and responsibilities, as required by the Constitution.[43]

3.1.2 Statutory framework

The national government has decentralised resource-raising powers to local authorities.[44] Under various Acts of Parliament, local authorities have the power to raise revenue by imposing user-charges, property tax, levies, licencing fees and vehicle taxes.[45] They also generate revenue from selling, renting and leasing of land or buildings. Local authorities have struggled to raise sufficient revenue to meet their expenditure and development obligations despite having these resource-raising powers.[46] It is submitted that this challenge should be addressed given that without sufficient revenue local authorities will not be able to perform their assigned tasks adequately.[47] As will be observed below when resource-raising powers are examined, the failure to raise adequate revenue has been attributed to a number of reasons including the absence of lucrative taxes at the local level, failure by local authorities to ensure cost recovery on services provided, an unstable macro-economic environment and a culture of non-payment for services provided by consumers of public services.[48]

[41] See s 276(2), s 264(2)(f) Constitution. See Machingauta *et al* 2014: 22.
[42] The Aberdeen Principles 2005: 8, Article 9(1) European Charter of Local Self-Government, UN-Habitat 2007: 8-9. See also Musekiwa 2014: 5.
[43] See s 276(2)(b) Constitution.
[44] See Coutinho 2010: 72
[45] The UCA, the RDCA and the Regional Town and Country Planning Act, the Public Health Act, the Education Act [*Chapter 20: 4*], the Liquor Licensing Act, the Roads Traffic Act [*Chapter 13: 11*], the Land Survey Act [*Chapter 20: 12*], the Water Act [*Chapter 20: 22*] and the Electricity Act [*Chapter 13: 5*].
[46] Coutinho 2010: 71, Zhou & Chilunjika 2013: 43, Marumahoko &Fessha 2011: 52, Chikulo 2010: 151.
[47] Bockenforde 2011: 22.
[48] Marumahoko & Fessha 2011: 47, Coutinho 2010: 71-2, Machingauta *et al* 2014: 23.

3.1.3 User-charges and fees

It was contended in paragraph 2.2.2.2 of Chapter two that local governments should be given the power to impose user-charges since most of the public services which they provide can be priced and are amenable to full cost-recovery.[49] In this section, the chapter examines the power of local authorities to impose user-charges and determine user-charges. It further discusses the power of the national government to approve user-charges, the role of citizens in the determination of user-charges and the raising of revenue through user-charges in practice.

3.1.3.1 Power to impose user-charges and fees

Local authorities have the power to impose user charges on the provision of water and electricity, removal of sewerage and refuse disposal services, and any other services.[50] Unlike urban local authorities, rural local authorities mainly charge consumption fees only in areas where they provide piped water.[51] All local authorities may impose fees in respect of certificates, licences and permits issued as well as on inspections or any 'act' carried out.[52] Urban local authorities have the power to charge fees:

a) for the construction of sidewalks;[53]
b) for construction (or connection) of sewer related infrastructure and services such as the treatment of trade effluent;[54]
c) for the use of its cemeteries, storage facilities and market places;[55] and
d) on the processing of building plans and provision of health, education and maternal services.[56]

It can be observed that local authorities may impose user-charges and fees on a variety of services which they provide. Ideally, this widens the revenue streams available to local

[49] Bahl 1994: 14.
[50] S 218 UCA and s 75 RDCA. See also number 17, Second Schedule, UCA. A local authority may impose charges on owners of stands, lots, premises or other areas, even if the owner is not a user of the services it provides. User-charges on water are categorised into connection fees, water consumption charges and deposit fees. Charges on sewerage removal services are divided into fixed charges, blockage clearance, septic tank emptying and sewerage connection fees. See Pasipanodya *et al* 2000: 174.
[51] In areas where there is no piped water, where boreholes and wells are the sources of water, water-related user-charges are imposed and managed by the benefitting communities.
[52] Number 17 Second Schedule, UCA.
[53] S 159(1) UCA.
[54] S 179 UCA. See also ss 173, 174 and 178 UCA. These provisions of the UCA also apply to rural local authorities. See s 72 RDCA.
[55] Number 12, Second Schedule, UCA.
[56] See the Regional Town and Country Planning Act, the Public Health Act, and the Education Act.

authorities and thus their potential to raise revenue. As discussed in detail below, it is important to note that the potential of user-charges to raise significant also depends on whether local authorities have the right power to determine the user-charges and fees. Such a right creates flexibility by enabling local authorities to adjust tax rates to suit their budgetary requirements or when economic circumstances require.[57] This right is examined in detail the following paragraph.

3.1.1.2 Power to determine user-charges

The extent to which local authorities have autonomy to determine tax rates has implications for the mobilisation of revenue at local level. Thus, in paragraph 6.2.2 of Chapter Two it was submitted that local governments should have the power to determine user-charges and fees.[58] The UCA and RDCA give local authorities some measure of discretion to determine user-charges.[59] Local authorities are required to fix charges, tariffs or deposits only through a resolution supported by a majority of the total membership of the council.[60] They also have the power to fix fees payable in respect of certificates, licences or permits issued, inspections carried out or services rendered.[61] Moreover, they determine fees applicable in the provision of maternal, education and health services.[62] While legislation gives local authorities the power to determine user-charges and fees, the discretion to determine user-charges and fees is limited in a number of ways, which are analysed below.

3.1.1.3 Approval of user-charges by the Minister

In local government areas[63] administered by the council or in such parts of a council area as may be prescribed by the Minister, local authorities may not raise user-charges in respect of any residential accommodation except in the form of a by-law.[64] After independence and in line with its socialist policies, the national government prescribed high density suburbs[65] as other areas where councils may not raise user-charges than in the form of a by-law. As

[57] See Bardhan & Mookherjee 2006: 13, World Bank 2000: 117.
[58] See Eaton & Schroeder 2010: 180.
[59] S 219(1) UCA and s 17(1) RDCA.
[60] S 219(1) UCA and s 17(1) RDCA.
[61] S 219(1)(b) of the UCA.
[62] The determination of education and health fees will be explored in detail below.
[63] See para 3.1.2 of Chapter Four for the definition of local government areas.
[64] S 219(1) UCA and s 17(1) RDCA. The same requirements apply in respect of services provided specifically to or in connection with any residential accommodation.
[65] High density suburbs are inhabited by a majority of poor citizens.

discussed in paragraph 4.3.1.1 of Chapter Six, a by-law may only be binding after it has been approved by the Minister. Thus, while legislation gives local authorities the power to determine user-charges, the Minister has the final decision-making power with regard to the determination of user-charges which applies to local government areas and high density suburbs. Almost three-quarters of the population in urban local authorities reside in high density areas. Local authorities spend a significant portion of their budget providing services in these areas even though they are not allowed to raise user-charges in these areas without the consent of the Minister.

In terms of a directive issued by the national government in May 2010, local authorities may not increase user-charges and fees without the written approval of the Minister.[66] The Minister has further issued directives to local authorities setting ceilings for user-charges and other fees.[67] Hence, whereas the UCA and RDCA give local authorities the power to determine user-charges and fees, the directives have not only given the Minister power to set ceilings but to approve any increment of user-charges and fees.[68] It is submitted that even though the directives may seek to advance equity by ensuring that user-charges do not go beyond the reach of the poor, they undermine the mobilisation of revenue at local level.[69] The powers of the Minister to approve any increments of user-charges and fees may also be used to achieve political ends against the interests of citizens. This claim is supported by Chikulo who argues that the ability of local authorities in the Southern Africa to derive adequate revenue from user-charges is 'constrained by central government restrictions imposed for fear of eroding political support among the urban populace'.[70] It is submitted that the national government should provide intergovernmental grants for the implementation of 'protectionist' policies at the local level, such as delivery of basic services.[71] In the absence of such intergovernmental grants, local authorities should be given some measure of autonomy to determine user-charges and fees so that cost recovery can be achieved.[72]

[66] Ministry of Local Government 'Ministerial Directive on local authority service charges, fees and rates' 2010.
[67] Sachikonye *et al* 2007: 79.
[68] S 219(1) UCA and s 17(1) RDCA.
[69] See Marumahoko & Fessha 2011: 49, Ndlovu *et al* 2006: 10.
[70] Chikulo 2010: 151.
[71] See Marumahoko & Fessha 2011: 49.
[72] See Article 9(3) European Charter of Local Self-Government, Clause 21 Urban Councils Amendment Bill. See also Sachikonye *et al* 2007: 83, Pasipanodya *et al* 2000: 85.

3.1.1.4 Role of citizens in the determination of user-charges

In paragraph 6.1.5 of Chapter Two an argument was made for the participation of citizens in activities which affect their lives such as the determination of user-charges.[73] The UCA and RDCA provide for mechanisms to allow citizens to influence decisions relating to the determination of user-charges. Both urban and rural local authorities are required to give citizens a period of not less than 30 days to make any objections to the proposed tariff before they can implement such a tariff.[74] If objections are made by 30 or more people, the concerned local authority must consider such objections.[75] The issue of consideration of objections was at the centre of *Matopo Indigenous Business Development Association vs Matopo Rural District Council*.[76] The background to the case is that sometime in 2005 the respondent (the council), in terms of section of 76(1) and 96 of the RDCA,[77] published a notice of its intention to increase tariffs by 350-400 per cent. Following the publication of the notice, applicants and other stakeholders objected to the tariff increase. Various meetings were held between the council and the applicant and other stakeholders to resolve the disputes related to the proposed tariffs but the meetings yielded no result. On 1 April 2005, the council held a special full council meeting to consider the objections raised by the applicants, as required by the RDCA.[78] The council resolved to reduce the proposed vehicle licence fees and other tariffs by 50 per cent.

Following the resolution of the council the applicants approached the courts seeking an interdict to prevent the respondent from implementing the new tariffs. Further, they sought an order directing the council to convene a meeting with them to resolve the tariff dispute. The applicants also wanted the notice to increase tariffs to be declared null and void by the court.[79] The court found that, in terms of section 76, when fixing tariffs a council is only required to pass a resolution, publish proposed tariffs and consider objections raised by 30 or more voters. It declared that there is no legal requirement for the council to convene meetings with voters to review proposed tariff increases although that may be necessary to promote

[73] See Zhou & Chilunjika 2013: 234.
[74] S 219(3) UCA and S 76(3) RDCA.
[75] S 219(3) UCA and S 76(3) RDCA.
[76] *Matopo Indigenous Business Development Association vs Matopo Rural District Council Judgement No. HB55/05, Case No. HC 757/05, 30 June 2005*.
[77] Section 96 of the RDCA gives rural local authorities the power to impose levies.
[78] See s 76(3) RDCA.
[79] *Matopo Indigenous Business Development Association vs Matopo Rural District Council*, page 1.

accountability and transparency.[80] The court ruled that the council had complied with the requirements of section 76 and therefore dismissed the application with costs.[81] This judgment highlights that while the participation of citizens in reviewing tariff increases is an important element of local democracy, it is the statutory responsibility of a council to determine tariffs. Thus, a local authority does not have to seek consensus with objectors to proposed tariff increases although such a move may make enforcement of tariffs easier.[82] As stated above, local authorities no longer have the discretion to determine user-charges since the Minister has to approve any increment in user-charges. Under this system, citizen participation in the determination of user-charges at the local level is of little use since the final decision-making power relating to user-charges and fees rests with the Minister and not with the local authority. The 2013 Constitution requires democratic, transparent and accountable government.[83] This in part means that citizens are allowed to play a central role in the determination of user-charges and fees. Such citizen participation in the determination of user-charges will be of no value unless the power of the Minister to approve user-charges and fees is limited to only setting tariffs ceilings and not extend to approving them.

3.1.1.5 'Culture of non-payment of services'

Local authorities are owed large sums of money by consumers of their services. This can be attributed, in part, to a 'culture of non-payment of services' provided by local authorities such as water supply and refuse removal.[84] Citizens fail to pay for services provided as they cannot afford the user-charges due to declining income and rising poverty.[85] On the other hand, citizens who can afford to pay user-charges have been reluctant to settle their bills due to poor service delivery and inaccurate billing.[86] Besides the citizens, some commercial and

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[80] *Matopo Indigenous Business Development Association vs Matopo Rural District Council*, page 4.
[81] *Matopo Indigenous Business Development Association vs Matopo Rural District Council*, page 4.
[82] See *Matopo Indigenous Business Development Association vs Matopo Rural District Council*, page 4.
[83] See ss 3, 264(2)(b) Constitution.
[84] Sachikonye *et al* 2007: 83, Pasipanodya *et al* 2000: 122. Chakaipa 2010: 63, Combined Harare Residents Association 2014: 74. A culture of non-payment of service charges is not unique to Zimbabwe but prevalent in a number of developing countries. For example in South Africa, municipalities continue to face a 'culture of non-payment' mainly by township dwellers, a habit which has origins in the apartheid. See Chikulo 2010: 210. The other challenge is that water infrastructure is dilapidated. A significant number of local authorities have lost revenue from water charges due to burst or leaking water pipes. Large quantities of water are lost during transportation to service users due to leaking water pipes. Other challenges relate to illegal connections and the usage of unmetered water by some residents.
[85] Bland 2010: 4, Ndlovu *et al* 2006: 13.
[86] Coutinho 2010: 74. Maruamahoko & Fessha 2011: 48. Local authorities do not have accurate billing data about service-users. The billing of service-users is highly inconsistent and riddled with irregularities. The lack of accurate data has compromised the ability of local authorities to recover debts. See Chakaipa 2010: 63.

industrial entities have also failed to pay user-charges as they cannot afford due to liquidity crisis being experienced in Zimbabwe at the time of writing. The challenge has been worsened by the fact that the national government and its various agencies owe local authorities huge sums of money in unpaid user-charges.[87] Against this background, user-charges, although contributing significantly to budgets of most urban local authorities, have generated less revenue than they potentially could.

3.1.1.6 The setting of uneconomic user-charges and fees

The setting of uneconomic rates has undermined local revenue mobilisation in many local authorities. User-charges and fees are normally set at sub-economic levels as local authorities are forced to adjust to the demands of the national government and the citizens.[88] There is often pressure on local authorities from different political groupings that use ratepayers' inability to pay high user-charges and fees for political gain. Marumahoko and Fessha point out that when elections approach, there is often political pressure on the local tax administration to relax user-charges and revenue collection in general for political gain.[89] In such scenarios, user-charges and fees are set at very low levels to the extent that, sometimes, revenue collection costs outweigh actual revenue collected.[90] Health and education fees are usually kept beyond economical values as they are normally determined by the national government based on norms and not actual consumption.[91] These fees tend to be fixed and unresponsive to economic pressures. For example, it is argued that fees charged at clinics operated by local authorities 'do not even come close to recovering a quarter of the cost of health drugs in stock'.[92] These core public services are usually subsidised by other local sources of finance. As a result, most local authorities have been unable to implement cost recovery systems in the provision of services.[93] As will be argued in paragraph 4 below, intergovernmental grants are required to finance the provision of these core public services.

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[87] Sachikonye *et al* 2007: 83. See also the Report of the Portfolio Committee on Local Government, Rural and Urban Development 2011: 8.
[88] Jonga & Chirisa 2009: 174, Marumahoko & Fessha 2011: 48, Mushamba 2010: 110.
[89] Jonga & Chirisa 2010: 8. Marumahoko & Fessha 2011: 48.
[90] Zhou & Chilunjika 2013: 43, Coutinho 2010: 74.
[91] Pasipanodya *et al* 2000: 125, 174.
[92] Marumahoko & Fessha 2011: 48.
[93] See Coutinho 2010: 74.

3.1.1.7 Ineffective debt recovery mechanisms

Local authorities have not realised significant revenue from user-charges and fees due to ineffective debt recovery mechanisms. In terms of section 151 of the RDCA and section 281 of the UCA, local authorities have the power to recover debts by instituting legal proceedings in the courts.[94] Efforts by rural local authorities to recover money using this legal route have been undermined by the national government.[95] In terms of Local Government Circular Number 3 of 2010, rural local authorities were directed to desist from approaching the courts and contracting debt collectors to recover unpaid levies.[96] *The Herald* newspaper quoted the Minister as having said: 'We no longer want to hear that there are some councils in this country that attach and sell the property of those who fail to pay their rates and taxes.'[97]

This essentially means that the Minister directed rural local authorities not to exercise their statutory powers. The obvious implication of such a directive is that it has undermined the efficiency and effectiveness of debt collection methods available to local authorities.[98] While such a directive may seek to protect the poor, it has adverse effects on the sustainable delivery of public services. Public services are unlikely to be provided on a sustainable basis without effective cost recovery mechanisms and associated measures to recover debts to raise revenue. Similar implications have resulted out of the directive of the Minister to local authorities regarding writing off debts.

In a directive dated 23 July 2013, the Minister instructed all local authorities to write off debts owed by citizens from February 2009 to 30 June 2013.[99] The Minister justified the directive by the need to 'cushion individual ratepayers from the severe effects of the economic challenges experienced'.[100] The timing of this directive is questionable given the political environment which prevailed when it was issued. The directive was issued a week

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[94] S 151 RDCA and s 281UCA
[95] See Pasipanodya *et al* 2000: 134.
[96] Ministry of Local Government, Rural and Urban Development, Local Government Circular Number 3 of 2010.
[97] *The Herald* 'Hands off defaulters' property, council told' 2012. Instead, the Minister is reported to have directed local authorities to give residents enough time to settle their arrears and to develop innovative approaches to generate revenue.
[98] Pasipanodya *et al* 2000: 134.
[99] Ministry of Local Government 'Directive to write off debts by all local authorities' 2013. This directive was later followed by the directive of 29 August 2013 in which the Minister instructed all local authorities to go public in the broadcast media through national or radio and print media regarding progress in implementing the directive of writing off debts for the benefit of the citizens. See Ministry of Local Government: Implementation of Ministerial directive to all local authorities to write off debts, dated 29 August 2013.
[100] Ministry of Local Government 'Directive to write off debts by all local authorities' 2013.

before the harmonised elections of 31 July 2013. Could there be a link between the timing of the directive and the July 2013 harmonised elections? Are there any hidden agendas, such as mobilising support for ZANU-PF political party, behind the directive? These questions may be answered by examining the legality of the directive.

In terms of section 313 of the UCA, the Minister has the power to issue directives of a 'general character' to urban local authorities if it appears to be in the national interest. It is submitted that the directive to write off debts cannot be said to be of a 'general character' as it did not merely relate to policy but requires local authorities to undertake a specific act, namely writing off debts.[101] In terms of section 155 of the RDCA, if a rural local authority has failed to carry out a statutory duty, the Minister may direct the local authority to take specified action to remedy the situation. Again, this section does not empower the Minister to issue directives to write off debts as rural local authorities had not failed to carry out a statutory duty.[102] Thus, there was no legal basis for the directive to write off debts. The directive had the overall effect of undermining local resource-raising efforts.[103] Hence, as argued in Chapter Eight, the supervisory powers of the Minister should be reformed and exercised with oversight from Parliament. Furthermore, the validity or legality of directives of the Minister should be checked in court especially now that local authorities are a constitutionally recognised tier of government.

This section discussed the raising of revenue at the local level through user-charges and fees. As highlighted in Table 7 below, revenue generated from charges imposed on water supply, refuse removal and sewerage removal constitutes a majority portion of the total revenue generated by most urban local authorities.[104] Unlike urban local authorities, rural local authorities do not derive significant revenue from user-charges because they do not provide a variety of public services where cost recovery can be achieved. For example, the majority of citizens in rural areas do not have piped water. They rely on boreholes and wells. Furthermore, the tax base in most rural areas is poor due to limited commercial or industrial activity.[105] Hence, user-charges are minimal. User-fees imposed on permitting and licensing

[101] Veritas Zimbabwe, Constitutional Watch 37/2003.
[102] Veritas Zimbabwe, Constitutional Watch 37/2003. Under section 133 of the RDCA, rural local authorities may only write off debts in specific circumstances which did not exist when the Minister issued the directive. Even if the circumstances existed, such powers to write off debts can only be exercised by the rural local authority and not the Minister.
[103] See Pasipanodya *et al* 2000: 134.
[104] See Zhou & Chilunjika 2013: 235, Coutinho 2010: 74.
[105] Zhou & Chilunjika 2013: 243, Coutinho 2010: 74, Chikulo 2010: 151.

in rural local authorities also tend to contribute insignificant revenue due to the absence of tax base.[106]

3.1.4 Land development and special levies

Land development levies are imposed by rural local authorities. They can be considered to be synonymous to property rates in urban local authorities. This section discusses the raising of revenue through land development and special levies. Attention is given to the power to levy, determine rates and the raising of revenue in practice through land development levies.

3.1.4.1 Power to impose levies

Rural local authorities may impose land development levies upon all persons who own land in rural areas and all persons who are heads of household within any communal ward of the council.[107] Further, they may impose levies on mining companies, the business community and holders of permits authorising the occupation and use of any portion of rural land.[108] Rural local authorities may impose special levies for recovering expenses incurred (or which will be incurred) in carrying out any development project within the council area.[109] Special levies may be imposed to meet expenses which are of an 'unusual nature', arise from 'unusual circumstances', or arise from 'unequal demand of services provided by the council'.[110] For example, a rural local authority may impose special levies to finance the expansion of infrastructure in a particular area of the council to meet growing demand of a particular public service. Before a rural local authority may impose any special levies, they have to seek the approval of the Minister.[111] Thus, while rural local authorities have discretion with regard to land development levies, in cases of special levies the Minister has the final decision-making power.

3.1.4.2 Right to determine levies

Rural local authorities have the power to determine rates applicable to land development levies and special levies but the Minister may prescribe applicable rates.[112] They may not fix

[106] Marumahoko & Fessha 2011: 48.
[107] S 96(1)(2) RDCA.
[108] S 96(1)(2) RDCA.
[109] S 97(1) RDCA.
[110] S 97(1) RDCA
[111] S 97(1) RDCA. The Minister has the power to direct a rural district council to impose a special rate.
[112] S 96(3)(4) RDCA and s 97(2)(3) RDCA.

different rates in respect of different classes of heads of household without the approval of the Minister.[113] As highlighted in paragraph 3.1.3 above, in 2010 the Minister issued a directive requiring all local authorities to seek approval of the national government before increasing levies, fees and rates.[114] The argument raised above also applies here as rural local authorities lack the autonomy to determine the rates of levies.[115]

In practice, levies tend to generate insignificant revenue due to the concentration of poor residents and limited commercial or industrial activity in rural areas.[116] Limited administrative capacity to levy and collect revenue has also undermined the realisation of significant revenue from the imposition of levies.[117] Accurate information on commercial, mining, residential and agricultural property is yet to be established in most rural local authorities.[118] This has made it difficult for rural local authorities to impose levies on these activities.

3.1.5 Rents and sales of land and buildings

Local authorities generate revenue from selling, renting or leasing land and buildings.[119] A local authority has the power to sell, exchange, lease or permit the use of any of its land.[120] It may also sell, lease or rent buildings.[121] Unlike urban local authorities, rural local authorities are required to seek the approval of the Minister before they can develop any land or buildings for the purposes of generating revenue by renting, leasing or selling.[122] As discussed below, the extent to which local authorities have the power to determine rents and deposits[123] has a bearing on the actual revenue mobilised from this source.

Local authorities may determine rents or deposits which are to be paid on leased land or buildings but such rents and deposits may not be enforced unless approved by the Minister.[124]

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[113] S 96(3)(a) RDCA.
[114] Ministry of Local Government 'Ministerial Directive on local authority service charges, fees and rates' 2010.
[115] Zhou & Chilunjika 2013: 240.
[116] Zhou & Chilunjika 2013: 243, Chikulo 2010: 151.
[117] Zhou & Chilunjika 2013: 240.
[118] Zhou & Chilunjika 2013: 243.
[119] See Coutinho 2010: 76.
[120] S 152(1) UCA and s 86 RDCA. With the approval of the Minister, rural local authorities may develop state land within their jurisdictions.
[121] S 153(2) UCA. See also s 86 RDCA.
[122] S 86(3) RDCA.
[123] Money paid by the lessee to the council to provide some sort of guarantee which is paid back at the end of the leasing period unless the contract is renewed.
[124] S 219(1) UCA. Local authorities are required to publish any proposal to increase rents or deposits and to invite objections to such a proposal for a period not less than 30 days. S 219(2)(3) UCA.

They may fix interest rates applicable to any rents or deposit unpaid after such date as determined by the council.[125] The rate on interest is passed in the form of a by-law, which means that it has to be approved by the Minister before it can be enforced.[126] Thus, local authorities do not have the autonomy to determine rents and deposits as such rents or deposits have to be approved by the Minister before they can be implemented. This has a negative implication on the mobilisation of revenue at the local level.

In practice, revenue mobilised from the renting, leasing and selling of land or buildings contributes insignificantly to budgets of most local authorities. While the absence of autonomy to set rents and deposits may undermine local resource mobilisation, mismanagement and poor business practices have been cited as the main causes behind the failure of rents and deposits to live up to their revenue mobilisation potential.[127] Rents and deposits payable in properties owned by local authorities are normally set far below market value.[128] The report of the Investigation Committee, appointed by the Minister to report on tendering and management of estates by the City of Harare revealed that some senior officials of the City rent council houses and flats, where they pay close to nothing, while renting their mansions at market rates.[129] As a result, revenue raised from rents and deposits is very low. Local authorities, especially urban local authorities, have potential to generate significant revenue from the sale and leasing of land.[130] Cities such as Bulawayo and Harare own a significant number of estates or properties which they rent or lease to generate revenue. Harare City Council, for example, owns around 14 000 properties divided into houses, shops and industrial complexes.[131] Tenants in these properties tend to pay rents which are below market rates. If such properties are rented or leased following market principles, they can generate a substantial amount of revenue. This view is supported by a report of the Investigation Committee which recommended that the City float a public tender to have its

[125] S 219(6) UCA.
[126] S 219(6) UCA.
[127] See *The Herald* 'City urged to rent out properties' 2012, Coutinho 2010: 76.
[128] See *The Herald* 'City urged to rent out properties' 2012, Coutinho 2010: 76.
[129] *The Herald* 'City urged to rent out properties' 2012. Other senior officials even sublet their allocations to third parties.
[130] Although rural authorities are the custodians of rural land, they may not sell such land unless given the permission by the national government. Most rural local authorities do not own buildings. Thus, they may not derive revenue through renting or selling of such buildings.
[131] *The Herald* 'City urged to rent out properties' 2012.

properties valued and then float tenders so that such properties are managed professionally on market-based principles.[132]

3.1.6 Property tax

It was contended in paragraph 2.2.2.1 of Chapter Two that property tax is the 'most appropriate' tax for local governments as services they provide tend to benefit property owners and occupants.[133] It is also argued that although property tax can be a major source of revenue for local government, in some countries it does not produce significant revenue because of the administrative burden involved in collecting it and the fact that it is politically unpopular.[134] As in most countries that have multilevel systems of government, local authorities in Zimbabwe raise some of their revenue from property tax. The raising of revenue through property tax (rate) is examined in this section.

3.1.6.1 Power to impose property rate

Local authorities have the power to impose a general rate on all property within their jurisdictions except on exempted property.[135] Exempted property includes property which is owned by the national government or a local authority;[136] is used exclusively for religious and educational purposes; used as a public institution for aged, mentally or physically handicapped persons; used as a public hospital; used as a public orphanage, cemetery or crematorium and for youth-related activities.[137] In addition, rural local authorities may not impose property rates on mining companies, rural land or any other land that is exempted by law.[138] In addition to the general rate, local authorities may impose a special rate on all rateable property for the purposes of recovering expenses incurred in the execution, maintenance or operation of any works in a portion of a council area which derives benefits from such works.[139] For example, a council may impose a special rate to recover expenses

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[132] See *The Herald* 'City urged to rent out properties' 2012.
[133] See Bahl 1994: 14.
[134] Bahl 1994: 14.
[135] S 272(1) UCA and s 98(1)(a) RDCA. See also s 269 UCA.
[136] S 270(1) UCA and s 98(1)(c) RDCA. Property owned by a local authority can only be exempted from rates if it is less than five hectares in extent and is used for public purposes.
[137] S 272(1) UCA and s 98(1)(a) RDCA. See s 167 UCA.
[138] S 98(1)(f) RDCA.
[139] S 273(1) UCA and S 100(1) RDCA. Section 273(3) of the UCA requires that before any special rate is levied a notice of intention to levy the rate must be served in writing to the owners of the property concerned and placed in three issues of a newspaper. The council can only levy the special rate if within 30 days of the last

related to the erection of a water reservoir which supplies water to a particular potion of the council area. However, a local authority may not levy a special rate on property without the approval of the Minister.[140]

3.1.6.2 Power to determine property rates

The power of local authorities to impose property rates is coupled with the power to determine rates. Local authorities have the power to determine a general rate on all rateable property within their jurisdictions.[141] Property rates are assessed on the valuations as shown in the valuation rolls unless the Minister has given consent to any alternative.[142] The valuation roll is prepared by a valuation officer appointed by a local authority and approved by a valuation board appointed by the Minister.[143] Thus, the Minister has an indirect influence in the formulation of valuation rolls by virtue of his role in appointing members of valuation boards.[144] The Minister has a more direct role to play in the determination of property rates which are imposed in high density suburbs.

Even though supplementary charges which are imposed in high density areas are by definition property tax, section 219 of the UCA treats them as charges which have to be approved by the Minister before they may be enforced. The Minister is required to authenticate his or her approval by gazetting the increase or adjustments through a statutory instrument.[145] As mentioned above, there is a ministerial directive which states that no local authority may increase user-charges and rates without the approval of the Minister.[146] While the UCA limits the powers of the Minister to approving only rates applicable to high density areas, this directive has broadened the requirement of approval of rates to include areas other than high density areas. Hence, local authorities do not have the autonomy to determine

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publication of the notice there is no objection to the special rate. If there are any objections and the council seeks to proceed, the consent of the Minister on the special rate is required. S 273(4) UCA.

[140] S 273(4) UCA and s 100(3) RDCA.

[141] See Part XVIII and UCA. This part of the UCA and 266-78 of the UCA also applies to rural local authorities with reference to valuation of property. See s 101 RDCA.

[142] S 101 RDCA S 272(7)(8) UCA, s 99(4)(6) RDCA and s 278 UCA .

[143] S 241 UCA. Section 247 of the UCA requires all local authorities to update their general valuation rolls any time between three and ten years.

[144] S 242 UCA.

[145] 219(1) UCA. The Minister has been accused of causing revenue loss at local level by delaying gazetting the statutory instrument. As a result, some local authorities usually go on to implement new rates without the statutory instruments in a bid to minimise the impact of the delays such as revenue loss. See Pasipanodya *et al* 2000: 193.

[146] Ministry of Local Government, Rural and Urban Development 'Ministerial Directive on Local Authority service charges, fees and rates' 2010.

property rates applicable not only to high density areas but also other parts of the council area. This has undermined the local resource mobilisation effort. It is submitted that local authorities should be given autonomy to determine property rates while the national government can retain the power to set ceilings applicable to property rates.[147]

3.1.6.3 The practice of raising of revenue through property rates

Property rates are an important source of revenue for most urban local authorities, especially city and municipal councils.[148] Rural local authorities, like most of their counterparts in the Southern African region, do not generate substantial revenue from property rates due to absence of a high concentration of rateable property in their jurisdictions.[149] In Zimbabwe, the ability of local authorities to derive adequate revenue from property rates has been constrained by a number of factors, chief amongst them administrative complexities, fear of eroding political support and the large number of properties exempted from rates.[150]

A significant number of local authorities do not have a comprehensive valuation roll of all properties within their jurisdictions. They fail to set up rating zones and rating units to be assigned to residential properties for rating purposes or to regularly update their valuation roll.[151] This can be attributed in part to unavailability of skilled personnel to assess properties.[152] As a result, some of the properties which should be subjected to rates are often excluded, properties are otherwise under-rated because there are no rating zones, or properties are classified in the wrong zone. Hence, property rates have failed to raise significant revenue despite their huge potential to do so.

The exemption of a large number of national government properties from property rates has diminished revenue raised from property rates in both urban and rural local authorities.[153] Some of these properties generate income and this makes it unsound to exempt them from property rates. Rural local authorities are the worst affected by the exemption as they have

[147] See Article 9(3) European Charter of Local Self-Government, Clause 9 Urban Councils Amendment Bil. See also Combined Harare Residents Association 2014: 74.
[148] Coutinho 2010: 73, Zhou & Chilunjika 2013: 235.
[149] See Zhou & Chilunjika 2013: 243, Chikulo 2010: 151.
[150] See Chikulo 2010: 151, Combined Harare Residents Association 2014: 74. In practice, it is difficult for local authorities to enforce payment of property rates especially from the poor and powerful. Zhou & Chilunjika 2013: 235.
[151] Marumahoko & Fessha 2011: 48, Mushamba 2010: 110, Coutinho 2010: 73.
[152] Zhou & Chilunjika 2013: 235.
[153] Coutinho 2010: 73.

vast tracts of land owned by the state.[154] Urban local authorities are also host to a number of properties of the national government. An estimated average of between 5 to 7 per cent is lost in potential revenue due this exemption, in urban local authorities alone.[155] The national government used to compensate local authorities for potential loss of revenue through a grant, but it has defaulted on the payment of this grant.[156] The 1984 commission of enquiry into taxation stressed the need to abolish the exemption of property owned by the national government from property rates.[157] The Commission recommended that the national government should pay all service charges and only 50 per cent of the rateable value of its properties.[158] This chapter concurs with this recommendation of the commission as a way to increase the revenue mobilisation potential of local authorities.

3.1.7 Motor vehicle taxes

It was contended in paragraph 6.2.1.1 of Chapter Two that local governments should be assigned taxes which may not be easily exported between jurisdictions. Motor vehicle taxes are suitable taxes for local governments because they meet the test of not being easily exported and being administratively feasible.[159] These include taxes on motor fuels, restricted licenses, unrestricted licences, tolls and parking taxes. In Zimbabwe, local authorities do not have the power to impose vehicle taxes, with the exception of parking fees and traffic fines.[160] Vehicle taxes, which include licence fees and vehicle ownership fees, are national government taxes. Thus, the national government determines the tax rates for these vehicle-related taxes. Since independence the position has been that local authorities collect vehicle taxes on behalf of the national government. After collection, local authorities are required to remit the revenue to the national government and retain five per cent of the total revenue to cover administration fees involved in the collection of the vehicle taxes.[161] This arrangement has since been abolished as the national government through the Zimbabwe National Roads Agency is collecting all vehicle taxes. Local authorities generate revenue from parking

[154] Pasipanodya *et al* 2000: 184. Further, when state land is sold by the central government, the proceeds go to the central government and subnational governments are only given development fees, if any.
[155] Coutinho 2010: 73. Marumahoko & Fessha 2011: 48.
[156] Pasipanodya *et al* 2000: 123, 192. The grant was calculated at a rate of 66 per cent of the rateable value.
[157] Pasipanodya *et al* 2000: 192.
[158] Pasipanodya *et al* 2000: 192.
[159] Bahl 1994: 13.
[160] See Coutinho 2010: 75.
[161] Pasipanodya *et al* 2000: 121.

fees.[162] They also mobilise revenue from traffic fines imposed in terms of the Municipal Traffic Enforcement Act.[163] However, local authorities do not have the autonomy to determine traffic fines as they are fixed by the national government.[164] The role of the national government has had the overall effect of undermining resource mobilisation by local authorities.

3.1.8 Other sources of revenue

This section discusses other sources of revenue for local authorities. Attention is given to the mobilisation of revenue through income-generating projects and proceeds from the exploitation of national resources and investments.

3.1.8.1 Income-generating projects

The UCA and RDCA empower local authorities to engage in any commercial, industrial, agricultural or other activity for the purpose of raising revenue.[165] They may conduct liquor and *mahewu*[166] undertakings for the same purpose.[167] Some local authorities have ventured into brick moulding and farming to generate income and supplement their main sources of revenue.[168] The approval of the Minister is required before a local authority engages in any commercial, industrial and agricultural activity for the purposes of raising revenue. While the powers of the Minister to approve income-generating projects may be necessary, for oversight reasons it may undermine investment and innovation at the local level. Thus, it is submitted that such a form of supervision should be reformed so that local authorities have discretion to make decisions relating to income-generating projects.[169] The role of the Minister should be limited to regulating and monitoring their financial affairs. In practice, the raising of revenue by operating liquor undertakings is mainly carried out by city and municipal councils which have the capacity to operate such undertakings. Liquor trading entities tend not to generate profit in most local authorities and are in fact subsidised by

[162] S 189, s 190 UCA.
[163] Municipal Traffic Enforcement Act [*Chapter 29: 10*].
[164] S 9 Municipal Traffic Enforcement Act.
[165] S 221(1) UCA and s 80 RDCA. See Feltoe 2006: 134.
[166] See Number 15, Second Schedule, UCA. *Mahewu* is a traditional African drink.
[167] See Number 14, Second Schedule, UCA.
[168] Coutinho 2010: 76.
[169] See Clause 22 Urban Councils Amendment Bill.

revenue from other sources.[170] Some of the reasons cited for the poor performance of liquor trading entities are mismanagement, corruption and poor business practices.[171] This has led to most local authorities abandoning liquor trading operations.

3.1.8.2 Proceeds from natural resources

Some local authorities derive revenue from proceeds connected to the exploitation of natural resources such as minerals, wildlife, woodlands, sand and rocks. Natural resources are often exploited by private individuals and corporations while local authorities impose royalties or permit fees for their exploitation.[172] The most common royalties are royalties on minerals, sand extraction and hunting concessions. Proceeds from natural resources are an important source of revenue for some rural local authorities given that most of the country's natural resources are found in their areas of jurisdiction.[173] It is submitted that there is need for the development of a clear legislative framework to govern the imposition of royalties and permit fees by local authorities on the exploitation of natural resources within their jurisdictions. This is not only necessary to promote transparency as required by the 2013 Constitution,[174] but also to improve the capacity of local authorities to generate revenue from this source.

3.1.8.3 Investment

Local authorities may invest any surplus funds.[175] Despite having the power to invest, very few local authorities, if any, have managed to do so since 2000. This can be attributed to the unstable economic environment which made it difficult for local authorities to generate any surplus funds.[176] In practice, local authorities are actually failing to generate sufficient revenue to meet their recurrent expenditure.

Table below provides a summary of the main sources of revenue of local authorities. It uses the proposed 2014 estimates of revenue of the City of Harare to show the significance of each tax or source of revenue. The table shows that charges on water supply are the main source of

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[170] See Coutinho 2010: 76, Phelps 1997: 19. The City of Harare has since stopped to operate *Rufaro Marketing*, a beer trading entity, as it was not making any profit. See *The Herald* 'City urged to rent out properties' 2012.
[171] See Coutinho 2010: 76.
[172] Coutinho 2010: 76.
[173] Coutinho 2010: 76.
[174] See s 264(2)(b) Constitution.
[175] See s 131(1) UCA.
[176] See Bland 2010: 2, Centre for Peace Initiatives in Africa 2005: 16.

revenue for the City of Harare.[177] In 2014, water charges were expected to contribute about 39.3 per cent towards revenue of the City. Water charges are followed by property rates and refuse removal. Welfare services are expected to contribute the least amount of revenue of around 0.21 per cent of the total revenue expected to be mobilised. For rural local authorities, the main sources of revenue are the land development levy, unit tax and land sales.[178]

Table 7: Estimates of revenue of the City of Harare

Source	Amount-US$ (millions)
Property	102.0
Refuse collection	23.3
Welfare	0.6
Zinara and Billboards	4.0
City Architect	3.6
Clamping and towing	5.4
Health fees	9.9
Housing: Rentals, Leases and Markets	11.0
Harare Water	108.0
Parks and Cemeteries	0.8
Metropolitan Police	1.6
Education	2.7
Estates	2.7
Other	0.8
Total	274.6

Source: City of Harare, 2014 Budget Speech and Proposals 2014: 12.

This section examined the revenue-raising powers of local authorities. It was contended that although local authorities have revenue-raising powers, they have not been able to raise sufficient revenue to deliver on their functions.[179] Such failure can be attributed to the fact

[177] This also applies to most urban local authorities.
[178] See Chakaipa 2010: 63, Coutinho 2010: 80. The contribution of the land development levies is now limited, given that some components of the levy have been recentralised. People who own land, particularly resettled farmers, are now required to pay land levies to the Ministry of Lands.
[179] Zimbabwe Institute 2005: 19, Coutinho 2010: 85.

that the revenue-raising powers of local authorities are not wide enough to mobilise sufficient revenue.[180] It was also observed that the power of the national government to approve tax rates has also undermined the local resource-raising effort. As highlighted above, the 2013 Constitution requires each local authority to have a 'sound financial base' so as to ensure that it is in a position to deliver on its mandate and development obligations.[181] To establish that 'sound financial base' the chapter recommends that the national government should decentralise more taxing powers.[182] Granting local authorities access to a variety of revenue streams will enable them to finance their expenditure obligations. Furthermore, local authorities should have the authority to determine tax rates, user-charges and fees so that they have the discretion to adjust them in response to economic and social developments.[183] The supervisory powers which allow the Minister to prevent local authorities from recovering debts should be abolished. It was observed that such powers have been used to the detriment of the local resource-raising effort. Revenue raised from the sources discussed in this section can be complemented by borrowing, especially to finance capital development projects, as discussed below.

3.2 Borrowing powers

There is a growing demand for new and upgraded public infrastructure in Zimbabwe, especially in urban areas due to the combined effect of urbanisation and depleted infrastructure. Traditional sources of funding public infrastructure at local level, funds from the national government and donors, have failed to meet the ever-expanding demand for infrastructural investment.[184] As a result, the question of how local authorities can gain access to an expanded pool of financial resources to finance infrastructure development has gained more prominence.[185] Borrowing has emerged as one of the alternatives to the financing of capital projects. As argued in paragraph 6.2.1.2 of Chapter Two, subnational governments which have the capacity to repay loans should be allowed to borrow money to finance capital

[180] See Chikulo 2010: 150. The ability of local authorities to collect and administer revenue has also been adversely affected by the lack of capacity, especially in rural local authorities. A significant number of rural local authorities do not have the skilled personnel and administrative machinery to collect service charges, taxes, tariffs and levies. See Zhou & Chilunjika 2013: 240, Zimbabwe Institute 2005: 20.
[181] S 264(2)(f) Constitution.
[182] See Sims 2013: 24, Coutinho 2010: 85, Muchadenyika 2014: 138.
[183] See Sims 2013: 24, Coutinho 2010: 85, Muchadenyika 2014: 138.
[184] Phelps 1997: ix.
[185] See Phelps 1997: ix.

projects.[186] The advantage of financing capital projects from loans is that capital assets are long-lived and therefore ought to be financed by bonds whose maturity approximately matches the asset life.[187] Allowing larger subnational governments to borrow money may also free up grant monies for use in subsidising the budgets of poorer subnational governments. However, it was also stressed that borrowing at subnational level must be regulated so as to minimise unintended effects on macro-economic stability which may be caused by uncontrolled borrowing.[188] This section analyses the mobilisation of resources through borrowing at the local level. Attention is given to the constitutional and statutory frameworks for borrowing as well as the practice of borrowing money by local authorities.

3.2.1 Constitutional and statutory framework

Borrowing by the government at all levels is regulated by the Constitution. The Constitution directs Parliament to enact a law setting the limits on state borrowing, public debt and state guarantees.[189] It states that limits set by Parliament on borrowing and public debt may not be exceeded without the authority of the National Assembly.[190] Parliament is directed to enact a law prescribing 'terms and conditions under which the Government may guarantee loans'.[191] The Constitution further requires the Minister responsible for finance to report to Parliament on the performance of loans raised and guaranteed by the 'State' at least twice a year.[192] As contended in paragraph 5.3 of Chapter Two, the guaranteeing of subnational loans by the national government could have negative effects on macro-economic stability in cases where subnational governments fail to repay loans. Instead, it was contended that the national government should implement a hard budget constraint and ensure disciplined financial management at subnational level.[193] Besides the Constitution, borrowing by local authorities is regulated by the UCA and RDCA. These Acts make provision for two forms of borrowing, namely long-term and short-term borrowing.

[186] Larger local governments, such as the City of Harare and Bulawayo, require capital investment to adequately meet demands for water, power, sanitation, roads and other infrastructure. See Phelps 1997: ix.
[187] Bahl 1999: 14.
[188] McCarten 2003 cited in Rodrígues-Pose & Gill 2005: 5.
[189] S 300(1) Constitution.
[190] See s 300(2) Constitution.
[191] S 300(2) Constitution.
[192] S 300(1(c) Constitution.
[193] See Eaton & Schroeder 2010: 182; Bahl 1999: 5, 27; Phelps 1997: xi.

3.2.2 Long-term borrowing

Local authorities may borrow money on a long-term basis to finance the acquisition or construction of permanent works, acquisition of immovable property, making of advances permitted by legislation and payment of compensation.[194] Further, they may borrow money to liquidate the principal monies owing on account of any previous loan; provide relief of 'general distress occasioned by some calamity' within the jurisdiction of the local authority; or to acquire plants, equipment and vehicles, among other related assets.[195] The sources and procedure of long-term borrowing are analysed below.

3.2.2.1 Sources

A local authority may borrow money from the national government, a pension fund,[196] a municipal provident fund, municipal medical aid fund, or another local authority.[197] They may raise money by issuing stock, bonds, debentures or bills or from any other sources.[198] Cities and municipalities may source funds by issuing municipal bonds in the 'open market' although very few have done so since independence.[199] Local authorities may raise funds from building societies specifically to finance housing-related infrastructure and community facilities, under the Building Societies Act.[200]

3.2.2.2 Procedure

When borrowing money, local authorities are required to follow a certain procedure, which is depicted in figure 19 below.

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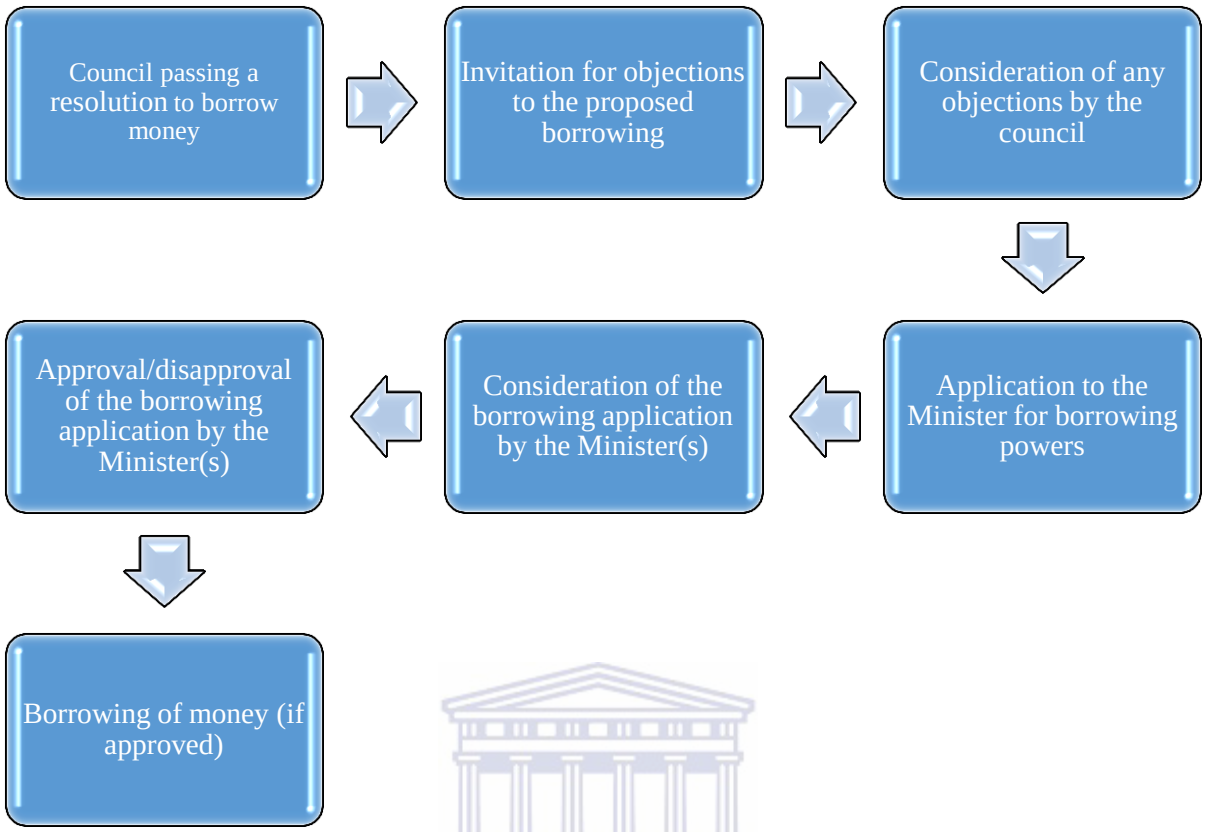
[194] S 290(1) UCA.
[195] S 290(1) UCA.
[196] For example, the Local Authorities Pension Fund (LAPF) serves as the pension fund of a significant number of local authorities. The LAPF makes direct loans to local authorities and also buys the bonds of local authorities.
[197] S 290(5)(a) UCA.
[198] S 290(5)(b) UCA.
[199] Phelps 1997: 14.
[200] Phelps 1997: 15. This source has so far been under-utilised by local authorities.

Figure 19: Borrowing procedure



As shown by the diagram above, a local authority may not borrow money unless it has passed a resolution supported by a majority of the total membership of the council and the mayor or chairperson has not exercised a casting vote.[201] After a resolution has been passed, the local authority concerned is required to give notice stating the intended purposes for which monies are to be borrowed and the amount to be borrowed.[202] In addition, the local authority must invite objections (comments) to the proposed borrowing and ensure that the copies of the borrowing proposal are available at its offices.[203] After considering any objections made and passing a resolution, a council may then apply to the Minister for the authority to borrow money. When applying for borrowing powers, a local authority is required to attach a copy of the objections made and its response to the objections.[204] As discussed below, the Minister may approve or disapprove the application for borrowing powers.

[201] S 291(2)(a) UCA.
[202] S 290(3)(a)(i) UCA.
[203] S290(3)(a)(b) UCA. In particular, the subnational government should ensure that information relating to the borrowing proposal, as requested by the ratepayers association and citizens, is made available. A period of 30 days should be given to the citizens for any objections they may wish to make.
[204] S 290(3)(c)(d) UCA.

3.2.2.3 Approval of borrowing powers

Local authorities may not borrow money on a long-term basis unless the Minister has granted authority to borrow money.[205] If a local authority seeks to raise money by issuing stock, bonds, debentures or bills or from any other sources, it has to seek not only the approval of the Minister but also of the Minister responsible for finance.[206] In such a case, the Minister of Finance exercises the final decision-making powers relating to the granting of borrowing powers. The Minister(s) may approve the project in whole or in part and grant the local authority the authority to borrow money applied for.[207] The Minister may also grant authority to borrow money applied for, either in whole or in part, and may impose conditions including limiting the period of validity of borrowing authority.[208] An application for borrowing powers is evaluated on set criteria. Some of the key elements of the criteria include: whether a council passed a resolution to borrow; if local authority advertised the intention to borrow; if comments made by the public on the proposed borrowing were considered by the council; and if the local authority has audited financial statements.[209] Other debt obligations and the financial viability of the local authority are also considered.[210] It is submitted that the criteria provides a fair assessment of the status of the local authorities and its ability to repay the loan.

3.3.3 Short-term borrowing

Local authorities may borrow money on a short-term basis to finance recurrent expenditure such as salaries. Short-term borrowing is undertaken by means of bank overdraft or short-term loans, or both, for the purpose of temporary financial accommodation.[211] Money borrowed by means of a bank overdraft or short-term loans may not exceed the aggregate of the income of the local authority in the preceding financial year from rates unless the

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[205] 290(2)(c) UCA.
[206] S 290(5)(b) UCA.
[207] S 290(4) UCA.
[208] S 290(4) UCA.
[209] Ministry of Local Government 'Evaluation criteria for borrowing'.
[210] Ministry of Local Government 'Evaluation criteria for borrowing'. Other elements are whether: key administrative positions (town clerk and treasurer) are filled; there is a debt recovery programme in place; the project for which the loan is required appears in the council budget and in the Council Development Plan; the local authority has capacity to implement the project for which the funds are being borrowed; the application for borrowing powers is accompanied by a detailed project proposal; the local authority operates a separate Development Account into which the funds will be deposited; and the status of the council in relation to its debtors, creditors and employment costs.
[211] S 291 UCA. Overdraft accounts or lines of credit are mostly accessed from commercial banks on corporate interest rates applicable to various bank accounts, usually of 30-90 days. See Phelps 1997: 16.

approval of the Minister for the borrowing of the amount in excess of that figure has been granted.[212] Local authorities are not authorised to undertake short-term borrowing for the purposes of financing capital expenditure unless the Minister has authorised such borrowing by granting borrowing powers.[213] The ability of local authorities to undertake short-term borrowing is usually dependent on the credit worthiness of a local authority and the security collateral a local authority can offer.[214] Short-term borrowing to bridge finance gaps through bank overdrafts has generally been available to most local authorities.[215] Coutinho claims that some local authorities have undertaken short-term borrowing without seeking the necessary approval from the national government. In such cases, it is submitted that legislation should provide for stronger penalties, including dismissal of concerned officials given that borrowing has significant implications on the financial positions of a local authority and therefore its ability to deliver services.

3.3.4 The spending of borrowed funds

After securing the borrowing authority[216] and subsequent loan, local authorities are required to spend borrowed funds solely on the project for which the funds were borrowed. If such borrowed funds are not immediately required for that project, the local authority concerned is allowed to invest the money.[217] In cases of illegal borrowing,[218] all councillors who were present when the resolution to borrow money was passed and who did not record their dissent or councillors who purported to authorise the borrowing, are liable to repay the borrowed money with interest.[219] This provision is essential to discourage unauthorised borrowing by local authorities.

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[212] S 291(i) UCA.
[213] S 219 UCA.
[214] Pasipanodya *et al* 2000: 197.
[215] See Coutinho 2010: 82.
[216] S 290(8) of the UCA empowers the Minister to cancel borrowing authority if the local authority concerned fails to utilise the borrowing powers. The Minister is required to give 12 months' notice of his intention to cancel the borrowing powers.
[217] S 290(6)(a) UCA. See also s 302 UCA. If the borrowed money is not expended in full on the project for which it was borrowed, local authorities are required 'to apply the unexpended option to the reduction of the original loan or advance; or any other purpose for which the council has borrowing power; or any other purpose approved by the Minister'. See s 290(6)(b) UCA.
[218] Illegal borrowing occurs when a local authority does not follow the borrowing procedure discussed above when borrowing money.
[219] S 294 UCA. The exception is a councillor who can prove that he/she did not know of the contravention or who can prove that his/her lack of knowledge was not the result of a failure on his part to exercise reasonable care in the matter.

3.3.5 Borrowing in practice

3.3.5.1 Loans from the national government

From independence to around 2000, both urban and rural local authorities relied more on the national government than the market for loans to finance capital projects. The national government, through the Public Sector Investment Programme (PSIP), allowed local authorities to access concessionary interest-bearing loans.[220] Funds available under the PSIP however have drastically decreased since 2003 due to the economic and political meltdown in Zimbabwe.[221] There is a lack of predictability and transparency in the determination and allocation of funds to local authorities under the PSIP.[222] This has also brought into question the equitable allocation of these funds to local authorities. Table 8 below shows funds which were allocated to some local authorities by the third quarter budget performance period ending 30 September 2011. As shown in the table, some high category local authorities (cities and municipalities), Chitungwiza and Masvingo, which have higher populations, received US$ 650 000 and US $ 300 000, respectively; whereas Ruwa (a local board), with less than a quarter of the population of Chitungwiza, received US$ 2 000 000. The basis upon which benefitting local authorities were identified is not clear, neither is the actual allocation to each individual local authority.[223]

Table 8: PSIP allocations by the end of the third-quarter budget performance (period ending 30 September 2011)

Local Authority	Amount (US $)
Mutoko Rural District Council	560 000
Chiredzi Town Council	150 000
Chitungwiza Municipal Council	650 000
Chegutu Municipal Council	550 000
Ruwa Local Board	2000 000
City of Harare	2000 000
Gokwe Town council	375 000
Tongogara Rural District Council	245 000

[220] See Coutinho 2010: 81.
[221] See Mushamba 2010: 111.
[222] See Coutinho 2010: 81, 85; Mushamba 2010: 111.
[223] See Portfolio Committee on Local Government, Rural and Urban Development 2011: 9.

Chinhoyi Municipal Council	1500 000
Gwanda Rural District Council	720 000
Chipinge Rural District Council	580 000
City of Bulawayo	2000 000
City of Masvingo	300 000
Murehwa Rural District Council	450 000
Mutasa Rural District Council	200 000
Runde Rural District Council	280 000
Chivi Rural District Council	450 000
City of Gweru	1000 000
City of Mutare	1000 000
Redcliff Town Council	550 000
Rusape Town Council	600 000
Total	16 160 000

Source: Portfolio Committee on Local Government, Rural and Urban Development 2011: 7.[224]

The Portfolio Committee on Local Government, Rural and Urban Development noted with concern the absence of transparency and equitability in the PSIP allocations.[225] The committee recommended that there is a need for a fair allocation and distribution of funds to local authorities.[226] In particular, the committee highlighted that, among other factors, demographic consideration should inform the allocation of these funds to local authorities.[227]

Between 2000 and 2005, the Reserve Bank of Zimbabwe availed itself of the Productive Sector Finance (PSF). Like the PSIP, the PSF allowed local authorities to access loans from the national government at friendly rates.[228] To qualify for the funds under the PSF, local authorities had to meet stringent conditions including up-to-date budgets, appropriate governance policy and management structures.[229] The funds made available under this facility were largely insufficient to cover the large number of local authorities in need of such funds. A number of local authorities have found it difficult to settle loans borrowed from the

[224] Portfolio Committee on Local Government, Rural and Urban Development 2011: 7.
[225] Portfolio Committee on Local Government, Rural and Urban Development 2011: 9.
[226] Portfolio Committee on Local Government, Rural and Urban Development 2011: 9.
[227] Portfolio Committee on Local Government, Rural and Urban Development 2011: 9.
[228] Zimbabwe Institute 2005: 20, Coutinho 2010: 81.
[229] Zimbabwe Institute 2005: 20.

national government.[230] The primary reason for this is the dwindling subnational resources which has made it difficult for local authorities to service loans while delivering on their day-to-day service delivery mandate. As of 2000, most local authorities have accrued huge debts to the national government.[231]

3.3.5.2 Loans from the financial market

Since independence in 1980, no rural local authority has raised funds by issuing securities into the capital market because of the national government policy which restricts them from doing so. Up to 1997, the cities of Harare and Bulawayo were the only local authorities which raised funds by issuing securities (bonds) into the capital market. For example, the City of Harare issued municipal bonds from the capital markets amounting to Z$481.5 million as of 30 June 1997.[232] Unlike loans sourced from the national government, local authorities seem to be more willing to service loans acquired from the financial market.[233] There seems to be more of a culture of compliance with the terms and conditions of loans secured from the financial market than with the terms and conditions of loans secured from the national government. This could be attributed to the advantage which the private sector tends to have over the national government in monitoring and enforcing conditions of loans. Between 2000 and 2008, urban local authorities were not able to borrow funds from the market. The main reason behind the inability was that most local authorities were not creditworthy due to diminished revenue mobilisation capacity.[234] Further, Zimbabwe was considered to be an unfavourable destination to lend money due to the highly unstable political and economic environment.

3.3.5.3 Loans from the international monetary institutions and other countries

Few local authorities have managed to access funds from international monetary institutions, which usually come through the national government.[235] Monetary institutions such as the World Bank and the African Development Bank have financed a number of infrastructural-

[230] See Coutinho 2010: 81.
[231] See Pasipanodya *et al* 2000: 131.
[232] Pasipanodya *et al* 2000: 128.
[233] Pasipanodya *et al* 2000: 131.
[234] Ndlovu *et al* 2006: 9. Creditworthy subnational governments mean those subnational governments that have in place sound financial management systems as well as sustainable and predictable sources of revenue. Such subnational governments have the capability to repay borrowed loans.
[235] See Coutinho 2010: 81.

related projects especially in the period before the economic meltdown in 2000. For example, the World Bank supported the Urban I project under Loan No. 2445-zim, which was implemented between 1984 and 1989.[236] Under this loan facility, the cities of Harare and Mutare and the town councils of Marondera and Masvingo accessed a total of US$95 million. The money was used to service about 18 185 residential plots in these local authorities.[237] In 2013, the City of Harare secured a loan amounting to US$ 144 000 000 from the Exim Bank of China for the purposes of rehabilitating its water and sewerage treatment plants.[238] As discussed below, local authorities have faced various obstacles in trying to access money on the financial market.

*3.3.*6 Obstacles to accessing money on the financial market

Intervention by the national government into subnational affairs, while necessary, may undermine the ability of local governments to access funds from the financial market. In this section the possible implications of the powers of the national government to approve tariffs, reverse (or suspend, rescind) decisions of local authorities and to abolish local authorities are examined.

3.6.6.1 Approval of tariffs

As discussed above, local authorities may not increase user-charges, rents and rates without the approval of the Minister. This requirement inserts uncertainty into the revenue-raising process at local level.[239] It increases the real risk of a municipal investment by the private sector.[240] As a result, the private sector is likely to be reluctant to lend funds to local authorities. As argued above, the 'approval requirement' has to be removed if the chances of local authorities to access funds on the financial market are to be improved. In other words, broader revenue-raising powers will need to be decentralised to local authorities so that tariffs are determined that are in line with market forces.[241]

[236] Pasipanodya *et al* 2000: 79. See Coutinho 2010: 81.
[237] Pasipanodya *et al* 2000: 79.
[238] City of Harare '2014 Budget Speech and Proposals' pg 8.
[239] Phelps 1997: 26. See Coutinho 2010: 82.
[240] Phelps 1997: 26, Coutinho 2010: 82.
[241] Pasipanodya *et al* 2000: 85, Phelps 1997: 26.

3.6.6.2 Abolition of local authorities and reversal or suspension of resolutions

The ability of local authorities to borrow money is highly dependent on their creditworthiness. The creditworthiness of local authorities is adversely affected by provisions of the UCA and RDCA that give the President power to abolish or alter the boundaries of a local authority at any time.[242] Moreover, section 314 of the UCA authorises the Minister to reverse, suspend or rescind resolutions and decisions of the council. It is submitted that these powers of the national government create uncertainty in terms of the sustainability of a local authority and the security of the monies that will have been borrowed.[243] For instance, decisions taken by local authority to secure a loan can be rescinded by the Minister in terms of the powers bestowed on him/her. Hence, the private sector is likely to be reluctant to lend money to local authorities under the current regulatory regime.[244] It is submitted that local authorities require greater autonomy which will allow them to make the financial commitments that investors and other private partners require when lending funds.[245] As for the abolition of local authorities, it is suggested that legislation should provide for mechanisms to allow a local authority to justify its existence such as a requirement for consultation.

3.6.6.3 Non-payment of services

The ability of local authorities to access funds on the financial market may be affected the 'culture of non-payment' of services. As discussed above, a significant number of citizens have boycotted the payment of user-charges due to their inability to pay, while others have cited poor service delivery. As a result, most local authorities are owed large sums of money by service consumers. Rates boycotts and non-payment of services in general, have been found to seriously undermine the creditworthiness of local authorities.[246] As observed above, efforts by local authorities to recover such debts are met with strong resistance from the national government, either by directing local authorities to write off debts or not to attach properties of defaulters. Such interventions increase the risk to lenders who may want to lend

[242] Pasipanodya *et al* 2000: 197. See s 8 RDCA and s 4 UCA.
[243] Pasipanodya *et al* 2000: 197.
[244] See Coutinho 2010: 82.
[245] Phelps 1997: 26.
[246] Phelps 1997: 35.

money to local authorities.[247] Consequently, this reduces the number of lenders who are willing to lend money to local authorities.

This section discussed the mobilisation of revenue by local authorities through borrowing. It was observed that although local authorities may borrow money there are a number of obstacles which have made them financially 'unattractive' to lenders. These include approval of tariffs by the national government, the power of the national government to abolish a local government unit at any time, the power of the national government to reverse or suspend decisions of local authorities and non-payment of user-charges. While recognising the importance of the supervisory role of the national government over the use of borrowing powers, it is submitted that local authorities should be given the freedom to borrow money from the national and international capital market within the confines of national legislation.[248] National regulation is particularly important given the volatile economic environment being experienced in Zimbabwe since 2000.[249] It was also argued that even though the Constitution allows the national government to guarantee subnational loans, the national government is discouraged from doing so as that could have negative repercussions on macro-economic stability when subnational governments fails to repay borrowed funds.[250]

Having discussed the resource-raising powers of local authorities, the following section will examine local expenditure.

3.3 Local expenditure

The decentralisation of resource-raising powers by itself is unlikely to be enough for subnational governments to assist in the realisation of development, democracy and sustainable peace. It was contended in paragraph 6.2.4 of Chapter Two that, in addition to resource-raising powers, subnational governments should be given the power to spend revenue.[251] However, it was argued that the national government should retain the power to set expenditure frameworks to influence local spending to achieve national goals such as equity. It was further argued that citizens should be actively involved in the determination of

[247] Phelps 1997: 35. See Coutinho 2010: 82.
[248] See Article 9(8) European Charter of Local Self-Government. See also Combined Harare Residents Association 2014: 76.
[249] See UN-Habitat 2007: 10.
[250] See para 5.3 of Chapter Two.
[251] Marumahoko & Fessha 2011: 51.

expenditure priorities at subnational level, for example, in the formulation of budgets.[252] Local expenditure will be examined in this section with specific focus on local budgets, budget autonomy, local expenditure in practice and the challenge of 'unfunded mandates'.

3.3.1 The budget

The budget is the main instrument through which local authorities deliver on their responsibilities. It is a financial plan which shows 'how government resources will be generated and used over the fiscal period'. [253] At local level, the budget is a key instrument for promoting both local and national objectives, strategies and programs.[254] Given the importance of the budget in the realisation of local and national goals, the budget-making process will be examined in detail in this section.

3.1.1.1 Formulation of budgets

Before the end of each financial year,[255] the finance committee of an urban local authority is required to formulate estimates of the income and expenditure on revenue and capital accounts for the next financial year.[256] In rural local authorities, every committee of the council prepares detailed estimates of income and expenditure on revenue and capital accounts for its functional area.[257] It is then required to submit the estimates to the finance committee which in turn presents the estimates to the council for approval.[258] As discussed in detail below, it is submitted that it may be necessary for legislation to make provision for uniform budget formulation procedures in both rural and urban local authorities to allow easier supervision of local authorities, among other advantages. Local authorities may formulate supplementary budgets to cater for unforeseen expenditure and economic developments.[259] A supplementary budget is drawn up and presented in the same manner as a normal budget.

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[252] See Zhou & Chilunjika 2013: 234.
[253] Kriel & Monadjem 2011: 23-27.
[254] See Kriel & Monadjem 2011: 23-7.
[255] The financial year of local authorities coincides with that of the national government, ending 31 December in any year. See s 2 Public Finance Management Act.
[256] S 288(1) UCA.
[257] S 121 RDCA.
[258] S 121 RDCA.
[259] S 288(5) UCA.

3.1.1.2 Content and arrangement of items in a budget

The form of the budget goes beyond the functional layout of the document to the content.[260] Thus, it is submitted that there may be a need for the national government to prescribe the minimum content of the budget. This has the advantage of providing a unified approach which makes it easier to monitor the budgets of local authorities.[261] The Ministry of Local Government sends out yearly budget minute circulars to local authorities prescribing the time frames, information and arrangement of matters in budget estimates. For example, the Local Government Circular Number 3 of 2012 requires local authorities when preparing budgets to follow the standardised format prescribed in the Standardised Accounting and Budgeting Systems, Procedures and Policies manual.[262] The arrangement of terms in the budget as presented in the circular is provided in the table below.

Table 9: Standard arrangement of terms in the budget (2013 budgets)

- Vision and mission statement
- Vital statistics[263]
- Finance Chairperson's speech
  - Review of current budget, including a performance statement
  - Macroeconomic environment
  - Local government climate
  - Revenue budget
  - Capital budget
- Consolidated income and expenditure statement
- Classified income and expenditure statement
- Individual activity accounts (service objectives and standards, summarised income and expenditure statement)
- Proposed capital budget
- Certificate of consultation
- Mayor or Chairperson's signature

Source: Ministry of Local Government, Rural and Urban Development, Local government Circular Number 3 of 2012.

[260] Kriel & Monadjem 2011: 28. See also Bahl 1998: 8.
[261] Kriel & Monadjem 2011: 28. Coherence promotes greater accountability and transparency in respect of the budgets as the opportunity for comparison between local authorities becomes possible.
[262] Ministry of Local Government, Rural and Urban Development, Local government Circular Number 3 of 2012.
[263] For example: area of authority (hectares) growth rate, population growth rate, rateable values (land and buildings), refuse collected growth rate (%), industrial units growth rate (%), council clinics growth rate (%) and water sold growth rate (%). See Ministry of Local Government, Rural and Urban Development Local government Circular Number 3 of 2012.

The RDCA requires rural local authorities to attach to the budget information relating to the number of their employees and related remuneration costs.[264] While this requirement applies to rural local authorities, the UCA gives urban local authorities the discretion to attach such information to the budget.[265] However, such discretion has been taken away by the Local Government Circular Number 3 of 2012 which makes it mandatory for all local authorities to show employment costs supported by a schedule of salaries. It is submitted that the submission of such information is necessary to enable the national government to carry out its supervisory role. It is based on this information that national government, for example, assesses whether it is necessary to implement or adjust expenditure frameworks to influence local spending.

3.1.1.3 The budget cycle

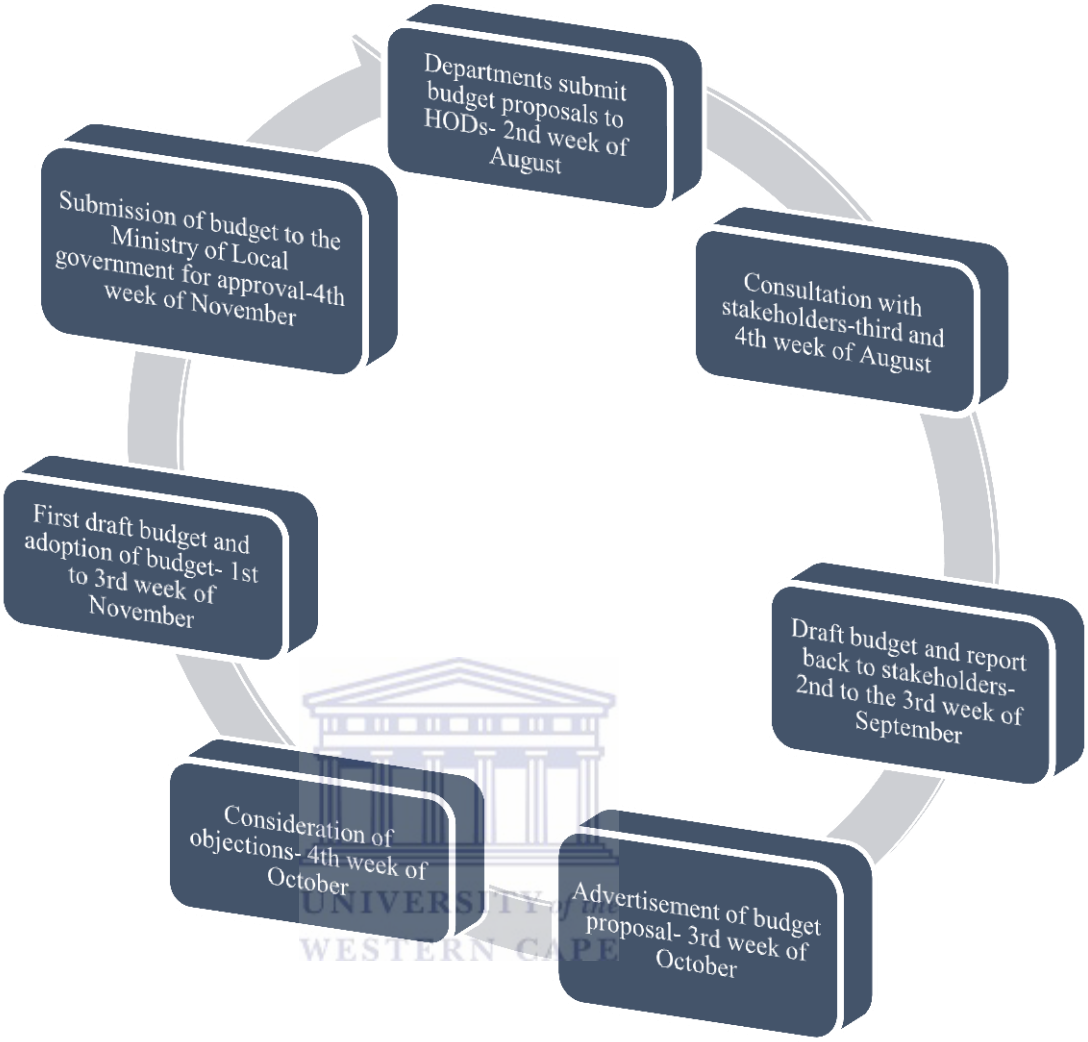
The UCA and RDCA do not regulate in detail the budget-making process. As mentioned above, the Ministry of Local Government issues yearly budget circulars determining time frames for budget preparation. This has undermined certainty in the budget-making time frames. In practice (as shown in Figure 20 below), the budget cycle usually begins in August of each year with various sections making budget proposals to the Head of Department.[266] Toward the end of August, the local authority holds consultative meetings with various stakeholders including residents and ratepayers to get their input. The meeting is followed by the formulation of a draft budget proposal. In the third week of October, the local authority advertises the draft budget proposal and invites objections to the proposal. The local authority then considers any objections to the budget proposal in the last week of October. The first draft budget is formulated in the first week of November with the final draft adopted by the council in the third week of the same month. A council is required to pass a resolution approving the proposed budget before it is forwarded for the signature of the mayor or chairperson, as the case may be.[267] After the mayor or chairperson has signed the budget, the council must make copies of the budget available for public inspection.[268] Within three months after the budget has been signed by the mayor or chairperson, three copies of the

[264] See 121(4) RDCA. The information relates to: (a) the total number of employees and the aggregate of the salaries and wages payable to them; (b) the total number of employees in each department and the aggregate of the salaries payable to them; (c) information listed in (a) and (b), above, in respect of the year prior to that to which the estimates relate; and (d) the posts held by employees in each department. See also s 288(3) UCA.
[265] S 288(3) UCA.
[266] For more on the role of heads of department, see section 4.1.3 of Chapter Five.
[267] S 288(2) UCA.
[268] S 288(2) UCA

budget must be forwarded to the Minister for his or her information and approval of tariffs and supplementary charges in high density areas.[269] The Local Government Circular Number 3 of 2012 requires local authorities to submit their budgets to the district administrator (DA) by 10 November, who in turn forwards it to the Minister by 30 November. In practice, some local authorities have failed to follow the budget time frames, with some submitting budgets to the Minister in December or even the following year. It is submitted that to create certainty the budget time frames should be legally recognised. In addition, legislation should provide for intergovernmental oversight and corrective mechanisms in cases where a local authority fails to submit a budget on time. The Minister should have the power to intervene if a local authority fails to approve the budget. Such powers can include the power to adopt a temporary budget to provide for the continued functioning of the local authority.[270] In serious cases, the Minister can dissolve the council and appoint a caretaker until a new council is elected.[271] In both cases, the Minister should seek the approval of Parliament and the provincial (or metropolitan) council of the province for intergovernmental checks and balances.

[269] See S 288(2)(b) UCA. As discussed below, a local authority may only implement the budget after it has been approved by the Minister.
[270] See s 139(4)(b) Constitution of South Africa.
[271] See s 139(4)(a) Constitution of South Africa.

Figure 20: The budget cycle



Source: Zimbabwe Women's Resource Centre and Network (2010)

3.1.1.4 Role of citizens in the budget process

As highlighted above, legislation does not prescribe the process to be followed when crafting the budget. It merely assigns responsibilities to the finance committee and the council. This means that there is no legal requirement for citizen participation in the budget-making process. While citizens and other stakeholders are allowed to inspect and make comments on the proposed budget, legislation does not oblige the council to consult the citizens and consider their views.[272] It is submitted the absence of such a legal obligation may undermine local democracy since budget-making was identified in paragraph 6.1.5 of Chapter Two as

[272] Coutinho 2010: 84.

one of the critical governance processes which has significant implications on the lives of citizens.[273] Nonetheless, the Minister usually sends circulars requiring local authorities to consult citizens and other interested stakeholders when making their budgets.[274] For example, the Local Government Circular Number 3 of 2012 requires local authorities to consult various stakeholders and to explain the changes made to the tariffs and expenditure. Further, as shown in Table 9 above, the Circular requires each local authority to attach to its budget a certificate of consultation as proof that citizens were consulted in the formulation of the budget. It is submitted that the practice of issuing circulars prescribing such important governance process should be abolished. Instead, legislation should require every council to provide mechanisms for the participation of citizens and other stakeholders in the budget-making process, especially determination of priorities.[275]

3.1.1.5 Unlawful expenditure

The 'object of a … budget is to provide forward planning for expenditure which, after a deliberative process of budget approval, binds the [local authority] in its expenditure decisions'.[276] The 'binding nature of the budget entails that expenditure not incurred in terms of the budget is regarded as [unlawful] expenditure'.[277] Local authorities are not authorised to spend any money unless such expenditure has been covered by their budget or supplementary budget.[278] The exception is expenditure arising due to unforeseen events which cannot be postponed without detriment to the interests of the local authority.[279] In such cases, the mayor or chairperson may authorise such expenditure.[280] Town clerks or chief executive officers, as accounting authorities, have a responsibility to ensure that expenditure of the local authority is in accordance with the approved budget.[281] While legislation requires local authorities to spend only in terms of their budgets it however does not provide for what happens if a local

[273] See the Aberdeen Principles 2005: 7.
[274] Coutinho 2010: 84.
[275] The Local Authorities Draft Bill has not made provision for such consultation. It is recommended that the Bill should be reformed to make it mandatory for the council to involve the citizens and other stakeholders in the formulation of the budget.
[276] Steytler & De Visser 2009: 14-5.
[277] Steytler & De Visser 2009: 14-6. Unlawful expenditure includes overspending on the total vote of the budget, overspending on a vote, expenditure unrelated to a vote and expenditure for a purpose other than an approved purpose. See s 1(1) Municipal Finance Management Act 56 of 2003, South Africa.
[278] S 288(7) UCA.
[279] S 288(8) UCA.
[280] S 288(8) UCA. Such expenditure has to be reported at the next meeting of the finance committee.
[281] S 47(4) Municipal Finance Management Act.

authority incurs unlawful expenditure.[282] Thus, there are no sanctions in cases involving unlawful expenditure, thus encouraging officials to incur such expenditure.

It is submitted that legislation should provide for the personal liability of both councillors and administrative officials in cases involving deliberate and negligent incurring of unlawful expenditure.[283] Further, a local authority should recover such expenditure from the councillor or administrative official concerned.[284] Apart from recovering such expenditure the council should be allowed to institute disciplinary criminal proceedings against the councillor or administrative official for breaching legislative prescriptions.[285] It is further suggested that in cases of unlawful expenditure, the town clerk (or equivalent) should notify the mayor, Minister and Auditor-General (AG) of the occurrence of such expenditure and measures which the council is taking to recover or rectify the unlawful expenditure.[286] Notification of the Minister and the AG is necessary to provide intergovernmental oversight.

3.3.2 Budget autonomy

It was contended in paragraph 6.2.4 of Chapter Two that the degree to which local governments are able to determine expenditure programmes is important for development and, in particular, for adjusting the mixture of services to closely match local preferences. Budget autonomy suggests that senior governments do not have the power to determine expenditure programmes of local governments or have the power to approve their budgets.[287] The achievement of national and local goals nevertheless may require senior governments to set expenditure frameworks at the local level.[288] National goals, such as equity, require the involvement of the national government in setting expenditure parameters at subnational level. As will be observed below, in Zimbabwe the national government has firm control over spending decisions at local level by virtue of its powers to approve budgets and set expenditure frameworks.[289]

[282] Coutinho 2010: 85.
[283] See s 32(1) Municipal Finance Management Act. This liability should not limit the liability of the person in terms of the common law or other legislation.
[284] See s 32(2) Municipal Finance Management Act.
[285] See s 32(5) Municipal Finance Management Act.
[286] See s 32(4) Municipal Finance Management Act.
[287] See Eaton & Schroeder 2010: 180.
[288] See Bahl 1999: 9.
[289] Zhou & Chilunjika 2013: 243, Marumahoko & Fessha 2011: 52, Sachikonye *et al* 2007: 79.

3.3.2.1 **Approval of budgets**

Section 47 of the Public Finance Management Act requires local authorities to submit their budgets and annual plans to the Minister for approval at least thirty days before the beginning of the next financial year. These powers of the Minister are buttressed by the UCA and RDCA which require increments of user-charges and rates in high density areas and local government areas to be approved by the Minister.[290] This essentially means that the Minister has to approve the entire budget since user-charges in high density areas are dependent on those charged in other areas and on overall expenditure.[291] In practice, the Minister has been reluctant to approve the budgets of local authorities proposing increments of rates, fees and charges in cases where they do not adhere to the prescribed expenditure parameters.[292] It is submitted that the approval of budgets by the Minister goes to the 'heart' of budget autonomy and thus limits the ability of local authorities to adjust the mixture of services to closely match local preferences.[293] Thus, it is submitted that the power of the Minister to approve budgets should be abolished so that local authorities have some measure of discretion to spend revenue. The Minister should however retain the power to set expenditure frameworks to influence local spending.[294] For example, the Minister can determine the spending framework between service delivery and administrative costs, as discussed below.

3.3.2.2 Expenditure frameworks

The Minister regularly issues circulars providing for percentages and ratios of expenditure items at the local level. For example, the Ministry has prescribed the percentage increases of tax ratio between recurrent and capital development expenditure as well as on expenditure on workers' salaries and allowances versus the total budget. The Local Government Circular Number 3 of 2012 requires local authorities to comply with the spending ratio of 70:30 for service delivery and employment cost, respectively.[295] Most local authorities have not been

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[290] See s 219(1) UCA and s 17(1) RDCA. See para 3.1.3 above.
[291] Phelps 1997: 18, Coutinho 2010: 84.
[292] See Sachikonye *et al* 2007: 83.
[293] Marumahoko & Fessha 2011: 55. In practice, the difficulty with these powers of the Minister is that the Minister has on numerous occasions delayed approving budgets which must come into effect in January but which may only be approved between February and April. This has had an adverse impact on operations of most local authorities. See Martin & Nyamayaro-Musandu 2004: 19.
[294] See Sims 2013: 24.
[295] The circular requires local authorities, when submitting their budgets to the Minister, to show employment costs and attach a schedule of salaries. The Local Authorities Draft Bill (August 2014) has recognised this expenditure framework.

able to comply with this expenditure framework due to huge salary bills against limited financial resources being mobilised. As demonstrated by Table 10 below, the City of Harare is one such local authority.

Table 10: Service delivery and employment costs ratio for the City of Harare

Year	2009	2010	2011	2012	2013
Employment costs	96%	73%	65%	55%	48%
Service delivery	4%	27%	35%	45%	52%

Source: City of Harare, 2014 Budget Speech and Proposals 2014: 7.

The table above shows that although revenue spent on service delivery relative to employment costs has been increasing since 2009, the city has failed to comply with the required 70:30 percentage ratio of service delivery and employment costs, respectively. The Minister has on numerous occasions withheld the approval of the budgets of certain local authorities, citing expenditure programmes that go beyond the prescribed spending frameworks.[296] As argued above, while these expenditure parameters tend to limit the budget autonomy of local authorities, they are however necessary to ensure that certain expenditure decisions at local level are prioritised over others so to realise local and national goals. The realisation of equity, for example, may require the national government to set spending frameworks for the supply of public services to poor and rich jurisdictions within a local authority.

3.3.3 Expenditure of revenue in practice

The expenditure of revenue at local level tends to mirror that of the national government. At national level, employment costs consume a large part of the budget. For example, for the period up to November 2013, employment costs amounted to US$2.429 billion, accounting for 68.9% of total expenditure.[297] Similarly at the local level, employment costs consume the majority of the budget followed by general operating expenditure,[298] repairs and maintenance

[296] See Sachikonye *et al* 2007: 83. At some point, 'the Minister has occasionally made the gazetting of high density tariffs conditional on him approval the overall budget'. Sachikonye *et al* 2007: 83.
[297] Ministry of Finance and Economic Development 2014: 54.
[298] The purchasing of water chemicals consumes a substantial amount of the operating expenditure. In Harare, for example, because of the poor quality of the raw water, the City spends heavily on water chemicals for

and, if resources are available, capital investment.[299] In all local authorities, employment costs usually consume between 28-60 per cent of the budget.[300] Yet, as discussed above, national government policy on expenditure of revenue is that revenue should be spent on a percentage ratio of 70:30 service delivery and employment costs, respectively. If the national government is failing to abide by this expenditure framework due to the volatile macro-economic environment, how is it possible for local authorities to conform with this spending framework?

The proposed 2014 budget of the City of Harare indicates that salaries will consume 48 per cent of the US$369.3 million of the budget.[301] General operating expenditure will amount to 26 per cent, repairs and maintenance will consume nine per cent and administration charges will amount to eight per cent of the budget.[302] As highlighted above, capital investment is non-existent in most local authorities given the limited resources at their disposal.[303] High category local authorities are beginning to invest in capital projects as their revenue mobilisation is slowly improving. The City of Harare has set aside US$95.6 million for capital projects in its proposed 2014 budget.[304] This amount, however, is inadequate to meet the required infrastructure refurbishment and development caused by years of under-investment in public infrastructure, urbanisation and the growing population. As argued in paragraph 3.1 above, unless the national government decentralises more resource-raising powers to local authorities or alternatively improves the amounts and predictability of intergovernmental grants to local authorities, the current expenditure patterns at local level are likely to continue.

3.3.4 'Unfunded mandates'

An 'unfunded mandate' is defined as an expenditure assignment that is not funded.[305] It occurs where a 'government agency has the responsibility of conducting a function but lacks suitable revenue raising capacity or does not receive a grant necessary for the performance of

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treating the water. This means that the City spends a lot of money acquiring electricity for water and sewerage treatment plants. See Coutinho 2010: 83.

[299] Coutinho 2010: 83.

[300] Bland 2010: 5.

[301] City of Harare 'Proposed 2014 Budget', *The Herald* 'Council to review tariffs, charges downwards' 2013.

[302] *The Herald* 'Council to review tariffs, charges downwards' 2013.

[303] Bland 2010: 4.

[304] *The Herald* 'Council to review tariffs, charges downwards' 2013.

[305] Kriel and Monadjem 2011: 22-7.

the function'.[306] The funding of responsibilities which are shared between the national and local governments has been at the centre of debates on revenue and expenditure assignment in Zimbabwe.[307] Functions which are shared between these two tiers of government include health, education, and water.[308] This section will use the example of health function to examine the challenge of 'unfunded mandates'. Attention is also given to funding problems associated with the implementation of national directives by local authorities.

3.3.4.1 Health function

Traditionally the health sector was funded jointly by local authorities and the national government.[309] The national government is responsible for the running of referral hospitals and some medical facilities in rural areas. It also reimburses local authorities for costs, particularly costs associated with implementing directives of the Ministry of Health. Local authorities are responsible for operating clinics and, in addition, the cities of Harare and Bulawayo operate referral hospitals. Local authorities fund the provision of health services from health fees, with the rest of the costs covered by a grant from the national government.[310] This funding model changed in the 1990s. The health grant, like other intergovernmental grants from the national government, became highly unreliable and insufficient to bridge the deficit in the health accounts of local authorities. The non-provision of health grants or the provision of intergovernmental grants not adequate to meet the expenditure related to the provision of health and maternal services amounts to an 'unfunded mandate'.[311]

The financial position of local authorities with regard to the funding of the health function has been worsened by the fact that the national government approves health fees which are charged by local authorities for the provision of health and maternal services, as discussed in paragraph 3.1.1.2 above. The justification for the regulation of health and maternal fees is that full costs related to the provision of health and maternal services may not be recovered

[306] Kriel & Monadjem 2011: 22-7. It breaches the principle of 'finance-follows-function' discussed in Chapter Two.
[307] See Sachikonye *et al* 2007: 125, Phelps 1997: 19, Mushamba 2010: 112.
[308] See the First Schedule, RDCA and the Second Schedule, UCA.
[309] Phelps 1997: 19, Mushamba 2010: 112.
[310] See Pasipanodya *et al* 2000: 230, Mushamba 2010: 112. Health fees are controlled by the national government which in most cases sets unviable fees.
[311] See Bland 2010: 4, Mushamba 2010: 112, Pasipanodya *et al* 2000: 230.

without excluding the poor.[312] It is submitted that even though this form of regulation promotes equity, it undermines the economic viability of health service provision. Since cost-recovery may not be possible for the provision of health and maternal services, it is further submitted that the national government should provide adequate financial support through predictable grants. The practice of health and maternal services being subsidised from other local sources of finance is not sustainable.[313] It has not only undermined the effective delivery of health and maternal services but also the ability of local authorities to deliver on other mandates.[314]

3.3.4.2 Costs of implementing directives of the national government

The national government regularly issues directives to local authorities which have implications for expenditure of revenue at the local level. As explained below, in most cases the directives are not accompanied by funds for their implementation by local authorities. An example is Operation Murambitsvina which was launched by the national government in 2005. Under Operation Murambatsina, local authorities were directed by the national government to demolish all illegal structures, including houses, shops and market places, within their jurisdictions. Despite the fact that the implementation of this directive required funds, the national government did not provide any funds. Instead, local authorities were forced to fund the implementation of the 'operation' even though they had not budgeted for it.[315]

As a result of the demolition of illegal structures under Operation Murambatsvina, a significant number of people were left homeless. The national government then directed local authorities to provide housing to the homeless people, under Operation Garikayi. Again, local authorities were forced to meet the costs of the provision of housing despite having not budgeted for this form of capital expenditure.[316] The implementation of national directives such as these has in part contributed to budget deficits at local level. This further buttresses the argument that local authorities in Zimbabwe have very limited expenditure autonomy. It is submitted that the two 'operations' amounted to 'unfunded mandates'.

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[312] See Marumahoko & Fessha 2011: 48, Zhou & Chilunjika 2013: 234. This challenge is also faced in other services provided by local authorities, such as education and the provision of cemeteries.
[313] See Marumahoko & Fessha 2011: 48.
[314] Pasipanodya *et al* 2000: 230, 235.
[315] Sachikonye *et al* 2007: 79.
[316] Sachikonye *et al* 2007: 79.

This section examined local expenditure and it was established that local authorities have limited autonomy to spend revenue. The powers of the national government to approve budgets present the most significant challenge to budget autonomy. It was however contended that the powers of the national government to set expenditure frameworks are necessary to influence spending decisions at the local level to realise national and local goals such as equity and poverty reduction. The challenge of an 'unfunded mandate' was also discussed and it was submitted that this challenge can be addressed by a responsive system of fiscal intergovernmental relations. The following section will discuss the attributes of such a system.

4. Intergovernmental grants

Under a multilevel system of government the assignment of revenue powers to subnational governments is unlikely to match their expenditure obligations.[317] It was contended in paragraph 6.25 of Chapter Two that such an imbalance requires a complementary system of fiscal intergovernmental relations which recognises the need for nationally raised revenue to be shared among governments at various levels. Revenue-sharing serves multiple objectives, mainly bridging the fiscal gap, promoting fiscal equalisation and regional development, and stimulating tax effort at subnational levels.[318] To achieve these objectives, it was further contended that the system of fiscal intergovernmental relations should be transparent, flexible, predictable and equitable.[319] If there are no equalisation measures, a multilevel system of government is likely to increase disparities between jurisdictions following the exercise of financial autonomy by subnational governments.[320] Disparities pose a threat to the achievement of national and local goals, among them sustainable peace, democracy and development.

This section examines the system of fiscal intergovernmental relations in Zimbabwe against the normative framework set in paragraph 6.2.5 of Chapter Two. Under the Lancaster House Constitution, subnational governments relied on the 'goodwill' of the national government for any form of financial support.[321] The difficulty with this system of financial support was

[317] Prud'homme 1995: 201-3.
[318] Shah 1994: 37, Kriel & Monadjem 2011: 18-27.
[319] See Bahl 1999: 24.
[320] De Visser 2005: 27.
[321] See Musekiwa &Mandiyanike 2013: 10. For a discussion of the history of intergovernmental grants see Pasipanodya *et al* 2000: 84, 86; Sachikonye *et al* 2007: 101; Martin &Nyamayaro-Musandu 2004: 19.

that there was no predictability in the allocation of intergovernmental grants.[322] This adversely affected budgeting at the local level. As will be discussed below, the 2013 Constitution has reformed this system. In the first part of this section, the chapter examines the constitutional framework for fiscal intergovernmental relations. This is followed by a discussion of equitable share, capital grants, and other allocations to provincial and metropolitan councils and local authorities. The chapter then examines the criteria for sharing revenue before making an argument for the involvement of provincial and metropolitan councils and local authorities in the determination of intergovernmental grants.

4.1 Constitutional framework

The question of how much detail on fiscal decentralisation should be recognised in the constitution has to be considered when drafting a new constitution. In paragraph 6.2.5.4 of Chapter Two it was stated that detailed fiscal decentralisation in the constitution may make it difficult for the national government to (re)adjust the fiscal system in response to economic and political environments.[323] Nonetheless, it was contended that a certain measure of constitutional recognition of fiscal decentralisation is necessary to create predictability, transparency and to provide a guaranteed source of funding for subnational governments. As observed below, the Constitution of Zimbabwe provides a certain measure of fiscal decentralisation especially in relation to the sharing of revenue among the three tiers of government.[324] The Constitution mandates the national government to 'ensure that all institutions and agencies of government at every level … are provided with adequate resources and facilities to enable them to carry out their functions conscientiously, fairly, honestly and efficiently'.[325] It further requires revenue raised nationally to be shared equitably among the three tiers of government.[326] The Constitution provides for the allocation an equitable share and other grants to provincial and metropolitan councils and local authorities.[327] This will take place through an annual act of division of revenue raised nationally. The nature of the equitable share and other grants is examined in the following section.

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[322] Coutinho 2010: 85.
[323] See Bahl 1994: 24.
[324] See Machingauta *et al* 2014: 23, Local Governance Community Capacity Building and Development Trust 2014: 11, Muchadenyika 2014: 138.
[325] S 9(2) Constitution.
[326] Section 298(1)(b)(ii) Constitution.
[327] S 301 Constitution.

4.2 Equitable share

Section 303(3) of the Constitution states that 'not less than five percent' of national revenue raised in any financial year must be allocated to provincial and metropolitan councils and local authorities as their share in that year'. This provision raises a number of questions. Does it give provincial and metropolitan councils and local authorities any entitlement? Does national revenue mean national government revenue? Does five per cent amount to an equitable share, as required by the Constitution?[328] Is the five per cent inclusive or exclusive of conditional and non-conditional grants that the national government may allocate to provincial and metropolitan councils and local authorities? The following section aims to provide answers to these questions.

4.2.1 Entitlement

For the first time in the history of Zimbabwe, provincial and metropolitan councils and local authorities are entitled to a certain portion of nationally raised revenue in each financial year.[329] Such a portion may not be less than five per cent of the 'whatever' revenue is generated by the national government in every financial year.[330] However, this does not guarantee any individual council or local authority any specific amount or percentage but guarantees at least five per cent for the entire provincial and local sector.[331] It is submitted that the equitable share induces certainty of funding and goes a long way in providing guaranteed financial resources to provinces and local authorities.[332] It is further submitted that prior to the allocation of five per cent (or more) to the provincial and metropolitan councils and local authorities, nationally raised revenue may not be regarded as national government revenue even though such funds are kept in the national fund. It is only when provincial and metropolitan councils and local authorities have been given their share of five per cent (or more) that the remainder can be regarded as national government revenue. Thus, the general notion that all funds in the national 'purse' are funds of the national government is inaccurate under the 2013 Constitution.

[328] See s 298(1)(b)(ii) Constitution.
[329] See s 301(3) Constitution. See also Musekiwa & Mandiyanike 2013: 10.
[330] Machingauta *et al* 2014: 23.
[331] Machingauta *et al* 2014: 23.
[332] See UN-Habitat 2007: 9, Coutinho 2010: 85, Musekiwa 2014: 4, Martin & Nyamayaro-Musandu 2004: 18.

4.2.3 What is equitable?

In the 2014 Budget Statement, the Minister of Finance made provision for the allocation of US$200 million to provincial and metropolitan councils and local authorities, as their share in 2014.[333] This is against projected national revenues for the year 2014 amounting to US$4.120 billion.[334] Five percent of US$4.120 equates to a total of US$206 million. Thus, the Minister under-allocated by US$6 million. There is no evidence to suggest that even the US$200 million was actually distributed to subnational governments, especially given that by June 2014 provincial and metropolitan councils had not been established. Further, there was no formula for sharing revenue among provincial and metropolitan councils and local authorities. In 2015, a projected US$4.340 billion is going to be mobilised nationally, five per cent of which is US$217 million.[335] If the projected figures are not revised, the Constitution requires that provincial and metropolitan councils be allocated not less than US$217 million in 2015. It is hoped that the national government will abide by the Constitution by giving provincial and metropolitan councils and local authorities their share.

Besides the question of whether the national government actually allocates five per cent of national revenues, another important question is whether five per cent is enough for ten provincial and metropolitan councils and 92 local authorities?[336] Alternatively, does the five per cent amount to an equitable share? It is submitted that five per cent is not enough, especially given that provincial and metropolitan councils do not have resource-raising powers.[337] Further, local authorities have a huge service delivery responsibility which requires significant revenue. Section 298(1)(b)(ii) of the Constitution requires equitable sharing of nationally raised revenue among the national, provincial and local tiers of governments. Equitability means sharing relative to need. This implies that the sharing of nationally raised revenue should be informed by the responsibilities which each tier of government has.[338] Five per cent serves as the minimum which can be given to provincial and local tiers of government but may be insufficient to amount to an equitable share of the 'national cake'. Therefore, the portion of nationally raised revenue which provincial and local tiers of government are entitled to in each year depends on the responsibilities which they

[333] Ministry of Finance and Economic Development 2013: 126.
[334] Ministry of Finance and Economic Development 2013: 94.
[335] Ministry of Finance and Economic Development 2013: 94.
[336] See Musekiwa & Mandiyanike 2013: 10.
[337] Machingauta *et al* 2014: 23.
[338] See the Aberdeen Principles 2007: 8, Musekiwa & Mandiyanike 2013: 11.

have but may not be less than five per cent of nationally raised revenue. It is suggested that provincial and metropolitan councils and local authorities should be given more than five per cent in line with other countries which have recently adopted a devolved system of government, such as Kenya and South Africa.[339] In Kenya, for example, counties (subnational governments) are entitled to not less than 15 per cent of nationally raised revenue but in practice they receive more than 15 per cent.[340] In the 2014/15 financial year provinces and municipalities in South Africa received about 46 per cent of the national revenue available for sharing.[341] Some scholars propose that a minimum of 11 per cent should go to provincial and metropolitan councils and local authorities in each year to address the fiscal gap.[342]

4.2.4 Can any conditions be imposed on the provincial and local equitable share?

As discussed below, the national government may allocate capital grants and other conditional grants to provincial and metropolitan councils and local authorities. It may also allocate non-conditional grants. The question is whether the five per cent (or more) which provincial and metropolitan councils and local authorities are entitled to is a conditional grant?[343] In other words, can the national government impose conditions on how it is spent? It is submitted that the five per cent (or more) may not be allocated with any conditions because it is 'share'.[344] Generally a share is allocated with few or no conditions. Attaching conditions to the spending of the equitable share however reduces local discretion and undermines local accountability. In South Africa, it was found that an equitable share is an unconditional grant.[345] Kriel and Monadjem state that 'a grant is unconditional if it has limited conditions relating to the transfer'.[346] Thus, the five per cent (or more) may be allocated only with limited conditions related to how it is spent. However, this does not mean that provincial and metropolitan councils and local authorities may use whatever share of money they receive to fund extravagant expenditure. The grant should be used to fund the delivery of key public services and development.

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[339] See Musekiwa & Mandiyanike 2013: 11.
[340] Article 203(2) Constitution of Kenya.
[341] Schedule 1, Division of Revenue Bill 2014. In the 2015/16 financial year, provinces and municipalities are expected to receive about 54 percent. See Schedule 1, Division of Revenue Bill 2014.
[342] Musekiwa & Mandiyanike 2013: 11.
[343] See Local Governance Community Capacity Building and Development Trust 2014: 9.
[344] See s 298(2)(b)(ii) Constitution.
[345] See Kriel & Monadjem 2011: 18-27.
[346] Kriel & Monadjem 2011: 17-27.

4.3 Capital grants

A capital grant is a form of conditional grant. A grant is conditional 'if conditions are used to direct the spending of the grant in receiving municipalities or provinces'.[347] Conditional grants are an effective tool of influencing local level spending in areas considered of less priority by the subnational governments but which are of importance to the achievement of certain national goals.[348] The Constitution recognises the importance of capital grants as tools for influencing spending at subnational level. Section 301(1)(a) of the Constitution directs Parliament to enact a law providing for the 'equitable' allocation of capital grants between provincial and metropolitan councils and local authorities. The use of the term 'equitable' highlights the importance which is attached to redistribution of financial resources across provinces and local authorities. In addition, it is submitted that the grants must be predictable to allow effective budgeting at subnational level. Such requirements were lacking under the Lancaster House Constitution, as discussed below.[349]

Prior to the adoption of the 2013 Constitution, capital grants were transferred to various local authorities at the discretion of the national government. Generally, the capacity of local authorities to absorb conditional grants and comply with the attached conditions was an important variable determining future disbursement of conditional grants.[350] The allocation of capital grants to local authorities was often 'marked by secrecy, giving credence to claims that political considerations [were] at the centre of the disbursements'.[351] There was little transparency and predictability in such allocations.[352] Due to limited capacity the national government failed to effectively monitor the spending of capital grants so as to ensure that allocated funds were spent in accordance with the relevant conditions of spending. The Portfolio Committee on Local Government found that the Ministry of Local Government was failing to follow up on capital grants which were disbursed to local authorities in 2011.[353] A total of US$16 160 000 disbursed in grants could not be monitored effectively by the national government. As a result, some local authorities diverted capital grants from financing capital

[347] Kriel & Monadjem 2011: 27-17.
[348] See Shah 1994: 18, UN-Habitat 2007: 10.
[349] See Ndlovu *et al* 2006: 9.
[350] Zimbabwe Institute 2005: 20.
[351] Marumahoko & Fessha 2011: 49. See also Zhou & Chilunjika 2013: 243, Phelps 1997: 27.
[352] Shah 1999: 9.
[353] Portfolio Committee on Local Government, Rural and Urban Development 2011: 7.

projects to paying salaries of employees.[354] It is submitted that the national government should build its own capacity to monitor the spending of capital grants to ensure that capital grants are spent on intended projects.

4.4 Other allocations to provincial and metropolitan councils and local authorities

4.4.1 Constitutional recognition of allocations

Besides the equitable share and capital grants, the Constitution recognises that the national government may transfer other forms of grants (whether conditional or non-conditional) to provincial and metropolitan councils and local authorities. The Constitution directs Parliament to enact a law providing for any allocations to provinces and local authorities, and any conditions on which those allocations may be made.[355] While recognising the importance of influencing subnational priorities, it submitted that a majority of these allocations should be unconditional grants so that provincial and metropolitan councils and local authorities have discretion to spend such funds, thereby enabling them to respond to the needs and preferences of their citizens.[356]

4.4.2 The allocation of grants before adoption of the 2013 Constitution

Since independence, the national government has transferred both conditional and non-conditional grants to local authorities.[357] Unconditional grants have been transferred mostly to rural local authorities which usually have limited fiscal resources. Such grants can be used to finance any expenditure programme at the discretion of the local authorities.[358] The national government has also transferred conditional grants to local authorities. The most notable forms of conditional grants are the health, roads, administration and education grants which are designed to cover budget shortfalls.[359] In the period between 1980 and 1990, grants to local authorities were generally disbursed on time and were sufficient to cover expenditure shortfalls at local level. Since the introduction of the structural economic adjustment programmes in the early 1990s, grants from the national government have gradually

[354] Portfolio Committee on Local Government, Rural and Urban Development 2011: 7.
[355] S 301(1)(b) Constitution.
[356] UN-Habitat 2007: 10.
[357] Ndlovu *et al* 2006: 9.
[358] Pasipanodya *et al* 2000: 127.
[359] Pasipanodya *et al* 2000: 123.

decreased due to the shrinking revenue resources available to the national government.[360] The nature of the grants has also changed from non-conditional to conditional grants.

From the late 1990s to the time of writing, grants to local authorities were unreliable, inconsistent and insufficient.[361] This can be attributed to the deepening economic crisis which the country experienced over this period. During this period the national government drastically reduced the size and number of grants to local authorities. In 1998, the national government transferred Zim$17.5 million to 58 rural local authorities. This amount was reduced to Zim$6 million in 2000. In 2003, rural local authorities were allocated less than 10 per cent of the money under the vote of the Ministry of Local Government.[362] During this period, conditional health and education grants were insufficient to cover the health and education expenditure, respectively.[363] As a result of the reduced amount of grants to local authorities, local authorities raise more than 98 per cent of their recurrent income through taxes and user-charges.[364] The reduction in the amount of funds given to local authorities was not complemented by the decentralisation of additional resource-raising powers. After the formation of the Government of National Unity in 2008, grants to local authorities have gradually improved because of the stabilised economic and political environment. Revenue mobilisation potential of the national government has significantly improved, allowing the national government to allocate more financial resources to local authorities. With the adoption of the 2013 Constitution, which recognises the need for the national government to provide financial support to provincial and metropolitan councils and local authorities,[365] it is hoped that the national government will allocate more financial resources to these lower governments to enable them to effectively deliver on their obligations.

4.5 Criteria of sharing revenue

It was contended in paragraph 6.2.5 of Chapter Two that intergovernmental grants can be an effective instrument for equalising fiscal capacities of subnational governments, especially if they incorporate explicit standards of equalisation.[366] Such standards of equalisation have to ensure that resources are transferred from rich to poor regions so as to ensure horizontal

[360] Zimbabwe Institute 2005: 21.
[361] Sachikonye *et al* 2007: 101, Ndlovu *et al* 2006: 9, Pasipanodya *et al* 2000: 127.
[362] Zimbabwe Institute 2005: 19.
[363] See Pasipanodya *et al* 2000: 134.
[364] Ndlovu *et al* 2006: 9, Chikulo 2010: 151, Shah 1994: 137.
[365] See s 9(2), S 264(f), s 298(1)(b)(ii), and s 301 Constitution.
[366] Shah 1994: 9.

equalisation.[367] The 2013 Constitution has recognised the need for not only vertical but horizontal equalisation. It directs Parliament to enact legislation providing for 'equitable' allocation of capital grants and any other allocations to provincial and metropolitan. Such legislation must take into account:

a) national interests,
b) any provision that must be made in respect of the national debt and other national obligations,
c) the needs of the central government, determined by objective criteria,
d) the need to provide basic services, including educational and health facilities, water, roads, social amenities and electricity to marginalised areas,
e) the fiscal capacity and efficiency of provincial and metropolitan councils and local authorities,
f) developmental and other needs of provincial and metropolitan councils and local authorities, and
g) economic disparities within and between provinces.[368]

The wording of section 301 of the Constitution seems to suggest that these criteria only apply to the sharing of revenue at provincial and local level. As explained below, it is submitted that these criteria apply to both vertical and horizontal sharing of revenue. The argument is that the criteria provide for the consideration of factors such as national interests, national debt and needs of the national government, which are usually prime considerations when determining the vertical sharing. For example, in Kenya and South Africa, where the Zimbabwean Constitution significantly borrowed from, these factors are key considerations when determining both horizontal and vertical sharing of revenue.[369] Other factors such as provision of basic services, fiscal capacity and efficiency, developmental needs, and economic disparities have more relevance when determining the horizontal sharing of resources. Thus, it is submitted that the criteria should be applied to both vertical and horizontal sharing of revenue. The chapter will examine the criteria in detail below.

4.5.1 National interests and obligations

The Constitution requires that the allocation of grants to provinces and local authorities 'must' take into account the national interest and any provision that must be made in respect

[367] See World Bank 2000: 118, Watts 2001: 33.
[368] S 301(1)(2) Constitution.
[369] See s 203 Constitution of Kenya and s 214(2) Constitution of South Africa.

of the national debt and other national obligations.[370] This means that the allocation of grants to provincial and local governments should be cognisant of the needs and interests of the national government.[371] Such needs and interests of the national government have to be determined by objective criteria.[372] The requirement of objective criteria is commendable as it seeks to promote transparency in the determination of the share of the national government from nationally raised revenue. The consideration of national debt however has significant implications on the sharing of revenue among the three tiers of government given that Zimbabwe has a huge external debt amounting to US$10 billion.[373] If prime consideration is given to the servicing of this debt this means that there will be few or no financial resources available to be allocated to provincial and local governments. Thus, while consideration of national debt is necessary, it is submitted that the fiscal needs of provincial and local governments should also be taken into account.

4.5.2 Provision of basic services

Under a multilevel system of government, where subnational governments are responsible for providing basic services, citizens living in different jurisdictions may have varying access to public services caused by differences in revenue-raising capacity of subnational governments.[374] This differential treatment of citizens, in terms of access to public services, is contrary to the democratic principle of equality, which requires that citizens have comparable access to public services, especially basic services. One of the mechanisms of ensuring comparable access to basic services is by factoring a basic service component into the criterion of sharing resources among subnational governments.[375] The 2013 Constitution provides such a requirement.[376]

When sharing financial resources between provincial and metropolitan councils, and local authorities, the national government is required to take into account the need to provide basic services by each council or local authority.[377] In particular, consideration should be given to the funding of key public services including educational and health facilities, water, roads,

[370] S 301(2)(a)(b) Constitution.
[371] S 301(2)(c) Constitution.
[372] S 301(2)(c) Constitution.
[373] ZimAsset 2013: 19. Debt as of December 2012.
[374] Prudhomme 1995: 201-3.
[375] Smoke 2001: 16, Prud'homme 1995: 202.
[376] See s 301(2)(d) Constitution.
[377] S 301(2)(d) Constitution.

social amenities and electricity to marginalised areas.[378] This implies that poor provinces and local authorities will receive more funding compared to their wealthier counterparts. With additional funding, poor councils and local authorities will be in a position to fund the delivery of basic services. It is submitted that the criterion of sharing financial resources promotes redistribution by acknowledging the importance of ensuring that citizens in the country, irrespective of where they reside, have comparable access to public services.

4.5.3 Fiscal capacity and efficiency of provinces and local authorities

As contended above, subnational governments are unlikely to have equal potential to raise revenue as their respective jurisdictions are endowed with varying levels of wealth.[379] Moreover, subnational governments may not have equal capacity to collect revenue due to different levels of administrative capacity. As a result, some subnational governments may be able to finance their expenditure and development programmes with little or no assistance from the national government, while others may not.[380] If not addressed, such a scenario will exacerbate disparities across jurisdictions. It is therefore important that the criterion of sharing revenue across subnational governments consider these differences in fiscal capacity and efficiency.[381] The 2013 Constitution requires such consideration. It mandates the national government to consider the fiscal capacity and efficiency of each provincial and metropolitan council and local authority when allocating intergovernmental grants.[382] In this regard, it is submitted that, unlike the Lancaster House Constitution, the 2013 Constitution seeks to advance redistribution of wealth and financial resources across provinces and local authorities.

4.5.4 Developmental needs of provinces and local authorities

Provincial and metropolitan councils and local authorities have a developmental role to play within their jurisdictions and beyond.[383] The developmental role of each provincial council, metropolitan council or local authority is likely to be affected by the environmental factors within their respective jurisdictions. For example, some local authorities have to direct their resources towards the delivery of a particular public service compared to other services. It is

[378] S 301(2)(d) Constitution.
[379] Fjeldstaad 2006: 1.
[380] Prud'homme 1995: 201-203, UN-Habitat 2007: 9.
[381] See Bahl 1999: 6, Article 9(5) European Charter of Local Self-Government.
[382] S 300(2)(e) Constitution.
[383] S 270(1)(a) Constitution.

therefore important that the sharing of resources among local authorities and provincial and metropolitan councils takes into account these varying developmental obligations. The Constitution is commendable in this respect as it requires consideration of the developmental and other needs of provincial and provincial and local governments when sharing nationally raised revenue.[384]

4.5.5 Economic disparities

As highlighted above, a multilevel system of government may promote the widening of disparities across jurisdictions.[385] If not addressed, disparities have negative consequences for the achievement of development and democracy. Unequal development may undermine the achievement of sustainable peace due to its potential to weaken national integration.[386] Hence, it was stressed above that measures to reduce disparities among jurisdictions are required.[387] This has been recognised in the 2013 Constitution. Section 13 of the Constitution requires government at every level to facilitate rapid and equitable development by taking measures to bring about balanced development between rural and urban areas.[388] To ensure this balanced development, the Constitution requires the allocation of revenue to provincial and metropolitan councils and local authorities after consideration of economic disparities.[389] Consideration of these disparities in the determination of the share of each provincial council, metropolitan council or local authority is likely to promote redistribution of fiscal resources from rich to poor regions and local authorities.[390]

This section examined the criteria of sharing resources among provincial and metropolitan councils and local authorities.[391] As discussed above, the criteria encompass a broad range of issues, including national interests, service delivery obligations, fiscal capacity, economic disparities and development objectives. The consideration of these factors may promote the redistribution of financial resources and wealth across provinces and local authorities, thereby reducing disparities. It was contended in paragraph 6.2.5.4 of Chapter Two that the ever-changing political and economic environment will require national governments to

[384] S 301(2)(f) Constitution.
[385] Rodríguez-Pose & Gill 2005: 5. See also Bahl & Linn 1992, Rodríguez-Pose & Gill 2005: 2.
[386] Watts 2001: 34.
[387] See Article 9(5) European Charter of Local Self-Government.
[388] S 13(1)(d) Constitution.
[389] S 301(2)(g) Constitution.
[390] See Machingauta *et al* 2014: 24.
[391] See s 301(2) Constitution.

continually adjust standards of equalisation or grant distribution formulae.[392] While the 2013 Constitution provides criteria to guide the sharing of revenue, it (correctly) does not provide a specific formula to guide the actual sharing of revenue at vertical and horizontal levels.[393] It is submitted that there is a need to develop a transparent formula for both the vertical and horizontal sharing of revenue informed by the criteria set out in the Constitution, discussed above.[394] This is particularly important given that provinces and local authorities are different in physical size, population, level of development and fiscal need, among other differences. For example, Harare Province has an estimated population of 2 098 199; Matabeleland South Province, 685 046; while 1 139 940 people are estimated to reside in Mashonaland Central Province.[395] At local level, Beitbridge Municipal Council has an estimated 42 218; City of Bulawayo, 655 674; and City of Kwekwe 100 455.[396] As argued below, such a formula should be developed with the participation of provincial and local governments.

4.7 Involvement of provincial and local governments in revenue sharing

It was contended in paragraph 6.5.2.3 of Chapter Two that subnational governments should have the means and mechanisms of influencing the sharing and distribution of financial resources across and within levels of governments.[397] The primary reason for this is that revenue sharing directly affects their financial sustainability. Thus, the question of whether provincial and metropolitan councils and local authorities have the mechanisms to influence the sharing of revenue or whether this should be left exclusively to the national government to decide on its own becomes critical.[398] Under the Lancaster House Constitution there was little or no involvement of provincial councils and local authorities in the determination of both the amounts or forms of intergovernmental grants and the time frames in which such grants ought to be disbursed.[399] This negatively affected the budgeting processes and fiscal discretion of subnational governments, particularly local authorities. Like its predecessor, the 2013 Constitution does not provide for the involvement of provincial and metropolitan councils and local authorities before the enactment of legislation providing for grants or on

[392] Bahl 1999: 9.
[393] See Musekiwa & Mandiyanike 203: 11.
[394] See Combined Harare Residents Association 2014: 72, Chatiza 2014: 11, Local Governance Community Capacity Building and Development Trust 2014: 8, 10.
[395] ZimStat 2012: 6
[396] ZimStat 2012: 8
[397] See Watts 2001: 33.
[398] Machingauta *et al* 2014: 23.
[399] Sachikonye *et al* 2007: 101, Pasipanodya *et al* 2000: 134.

the vertical sharing of revenue. Yet these are critical matters for provincial and metropolitan councils and local authorities as they directly affect their financial sustainability and therefore their ability to deliver on their obligations.[400]

As will be discussed in Chapter Nine, the 2013 Constitution seeks to promote cooperative governance among tiers of government and their respective institutions.[401] Cooperative governance means that lower tiers of government are consulted or participate in decision-making processes that affect their institutions and functions, such as sharing of revenue. Thus, unlike under the Lancaster House Constitution, the national government under the 2013 constitutional order has an obligation to involve provincial and metropolitan councils and local authorities in the determination of the vertical and horizontal sharing of revenue.[402] The involvement of these councils and local authorities also promotes transparency in the sharing of revenue.[403] In this regard, it is recommended that Parliament should consider adopting a specific law that facilitates intergovernmental fiscal relations, particularly around the annual determination of grants and the role of provincial and metropolitan councils.[404] Provincial and metropolitan councils could also provide a platform where revenue sharing can be discussed.

6. Conclusion

This chapter discussed the finances of provincial and metropolitan councils and local authorities. It was argued that the ability of provincial and metropolitan councils and local authorities to deliver on development, democracy and sustainable peace goals depends on the resources they have. In particular, financial resources were identified as key for provincial and local governments to deliver on their obligations. It was observed that local authorities do not have powers to raise sufficient resources, while provinces have none at all. Accordingly, the councils and local authorities are unlikely to deliver on development, democracy and sustainable peace objectives since fiscal resources determine in part the role which these governments can play in the realisation of these objectives. Against this background the chapter suggested that the national government should decentralise resource-raising powers to the provincial and local levels so that these lowers governments are in a position to raise

[400] Machingauta *et al* 2014: 24.
[401] S 194(1)(g) Constitution.
[402] See UN-Habitat 2007: 9, Machingauta *et al* 2014: 25.
[403] See the Aberdeen Principles 2007: 8, Pasipanodya *et al* 2000: 240.
[404] See the Aberdeen Principles 2005: 8, UN-Habitat 2007: 9, Musekiwa 2014: 7.

own-revenue enough to meet their obligations. The decentralisation of significant resource-raising powers to the subnational level is likely to promote local accountability, among other advantages. Since revenue raised at subnational level is unlikely to be commensurate to expenditure obligations at this level, the resultant fiscal gap should be reduced through intergovernmental grants. The 2013 Constitution strives to reduce the fiscal gap at the provincial and local levels. It guarantees provincial and metropolitan councils and local authorities of not less than five per cent of nationally raised revenue in each financial year. The Constitution further provide for the allocation of other non-conditional and conditional grants to provinces and local authorities to achieve various objectives. The allocation of these funds to the provincial and local levels of government will likely require supervision from the national government to monitor the spending of these resources. This argument is explored in greater detail in the following chapter, which focuses on the supervision of junior by senior governments in Zimbabwe.

Chapter 8

Supervision

1. Introduction

Countries all over the world have adopted various forms of multilevel government to realise development, democracy and sustainable peace, among other goals. It was contended in Chapter Two that while these forms of government may promote development, democracy and sustainable peace they also have the potential to undermine the achievement of these goals. The disadvantages of local autonomy associated with multilevel systems of government, such as corruption, inequality, macroeconomic instability, secession and ethnic conflict, have adverse effects on development, democracy and sustainable peace. It is submitted that a 'counterbalance' to the exercise of local autonomy is therefore necessary to realise development, democracy and sustainable peace. This takes the form of supervision of junior governments by senior governments intended to minimise the disadvantages of autonomy and prevent the possible 'centrifugal effect of decentralisation on government functioning'.[1] Supervision means that senior governments can in certain circumstances make binding decisions affecting the exercise of autonomy by junior governments.[2] Its overall objective is to ensure that the government as a whole delivers on both national and local objectives, including development, democracy and sustainable peace.[3] In this regard supervision is twofold. First, it is carried out to ensure compliance with constitutional and legislative framework. Second, supervision is undertaken to ensure that junior governments do not jeopardise the overall development agenda. As stated in Chapter Two, supervision is carried out through regulation, monitoring, support and intervention.

In this chapter, the study examines supervision of junior governments by senior governments in the Zimbabwean multilevel system of government. It will be argued that although supervision is important it should not compromise the minimum level of local autonomy necessary for provincial and metropolitan councils and local authorities to play a role in development, democracy and sustainable peace.[4] Once the Constitution and national legislation has guaranteed a minimum level of local autonomy, supervision should only be

[1] De Visser 2005: 169. See also Ayele 2014: 211.
[2] Steytler & De Visser 2009: 5-15. See also Department of Provincial and Local Government 2007: 6.
[3] See Department of Provincial and Local Government 2007: 33.
[4] See para 6 of Chapter Two. See also Jordan 1984: 89.

'exercised in accordance with such procedures and in such cases as provided for by the Constitution or by law'.[5] The chapter begins by briefly discussing the nature of the Zimbabwean multilevel system of government which informs supervision. The following section discusses the supervisory role of the Ministry of Local Government, before examining the supervisory role of other institutions. The rest of the chapter discusses the four main methods in which senior governments supervise junior governments in Zimbabwe.

2. Changed nature of the system of government and supervision

Before examining the manner in which the senior governments supervise junior governments it is important to briefly discuss how the system of government has changed under the Lancaster House Constitution and 2013 Constitution. The crucial question is what that change suggests for the manner in which senior governments supervise junior governments. Does it allow the continuation of 'old' ways of supervising provincial council and local authorities? This section interrogates this question.

2.1. Identifying the supervisory role of senior governments in the 2013 Constitution

Section 1 of the Constitution provides that Zimbabwe is a 'unitary' state. Unitary signifies a form of 'aggregated' power at the national centre.[6] In the Zimbabwean context, this implies that governmental power resides with the national government, which may decentralise some of it to lower governments. It therefore follows that the exercise of decentralised governmental powers, even if such powers are constitutionally recognised, is supervised by the national government.[7] This argument is supported by the use of the term 'tiers' of government in the Constitution. The Constitution provides that the 'tiers' of government in Zimbabwe are the national government, provincial and metropolitan councils and local authorities.[8]

The word 'tiers' suggests a hierarchical organisation rather than a relationship of equality among governments.[9] Thus, the national government is at the apex of the hierarchy of governments in Zimbabwe, followed by provincial and metropolitan councils and local authorities. As shown in the diagram below, provincial and metropolitan councils and local

[5] UN-Habitat 2007: 7. See also Article 8(1) European Charter of Local Self-Government.
[6] Bockenforde 2011: 35.
[7] See Ministry of Local Government 2013: 13.
[8] S 5 Constitution.
[9] Levy & Tapscott 2001: 5.

authorities are subordinate to the national government.[10] The hierarchical organisation suggests that the national government, as the superior government, has the right and obligation to supervise other governments organised at provincial and local levels.[11] Thus, while not explicitly recognised in the Constitution, the supervisory role of the national government is informed by this understanding. It also follows that provincial and metropolitan councils, as superior governments to local authorities, should have the power to supervise local authorities. The nature and extent of such supervision will be determined by the national government.

Figure 21: Organisation of governments

2.2 Changing nature of supervision

2.3.1 Lancaster House Constitution.

The adoption of a new constitution has brought about the constitutional recognition of provincial and metropolitan councils and local authorities as tiers of government. The question at issue is what impact the 2013 Constitution has on the supervisory relationships between tiers of government. This applies to both to supervisory and cooperative relationships.[12] As discussed in Chapter Three, under the Lancaster House Constitution the system of government was highly centralised, with provincial councils and local authorities operating as extensions of the centre.[13] Provincial councils and local authorities were not

[10] Levy & Tapscott 2001: 5.
[11] See Machingauta 2010: 140, 144.
[12] Cooperative relationships are examined in the following chapter.
[13] See s 13 Provincial Councils and Administration Act, UCA and RDCA.

recognised in the Constitution. They exercised delegated authority provided for under various Acts of Parliament.[14] The national government exercised significant supervisory powers, including the power to dismiss locally elected leaders or to assume decentralised responsibilities at any time.[15]

2.3.2 2013 Constitution

The 2013 Constitution has reformed these supervisory powers. It recognises provincial and metropolitan councils and local authorities not as extensions of the national government but tiers of government.[16] Further, the Constitution explicitly recognises devolution as the mode of transferring powers and functions to provincial and local governments.[17] The Preamble of Chapter 14 of the Constitution specifically requires devolution of powers and functions to provincial and metropolitan councils and local authorities in certain circumstances. Local authorities now have the 'right to govern' their areas and 'all' necessary powers to do so.[18] Thus, the Constitution envisages that provincial and metropolitan councils and local authorities will exercise some measure of local autonomy which the national government should respect. It is submitted that to guarantee this minimum level of autonomy, the supervisory powers of the national government, through the Minister, have to be reformed. Thus, the statutory framework governing provincial and metropolitan councils and local authorities requires adjustment in relation to the new constitutional framework.

2.3.3 Implications of the absence of constitutional limitations on supervision

It is clear from the discussion above that while the Constitution provides the broad framework for devolution, supervision of provincial and local governments by the national executive will be determined by Parliament through legislation. It therefore follows that any limitations on the use of supervisory powers will be imposed by Parliament.[19] Thus, there are no constitutional checks on the use of supervisory powers except (as discussed below) with regard to the powers to suspend and dismiss local officials from office.[20] The danger with such a system is that the national government may 'over-supervise' or 'under-supervise'

[14] These include the UCA, RDCA, Provincial Councils and Administration Act, and Regional Town and Country Planning Act.
[15] See s 114 UCA.
[16] See s 5, Chapter 14 Constitution.
[17] S 3(2)(l) Constitution.
[18] See s 276 Constitution.
[19] Sims 2013: 13.
[20] Sims 2013: 13.

provincial and metropolitan councils and local authorities. In both cases, effective multilevel governance will be undermined. It is submitted that when determining the supervisory power of the national government Parliament should strive to strike a balance between the requirement for supervision and need for local autonomy. Such a balance requires reform of the extensive supervisory powers of the Minister under the Lancaster House Constitution.[21]

Having provided a brief background to the changed landscape for the supervisory role of the national government, the chapter will provide a brief overview of the institutions which are responsible for supervising provincial and metropolitan councils and local authorities.

3. Supervisors

There are a number of institutions which are responsible for supervising provincial and metropolitan councils and local authorities. These include the Ministry of Local Government, provincial ministers, the Local Government Board, the Ministry of Finance, the Office of the President and Cabinet and sector ministries. In this section primary attention is given to the role of the Ministry of Local Government, provincial ministers, and provincial and metropolitan councils

3.1 Ministry of Local Government

The Ministry of Local Government is the institution of the national government which has the primary responsibility to supervise provincial and metropolitan councils and local authorities.[22] It has the responsibility to develop the legal and policy framework which governs the activities of provincial and metropolitan councils and local authorities.[23] Under various Acts of Parliament,[24] the Minister has the power to regulate, monitor and support provincial and metropolitan councils and local authorities.[25] It may also intervene in provincial and local affairs under certain circumstances. When undertaking the supervisory role, the Minister is supported by administrative officials who are stationed at the national, provincial and district (local) levels.[26] The hierarchical organisation of the supervisory structure of the ministry is illustrated in Figure 22 below.

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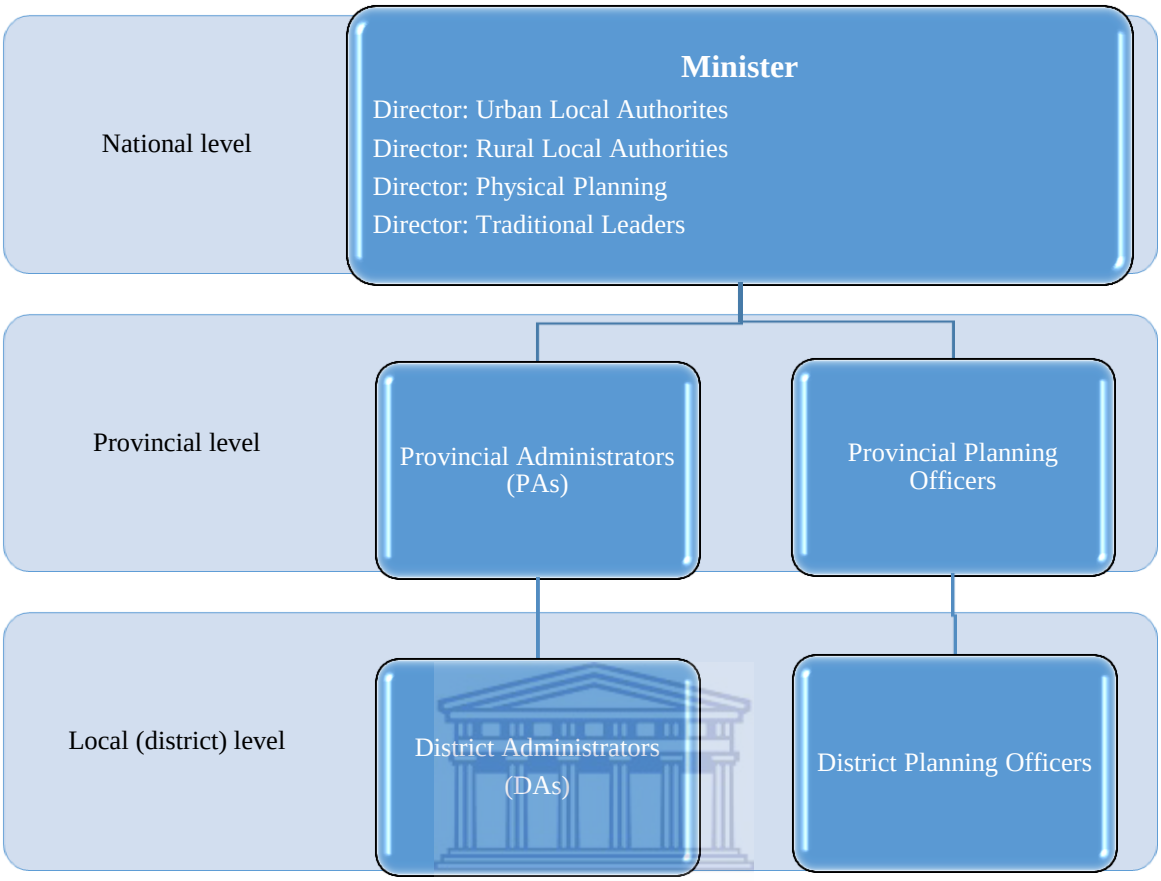
[21] Machingauta *et al* 2014: 39.
[22] Ministry of Local Government 2013: 13. See Mushamba 2010: 117.
[23] Machingauta *et al* 2014: 38.
[24] UCA, RDCA, Provincial Council and Administration Act and Regional Town and Country Planning Act.
[25] Ministry of Local Government 2013: 13.
[26] See Masuko 1996: 50, Sims 2013: 9.

Figure 22: Organisation of the Ministry of Local Government



As shown in the diagram above, at the national level there is the Minister who oversees the entire multilevel system of government. The Minister is supported by a number of administrative departments, including the departments of Rural Local authorities, Urban Local authorities and Physical Planning. The Department of Rural Local authorities oversees rural local authorities,[27] whereas the Department of Urban Local Authorities supports the Minister in supervising urban local authorities.[28] The Physical Planning Department assists the Minister in supervising all local authorities with particular reference to land use planning and development control.[29]

At the provincial level, the provincial administrator (PA) supervises all local authorities in the provinces on behalf of the Minister.[30] The PA reports to the Minister via the administrative

[27] Ministry of Local Government 2011: 9-10.
[28] Ministry of Local Government 2011: 2.
[29] Ministry of Local Government 2011: 13.
[30] Ministry of Local Government 2013: 14.

departments stationed at the national level.[31] At the local level, there are district administrators (DAs) who report to the PAs. Among other duties, the DA 'monitors, advises and supervises local authorities within the district to ensure that their operations are within the provisions of the appropriate statutes, policies and circulars'.[32]

3.2 Ministers of State responsible for provincial affairs

As discussed in paragraph 2.3.3 of Chapter Five, the President has appointed a Minister of State responsible for provincial affairs in each of the ten provinces. The question is: do these Ministers have a role to supervise provincial and metropolitan councils and local authorities? The evidence suggests that they represent the President at the provincial level and are expected to oversee general governance at this level. While it is legally permissible for the President to appoint provincial ministers, it is submitted that it will be contrary to the constitutional principle of devolution to allow these ministers to supervise provincial and metropolitan councils and local authorities.[33] The provincial and metropolitan councils and local authorities are constitutional structures whose activities should not be supervised by appointed officials such as provincial ministers.[34] It is submitted that the role of provincial ministers should be abolished, although there might not be political will to do so. If provincial ministers are retained, it is suggested that their role should be limited to representing the President at the subnational level and not extend to supervising provincial and local governments.

3.3 Provincial and metropolitan councils

It was argued above that while the Constitution is silent about the supervisory role of provincial and metropolitan councils over local authorities, the hierarchical nature of the Zimbabwean multilevel system of government would suggest that the councils may have a supervisory role to play over local authorities. However, their exact supervisory role is unclear and subject to determination by the national government. The Constitution has assigned to these councils responsibilities to monitor and evaluate use of resources in the province which, as argued in paragraph 3.1.5 of Chapter Six, include use of resources by

[31] Ministry of Local Government 2011: 23.
[32] See Ministry of Local Government: Job Description of a District Administrator.
[33] See s 3(2)(l) Constitution.
[34] See Chapter 14 Constitution.

local authorities.[35] Thus the Constitution envisages that provincial and metropolitan councils will play some form of supervisory role over local authorities. However, that role is unlikely to involve regulating and intervening in local affairs given that such supervisory powers are exercised directly by the national government. The councils may also oversee local authorities with regard to development planning and implementation, as their predecessors used to do.[36]

3.4 Other supervisors

Sectoral institutions also supervise provincial and metropolitan councils and local authorities, especially in sectors such as water, health, environment, transport and roads. The National Treasury plays a very important supervisory role, particularly relating to finances (including borrowing) and development planning.[37] As observed in Chapter Four, the President has a very important role, especially with regard to the establishment of local authorities.[38] The Office of the President and Cabinet directly oversees the delivery of public services by local authorities under the government's new economic blueprint, ZimAsset.[39] The supervisory role of the Auditor-General,[40] and National Parliament,[41] was discussed in the previous chapter while that of the Local Government Board was examined in Chapter Six. This chapter will not discuss in detail the role of these institutions but reference to their role is made when necessary. The sections that follow will examine the supervision of provincial and metropolitan councils following the broad categories of supervision, as set out in paragraph 6.4 of Chapter Two.

4. Regulation

It was contended in paragraph 6.6.1 of Chapter Two that the protection and promotion of national and local interests require senior governments to regulate the activities of junior governments. Regulation refers to senior governments setting 'frameworks within which

[35] See s 270(1)(e) Constitution.
[36] See s 13 Provincial Councils and Administration Act.
[37] See Mushamba 2010: 117.
[38] See Mushamba 2010: 117.
[39] ZimAsset 2013: 65. It directly oversees the implementation of the Integrated Results Based Management (RBM) at all levels of government. RBM is a new management style adopted by the national government which emphasises the use of resources available to achieve the most desired results (2013: 13, 32). See also Ministry of Local Government 2013: 18-20.
[40] See s 309 Constitution.
[41] See s 299 Constitution.

local autonomy can be responsibly exercised'.[42] Frameworks may comprise norms and standards on the delivery of public services, financial reporting and accounting practices. Junior governments must exercise their autonomy within the frameworks defined by the constitution, national legislation and policies.[43] A distinction can be made between regulatory powers affecting the institutions, on one hand, and those affecting functions of junior governments and finances of junior governments, on the other hand.[44] In this chapter a further distinction is made between regulatory powers affecting provincial and metropolitan councils and those affecting local authorities. Attention in this section is given to regulatory powers affecting the functions of provinces and metropolitan councils and local authorities.[45]

4.1 Regulatory powers affecting functions of provincial and metropolitan councils

4.1.1 Constitutional framework

The Constitution provides that provincial and metropolitan councils are responsible for socio-economic development in their respective provinces.[46] It further directs Parliament to enact legislation providing for the functions of provincial and metropolitan councils.[47] It is submitted that such an Act may only provide for the manner in which provincial and metropolitan councils exercise their functions. Such an act may not go further to provide the content of the functions, but is limited to the method of exercising them. Thus, the national government has power to regulate the manner in which provincial and metropolitan councils undertake socio-economic development. This responsibility must be exercised in a 'manner that does not encroach on the geographical, functional or institutional integrity of another tier of government'.[48]

4.1.2 Statutory framework

The Provincial Councils and Administration Act provides for the functions of provincial councils which mainly revolve around development planning and implementation. Section 45(1) of the Provincial Councils and Administration Act empowers the Minister to regulate

[42] Steytler & De Visser 2009: 5-15. See also De Visser 2005: 170.
[43] UN-Habitat 2007: 6.
[44] See De Visser 2005: 170, Machingauta 2010: 140.
[45] The section will not discuss regulatory powers affecting institutions and finances of provinces and local authorities since these were discussed in the previous chapters.
[46] S 270(1) Constitution.
[47] S 270(2) Constitution.
[48] S 265(c) Constitution.

'anything' which in 'his opinion is necessary or convenient' to be regulated at the provincial level. This means that the Minister has discretion to determine what has to be regulated and when such regulation should take place. It is argued that this provision gives the Minister unfettered powers since he or she may regulate 'anything' which in 'his opinion' requires regulation. As submitted above, the Minister may only regulate the manner in which provincial and metropolitan councils may exercise their functions. For example, the Minister may regulate the manner in which councils may monitor use of public resources in their respective provinces. Hence, it is submitted that section 45(1) of the Provincial Councils and Administration Act should be reformed.[49]

4.2 Regulatory powers affecting functions of local authorities

4.2.1 Constitutional and statutory frameworks

The 2013 Constitution gives local authorities the 'right to govern' their areas with 'all' the powers necessary to do so.[50] Such a right is not without boundaries. It is limited by the Constitution and in certain circumstances by national legislation.[51] The national government, through Parliament, has enacted various acts which regulate the functions of local authorities. Legislation regulating the functions of local government can be categorised into sectoral legislation and local government legislation. The two categories are analysed in this section.

4.2.2 Sectoral regulation

Sectoral regulation entails the regulation of a particular sectoral area which cuts across the hierarchical organisation of government. Sectoral regulation is carried out and overseen by sectoral ministries and departments[52] of the national government. Some of the key sectoral legislation includes the Public Health Act, the Education Act, the Water Act, the Roads Act, the Environmental Management Act, the Vehicle Registration and Licensing Act and the Shop Licenses Act. To complement these Acts, relevant ministers periodically make Statutory Instruments and Proclamations regulating local authorities in their respective sectoral areas.[53] The legislation often defines the norms and standards and other guidelines

[49] See Chatiza 2014: 5.
[50] S 276(1) Constitution.
[51] See s 276(1) Constitution.
[52] Ministry of Local Government 2013: 17-18.
[53] Ministry of Local Government 2013: 18. See also Mushamba 2010: 105.

which local authorities are required to abide by when delivering public services.[54] This section examines the regulation of the health, education and water sectors, which are some of the key local government responsibilities.

4.2.2.1 Health sector

As highlighted in Chapter Six, local authorities have competency over health, including the administration of hospitals and clinics.[55] The Public Health Act defines the competence of local authorities and imposes obligations on local authorities with respect to health.[56] For instance, the Act requires local authorities to hire medical officers and health inspectors whose qualifications, appointment, dismissal and terms of employment are determined by the national government through the Minister responsible for health.[57] The national government also determines fees which are payable in all health institutions administered by local authorities as well as on those fees which are payable for other services undertaken by local authorities such as inspections.[58] It is submitted that the health competence is highly regulated, leaving limited opportunities for local discretion. While some form of regulation is desirable in the health sector, it is submitted that room for local discretion should be provided. For example, the national government may retain the power to set a broad national health-fee structure while allowing each local authority to determine individual fees.

4.2.2.2 Education sector

Local authorities have the power to provide education services.[59] The Education Act imposes obligations on all local authorities for the purposes of ensuring 'fair and equitable' provision of primary education throughout Zimbabwe. Section 5 of the Act provides that 'every local authority shall endeavour to establish and maintain such primary schools as may be necessary for all children in the area under its jurisdiction'. This means that local authorities have the autonomy to determine how they are going to establish primary schools and the number of such schools. While local authorities have the power to establish and administer schools the

[54] See Jordan 1984: 83, Masuko 1996: 50, Chatiza 2010: 9.
[55] See the Second Schedule UCA and First Schedule RDCA.
[56] For example, s 14 of the Public Health Act states that 'every local authority shall take all lawful and necessary precautions for the prevention of prevalence of the occurrence, or for dealing with the outbreak or prevalence, or any infectious or communicable or contagious diseases'.
[57] Ss 7, 8, 10, 11 and 12 Public Health Act.
[58] S 81 Public Health Act.
[59] See Second Schedule UCA and First Schedule RDCA.

national government determines the curriculum. It is submitted that this form of regulation is necessary given that education curriculum cannot be left for the determination of individual local authorities since it has implications on the quality of education. Thus, such powers of the national government fall within the required scope of supervision.

4.2.2.3 Water Sector

The UCA and RDCA give local authorities the power to supply water for domestic and industrial purposes.[60] The Water Act sets the framework within which local authorities exercise their power to supply water. For example, when considering, formulating and implementing any proposal for the use, management or exploitation of water resources, local authorities are required to give due regard to the conservation of the environment.[61] Section 64(1) of the Water Act empowers catchment councils[62] to regulate the maximum volume of water which can be extracted from a public stream or storage works and the maximum rate per month at which water may be extracted from any borehole or well in a water shortage area.[63] These are typical examples of provisions determining the parameters within which local authorities exercise their competence. In some cases, however, the national government has gone beyond determining the parameters involved in the day-to-day operational work of local authorities. For example, the ZimAsset makes provision for the procurement of water treatment chemicals for all local authorities by the national government.[64] It is submitted that in such cases, the national government has reduced the ability of local authorities to make decisions. Without such an ability, local innovation and experimentation, which can promote the realisation of development goals, is likely to be lost.[65]

4.2.3 Primary local government regulation

The primary local government legislation, namely the UCA and RDCA, regulates the majority of local government functions. As highlighted above, the Minister is responsible for

[60] See s 183 UCA and s 71 read together with the First Schedule RDCA.
[61] S 67 Water Act.
[62] Catchment councils are bodies which are established by the Minister to, among other responsibilities, regulate and supervise the exercise of rights to, and use of, water in respect of a specific river system. See s 20 and s 21 Water Act.
[63] S 64(1) Water Act. A local authority may apply to the catchment council concerned for a permit to abstract water within a water shortage area at a rate higher than the prescribed maximum rate. S 64(6) Water Act.
[64] ZimAsset 2013: 76.
[65] See Jordan 1984: 89, Masuko 1996: 53.

developing and administering these pieces of legislation.[66] Under these Acts, the Minister enjoys various regulatory powers, including the power to issue policy directives and regulations governing the manner in which local authorities carry out their responsibilities.[67] These powers of the Minister are examined below.

4.2.3.1 Policy Directives

As discussed in Chapter Two, the role of subnational governments in development is likely to be enhanced if they have some measure of discretion when exercising their responsibilities. It was argued that such a minimum level of autonomy may be protected if the regulatory powers of the national government are limited to setting the national framework comprising norms and standards for the delivery of services, for example.[68] Further, the regulatory powers of the national government should be predictable and exercised within defined boundaries.[69] The Minister may issue directives to guide policy-making at local level. For example, with respect to land use planning, the Minister may issue directives regulating the form and content of land use and development plans and preliminary planning permits.[70] In urban local authorities the Minister may issue directives of a 'general character' guiding local policy-making.[71] It is submitted that the powers of the Minister to issue policy directives are necessary. However, such powers should be exercised in setting the national framework within which local authorities operate and not to take away local discretion, as discussed in detail below.[72]

4.2.3.2 Regulations

The Minister may regulate the functions of local authorities by issuing regulations in addition to policy directives.[73] Using the same example of land use planning discussed above, the Minister may issue regulations prescribing the form and content of master plans and local plans.[74] The Minister may also make regulations 'generally in respect of all matters for which

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[66] Ministry of Local Government 2013: 13.
[67] Masuko 1996: 50.
[68] See para 6.4.1. See also De Visser 2005: 44, the Aberdeen Principles 2005: 9
[69] See Ford 1999: 13.
[70] S 69(1)(a) Regional, Town and Country Planning Act.
[71] S 313 UCA.
[72] See Chatiza 2014: 5-6; Combined Harare Residents Association 2014: 37; Madhekani and Zhou 2012: 21, 22; Machingauta 2010: 140.
[73] See Ministry of Local Government 2013: 13.
[74] S 68(2)(a) Regional Town and Country Planning Act.

[the Minister] considers it necessary or expedient to provide for the better carrying out of the purposes and objects of [the UCA]'.[75] In local government areas, the Minister may issue regulations governing almost 'all' activities which can be carried out in those areas.[76] It is submitted that these provisions give the Minister 'unlimited' powers since he or she has the power to regulate almost 'all' matters concerning the functions of local authorities. Under this legal arrangement, the autonomy of local government depends entirely on the ability of the incumbent Minister to exercise restraint.[77] If the Minister does not exercise restraint, the autonomy of local authorities will be significantly undermined as there are no limitations to the powers of the Minister.[78] It is submitted that these powers of the Minister should be reformed by explicitly recognising in legislation the matters where the Minister can make regulations.[79] Further, those regulations should be limited to setting national frameworks in line with the 2013 Constitution, which envisages local authorities exercising some measure of local autonomy.[80] Section 276(1) of the Constitution provides that local authorities have a 'right to govern' their areas and 'all' the powers necessary to do so. Further, section 265(1)(c) highlights that local authorities have a geographical, functional and institutional integrity. It is submitted that these provisions suggest that the Minister may not have unlimited powers to regulate the functions of local authorities as that is likely to undermine their 'right to govern' and functional integrity.

In this section, the chapter examined the regulatory powers of the national government. It was argued that the national government has the necessary powers to regulate. However, it was stressed that in some cases the regulatory powers have been exercised beyond national framework-setting. In so doing, such regulatory powers endanger the minimum level of local autonomy which is necessary to reap the benefits associated with a multilevel system of government.[81] It is submitted that the statutory framework providing for the regulation of provincial and metropolitan councils and local authorities is now inconsistent with the 2013 Constitution, which requires that provincial and metropolitan councils and local authorities

[75] S 234(1)(h) UCA. See also s 159 RDCA.
[76] See s 235 UCA.
[77] Jonga 2012: 117.
[78] See Mushamba 2010: 119, Madhekani & Zhou 2012: 22.
[79] See Clause 28 Urban Councils Bill, Chatiza 2014: 5, 10.
[80] Preamble of Chapter 14, s 276 Constitution. See Chatiza 2014: 6.
[81] See De Visser 2005: 44. Ford suggests that 'legal barriers may inappropriately restrain the ability of local authorities to select the most desirable options for the delivery of decentralised services' (1999: 13).

exercise some measure of autonomy.[82] The Constitution requires the development of a new regulatory framework only comprising national standards, frameworks and guidelines.[83] It is submitted that when developing such a framework, compliance costs, especially by poor or low level subnational governments, should be taken into account.[84]

5. Monitoring

Supervision may be exercised through monitoring. Monitoring occurs when one tier of government measures the compliance with the constitutional, legislative and performance frameworks of another tier of government.[85] It is through monitoring that senior governments gather information upon which they make decisions determining the kind of support a particular government requires to fully exercise its autonomy.[86] It is also through monitoring that senior governments determine whether it is necessary to intervene at subnational level to address cases of 'serious' non-compliance with laws and policies. In this section, the chapter analyses the role of the national government to supervise provincial and metropolitan councils and local authorities by monitoring their activities.

5.1 Constitutional framework

The Constitution does not explicitly provide for the role of the national government to monitor provincial and metropolitan councils and local authorities. Thus, like any other forms of supervision, monitoring of provincial and metropolitan councils and local authorities is going to be carried out outside the Constitution. The Constitution nonetheless imposes an obligation on the national government, through Parliament, to monitor the financial affairs of provincial and metropolitan councils and local authorities.[87] Section 299(1) of the Constitution mandates Parliament to supervise expenditure at provincial and local levels in order to ensure that all revenue is accounted for, all expenditure has been properly incurred and any limits and conditions on appropriation have been observed. The Constitution further directs Parliament to enact a law providing for mechanisms of monitoring and overseeing the

[82] See Preamble of Chapter 14, ss 264 and 276 Constitution.
[83] Local Governance Community Capacity Building and Development Trust 2014: 12.
[84] For a discussion on the importance of compliance cost, see the National Planning Commission 2011: 385-91.
[85] Steytler & De Visser 2009: 15-5. See Article 8(2) European Charter of Local Self-Government 2007: 33.
[86] Steytler & De Visser 2009: 15-5, Ayele 2014: 218.
[87] S 299(1) Constitution.

financial affairs of provincial and metropolitan councils and local authorities (and other government institutions).[88]

The supervisory role of Parliament over the finances of all governments at all levels is commendable. The question is how Parliament is going to exercise the responsibility of monitoring finances at subnational level. Will it, for example, call a mayor or chairperson of the provincial council to explain certain financial decisions? If the answer is positive, local accountability of provincial and local governments is likely to be undermined. Will Parliament go to local authorities and investigate financial problems relating to corruption? What does Parliament do with the outcome of such investigation given that the Constitution has not assigned it the power to impose any penalties? Will it hold the Minister responsible for provincial and local governments accountable for financial problems at subnational level? This brings into question the feasibility of the role of Parliament to directly monitor subnational finances. Given that Parliament is part of the national government, it is suggested that its role with respect to monitoring the finances of provincial and local governments should be limited to developing the legislative framework governing the monitoring of finances at subnational level rather than being involved in the day-to-day monitoring of finances.

5.2 Statutory framework

The UCA and RDCA provide the main mechanisms through which the national government monitors the activities of local authorities.[89] Sectoral legislation also provides the monitoring regime for specific sectors. Under the ZimAsset,[90] provision is made for performance monitoring of all government institutions, including local authorities.[91] There are a number of tools at the disposal of the Ministry of Local Government to monitor the compliance of local authorities with regulatory and performance frameworks.[92] They range from requesting performance and financial reports, conducting investigations, monitoring minutes of councils, conducting monitoring visits, self-reporting, accessing records, and approving certain decisions or resolutions.[93] Self-reporting mainly relates to the financial statements which

[88] S 299(2) Constitution.
[89] See Machingauta 2010: 142.
[90] Economic blue print covering the period 2013 to 2018.
[91] ZimAsset 2013: 32.
[92] Chakaipa 2010: 33-4, Masuko 1996: 50.
[93] Ministry of Local Government 2013: 13. See Jordan 1984: 83, Machingauta 2010: 140.

local authorities are required to submit regularly to the national government and AG, as discussed in the previous chapter. This section examines the following monitoring mechanisms: right of the national government to access records, request information, inquire and investigate and approve resolutions and decisions. It will also analyse the regular submission of minutes by rural local authorities to the Minister.

5.3 Right of access to records and other documents

As argued in Chapter Two, the national government should have the right to access certain documents and information at subnational level.[94] Supervision is almost impractical without an instrument to obtain information on the basis of which senior governments can assess whether or not intervention, support or regulation is necessary.[95] However, such a right of senior government to request information and to access materials, information, places and persons of junior governments should not be exercised without limitations. For example, the national government may not demand access to information of junior governments on a daily basis. If such a situation is permitted, junior governments are likely to be diverted from their core functions of delivering services. The administrative burden involved in making information available for the perusal of the national government also has to be considered.[96]

The UCA gives the Minister 'unrestricted access' to all council records, minutes and any documents in the possession of any local authority which relate to the council's meetings, resolutions and affairs.[97] This implies that the Minister may access any document or information of a local authority at any time and without providing reasons for why he or she needs such information or document. There is no corresponding provision in the RDCA and Provincial Councils and Administration Act adding to the inconsistency in the supervisory framework. While this provision allows the Minister to keep abreast of what is happening in local authorities, it represents a challenge to the institutional integrity of local authorities.[98] Under the 2013 Constitution, local authorities are governments in their own right. Thus, a certain amount of respect should be given when encroaching on their institutional integrity.[99] This requires a restriction to be placed on the Minister's right to access certain key

[94] See para 6.4.2.
[95] De Visser 2005: 179.
[96] De Visser 2005: 182.
[97] S 91(1) UCA. The Minister may authorise any person to have 'unrestricted access' to documents of the council referred to above. S 91(2) UCA.
[98] See Machingauta 2010: 142.
[99] See Chatiza 2014: 5, 6.

documents of local authorities in routine monitoring. Such documents include annual reports, budgets and strategic plans. The Minister however should have unrestricted access to all documents if there are problems in a local authority.

5.4 Right to request information

Effective supervision of junior governments requires in part that senior governments have the right to request certain information upon which they can assess whether or not intervention, support or regulation is necessary.[100] However, it is submitted that such a right should not be construed to mean that senior governments may request information from junior governments on a regular basis. As highlighted above, the administrative burden involved in furnishing information should also be considered.[101]

5.4.1 Provincial and Metropolitan councils

The Provincial Councils and Administration Act states that the Minister may from time to time require a provincial council to submit to him or her copies of records of its proceedings, statistics and any documents or information.[102] This means that there are no limitations to the kind of information the Minister may request. It is submitted that such powers of the Minister are not consistent with the 2013 Constitution. Under the 2013 Constitution, provincial and metropolitan councils are not extensions of the national government. Thus, the Minister may not request access to 'all' information or documents of a provincial or metropolitan council for routine monitoring as that would infringe on their institutional integrity.[103] However, in cases where there are problems in a provincial or metropolitan council, the Minster should have unlimited access to all documents or information.

5.4.2 Local authorities

The Minister may require a local authority(s) to submit to him certified copies of its proceedings, statistics, and other documents, or any such other information.[104] Machinguata argues that these powers of the Minister indicate the kind of relationship which local government legislation envisaged between the Minister and local authorities.[105] The

[100] De Visser 2005: 179.
[101] De Visser 2005: 182.
[102] S 40(b) Provincial Councils and Administration Act.
[103] See s 265(1)(c) Constitution.
[104] S 309 UCA and s 153 RDCA.
[105] Machingauta 2010: 143.

legislation is 'silent on how the information may be sought and seems to accept that a simple letter requesting the information from the Minister suffice[s]'.[106] Further, there are no limitations to what the Minister may request as long as it is information of a local authority. It has been argued that this form of supervision by the Minister is excessive.[107] There is the danger that the exercise of these powers will impose an excessive administrative burden on local authorities since they have to provide almost 'all' types of documents and information at their disposal if requested by the national government. Under these circumstances, local authorities are likely to be preoccupied with complying with information requests rather than on delivering services to the people, which is their core mandate.

In practice, the Minister has requested a variety of information and reports from local authorities. For example, in terms of Local Authority Circular No 2 of 2000, all urban local authorities are required to provide monthly updates to the Minister on development programmes and service delivery. In particular, an update needs to be provided on a number of activities, including: budget performance, health delivery system, building plans approved and value thereof, comment on the state of water and sewerage reticulation as well as the number of refuse removal vehicles available and the regularity of refuse removal.[108] While the nature of information requested may be important for effective monitoring, it is submitted that legislation should provide the nature of information the Minister may request as well as the regularity and form of such information requests.

5.5 Submission of minutes to the Minister

One of the monitoring mechanisms available to the national government is the requirement that rural local authorities must submit council and committee minutes at certain intervals to the Minister. Rural local authorities are required to submit a copy of all minutes to the Minister within six weeks of the date on which the meeting to which they relate was held.[109] There is no corresponding requirement for urban local authorities or provincial and metropolitan councils. It is argued that this provision of the RDCA is too intrusive on local autonomy. It undermines the institutional integrity of rural local authorities which they have under the 2013 Constitution.[110] It presents rural local authorities as mere extensions of the

[106] Machingauta 2010: 143.
[107] See Jonga 2012: 117, 2014: 75; Combined Harare Residents Association 2014: 16.
[108] Ministry of Local Government: Local Authority Circular Number 2 of 2000.
[109] S 51(8) RDCA.
[110] See ss 5 and 265(1)(c) Constitution.

national government with no discretion even to keep minutes of proceedings. It is submitted that the provision should be repealed.

5.6 Right to inquire and investigate

As argued in Chapter Two, the powers of the senior governments to investigate and inquire into the affairs of junior governments are necessary among other reasons to detect corruption and resource-wastage. It was contended however that the exercise of such intervention powers should not undermine local autonomy.[111] Among other mechanisms, local autonomy may be protected by legally recognising the conditions upon which senior governments may undertake investigations and inquiries at subnational level.[112] Furthermore, the procedure to be followed when undertaking such investigations and inquiries must be clearly outlined. This rule-based form of supervision may serve as a deterrent to the invasion of subnational powers by the senior governments. Rule-based supervision provides a basis for judicial review of acts undertaken by the executive of senior governments.[113] The question is whether such mechanisms of safeguarding local autonomy exist in the Zimbabwean multilevel system of government.

5.6.1 Provincial and metropolitan councils

One of the mechanisms used by the Minister to monitor provinces is the appointing of investigators to inquire into matters relating to the administration of provinces. If the Minister considers it 'necessary or desirable in the public interest', he or she may appoint members of the public service to inquire into 'any matter which relates to the good government of a province'.[114] The Minister may also appoint investigators to inquire into 'any matter' which relates to the 'failure' of a provincial council to undertake any of its powers and functions, or which arises out of the affairs of a provincial council.[115] These provisions of the Provincial Councils and Administration Act are structured in a way which allows for a liberal interpretation. For example, what matters 'relate to the 'good government' of a province? Good government of a province encompasses almost 'all' aspects of provincial governance. The same applies to investigations triggered by 'failure' to undertake any of the powers and

[111] See UN-Habitat 2009: 10, World Bank 2000: 122.
[112] See Tarr 2011: 172.
[113] See Tarr 2011: 173.
[114] S 41(1) Provincial Councils and Administration Act.
[115] S 41(1) Provincial Councils and Administration Act.

responsibilities of a provincial council. The question is failure in what respect? It is submitted that these powers of the Minister pose a danger to the autonomy of provincial councils since the powers of the Minister are not limited.

As stated above, the autonomy of provinces is likely to be safeguarded if the grounds upon which the Minister may institute an investigation are recognised in the legal framework.[116] In South Africa, for example, section 100 of the Constitution of South Africa states that 'when a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national government may intervene'.[117] This means that the intervention powers of the national government are limited only to cases where a province 'cannot or does not' fulfil an executive obligation. It is submitted that, following the South African approach, the Provincial Councils and Administration Act should be reformed to recognise the grounds upon which the Minister may institute any form of investigation and the procedure to be followed.[118] Further, intergovernmental checks and balances are vital to check abuse of power by the Minister.[119] For example, the Minister could be required to seek the approval of Parliament before appointing investigators to inquire into matters relating to the administration of a province.

5.6.2 Local authorities

It has been argued that 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'.[120] In Zimbabwe, the national government has such supervisory powers. The Minister may appoint an investigator(s) to inquire into any matter which relates to the 'good government' of an area of a local authority or 'failure' of a local authority to undertake its power and functions, if he or she considers it 'necessary or desirable' to do so in the 'public interest'.[121] The Minister may also appoint investigators to inquire into any matter that may arise out of the affairs of a council or local authority concerning the exercise of the powers of

[116] See Tarr 2011: 172.
[117] See also s 139 of the Constitution of South Africa, with respect to local government.
[118] See s 100 Constitution of South Africa.
[119] See UN-Habitat 2007: 7. The Provincial and Metropolitan Councils Administration Draft Bill (August 2014) has not made provision for such intergovernmental checks and balances allowing the perpetuation of unchecked supervisory powers.
[120] Machingauta 2010: 143.
[121] S 311(2)(a)(b) UCA and s 154(a)(b) (1) RDCA.

local authorities to enter into cooperative agreements.[122] These investigations are reactionary in nature in that they are prompted by problems in local authorities.[123] What presents a challenge to local autonomy is the discretion which has been afforded to the Minister to determine the circumstances upon which investigations can be instituted to safeguard 'public interest' or 'good government'.[124] As argued above, these terms are not precisely defined and therefore allow liberal interpretation, which may be abused by the incumbent Minister for political reasons.[125] Moreover, there is no oversight on the exercise of such powers. Hence, it is submitted that although the legal framework governing the multilevel system of government gives the national government the necessary powers to investigate or inquire into subnational affairs, the UCA allows unfettered intervention in local authorities and, therefore, adversely affects local autonomy.[126] As argued above, local autonomy may be protected if the circumstances upon which the Minister may appoint investigators are clearly, legally recognised. In addition, such powers should be reviewable by Parliament, with the legislative body having the power to cancel such an investigation if it is not satisfied that due process was followed or the investigation was not warranted in the first place.[127]

5.7 Approval of resolutions of local authorities

As argued in paragraph 6.1.3.4 of Chapter Two, local authorities may play a role in development, democracy and sustainable peace especially if they have final decision-making powers over their functions. In other words, once a function has been devolved and a regulatory framework has been established, the national government should not make binding decisions on that function unless a local authority has failed to deliver on that function. Thus, supervision by the national government should not go to the extent of requiring local authorities to submit their policy proposals for 'approval' before they become operational. In Zimbabwe, rural local authorities are subjected to such supervisory control by the national government. The national government has the power to approve certain resolutions of rural local authorities.[128] Through a notice, the Minister may 'direct that any resolution of a council dealing with such matters or such class of matters as are specified in the notice shall be

[122] S 311(2)(c) UCA and s 154 (1)(b) RDCA. See Feltoe 2006: 135, 142.
[123] See Machingauta 2010: 144.
[124] See Machingauta 2010: 144, Combined Harare Residents Association 2014: 16.
[125] See Chakaipa 2010: 66, Combined Harare Residents Association 2014: 16.
[126] See Machingauta 2010: 140, Jonga 2014: 75, Combined Harare Residents Association 2014: 16.
[127] See Clause 33 Urban Councils Bill.
[128] See Jordan 1984: 83.

submitted to him for approval'.[129] Following that notice, no resolution passed by a rural local authority dealing with any matter specified in the notice can be of any force or effect, as a resolution of the council, unless approved by the Minister.[130] There is no corresponding provision in the UCA. The rationale of having this form of supervisory control only for rural local authorities and not for urban local authorities is questionable. It is further submitted that this provision gives the Minister the power to take away final decision-making power of rural local authorities over their responsibilities.[131] These powers of the Minister should be reviewed and redefined within the new constitutional paradigm which has devolution of power as one of its core tenets.[132]

As stated in paragraph 3.1.8.1 of Chapter Seven, the UCA and RDCA gives local authorities the power to engage in income-generating projects but only if the Minister allows them to do so and they have complied with any conditions the Minister may impose.[133] Other powers of the Minister relate to the power to approve establishment of cooperative and joint committees (or boards)[134] in both urban and rural local authorities.[135] The overall effect of these provisions on local authorities will be to reduce their ability to decide their own priorities. Yet it is this ability which is at the heart of local governments that deliver on development, democracy and sustainable peace.[136] In this kind of legal environment, local authorities are likely to play a minimal role in pursing development goals. It is submitted that the nature of these powers of the Minister are at odds with the 2013 Constitution, which gives local authorities the 'right to govern' their areas with limited control from the national government.[137] Thus, it is further submitted that these powers of the Minister should be abolished so that local authorities have final decision-making over their responsibilities within a national framework set by the national government.[138]

[129] S 53 RDCA.
[130] S 53(2) RDCA.
[131] See Combined Harare Residents Association 2014: 16, Madhekani &Zhou 2012: 22.
[132] See Chatiza 2014: 6.
[133] See s 221 UCA and s 80 RDCA.
[134] These are agreements between local authorities in which they undertake to assist one another when carrying out certain responsibilities.
[135] Ss 222, 224 UCA and ss 81, 83 RDCA.
[136] See Jordan 1984: 89, Masuko 1996: 53.
[137] Combined Harare Residents Association 2014: 21.
[138] See Chatiza 2014: 6, Jonga 2014: 75, Clause 22 Urban Councils Bill.

5.8 Monitoring visits

One of the mechanisms used by the ministry to monitor the activities of local authorities is by carrying out what are called monitoring visits.[139] This involves ministry officials physically visiting local authorities to evaluate compliance with legislation, policies and performance targets. The performance of a local authority against set targets is evaluated on the basis of a performance checklist, whilst compliance with legislation and policies is evaluated using a systems audit. These two monitoring tools are examined below.

5.8.1 Performance 'Barometer'

The Ministry of Local Government has developed a Performance Checklist, a barometer which measures the performance of a local authority within a stipulated period. As shown in the table below, the performance of a local authority is measured on five core areas, namely: service delivery, budgets, compliance, corporate governance and capacity to generate and utilise revenue. A local authority is given a performance rating out of 100 spread over the five areas. It is submitted that monitoring visits to assess the performance of local authorities are an effective way of monitoring the activities of local authorities, especially if they are carried out regularly. The only challenge to their effectiveness is the availability of resources to enable officials of the ministry to visit every local authority, which determines the regularity of these monitoring visits.

Table 11: Local Authorities Performance Checklist (2011 version)

Performance Area	Weighting	Description	Performance rating
1. General Service Delivery	35	(a) Roads and Street lighting (b) Water demand and supply (c) Refuse Collection (d) Health (number of hospitals, clinics and drugs availability) (e) Education and Social Amenities (number of schools and recreation facilities)	

[139] Ministry of Local Government 2013: 13.

		(f) Functionality of sanitation facilities (Other (specific), e.g., grass cutting	
2. Budgets	25	(a) Performance (level of creditors and debtors) (b) Compliance on consultation process (c) Salary schedule (30-70 employment cost/service delivery ratio) (d) Salary arrears and statutory remittances (e) Submission deadlines	
3. Compliance	20	(a) Circulars and Statutory provisions (b) Adherence to tender procedures (c) Audited accounts (d) Submission of minutes within six weeks	
4. Corporate Governance	10	(a) Functionality of committee system (b) Working relations with clients, stakeholders and government	
5. Capacity to generate revenue and deploy such revenue in development programmes	10	(a) Recapitalisation (b) Maintenance and rehabilitation works	
Total	100		

Source: Ministry of Local Government 2011.

5.8.2 Systems audit

The Ministry of Local Government also monitors the activities of local authorities by conducting what is referred to as a systems audit. A systems audit is an annual monitoring tool which assesses the operations of a local authority. The audit is carried out annually by

officials of the Ministry, among them PAs and DAs.[140] It seeks to establish whether a local authority is complying with legislative prescriptions and performing to the prescribed standards. The audit covers a number of areas, including finance, human resources, corporate governance and meetings of the council.[141] It is submitted that the system audit covers a variety of areas which gives a 'good' reflection of the ability of each local authority to comply with legislative and performance frameworks. They provide a base upon which the national government can make a decision to determine the kind of supervision required, whether regulation, support or intervention. The performance and systems audits determine whether it is necessary for the Ministry to make use of other monitoring tools such as inquiries and investigations.

5.9 Financial monitoring

The 'final stop on the pathway through raising, allocating, budgeting and spending public funds is monitoring, withholding and regulating the use of public funds'.[142] A number of institutions have been established to, among other responsibilities, monitor the financial affairs of provincial and local governments. The oversight role of Parliament over subnational finances has already been discussed above.[143] Besides Parliament, as will be examined below, the Auditor General and the Ministry of Local Government also monitor the finances of provincial and local governments.[144] This section examines the various mechanisms of monitoring the financial affairs of provincial and local governments. Primary attention is given to financial reporting, auditing and inquiries. It is also important to note that, as highlighted in paragraph 5.8.2 above, a system audit also encompasses an assessment of the financial affairs of a local authority. The audit can be an effective tool of monitoring the financial affairs of local authorities (and also provincial and metropolitan councils).

[140] See Ministry of Local Government: Local Authorities Systems Audit 2012.
[141] The audit covers an assessment of matters such as conditions of service of employment, code of conduct, total number and qualifications of employees, vacancy levels, recruitment and selection criteria, performance management system, staff development policy, discipline and grievance procedures, preparation of financial statements, fiscal reporting, internal audit system, submission of financial statements for auditing, implementation of audit recommendations.
[142] Kriel & Monadjem 2011: 41.
[143] See s 299(1) Constitution.
[144] See s 309 Constitution.

5.9.1 Financial reporting

It is often argued that decentralisation promotes corruption, resource wastage and abuse of power at local level, in the process undermining the achievement of development, democracy and sustainable peace.[145] It was contended in paragraph 5 of Chapter Two, however, that the potential of a multilevel system of government to promote corruption and resource wastage should not be the sole reason for centralising power. The answer lies in putting in place mechanisms to promote transparency, citizen participation and accountability. One of the mechanisms of promoting transparency, citizen participation and accountability is to require subnational governments to regularly report on their financial status.

The 2013 Constitution requires clear fiscal reporting at all levels of government.[146] The national government has the necessary powers to ensure that there is a clear fiscal report at subnational level. The Minister may regulate the form of accounts, statements and reports to be prepared by local authorities and the manner in which information is set out in such accounts, statements and reports.[147] Further, the Minister may issue regulations requiring a local authority to inform the public of its annual expenditure and specifying the manner and nature of information to be made public.[148] Senior officials of a local authority (town clerks, secretaries and head of departments) are required to submit monthly and quarterly financial reports (statements) to the finance committee and full council.[149] Further, the officials must present schedules of payments to the finance committee.[150] Within 120 days of the end of the financial year, every local authority must submit to the Minister:

a) an annual report on the activities of the local authority,
b) audited financial statements, and
c) the audit report on the audited financial statements.[151]

It is submitted that the power of the national government to regulate and require local authorities to report regularly on their financial status is necessary to detect whether public resources are being used for the benefit of the public, for example, through responsive service

[145] Shah 2006: 17, Prud'homme 1995: 211.
[146] See S 298(1)(e) Constitution.
[147] S 243(1)(d) UCA.
[148] S 234(1)(e) UCA.
[149] Ss 33, 34 Public Finance Management Act. See also Ministry of Local Government, Local Government System Audit Checklist (2011 version).
[150] See Ministry of Local Government, Local Government System Audit Checklist (2011 version). All local authorities are required to submit financial returns to the Ministry of Local Government within the set time frames. See Ministry of Local Government, Local Government System Audit Checklist (2011 version).
[151] S 35(7) Public Finance Management Act.

delivery.[152] However, the burden of complying with the fiscal reporting regime should be taken into account when determining fiscal reporting rules. It is further submitted that legislation should prescribe that all financial statements of all local authorities (and provincial and metropolitan councils) should be made public so as to enhance transparency and enable the public to hold public officials accountable.[153] In practice, financial reporting by local authorities is very poor.[154] The challenge is more acute in rural local authorities which usually lack key skilled personnel such as accountants.[155] As a result of poor financial reporting regimes, most local authorities are characterised by weak control systems, many cases of fraud, theft of public property and abuse of public assets.[156] It is submitted that the national government should provide the necessary support to local authorities to improve their capacity to report on fiscal issues. In addition, there may be need to establish different fiscal reporting rules for local authorities depending on the category or class of local authority as a way of responding to different capacity levels.

5.9.2 Auditing

5.9.2.1 Role of the Auditor-General

The Constitution provides for the establishment of the office of the Auditor-General (AG) to audit the accounts, financial systems and financial management of government, including all provincial and metropolitan councils and local authorities.[157] The AG has the authority to order the taking of measures to rectify any defects in the management and safeguarding of public funds and public property.[158] It is not clear if the AG can enforce such orders. It is submitted that the AG is unlikely to enforce the implementation of the orders and will rely on institutions such as Parliament and councils for enforcement. Parliament is advised to utilise its oversight role over public finances at all levels of government to ensure the implementation of audit recommendations and orders of the AG.[159]

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[152] See De Visser 2005: 30.
[153] See Sims 2013: 24, Chatiza 2014: 11.
[154] Coutinho 2010: 85.
[155] Mushamba 2010: 111.
[156] Coutinho 2010: 85.
[157] S 309 Constitution.
[158] S 309(2)(c) Constitution.
[159] Coutinho 2010: 86.

The Constitution requires public officials to comply with orders made by the AG to rectify any defects in the management and safeguarding of public funds and property.[160] This constitutional requirement seeks to ensure the implementation of orders of the AG. The Constitution does not provide penalties in cases where public officials fail to implement such orders.[161] In practice, some local authorities have failed to implement audit recommendations.[162] The non-implementation of audit recommendations has meant that financial problems persist. Thus, it is submitted that legislation should provide for the implementation of audit recommendations and orders. Furthermore, legislation should provide for sanctions in cases where public officials fail to implement the orders and recommendations of the AG. The auditing of financial statements, fiscal systems and financial management by the AG provides the necessary external oversight required by the Constitution.[163] It is recommended that audited financial statements from the AG should be widely publicised to allow the public and other stakeholders to hold provincial and metropolitan councils and local authorities accountable for their financial decisions.

5.9.2.2 Requirement for submission of financial statements for auditing

Local authorities are required to balance their accounts by not later than 120 days after the end of each financial year or such date as the Minister may approve.[164] After balancing the accounts, every local authority must submit its income and expenditure accounts, balance sheets and other accounts to the AG by not later than 120 days after the end of each financial year or such date as the Minister may approve.[165] Following auditing of its accounts, every local authority must submit its final accounts, auditor's report and related documents[166] to the Minister, within fourteen days after the certification of the final accounts by the council.[167] Auditing is an effective tool of monitoring the financial affairs of local authorities especially if all local authorities are able to provide financial statements before the legislated date.

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[160] S 309(3) Constitution.
[161] See ss 309(2)(c), 309(3) Constitution.
[162] Coutinho 2010: 84, 85.
[163] See S 298(1)(a) Constitution.
[164] S 135(b)(i) RDCA and s 305(a) UCA. See also 34(1) Public Finance Management Act.
[165] S 135(b)(ii) RDCA and s 305(b) UCA. For the purposes of an audit, a local authority must submit to the auditor all relevant books, minutes books, papers and writings in its possession.
[166] The documents may detail action taken by the council in response to any irregularities in the audit report. The council may not close its meeting when considering the report of the auditor and any related documents. See s 137(4) RDCA and s 307(6) UCA.
[167] S 307(8) UCA and s 137(6) RDCA.

While legislation provides that local authorities should submit audited financial statements to the Minister not more than six months after the end of each financial year, some local authorities have gone for several years without submitting financial statements for auditing.[168] This can be attributed to the absence of sanctions for failure to submit financial statements for auditing.[169] Moreover, the national government has done very little to ensure that all local authorities submit their financial statements for auditing on time.[170] It is submitted that legislation should impose sanctions on local authorities (and provincial and metropolitan councils) which fail to submit their financial statements to the AG for auditing on time. For example, failure to submit financial statements on the legislated date could be made a ground upon which the national government may intervene in local affairs and take necessary action. It is further submitted that legislation should provide for intergovernmental oversight on the preparation and submission of financial statements for auditing. For example, in South Africa if a municipality fails to submit financial statements on the legislated date, the mayor must promptly report the failure to the council.[171] The AG is required to promptly notify the council, the National Treasury, Member of the Executive Council for Local Government and Finance of the failure, and further issue a special report to the provincial legislature.[172] In such event, the council and other spheres of government are required to remedy the failure. Such oversight mechanisms are required in Zimbabwe.

5.9.3 Financial inquiries

One of the mechanisms through which the national government monitors the financial affairs of rural local authorities is by conducting a financial inquiry. The Minister may appoint any person to examine the accounts and records of a rural local authority.[173] The RDCA does not state the grounds upon which the Minister may institute a financial inquiry in a rural local authority. This means that the Minister has wide discretion to determine the grounds of

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[168] Chakaipa 2010: 64, Coutinho 2010: 84-5. This challenge is not only present in Zimbabwe. In South Africa, for example, some municipalities have repeatedly failed to submit their financial statements for auditing by the legislated date. See also Powell *et al* 2014: 15.
[169] Coutinho 2010: 84. Research carried out by Multilevel Government Initiative in South Africa suggests that if there are no sanctions for failure to perform (including submission of financial statements on time), municipalities have no incentive to deliver on policy and legislative obligations. See Powell *et al* 2014: 20.
[170] See Coutinho 2010: 86.
[171] See s 133(1)(b) Municipal Finance Management Act.
[172] See s 133(1)(b) Municipal Finance Management Act.
[173] S 138(1) RDCA. The Minister may also conduct financial inquiries using powers given to him under section 154 of the RDCA.

conducting a financial inquiry.[174] When exercising these powers, the Minister is not required to report to Parliament or to any other institution. This means that there is no oversight on the exercise of the powers to conduct a financial inquiry, thus creating room for abuse of power. It is submitted that the grounds upon which the Minister may institute a financial inquiry should be recognised in legislation. Providing the grounds upon which the Minister may institute a financial inquiry will enable local authorities and other interested institutions to seek judicial review of the decision of the Minister in cases where inappropriate grounds are relied upon or if the required procedure is not followed. With respect to urban local authorities, there is no specific provision in the UCA which gives the national government the power to conduct a financial inquiry. Financial inquiries in urban local authorities are carried out in terms of the general provisions of the UCA, which empowers the Minister to institute investigations and inquiries.[175] It is submitted that this is another area where there is inconsistency in the supervisory framework governing rural and urban local authorities which the envisaged new Act on local government should address.

5.9.4 Challenges to effective monitoring of finances

While the departments of the Ministry of Local Government responsible for supervising local authorities seem to have skilled personnel, they have limited resources to effectively monitor the financial affairs of local authorities. The Portfolio Committee on Local Government, Rural and Urban Development noted that the departments failed to monitor US$16 160 000 which was allocated to local authorities, under the PSIP, for the rehabilitation of water and sewer infrastructure.[176] The reason cited is that the departments did not have suitable vehicles to undertake the monitoring. Consequently, the departments could not ensure that the money was used for the purposes intended. The Portfolio Committee highlighted that the lack of resources to support the role of the departments is a 'recipe for financial improprieties' and may lead to cases of misappropriation of money at local level going undetected for a long time.[177] Thus, it is submitted that the departments should be resourced so that they can effectively monitor the financial affairs of not only local authorities but also provincial and metropolitan councils. It is suggested that the national government should develop an

[174] Jonga 2014: 75.
[175] S 311 UCA. These provisions are examined in detail in the following chapter.
[176] Portfolio Committee on Local Government, Rural and Urban Development 2011: 6.
[177] Portfolio Committee on Local Government, Rural and Urban Development 2011: 6.

extensive data system that will allow quantitative monitoring and evaluation of the financial performance of provincial and metropolitan councils and local authorities.[178]

This section discussed the monitoring of provincial and metropolitan councils and local authorities by the national government. It was argued that majority of the monitoring tools at the disposal of the national government are too intrusive on local autonomy and undermine the institutional integrity of provincial and metropolitan councils and local authorities. It was further argued that some of the monitoring mechanisms such as systems audits are very effective especially if they are carried out regularly. Hence, it is suggested that such measures should be legally recognised to remove the ad hoc nature that characterises them. It is however important to ensure that reporting and compliance requirements placed on provincial and local governments are reasonable, especially in light of administrative costs.[179] The section also established that there are a number of mechanisms established to monitor the financial affairs of subnational governments. It was submitted that these mechanisms are effective ways of monitoring the financial affairs of the subnational governments. What is required is the capacitation of relevant institutions which are charged with monitoring the financial affairs of subnational governments so that they are able to carry out this task effectively.

6. Support

It was contended in Chapter Two that the effective functioning of a multilevel system of government relies in part on the support which senior governments render to junior governments.[180] Support refers to measures of assistance to ensure that junior governments are able to perform their functions adequately.[181] In the South African context, support is understood to take two forms, namely, supervisory and cooperative support.[182] Supervisory support is carried out 'to prevent a decline or degeneration of structures, powers and functions',[183] whereas cooperative support is not aimed at preventing decline but rather at supporting lower tier(s) of government in the achievement of common goals.[184] Support may be general in nature or specific, where it is used to resolve specific problems identified

[178] Bahl 1999: 9.
[179] Combined Harare Residents Association 2014: 38.
[180] See para 6.4.2.
[181] Department of Provincial and Local government 2007: 34.
[182] Steytler & De Visser 2009: 15-18.
[183] *Certification of the Constitution of the Republic of South Africa, 1996 (10) BCLR 1253 (CC)* at para 371.
[184] Steytler & De Visser 2009: 15-18.

through monitoring.[185] It is particularly important for the institutional development of local government which usually lacks the capacity to deliver on its often demanding obligations. In this section, the chapter examines the ways in which the national government supports provincial and metropolitan councils. It seeks to establish whether there is an obligation for senior governments to support junior governments.

6.1 Constitutional framework

The Constitution does not explicitly require national government to provide general support to provincial and metropolitan councils and local authorities, nor does it require provincial and metropolitan councils to support local authorities. The Constitution nonetheless establishes a multilevel system of government with government organised at the national, provincial and local levels.[186] Implied in this hierarchical organisation of government is the obligation which higher tiers of government have to support lower tiers of government. The argument is that the national government's responsibility to monitor and regulate lower tiers of government goes hand in hand with the corresponding obligation to support these lower tiers of government. This argument is supported by the economic blueprint of the government, ZimAsset. The plan provides for the provision of finance, equipment and human resources support to local authorities to improve their capacity to deliver on their obligations.[187]

Unlike the position in respect of general support, the Constitution explicitly requires the national government to provide financial support to provincial and metropolitan councils and local authorities.[188] As highlighted in the previous chapter, the Constitution provides for transfer of conditional and non-conditional grants to provincial and metropolitan councils and local authorities.[189] Such intergovernmental grants will complement local resource-raising efforts and enable provincial and metropolitan councils to deliver on their obligations. In this section, the study will not dwell much on financial support offered to provincial and metropolitan councils and local authorities since it was discussed in detail in the previous chapter.

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[185] Ayele 2014: 222.
[186] S 5 Constitution.
[187] ZimAsset 2013: 65.
[188] See s 301(3) Constitution.
[189] S 301(1) Constitution.

6.2 Statutory framework

Financial support to provincial and local governments by itself is likely not to be enough for these governments to deliver effectively on their mandate. Other forms of support, including technical, human resources and cooperative support,[190] are essential. The Ministry of Local Government has the primary responsibility to support provincial and metropolitan councils and local authorities.[191] It provides technical, human resource and financial support.[192] The Ministry also coordinates the technical support offered to provincial and metropolitan councils and local authorities by other sectoral ministries.[193] For example, under ZimAsset the Ministry responsible for environment is required to provide support to local authorities so as to enhance their capacity to manage pollution and waste.[194] This form of support will be coordinated by the Ministry of Local Government. In this section, the chapter will discuss the manner in which the national government has supported local authorities. Support to provincial councils is not given attention as it mainly took the form of human resource support, which was discussed in Chapter Five.

6.3 Land use planning and development control

The national government does not only regulate and monitor local authorities in the areas of land use planning and development control, but also provides support to local authorities. The Department of Physical Planning provides technical support in the area of land use planning and development control to local authorities. The technical support is usually given to low capacity local authorities such as rural local authorities and local boards.[195] A significant number of rural local authorities have always relied on the technical support of the Department of Physical Planning for land use-related responsibilities.

6.4 Disaster management

The Department of Civil Protection, which also falls under the Ministry of Local Government, provides material and non-material support to local authorities. The main functions of the Department are to 'ensure the attainment of optimal capacity for disaster risk

[190] See Steytler & De Visser 2009: 15-18, for a detailed discussion of cooperative support.
[191] See Ministry of Local Government 2013: 13.
[192] See Masuko 1996: 50.
[193] Ministry of Local Government 2013: 13.
[194] ZimAsset 2013: 57.
[195] See Chakaipa 2010: 34. See also Combined Harare Residents Association 2014: 40.

management and integration of disaster risk reduction into development for sustainability'.[196] The Department has played an important role in supporting local authorities to manage disasters. For example, over the years, the Department has assisted Muzarabani Rural Local Authority in managing floods in the Muzarabani communal area. The Department has also been instrumental in sourcing equipment for managing disasters such as fire engines and ambulances for local authorities.[197]

6.5 Other forms of support

Support from the national government to local authorities also took the form of capacity-building.[198] The nature of this support is directed at developing the knowledge and skills of employees of local authorities so that they can have the capability to undertake their duties. Since independence, the national government embarked on capacity-building programs in local authorities, the notable one being the capacity-building program in rural local authorities undertaken in the 1990s. However, this form of support has not been sustainable. Like many other support initiatives the capacity-building program ended as a 'white elephant' project due to lack of resources, among other reasons. The internal audit unit of the Ministry used to provide technical assistance in the preparation of financial statements especially to rural local authorities.[199] After this form of support was withdrawn a significant number of rural local authorities have struggled to produce financial statements on the required dates.[200]

This section discussed some of the ways in which the national government have supported local authorities. A major observation is that general support is not structured and depends on the goodwill of national ministries and departments. These ministries and departments are often reluctant to provide support to local authorities. Given that national ministries and agencies are usually reluctant to support junior governments, it may be necessary to impose a statutory obligation for them to support junior governments. Such an obligation can force the national government and its agencies to provide support to junior governments. Hence, it is submitted that Parliament should consider imposing such an obligation on national departments and ministries.[201] Support is especially critical in the delivery of core public

[196] Ministry of Local Government: Service Charter 2011: 15.
[197] Chakaipa 2010: 34.
[198] Department of Provincial and Local Government 2007: 37.
[199] Chakaipa 2010: 54.
[200] Chakaipa 2010: 54.
[201] See Combined Harare Residents Association 2014: 40, Musekiwa 2014: 7, Local Governance Community Building and Development Trust 2014: 11.

services, such as water, health and sanitation. The national government must provide general and specific support to junior governments to prevent the degeneration of a council or local authority which will warrant an intervention.[202] Thus, the absence of capacity at the subnational level should not be used as an excuse by the national government not to devolve power.[203]

7. Intervention

Supervision may be carried out through intervention. Intervention refers to the competence, and sometimes obligation, of senior governments to direct activities and outcomes of junior governments so as to remedy an 'unacceptable situation'.[204] An 'unacceptable situation' may arise when a junior government fails to deliver on its legislative obligations or perform to the standards set by senior governments. Intervention is particularly necessary if the monitoring mechanisms reveal serious shortcomings and support mechanisms have been unable to remedy these shortcomings.[205] The aim of an intervention is not merely the fulfilment of an obligation that a junior government failed to fulfil but to ensure that such an obligation will be fulfilled in the future.[206] Interventions intrude into the autonomy of a government. It was contended in Chapter Two that interventions should therefore be taken as a measure of last resort and subject to specific procedures.[207] Further, it was submitted that the right of senior governments to intervene in subnational affairs should be coupled with mechanisms to protect the autonomy of junior governments. The autonomy of junior governments is mostly secured if the Constitution imposes limitations and provides oversight mechanisms on the use of powers to intervene by senior governments.[208] The question is whether the constitutional and statutory framework for multilevel governance in Zimbabwe provides for such safeguards to local autonomy.

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[202] See UN-Habitat 2009: 10, World Bank 2000: 122. See also Combined Harare Residents Association 2014: 40, Mushamba 2010: 121.
[203] Musekiwa 2014: 8.
[204] Steytler & De Visser 2009: 15-5, Department of Provincial and Local Government 2007: 34.
[205] Machingauta 2010: 144, Department of Provincial and Local Government 2007: 41. The existence of the right of higher tiers of government to intervene in the affairs of lower tiers of government indicates the intergovernmental relations are not all about persuasion and dialogue. See Department of Provincial and Local Government 2007: 34.
[206] Department of Provincial and Local Government 2007: 41. An intervention should thus be solution-oriented.
[207] See para 6.4.3.
[208] See UN-Habitat 2007: 7.

7.1 Constitutional framework

Like other forms of supervision, the Constitution does not explicitly provide for the role of senior governments to intervene in the affairs of junior governments. The implication of this is that the national government determines the intervention rules. Unregulated interventions present a danger to local autonomy.[209] It may be argued that there are no limits to the use of intervention powers.[210] The absence of constitutional limitations on intervention powers means that there are no checks and balances on the exercise of such powers. Under such a multilevel system of government, intervention powers may be used to achieve selfish political ends, for instance, to undermine the authority of a provincial council, metropolitan council or local authority under the control of an opposition political party.[211] It is however submitted that while the Constitution is silent about the intervention powers of the national government, it provides a set of values and principles which should shape the development of intervention rules. These key values and principles include:

a) the objective of giving power to the people to make decisions that affect them;[212]
b) the devolution of power to lower governments;[213]
c) the right of communities to manage their own affairs and to further their own development;[214]
d) the geographical, functional and institutional integrity of provincial and metropolitan councils and local authorities;[215] and
e) cooperative governance.[216]

Thus, the development of a statutory framework providing for intervention should be informed by these values and principles, which suggest a rule-based form of supervision exercised within limits and subject to oversight.

7.2 Statutory framework

The national government has enacted various acts of Parliament which give the Minister the right to intervene at provincial and local levels.[217] The main pieces of legislation which give

[209] Ayele 2014: 232.
[210] Ayele 2014: 232.
[211] See Ayele 2014: 232.
[212] See s 264(2)(a) Constitution.
[213] Preamble of Chapter 14, s 264(1) Constitution.
[214] See s 264(2)(d) Constitution.
[215] See s 265(1)(c) Constitution.
[216] See ss 194(1)(g), 265(1)(d) Constitution.
[217] See Mushamba 2010: 116, Masuko 1996: 50.

the Minister the power to intervene in local authorities are the UCA, RDCA and Regional Town and Country Planning Act. The Provincial Councils and Administration Act empowers the Minister to intervene in provincial affairs. Other sectoral legislation provides for various forms of intervention in local affairs. Interventions mainly take the form of directives; assumption of responsibility; suspension and dismissal of officials; suspension, reversal and rescinding of council resolutions; rectification of 'omitted acts'; assumption of legislative powers; assumption of a financial duty; and elimination of budget deficits.[218] These interventions will be examined in this section. The section seeks to establish whether these interventions present an appropriate balance between the need for intervention and the requirement for local discretion, a key attribute if provincial and metropolitan councils and local authorities are to assist in the realisation of development, democracy and sustainable peace.[219]

7.3 Directives

Intervention into subnational affairs takes the form of directives which are issued by the national government. Directives have been the most common intervention form, especially at local level.

7.3.1 Provincial and Metropolitan Councils

The Minister may direct a provincial council to take such action as he or she 'considers necessary' if in his or her opinion the provincial council has failed to carry out any legislative obligation.[220] While the powers of the Minister to direct certain actions may be necessary, the above provision gives the Minister wide discretion and unfettered powers. The Minister does not only have the power to issue directives but to decide whether a provincial council has failed to fulfil a statutory obligation. Such wide discretion is prone to abuse for political ends at the expense of local autonomy. It is proposed that the South African form of rule-based supervision of discussed in paragraph 5.6.1 above be adopted as it provides adequate intergovernmental checks and balances to safeguard local autonomy.[221]

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[218] See Machingauta 2010: 140, 144.
[219] For a discussion on the importance of safeguards, see Ayele 2014: 232.
[220] S 42 Provincial Councils and Administration Act. The Minister is required to give the provincial council concerned an opportunity to make representation before making any directives.
[221] See Ss 100 and 139 Constitution, South Africa.

7.3.2 Rural Local authorities

The Minister may direct a rural local authority when constructing or repairing roads, dams and waterworks, or when carrying out any other activity, to make use of services provided by the national government.[222] Further, the Minister may issue directives to a rural local authority 'if in his opinion' it has failed to carry out a statutory obligation.[223] Before issuing such directives, the Minister must give the concerned rural local authority an opportunity to submit any representations it may wish to make in connection therewith.[224] The Minister also has the power to direct rural local authorities to establish joint committees (and boards)[225] if 'it appears to the Minister that it would be of advantage' to do so.[226] In practice, the directives take the form of circulars which are sent to local authorities.[227]

It is submitted that the above-described powers allow the Minister to direct a rural local authority on how it must exercise its executive powers. Thus, the Minister is empowered to usurp the power of rural local authorities to exercise executive powers.[228] The difficulty with this kind of power arises when there is no shared vision between the Minister and a rural local authority, especially those local authorities which are controlled by political parties other than the one which the Minister belongs to.[229] Furthermore, the Minister is not required to report to Parliament or any other body when issuing such directives. This means that there is no oversight of the power of the Minister to issue directives to rural local authorities. Therefore, there are no measures to counter possible abuse of power by the Minister.[230]

7.3.3 Urban Local Authorities

The Minister has the power to issue policy directives of a 'general character' to local authorities 'as appear to the Minister to be requisite in the national interest'.[231] Where the Minister is proposing to issue a directive to a local authority, he or she is required to give the local authority concerned 30 days or such period he or she may determine to comment on the

[222] S 155(1) RDCA. This service may include aspects such as the hiring of equipment and procurement of goods and services.
[223] S 155(2) RDCA.
[224] S 155(2) RDCA.
[225] A joint committee is an agreement between two local authorities for the purposesof conducting and managing their businesses and employment of staff, among other matters. See s 83 RDCA.
[226] S 84 RDCA.
[227] Ministry of Local Government 2013: 18.
[228] Jonga 2012: 128. See also See Kamete 2006: 257.
[229] Machingauta 2010: 144.
[230] See Kamete 2006: 257.
[231] S 313(1) UCA.

proposal.[232] In particular, the concerned local authorities should comment on the possible implications of the proposed directive on its financial and other resources. Such consultative requirements are commendable as they promote cooperative governance required by the 2013 Constitution.[233] However, this provision still presents a threat to local autonomy due to the way it is phrased. The liberal interpretation allowed by the term 'national interests' has been addressed earlier in the chapter.[234] It is nevertheless important to note that unlike any other supervisory powers, the power of the Minister is limited to issuing policy directives which are general in character.

It is submitted that policy directives of a general character mean directives which set out the national framework within which local authorities operate. The Minister may not, for example, direct a local authority to employ a particular person as opposed to another. In this particular instance, what the Minister may do is set the minimum qualifications for employment. To the contrary, in practice the Minister has issued some directives which may not be considered to be of a general character, as required by the UCA. For instance, in a directive dated 29 September 2010, the Minister directed that 'no local authority may employ any staff member at any level or grade, including casual or contract workers', without his written permission.[235] The directive further provided that 'where compelling reasons exist for recruitment, these should be submitted, together with details of employment costs and the relevant revenue source, to the Minister for his consideration'.[236] The Minister justified the directive based on what he called the need to 'rationalise employment costs and the need to clear salary and statutory obligations arrears'. What this directive means in essence is that local authorities may not recruit without the approval of the Minister.

It is submitted that this directive is not a directive of a 'general character' as it requires a specific act, that is, approval of the Minister before a local authority may employ staff.[237] This directive takes away the powers of local authorities to hire and fire their own staff which are necessary for local authorities to fully exercise their 'right to govern' their areas, as provided in the 2013 Constitution.[238] It is just one example of many directives which have been issued by the Minister that go beyond general policy-setting. The other example relates

[232] S 313(2) UCA.
[233] See Ss 194(1)(g) and 265(1)(d) Constitution.
[234] Machingauta 2010: 144.
[235] Ministry of Local Government: Ministerial Directive on Employment 2010.
[236] Ministry of Local Government: Ministerial Directive on Employment 2010.
[237] See s 313(1) UCA.
[238] See s 276(1) Constitution.

to the directive to write off of debts, discussed in Chapter Seven.[239] It can be argued that in such cases the power to issue policy directives have been incorrectly exercised by the Minister. Thus, it is submitted that the power of the Minister to issue directives should be reformed in line with the 2013 Constitution.[240] In particular, there is need for a clear distinction between regulatory and intervention powers, with the latter requiring oversight mechanisms.[241]

7.4 Power to suspend and dismiss councillors and members of provincial and metropolitan councils

It was contended in Chapter Two that once public officials at subnational level have been elected into office, officials of senior governments should not be empowered to arbitrarily remove locally elected officials.[242] It was further argued that locally elected officials should only be removed from office after following due process of the law or through democratic means such as elections. Nonetheless, this should not be interpreted to mean that corrupt and incompetent public officials should not be removed from their positions. Rather there should be checks and balances in the exercise of the power to remove locally elected officials from office. Such checks and balances in the removal of locally elected officials from office did not exist under the Lancaster House Constitution but have been provided for in the 2013 Constitution. This democratic improvement will be discussed in this section.

7.4.1 Lancaster House Constitution

Under the Lancaster House Constitution the President had the power to suspend and dismiss any councillor in a rural local authority from exercising all or any of their functions if he 'considers it necessary or desirable to do so in the public interest or in the interest of the inhabitants of a council area'.[243] In urban local authorities, the Minister could suspend and dismiss councillors on a number of grounds, including corruption or misconduct.[244] The

[239] See para 3.1.1.7.
[240] See Chatiza 2014: 6.
[241] Combined Harare Residents Association 2014: 40. See also Clause 34 Urban Councils Bill.
[242] See para 6.1.1.3. See also Bland 2010: 55.
[243] S 157(1)(a) RDCA. If the President does not revoke the suspension within 30 days, the seat of the councillor becomes vacant and the councillor is disqualified from being elected as a councillor, until such a time as the suspension has been revoked by the President. S 157(2) RDCA.
[244] S 114 UCA. See also s 107, 108 and 109 UCA. If the suspension is not lifted within 30 days, then the seats of the councillor(s) become vacant. A suspended councillor is entitled to remuneration for so long as he remains a councillor, unless the Minister directs otherwise. Upon dismissal, the seat of the councillor becomes vacant. A councillor who has been dismissed is disqualified from election as a councillor for a period of five years.

powers of the President and the Minister to suspend and dismiss councillors raised certain interpretive challenges. For instance, it was difficult to establish when it becomes 'necessary' or 'desirable' to suspend a councillor to protect or promote 'public interests' or the 'interests of the inhabitants of a council area'. It could be argued that the President and the Minister enjoyed wide powers simply because terms such as 'public interest' or 'interest of the inhabitants of the council area' cannot be precisely defined.[245] In practice, the exercise of the power to suspend and dismiss councillors was controversial, especially in urban local authorities.[246] Between 1999 and 2008, the Minister suspended and/or dismissed a number of councillors and/or councils on varying allegations of poor performance, 'shady' tendering procedures, corruption, mismanagement and incompetence.[247] Most of the councillors or councils that were suspended and/or dismissed were aligned to the MDC, while the incumbent Minister was aligned to ZANU-PF.[248] For instance, between 2000 and 2005, the Minister suspended and/or dismissed the Mayors of the City of Harare, Chitungwiza Municipal Council, Kariba Town Council and City of Mutare.[249] Of the four mayors, three were aligned to the MDC, while the one of Kariba was aligned to ZANU-PF.

In the case of the City of Harare, despite the fact that the High Court exonerated Councillor Machetu and other councillors from charges of dishonesty, abuse of office and mismanagement which were being leveled against them, the Minister dismissed them from their positions.[250] The court later ordered their reinstatement as councillors, stating that the decision by the Minister to dismiss them was grossly unreasonable.[251] On the other hand, in Manyame Rural District Council, Councillor Manhambo was dismissed by the Minister on the grounds of abusing funds. Councillor Manhambo, who is aligned to ZANU-PF, was later reinstated by the Minister under unclear circumstances.[252] The Portfolio Committee on Local Government raised concerns about this 'selective application of the law' where ZANU-PF aligned councillors were pardoned by the Minister while those councillors aligned to MDC were suspended and dismissed.[253] Arbitrary though the suspensions and dismissals may seem

[245] Machingauta 2010: 148. See also Madhekani & Zhou 2012: 24.
[246] Bland 2011: 349, Kamete 2006: 38, Moyo 2013: 153, Madhekani & Zhou 2012: 19-22, Sachikonye *et al* 2007: xviii, Jonga 2012: 122, Jonga & Chirisa 2009: 166.
[247] Kamete 2006: 36.
[248] Jonga and Chirisa 2009: 178.
[249] Sachikonye *et al* 2007: 81. See also Jonga 2014: 79.
[250] Portfolio Committee on Local Government: Special Report on Local Government.
[251] *Judgement HC 1067 of 2011* cited by the Portfolio Committee on Local Government.
[252] Portfolio Committee on Local Government.
[253] Portfolio Committee on Local Government.

to be, the Minister relied on his powers under the UCA.[254] The suspensions and dismissals were a major challenge to not only local democracy but also negatively affected the ability of local authorities to deliver on their responsibilities.[255] It is as a result of these challenges that the 2013 Constitution reformed the supervisory mechanism in relation to the suspension and dismissal of councillors.

7.4.2 2013 Constitution

Prior to the adoption of the 2013 Constitution there were no constitutional limitations on the power of the Minister or the President to suspend and/or dismiss councillors, chairpersons and mayors of local authorities.[256] The 2013 Constitution has reformed the supervisory mechanisms in this respect. First, the Minister or President no longer has the power to suspend or dismiss mayors, chairpersons and councillors.[257] That role has been assigned to an independent tribunal.[258] Unlike under the Lancaster House Constitution, which allowed the President to remove members of provincial councils from office, the 2013 makes provision for the role of an independent tribunal to exercise that responsibility.[259] Secondly, the grounds upon which mayors, chairpersons and councillors may be removed from office by the tribunal have been limited to:

a) the inability to perform the functions of their office due to mental or physical incapacity;
b) gross incompetence;
c) conviction of an offence involving dishonesty, corruption or abuse of office; or
d) wilful violation of the law, including a local authority by-law.[260]

Similar grounds are provided for the removal of members of provincial and metropolitan councils from office by the independent tribunal.[261]

The constitutional recognition of the grounds upon which locally elected officials may be removed from office is commendable.[262] The grounds are however broadly framed and this may reduce the level of protection offered to councillors, mayors, chairpersons and members

[254] Kamete 2006: 38.
[255] See Sachikonye *et al* 2007: 81.
[256] See Jonga 2014: 75.
[257] Machingauta *et al* 2014: 35.
[258] See s 278(2) Constitution.
[259] S 272(7) Constitution.
[260] S 278(2) Constitution.
[261] S 272(7) Constitution.
[262] Musekiwa & Mandiyanike 2013: 9. See also UN-Habitat 2007: 7.

of provincial and metropolitan councils.[263] For example, what constitutes gross incompetence and misconduct? The removal from office on the ground of 'willful violation' of law including a by-law encompasses a variety of aspects from serious crimes to minor breaches of by-laws. This makes it almost unreasonable to remove officials on the basis of minor law transgressions.[264] For instance, can a councillor be dismissed from office for violating parking by-laws? Hence, it is suggested that national legislation should specify the nature of the violations which warrant removal from office of an official. As of July 2014, the relevant tribunal(s) had not been established, as the new acts on provincial and local government were yet to be passed. This has created a vacuum in terms of disciplining councillors. It is suggested that instead of establishing different tribunals for local authorities, on one hand, and provincial and metropolitan councils, on the other, legislation should make provision for the establishment of a single independent tribunal which can exercise a disciplinary role at both provincial and local levels. This will not only reduce costs but assist in developing a single supervisory mechanism.

7.5 Power to assume local responsibilities

It was contended in paragraph 6.4.3.3 of Chapter Two that following the suspension or dissolution of a locally elected body or local executives, the law should determine the resumption of their duties in as short a period of time as possible.[265] It was further argued that a similar requirement should apply in cases where a senior government has assumed a local responsibility. The chapter also stressed that the guiding principle of intervention into local affairs is that interventions must be constructive and not driven by the motive to penalise or to score political goals.[266] The extent to which the Zimbabwean multilevel system of government complies with this normative framework becomes important to safeguard local autonomy. The national government has the power to assume the responsibilities of local authorities. The Minister may appoint commissioners or caretakers to act as the council. In rural local authorities, the national government can assume the estate development function and responsibilities related to public infrastructure and cooperation agreements on behalf of the council. These supervisory powers are examined below.

[263] Musekiwa & Mandiyanike 2013: 2013.
[264] Musekiwa & Mandiyanike 2013: 2013.
[265] UN-Habitat 2007: 7. See Article 202 Constitution of Uganda.
[266] See Article 8(2) of the European Charter on Local Self-government.

7.5.1 Role of caretakers and commissioners

7.5.1.1 Appointment, functions and term of office

The power to appoint caretakers or commissioners to act as the council is perhaps one of the most significant powers of the Minister.[267] The Minister may appoint caretaker(s) or commissioner(s) to assume the responsibilities of a local authority if there are no councillors in an urban and rural local authority, respectively.[268] The Minister may also appoint caretaker(s) or commissioner(s) in urban and rural local authorities to act as the council if all councillors are suspended or imprisoned or are otherwise unable to exercise all or some of their functions.[269] The functions and term of office of the caretaker(s) or commissioner(s) are determined by the Minister.[270] In urban local authorities, the term of office of caretakers expires as soon as there are elected councillors for the local authority or 90 days after the date of their appointment.[271] In rural local authorities, the term of office expires as soon as there are elected councillors or six months after the date of their appointment, whichever occurs sooner.[272] This means that the term of office of caretakers may not go beyond 90 days, whilst that of commissioners may go up to six months. There is no rational justification for this difference. This reflects another case of inconsistency in the supervisory framework which the envisaged new Act on local government should address. Further, it is submitted that the term of office of commissioners should be limited as far as possible to allow for the resumption of responsibilities by the (new) council in as short a period of time as possible.[273]

7.5.1.2 Role of caretakers and commissioners in practice

The appointment of caretakers and commissions has been a contentious issue, especially in urban local authorities.[274] Since independence, a number of caretakers or commissioners have

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[267] Machingauta 2010: 148. See also Feltoe 2006: 137, 143.
[268] S 80(1) UCA and s 158(1) RDCA.
[269] S 80(1) UCA and s 158(1) RDCA.
[270] S 80(2) UCA and s 158(2) RDCA. The Minister may authorise the payment from the funds of a local authority, as remuneration, to the caretaker(s) or commissioner(s) at a rate as he/she may determine. See s 80(5) UCA and s 158(6) RDCA.
[271] S 80(3) UCA. The exception is when the period of 90 days expires within three months before the date of the succeeding general elections of councils.
[272] S 158(3)(a) RDCA. If the period of six months expires within three months before the date of the next succeeding general election, the commissioner will continue to hold office until such general election. See s 153(3)(b) RDCA .
[273] UN-Habitat 2007: 7. See Clause 13 Urban Council Bill 2011. The Bill proposes a maximum of 30 days without possibility of renewal.
[274] Chakaipa 2010: 40.

been appointed, mostly in urban local authorities, following the dismissal or suspension of councillors. Although commissioners or caretakers are not meant to be permanent features in a local authority, the terms of office of some commissioners have been continuously renewed and general elections of councillors postponed against legislative prescriptions.[275] Kamete argues that the nature of individuals who have been appointed as caretakers or commissioners suggest that the Minister was pursuing hidden political agendas to regain control of local authorities which were run by MDC-dominated councils.[276] Some scholars have argued in support by claiming that commissioners or caretakers who were appointed to administer local authorities were known 'supporters' and 'sympathisers' of ZANU-PF.[277]

The legitimacy of commissioners and caretakers, as local decision-makers, has not gone unquestioned by citizens. In 2002, the citizens of Harare approached the courts questioning the continual reappointment of commissioners by the Minister. In *Stevenson v Minister of Local Government and National Housing and Others*,[278] the Supreme Court of Appeal declared that it is illegal for the Minister to renew the term of office of commissioners. The court stated that the Minister could not avoid causing a general election of councils to be organised by continually extending the term of office of the commissioners.[279] The Court further reasoned that section 80(5) of the UCA, which was the basis upon which the Minister continually reappointed commissioners, 'was not meant to be a vehicle for the postponement of general elections of councillors'.[280] Thus, the Minister by continually reappointing commissioners was actually usurping the right of the electorate to elect councillors who would govern their affairs.[281]

[275] Jonga & Chirisa 2009: 178, Jonga 2014: 85. See 80 UCA and S 103 Electoral Act (before 2008 Amendments both to the UCA and the Electoral Act). For example, the Minister renewed the term of office of the Makwavarara Commission which was administering the City of Harare more than four times. The Minister also reappointed, more than twice, the commissioners during the era of the Chanakira Commission, 1999-2000.
[276] Kamete 2006: 35-6. Jonga and Chirisa note that on a number of occasions urban councils have been replaced by district administrators and provincial administrators who report directly to the Minister. Kamete 2009: 167.
[277] Jonga 2012: 121-2, Bland 2011: 341-9, Kamete 2006: 260, Sachikonye *et al* 2007: xviii. Jonga & Chirisa 2009: 167.
[278] Stevenson v Minister of Local Government and National Housing and Others 2002 (1) ZLR 498 (S).
[279] *Stevenson v Minister of Local Government and National Housing and Others*, page 9. See also *Chideya v Makwavarara and Others HC 5604/06, HH 13-2007, Christopher Magwenzi Zvobgo v City of Harare, HH 80-2005, HC 12862/00*.
[280] *Stevenson v Minister of Local Government and National Housing and Others*, page 9.
[281] See Zimbabwe Institute 2005: 14, Jonga 2014: 84.

It is submitted that although the power of the national government to remove officials who defy legislative obligations and the subsequent appointment of caretakers is essential,[282] such powers should not be exercised without limitations. As argued in paragraph 6.4.3.2 of chapter Two, the exercise of this kind of supervisory power should be checked by adequate oversight mechanisms to counter abuse of such powers.[283] The UCA and RDCA do not provide such checks and balances in the appointment and role of caretakers or commissioners.[284] This presents a danger to local democracy. Thus, it is submitted that the power of the Minister to appoint caretakers should be reviewed by Parliament so as to provide the necessary checks and balances.[285] Parliament should determine whether the appointment of a caretaker (or commissioner) is necessary. If necessary, it should approve the terms of reference of the caretaker.

7.5.2 Assumption of responsibilities

7.5.2.1 Public infrastructure

The national government has the power to assume responsibilities of rural local authorities relating to public infrastructure and estate development. For instance, the Minister may direct a rural local authority when constructing or repairing roads, dams, waterworks, or carrying out any other activity, to make use of services provided by the national government.[286] This could include services[287] provided by the Zimbabwe National Road Agency, District Development Fund and National Public Works Department. If the concerned rural local authority fails to follow the directives of the Minister, the Minister may take appropriate action on behalf of the council and recover the expenses incurred in connection therewith from the local authority.[288]

[282] Chakaipa 2010: 40. The importance of the powers of the Minister to remove errant councillors and mayors was shown in Chitungwiza Municipal Council. The Minister dismissed Mayor Marange of Chitungwiza in 2009 on charges of corruption. The Mayor was later convicted and sentenced to a prison term.
[283] See Machingauta 2010: 149.
[284] Chakaipa 2010: 40. See Kamete 2006: 264-5.
[285] See Clause 13 Urban Councils Bill 2011, Musekiwa 2014: 4.
[286] S 155(1) RDCA. Such services may include the hiring of equipment and procurement of goods and services.
[287] For example, engineering, surveying and construction services.
[288] S 155(3) RDCA. See Feltoe 2006: 136.

7.5.2.2 Estate development

While the power to assume responsibilities relating to public infrastructure may only be used in rural local authorities, the Minister has the power to assume estate development in all local authorities. The Minister may direct both urban and rural local authorities to undertake estate development, including provision of serviced stands, land and buildings.[289] If the concerned local authority fails to comply with such a directive, the Minister may undertake estate development on behalf of the local authority.[290]

7.5.2.3 Cooperative agreements

The Minister has the power to enter into a cooperative government agreement on behalf of a local authority. The Minister may direct a local authority to enter into a cooperative agreement with the national government, local authority, or private person, if in his 'opinion' such an agreement would be of 'public or local advantage.'[291] If the local authority concerned fails or refuses to implement the directive within the period directed by the Minister, the Minister may enter into such an agreement on behalf of the rural local authority.[292] Such an agreement entered into by the Minister is binding on the rural local authority.

It is submitted that the provisions of the UCA and RDCA described above give the Minister 'unlimited' powers and treat local authorities as 'appendages' of the national government.[293] Bland argues that the power of the Minister to direct a rural local authority to use services provided by the national government constitutes excessive intervention powers.[294] The same can be said of the powers of the Minister to act on behalf of local authorities with regard to estate development and cooperative agreements.[295] It is submitted that such intervention powers are not consistent with the spirit of the 2013 Constitution which defines local

[289] S 87(1) RDCA and s 206(1) UCA.
[290] S 87(2)(a)(b)(c)(d) RDCA and s 206(2) UCA. The Minister has the power to recover any costs incurred from the local authority concerned. The Minister may also transfer to the local authority any serviced State land or any expropriated land and make by-laws in respect of such land. The cost of such a transfer is met by the local authority. See s 87(2)(e) f) RDCA.
[291] S 82(3) RDCA and s 223(3) UCA.
[292] S 82(6) RDCA and 223(4)(5)(6) UCA.
[293] Jonga 2012: 117, Zimbabwe Institute 2005: 14. See also Chatiza 2014: 6.
[294] Bland 2011: 342. See also Zimbabwe Institute 2005: 5, Combined Harare Residents Association 2014: 16.
[295] Sachikonye *et al* 2007: 101, See Machingauta 2010: 149, Mushamba 2010: 114, Zimbabwe Institute 2005: 5.

authorities as tiers of government.[296] Hence, it is argued that such powers of the Minister should be abolished.[297]

7.6 Power to suspend, reverse, alter and rescind resolutions and decisions

It was contended in paragraph 6.1.3.4 of Chapter Two that when responsibilities are decentralised to the subnational level senior governments should make decisions on those functions only in cases were a junior government has failed to deliver on those responsibilities.[298] The argument is that significant involvement of senior governments in local decision-making processes constrains the overall process of decentralisation.[299] The question of how much the national government should be involved in local decision-making processes is one of the most contested issues in discussions around multilevel governance in Zimbabwe. The national government has the power to suspend, reverse and rescind resolutions or any other decision of a council. The Minister may direct a council to reverse, suspend or rescind a resolution or decision or to reverse or suspend such action if he is of the view that the resolution, decision or action is not in the 'public interest' or in the 'interest of the inhabitants of the council area'.[300] In rural local authorities, the Minister may only direct a council to rescind or alter its resolutions and not suspend any of decisions or actions.[301] This is another area where there is inconsistency in the supervisory framework which the envisaged new Act on local government should address.

The Minister has exercised this form of intervention on a number of occasions, both in rural and urban local authorities. For instance in 2011, the Minister directed the council of Chitungwiza Municipality to rescind its resolution to purchase a motor vehicle for the Deputy Mayor.[302] In the same letter, the Minister directed the council to rescind the resolutions which resulted in the change of use of stand number 12082 in Zengeza 4 and stand number 8161 in Zengeza 3 meant for a school and police post, respectively. In another local authority, Chinhoyi Municipality, the Minister directed the council to rescind the resolution to re-tender the Emergency Rehabilitation Project of the Municipality.[303] Thus, these intervention powers

[296] See Preamble to Chapter 14, Constitution.
[297] See Clause 19 Urban Councils Bill, Sims 2013: 18.
[298] Bardhan & Mookherjee 2006: 13.
[299] Kalin 1998: 2, Bahl 1999: 5.
[300] S 314 UCA.
[301] S 52(3) RDCA.
[302] Ministry of Local Government: Letter dated 4 November 2011.
[303] Ministry of Local Government: Letter dated 6 December 2011.

of the Minister have far-reaching implications on local authorities.[304] Two challenges can be identified in relation to the power of the Minister to reverse, suspend, alter or rescind resolutions of a council or to reverse or suspend any action taken by a council. These are discussed below.

7.6.1 Limited room for local discretion

The first challenge identified with the power of the Minister to nullify, reverse, suspend or alter decisions, resolutions and actions of a local authority is that it undermines local autonomy. The argument is that the council, as the governing body of a local authority, does not have power to make binding decisions on their affairs since the Minister may rescind, reverse, suspend or alter such decisions, resolutions or actions. Machingauta contends that the supervisory powers of the Minister, such as the power to alter, reverse, suspend or rescind council, present a good example of an imbalance which exists between supervision and local discretion in the Zimbabwean multilevel system of government.[305] It is submitted that this form of intervention is contrary to the 2013 Constitution, which gives local authorities the 'right to govern'.[306] The enhanced status which local authorities enjoy under the new constitutional order requires that such powers of the Minister be reformed to safeguard local discretion, as discussed below.[307]

7.6.2 Absence of oversight mechanisms

The second challenge identified with the power of the Minister to nullify, reverse, suspend or alter decisions, resolutions and actions of a local authority is that there is no oversight on the exercise of these powers.[308] In urban local authorities, the Minister may direct a council to reverse, suspend or rescind its resolution or decision or to reverse or suspend its action if it is in the 'public interest' or 'interest of the inhabitants of the council area' to do so. As argued above, terms such as 'public interests or 'interest of the inhabitants of the council area' do not have a clear meaning.[309] In rural local authorities, the Minister has the discretion to determine the circumstances under which a resolution of the council has to be rescinded or altered. In

[304] See Chakaipa 2010: 33.
[305] Machingauta 2010: 145.
[306] See S 276(1) Constitution. See also Combined Harare Residents Association 2014: 21, Sims 2014: 18.
[307] See Clause 35 Urban Councils Bill, Chatiza 2014: 6, Local Governance Community Capacity Building and Development Trust 2014: 12.
[308] Combined Harare Residents Association 2014: 16, Machingauta 2010: 149.
[309] Combined Harare Residents Association 2014: 16.

both urban and rural local authorities, the Minister does not have an obligation to an independent body such as Parliament, for example, to justify why a resolution of a council must be reversed.

The Minister clearly has wide discretionary powers which are unchecked by any other body to prevent or detect potential abuse of these supervisory powers.[310] Some scholars claim that due to unfettered powers and absence of oversight mechanisms, the Minister has used the power to reverse, suspend and rescind council resolutions to gain political advantage.[311] It should be noted nonetheless that the power to reverse, suspend and rescind resolutions and actions of local authorities may be necessary to protect the achievement of certain national and local goals. If a local authority undertakes an unreasonable action that undermines other neighbouring local authorities, for instance, the Minister should have the power to reverse such an action. To protect local autonomy, however, it is suggested that there is a need to legally recognise the exact circumstances under which the Minister may exercise the powers to nullify, reverse, suspend or alter decisions, resolutions and actions of a local authority. Further, the exercise of these intervention powers should be approved or reviewed by Parliament for checks and balances.[312]

7.7 Rectifying 'omitted acts'

Interventions in subnational affairs by the national government also take the form of rectification of 'omitted acts'.[313] If a provincial council fails to carry out any 'act or thing' required by legislation, the Minister may 'order all such steps to be taken which in his opinion are necessary or desirable to rectify such act or thing'.[314] The Minister has similar powers in relation to local authorities.[315] It is submitted that even though the powers of the Minister to rectify a failure by a provincial council or local authority to undertake a legislative obligation are necessary, the statutory framework gives the Minister wide discretion and unfettered powers.[316] There is no limitation to the exercise of powers by the Minister since he or she can 'order all such steps' which in his or her opinion are necessary to rectify 'omitted acts'. It is further submitted that the basis for intervention, that of failure to

[310] Madhekani & Zhou 2012: 22. See UN-Habitat 2007: 7, for a discussion on the importance of oversight.
[311] Jonga 2012: 122. See also Kamete 2006: 260, Zimbabwe Institute 2005: 8. Bland 2011: 341.
[312] See Musekiwa 2014: 4.
[313] S 316 UCA, s 43 Provincial Council and Administration Act.
[314] S 43 Provincial Councils and Administration Act.
[315] See S 316 UCA and s 156 RDCA. See also Feltoe 2006: 136.
[316] See Jonga 2012: 117, Combined Harare Residents Association 2014: 16.

undertake an 'act or thing', is too wide. It is difficult to establish the meaning of an 'act or thing'. As a result, the Minister has an unfettered power to determine the 'omitted act or thing' upon which he or she can make a decision to intervene.[317] Moreover, there are no oversight mechanisms to check potential abuse of these intervention powers.[318] The Minister is not required to report to other arms of government when undertaking this form of supervision. The absence of oversight mechanisms presents a danger to local autonomy. It is submitted that these powers of the Minister are no longer consistent with the 2013 Constitution, which guaranteed a certain measure of autonomy to provincial and metropolitan councils and local authorities.[319]

7.8 Assumption of law-making powers

It is argued that the exercise of legislative powers by junior governments is an important expression of local autonomy.[320] It is further argued that laws made by junior governments are important tools through which local citizens, via democratically elected councils or assemblies, express their interests and preferences.[321] It is therefore crucial that the supervisory powers of senior governments do not encroach on the law-making terrain of junior governments.[322] The national government in Zimbabwe has the power to encroach on the law-making terrain of local authorities. As argued in Chapter Six, the Minister has the power to make by-laws or adopt model by-laws on behalf of the local authorities.[323] This is perhaps the most far-reaching intervention power of the national government.[324]

It is submitted that even though the national government should have the right to intervene in local affairs, the right of the Minister to make by-laws or adopt model by-laws on behalf of local authorities goes beyond supervision.[325] Such powers allow the Minister to usurp the legislative authority of local authorities. These powers defy the rationale behind establishing a multilevel system of government which is to allow lower governments to respond to the needs of citizens, among other mechanisms, by making and implementing laws. As contended in Chapter Six the powers of the Minister to assume legislative powers of local

[317] Jonga 2012: 117.
[318] See Machingauta 2010: 149.
[319] Combined Harare Residents Association 2014: 21. See also Chatiza 2014: 6.
[320] See De Visser 2005: 186.
[321] See De Visser 2005: 186.
[322] See De Visser 2005: 186.
[323] See para 4.3.1. See also 233(1) UCA and s 94(1) RDCA.
[324] See Feltoe 2006: 144.
[325] See Mushamba 2010: 114 and Machingauta 2010: 149.

authorities are contrary to the principles, values and objectives of devolution in the 2013 Constitution.[326] Thus, such powers should be abolished as they represent an imbalance between need for supervision and the requirement of local autonomy.[327] It is submitted that the role of the national government should be limited to regulation of the framework (which does not extend to approving by-laws) within which local authorities exercise their legislative powers.

7.9 Financial interventions

As argued above, it is important that there is explicit legal recognition of the conditions under which senior government may intervene at subnational level.[328] This is important because, among other advantages, it creates predictability in the supervisory framework. It was also contended that an intervention into subnational affairs ought to be subjected to independent reviews for checks and balances.[329] Local autonomy may be protected if the supervisory powers are exercised in such a way as to ensure that the intervention of the senior government is kept in proportion to the importance of the interests which it is intended to protect.[330] The national government in Zimbabwe may intervene in local authorities to address finance-related problems.[331] The Minister may issue financial directives, assume a financial duty or undertake any action to eliminate budget deficits.[332] This section analyses these three forms of financial interventions.

7.9.1 Financial directives

The Minister may issue directives to a local authority to undertake certain actions relating to its finances and financial management.[333] There are two instances where the Minister may issue financial directives to an urban local authority. First, when an urban local authority has 'failed to give effect to any of the duties imposed upon it' by legislation.[334] Second, when the 'final accounts of a local authority for any financial year reveal an accumulated deficit on the

[326] See ss 264 and 265 Constitution.
[327] See Madhekani & Zhou 2012: 21, Clause 26 Urban Councils Bill, Chatiza 2014: 6.
[328] See Article 8(1) European Charter of Local Self-Government.
[329] UN-Habitat 2007: 7.
[330] Article 8(3) European Charter of Local Self-Government.
[331] The Provincial Councils and Administration Act does not make provision for any form of financial intervention at the provincial level due to the fact that under the Lancaster House Constitution provinces do not have fiscal powers. The new Act to govern provincial and metropolitan councils should make provision for such interventions as these councils will have the power to administer revenue.
[332] The monitoring of finances will not be discussed in this chapter as it was examined in the previous chapter.
[333] S 315(1) UCA and s 122(1) RDCA.
[334] S 315(1)(a) UCA.

consolidated revenue account and the [local authority] has not provided to the satisfaction of the Minister for the elimination or reduction of such deficit'.[335] In rural local authorities, the Minister may only issue directives in the second instance.[336] There is no justification for such differences. Hence, it is submitted that the envisaged new local government Act should address these differences so as to establish a consistent local government supervisory framework. In both urban and local authorities, the Minister is required to give the concerned local authority an opportunity to submit any representations it may wish to make before issuing any directives.[337] This requirement is commendable in light of the need to promote cooperative governance among different tiers of government.

It is submitted however that the provisions of the UCA and RDCA described above gives the Minister too-wide powers. In the first instance where the Minister may issue financial directives, the UCA does not explicitly recognise the failure which may warrant the issuance of a directive. The UCA only provides that the Minister may issue directives when an urban local authority has 'failed to give effect to any of the duties imposed upon it' by legislation.[338] Thus the Act gives the Minister wide discretion to determine the duties which the local authority would have failed to undertake. To protect local autonomy, it is suggested that there is need to recognise the financial problems (failures or obligations) which warrant an intervention. In the second instance, the Minister is also given wide discretion to determine whether any deficit elimination strategy is satisfactory.[339] Hence, the Minister has unlimited powers to issue financial directives, presenting a threat to local autonomy.[340] Moreover, there are no oversight mechanisms on the use of such supervisory powers.

7.9.2 Assumption of a financial duty

The national government has the power to assume responsibilities of urban local authorities in relation to financial issues.[341] As discussed above, if an urban local authority fails to undertake a statutory obligation related to its finances, the Minister may issue financial directives to such a local authority to rectify financial problems. If the concerned urban local authority fails to comply with such directives, the Minister may act on behalf of the

[335] S 315(1)(b)UCA and s 122(1) RDCA.
[336] See S 122(1) RDCA.
[337] S 315(1) UCA and s 122(1) RDCA.
[338] S 315(1)(a) UCA.
[339] S 315(1)(b)UCA and s 122(1) RDCA.
[340] Combined Harare Residents Association 2014: 16. See also Machingauta 2010: 149, Jordan 1984: 89.
[341] See S 315(1) UCA and s 122(1) RDCA.

concerned local authority and recover any expenses incurred from that urban local authority.[342] In the RDCA, there is no specific provision which empowers the Minister to assume a financial duty, unlike in urban local authorities. It can be argued that there is no justification for the differences in the supervisory regime in this regard. Thus, it is submitted that the Minister should also have the power to assume financial duties in rural local authorities in cases where a rural local authority has failed to carry out those duties. The UCA does not provide for oversight mechanisms in cases where the Minister would have assumed a financial duty at the local level.[343] It is submitted that the legislation should be reformed to provide for oversight mechanisms in the use of any intervention powers, including the power to assume a financial duty.[344] Parliament could play that oversight role in each case involving any form of financial intervention.[345]

7.9.3 Elimination of budget deficits

The national government has the power to address budget-related problems in both urban and rural local authorities. The Minister may direct certain actions so as to eliminate or reduce any budget deficit of a local authority.[346] If a local authority fails to act in accordance with the directives of the Minister, the Minister may levy a special rate on all rateable property within the area of a local authority for the purpose of recovering expenses or eliminating or reducing any budget deficit.[347] It is submitted that these powers of the Minister may be necessary to prevent a collapse of a local authority, which may result in that local authority failing to provide basic services to the citizens. However, as is the case with most supervisory powers, the Minister has unfettered powers in relation to the elimination of a budget deficit in a local authority.[348] Furthermore, there are no oversight mechanisms on the exercise of the power to eliminate budget deficit. Thus, it is proposed that 'whatever' measures of eliminating budget deficits (the Minister may direct a local authority to undertake or the Minister may undertake on behalf of a local authority) should be approved by Parliament. Such a requirement will allow Parliament to exercise oversight in relation to the exercise of

[342] S 315(2) UCA. The Minister may recover any expenses incurred by approaching the courts. S 315(3)(a) UCA.
[343] Madhekani & Zhou 2012: 21-2, Machingauta 2010: 149.
[344] See Chatiza 2014: 6, Combined Harare Residents Association 2014: 40.
[345] Musekiwa 2014: 4.
[346] See s 315(1)(b)UCA and s 122(1) RDCA.
[347] S 315(3)(c) UCA and s 122(2) RDCA.
[348] See Jonga 2012: 117, Madhekani & Zhou 2012: 21, Machingauta 2010: 149.

the Minister's powers to eliminate budget deficits at local level.[349] This can go a long way in protecting local autonomy.

This section examined the role of the national government to intervene in the affairs of provincial and metropolitan councils, and local authorities. It is submitted that the powers of the national government to intervene in subnational affairs represents an imbalance between the need for supervision and requirement for local autonomy.[350] The autonomy of provincial and metropolitan councils and local authorities is further undermined by the fact that there are no adequate mechanisms to check the use of powers to intervene by the Minister.[351] In this statutory environment, provincial and metropolitan councils and local authorities are unlikely to play a significant role in the realisation of national and local goals such as development, democracy and sustainable peace.

8. Conclusion

The effective functioning of a multilevel system of government requires senior governments to supervise junior governments. Supervision is important to reduce the dangers of decentralisation or of a multilevel system of government such as corruption, macroeconomic instability and disparities. It is necessary to ensure that lower governments deliver on both local and national goals including effectice and efficient service delivery. Such supervision may be exercised through regulation, monitoring, support and intervention. The right to supervise nonetheless is not a right which should be exercised without limitations. It should not constrain the minimum level of local autonomy which lower tiers of government should enjoy in order to undertake an active role in the realisation of development, democracy and sustainable peace. It was submitted in this chapter that the 2013 Constitution does not provide sufficient safeguards to guarantee the autonomy of provincial and metropolitan councils and local authorities. The statutory framework for supervision does not guarantee local autonomy either. Instead, the national government, through the Minister, is given wide powers over almost all aspects of subnational governance, with no oversight mechanisms to provide checks and balances. The overall effect of this is that subnational governments have failed to deliver on their service delivery and development mandates. This should not be construed to mean that such failure should be attributed solely to the unlimited supervisory powers of the

[349] See Musekiwa 2014: 4.
[350] See Combined Harare Residents Association 2014: 16.
[351] See Machingauta 2010: 150.

Minister as there are other contributing factors such as the unstable economic environment being experienced in Zimbabwe. The Constitution nevertheless provides a foundation upon which a statutory framework can be built that not only strives to balance supervision and local autonomy but also cooperative relations among tiers of government. The following chapter explores opportunities for cooperative relations among tiers of government in Zimbabwe under the 2013 Constitution.

Chapter 9

Intergovernmental relations

1. Introduction

The ability of a multilevel system of government to realise development, democracy and sustainable peace does not only depend on the supervisory relationships discussed in the previous chapter. It also requires cooperative relations among different tiers of government in addition to other factors such as decentralisation of fiscal resources. This chapter seeks to explore the development of these cooperative relations in the Zimbabwean multilevel system of government. It will be argued that although sound intergovernmental relations are not a 'sufficient condition' for the achievement of development, democracy and sustainable peace, their absence is likely to undermine the achievement of these goals.[1] Thus, it is important to establish an institutional, policy and legal framework that allows the development of an effective system of intergovernmental relations. As argued in paragraph 6.5 of Chapter Two, there are certain principles which are central to any effective system of intergovernmental relations. The principles are participation, consultation, respect, equality, transparency and predictability. It is argued these principles should generally inform the conduct of intergovernmental relations.

The chapter begins by providing a background that informs an understanding of intergovernmental relations and cooperation in Zimbabwe before analysing the constitutional framework for intergovernmental relations in Zimbabwe. It then assesses the relevance under the 2013 Constitution of institutions which were established to promote coherent governance under the Lancaster House Constitution. The chapter assesses the potential role of provincial and metropolitan councils as intergovernmental relations structures before examining intergovernmental planning and budgeting as a vehicle of promoting effective governance in Zimbabwe. In the last section, the chapter develops a framework of effective intergovernmental relations with the intention of providing lessons to inform the development of an intergovernmental relations system in Zimbabwe, as required by the Constitution.

[1] See Levy & Tapscott 2001: 20.

2. Defining intergovernmental relations and cooperation

2.1 Intergovernmental relations

Intergovernmental relations are interactions which develop or exist between governmental units of all types and levels in a multilevel system of government.[2] These interactions are significant in a multilevel system of government because it is impossible to distribute powers and functions among governments within a nation state into 'watertight compartments'.[3] In such a system, the overlap of powers and functions across tiers of government is unavoidable. Thus, governments are likely to be interdependent and interrelated. Effective governance under this system of 'interdependence and interrelatedness may require governments organised at different levels to cooperate (as opposed to competing) with one another when discharging their responsibilities.[4] Constitutional objectives such as preservation of peace and national unity, securing the public welfare of all Zimbabweans and coherent governance are more likely to be achieved if tiers of governments cooperate with one another.[5]

2.2 Cooperation

Cooperation is the 'act of aligning and integrating governance across [tiers] of government so as to ensure coherence'.[6] It is different from supervision in that it takes place in a context of equality with each tier of government participating in intergovernmental relations as an equal partner.[7] Equality of governments, as actors in intergovernmental relations, depends on a number of factors, including political will of officials at the national level to abide by decentralisation rules, 'genuine interest' in pursuing national and local objectives, and the quality of human interaction. As will be argued below, in countries where there is no strong culture of cooperation among governments situated at different levels, such as Zimbabwe, it may be necessary to recognise in the Constitution (or legislation) the obligation for governments to cooperate with one another when performing their functions. As contended in paragraph 6.5.1 of Chapter Two, recognising in the Constitution (alternatively, in legislation) the need for cooperative relations among governments may assist in establishing the necessary foundation for a culture of cooperative governance. However, codification of

[2] Watts 2001: 22.
[3] Watts 2001: 22.
[4] See the Aberdeen Principles 2005: 6.
[5] See s 265(1) Constitution.
[6] Department of Provincial and Local Government 2007: 51.
[7] De Visser 2005: 210.

intergovernmental relations should be adopted with caution as it can foreclose options for negotiated intergovernmental relations which are more likely to establish lasting mechanisms for intergovernmental dispute resolution.[8] The extent to which intergovernmental relations are codified will be examined below, but first a brief background is provided to the nature of the Zimbabwean multilevel system of government. The argument is that intergovernmental relations should be understood and developed in the context of this system.

3. Background to intergovernmental relations and cooperative governance in Zimbabwe

Prior to the adoption of the 2013 Constitution, the terms cooperative governance or intergovernmental relations were virtually unheard of in Zimbabwe. This can be attributed to the nature of the system of government which Zimbabwe had. The national government was the only tier of government exercising decision-making powers which it could delegate to creations of statutes such as provincial councils and local authorities.[9] This meant that there were no intergovernmental relations to 'talk' about since intergovernmental relations develop out of interactions between more than two governments organised at different levels. The situation has changed with the adoption of the 2013 Constitution, which makes provision for three tiers of government.[10] This means that for the first time in the history of Zimbabwe there are relations between distinct governments. The major question is what mechanisms need to be put in place to ensure the development of constructive relations between the three tiers of government to ensure that the multilevel system of government achieves development, democracy and sustainable peace, among other goals.[11] Does the Constitution provide the necessary foundation for the development of cooperative relations among the three tiers of government?

4. Constitutional framework

The importance of cooperative relations among the three tiers of government has been recognised in the 2013 Constitution. The Constitution requires tiers of government to cooperate with one another when carrying out their responsibilities and obligations.[12] Such a

[8] Tapscott 1998: 27.
[9] See the Lancaster House Constitution.
[10] See s 5 Constitution.
[11] See the Aberdeen Principles 2005: 6.
[12] S 194(1)(g) Constitution.

requirement extends to their respective institutions and agencies.[13] The requirement for cooperative governance is further buttressed by section 265 of the Constitution which provides general principles of provincial and local government. The section provides that provincial and metropolitan councils must, within their spheres:

a) ensure good governance by being effective, transparent, accountable and institutionally coherent;
b) assume only those functions conferred on them by th[e] Constitution or an Act of Parliament;
c) exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another tier of government;
d) cooperate with one another, in particular by (i) informing one another of, and consulting one another on, matters of common interest (ii) harmonising and coordinating their activities;
e) preserve the peace, national unity and indivisibility of Zimbabwe;
f) secure the public welfare; and
g) ensure the fair and equitable representation of people within their areas of jurisdiction.

The State is required to take measures, including adopting laws, to promote cooperative governance.[14] In addition, section 265(3) of the Constitution requires Parliament to enact a law providing for the coordination of activities of the three tiers of governments. The major question is what is 'cooperative governance'? What is the significance of cooperative governance in the 2013 Constitution? How is cooperation different from coordination?

4.1 Defining cooperative governance

The concept of cooperative government was adopted from South Africa where it forms the cornerstone of the South African multilevel system of government.[15] In the South African context, Steytler and De Visser state that cooperative governance entails that 'the spheres, bounded together by a common loyalty to the country, its people and the Constitution, must cooperate to "secure the well-being of the people of the Republic"'.[16] Therefore cooperative governance relates to the way tiers of government must govern in order to achieve overall constitutional objectives. It is different from competitive governance in that it places

[13] S 194(1)(g) Constitution.
[14] S 194(1) Constitution.
[15] See Chapter 3 Constitution, South Africa.
[16] Steytler & De Visser 2009: 3-16.

constraints on tiers of government by imposing positive obligations to cooperate with one another.[17]

Cooperative governance serves as a constraining principle on tiers of government when they exercise their powers and functions.[18] It means that one tier of government or agency of government may not use its powers in such a way as to undermine the effective functioning of another tier of government or agency of government.[19] Unlike competitive governance, cooperative governance 'does not diminish the autonomy of any given [tier] of government'. Cooperative governance 'simply recognises the place of each within the whole and need for coordination in order to make the whole work'.[20] It has been submitted that the best way to realise cooperative governance is to 'ensure that all branches do exactly what they are empowered to do and no more'.[21] It is this form of governance that the 2013 Constitution requires in order for the tiers of government to preserve peace and national unity and secure the public welfare, among other goals.[22] To achieve these objectives the Constitution has provided a set of principles to govern the conduct of each tier of government and their respective agencies. These are discussed below.

4.2 Principles of cooperative governance

As described above, the Constitution provides the general principles of provincial and local government which among other objectives seek to promote cooperative governance. While section 265(1) of the Constitution seems to suggest that these principles bind only provincial and metropolitan councils, it is submitted that a purposive approach to interpretation should be adopted. Cooperative relations are not only important at subnational level but also when subnational governments interact with the national government.[23] Thus, there is rationality in arguing for the application of these to all tiers of government, including the national government, to ensure effective multilevel governance. This is supported by the requirement for cooperative governance, not only between provincial and local governments but among the three tiers of government and their agencies, captured in section 194(1)(g) of the Constitution.

[17] See Steytler & De Visser 2009: 3-16.
[18] See Steytler & De Visser 2011: 22-127.
[19] See Woolman & Roux 2011: 14.
[20] Woolman & Roux 2011: 14.
[21] Woolman & Roux 2011: 14-16.
[22] See s 265(1)(e)(f) Constitution.
[23] See the Aberdeen Principles 2005: 6.

The South African system of cooperative governance provided lessons in the development of the cooperative governance framework in the 2013 Constitution.[24] In South Africa, the principles of cooperative governance were found to represent a statement of intent rather than a prescription for action.[25] Steytler and De Visser highlight that these principles can be described as passive obligations of respect for the Constitution and other spheres of government.[26] The principles should not be construed as 'hard rules' of intergovernmental relations and cooperative governance and have to be given 'normative content'.[27] It is therefore submitted that the national government in Zimbabwe, through policies and legislation, should give content to these values to promote effective governance. What follows is an in-depth examination of individual principles.

4.2.1 Duty not to encroach on the geographical, functional and institutional integrity of another tier of government

Section 265(1)(c) of the Constitution provides that tiers of government must 'within their spheres exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another tier of government'. This provision is a replica of section 41(1)(g) of the Constitution of South Africa. In *Cape Metropolitan Council v Ministry for Provincial Affairs and Constitutional Development*, the Court ruled that section 41(1)(g) 'places a limitation or constraint on the manner in which a sphere of government or an organ of State may exercise its powers or perform its functions'.[28] The Court further stated that the section 'appears to be directed at preventing one sphere of government from undermining others thereby preventing them from functioning effectively'.[29] What this means in the Zimbabwean context is that tiers of government and their agencies may not exercise powers beyond what the Constitution has given them. If they do so, they are likely to undermine the ability of other tiers of government or their agencies to deliver effectively on their functions. This principle reflects a constitutional protection of subnational governments

[24] See Chapter 4 Constitution of South Africa.
[25] See Tapscott 1998: 20, Woolman & Roux 2011: 8-14, Steytler & De Visser 2009: 4-16.
[26] Steytler & De Visser 2009: 4-16.
[27] See Steytler and De Visser 2009: 4-16.
[28] See *Cape Metropolitan Council v Ministry for Provincial Affairs and Constitutional Development and Others 1999 (II)) BCLR 1229*, para 122.
[29] See *Cape Metropolitan Council v Ministry for Provincial Affairs and Constitutional Development and Others*, para 122.

in that it tends to limit the powers of national government to interfere with subnational decision-making processes.[30]

4.2.2 Duty to cooperate

Tiers of government 'must' cooperate with another in particular by informing and consulting one another on matters of interest and to harmonise and coordinate their activities.[31] This is a positive obligation that constrains the manner in which tiers of government exercise their powers and perform their functions.[32] What does the duty to inform and consult one another entail? What is the meaning of harmonisation and coordination of government activities? These questions require interrogation which this section seeks to provide.

4.2.2.1 Duty to inform one another

The Constitution imposes an obligation on tiers of government to inform one another on matters of common interest.[33] It is important to note that this duty of informing other tiers or agencies of government serves a very different function than that of consultation discussed below.[34] In the case of consultation, the consulting tier or agency of government seeks views or information from another tier of government or agency of government to inform its own decision-making. With input from other tiers or agencies of government, the concerned tier or agency of government is likely to be in a position to make a better decision than if it had not sought views of other tiers or agencies of government. With information-sharing the tier or agency of government disseminating the information does not seek a response from the relevant tier or agency of government.[35] Instead, the receiving tier or agency of government may take such information into consideration if and when it makes a decision on a related matter.[36]

[30] See *Cape Metropolitan Council v Ministry for Provincial Affairs and Constitutional Development and Others*, para 122.
[31] Ss 194(1)(g) and 265(1)(d) Constitution.
[32] Steytler & De Visser 2009: 4-16.
[33] S 265(1)(d)(i) Constitution.
[34] See Steytler & De Visser 2011: 22-134.
[35] See Steytler & De Visser 2011: 22-134.
[36] See Steytler & De Visser 2011: 22-134.

4.2.2.2 Duty to consult one another

Tiers and agencies of government 'must' consult one another on matters of common interest.[37] Consultation has been defined as 'a process whereby the views of another on a specific matter are solicited, either orally or in writing, and considered'.[38] This could relate to law-making, policy-making and sharing of nationally raised revenue. The principle of consultation imposes a duty on each tier of government and their agencies to consider the views of other tiers of government and their agencies before they take a decision on the relevant matter.[39] Steytler and De Visser argue that in the context of cooperative governance consultation has three basic elements, namely:

a) an invitation to hear views of a particular party (or public in general) on a specified matter;
b) an adequate opportunity to submit considered views; and
c) the party inviting views must consider those views in good faith.[40]

It is submitted that the invitation to hear the views of other parties can take one of two forms. In its passive form, 'the party consulting extends a general invitation to interested parties or the public in general. By setting a closing date for responses, it leaves the addressees to decide whether or not to respond. The more active approach is to solicit actively the views of particular parties.'[41] It entails putting more effort into securing the views of stakeholders – in this context, tiers and agencies of government.[42] This approach is particularly important when the Constitution or legislation imposes a duty to consult.

It has further been argued that when there is a duty to consult with a particular body, 'there must be conscious effort, directed to that party to achieve that end'.[43] Moreover, 'while the consultant's decision-making cannot unreasonably be delayed by dilatory conduct by the party whose views are being sought, "an engagement to consult" should amount to more than a simple invitation to submit views'.[44] For example, when formulating provincial plans, provincial and metropolitan councils should not merely require local authorities to submit

[37] S 265(1)(d)(i) Constitution.
[38] S 1(1) Intergovernmental Relations Framework Act, South Africa.
[39] See Woolman & Roux 2011: 14-17, Steytler & De Visser 2011: 134.
[40] Steytler & De Visser 2011: 134.
[41] Steytler & De Visser 2011: 136.
[42] See *Robertson and Another v City of Cape Town; Truman-Baker v City of Cape Town 2004 (9) BLCR 950 (C)* para 108.
[43] Steytler & De Visser 2011: 136.
[44] Steytler & De Visser 2011: 136. See also Geldenhuys 2008: 104-5.

their plans but go further to consider local plans when formulating the provincial plan. However, failure by a provincial council to consult a local authority or to consider its views does not invalidate its plan. It nevertheless may undermine the effective functioning of the multilevel system of government since effectiveness of the system relies on constant dialogue among governmental units.[45] Hence, it is submitted that tiers of government and their agencies should whenever possible take the active approach of consultation even though it can be time- and resource-consuming.[46]

4.2.3 ***Duty to harmonise and coordinate activities.***

Significant decentralisation requires coordination of government activities between different tiers and agencies of government.[47] The Constitution requires tiers of government to harmonise and coordinate their activities.[48] De Visser argues that coordination signifies an effort by the national government to ensure that policies and actions of all governments are aligned.[49] This means that, if circumstances require, the national government may use force to achieve intended results.[50] Watts, on the other hand, defines coordination rather generously. He states that coordination occurs 'where governments not only consult but attempt to develop mutually acceptable common policies and objectives, which they then apply and develop within their own jurisdiction'.[51] Thus, the duty to harmonise and coordinate activities goes beyond the duty to inform and consult one another discussed above. It is a recognition that the achievement of national and local goals is unlikely to occur when governments operate in isolation. It is also in line with one of the objectives of devolution in the Constitution which is to create coherent government in Zimbabwe as a whole.[52] To achieve coherent government, section 265(3) of the Constitution directs Parliament to enact a law providing for 'appropriate' mechanisms and procedures to facilitate coordination between the three tiers of government.[53] It is submitted that there is an urgent need to enact

[45] See Geldenhuys 2008: 104.
[46] See Article 4(6) European Charter of Local Self-Goverment.
[47] The Aberdeen Principles 2005: 6.
[48] S 265(1)(d)(ii) Constitution.
[49] De Visser 2005: 210.
[50] De Visser 2005: 210.
[51] Watts 2001: 28. The purpose of coordination and of effective intergovernmental relations system, in general, is not to 'eliminate' conflicts and competition among governments but to manage such conflicts and competition. Watts 2001: 26.
[52] See s 264(2)(b) Constitution.
[53] S 265(3) Constitution.

this piece of legislation given the importance of coordinated governance to the effective functioning of the multilevel system of government.[54]

In this section it was observed that the 2013 Constitution provides an enabling rather than prescriptive framework for intergovernmental relations and cooperation.[55] What is left is for the national government to develop content for this framework through legislation and policies. However, it should be noted that 'codification' of intergovernmental relations in and of itself will not necessarily result in the development of constructive intergovernmental relations.[56] In addition to codification, there is a need to develop the capacity of each tier of government to engage with other tiers. As discussed below, the establishment of institutions of intergovernmental relations may provide the much-needed platform for nurturing cooperative relations among governments. The role of institutions which were established to foster coherence governance since independence will be examined below.

5. Institutions established to foster coherent governance

This section assesses the effectiveness of institutions which were established not necessarily as institutions of intergovernmental relations but designed to foster coordination of government activities to ensure coherent governance in Zimbabwe. The assessment is carried out to establish the relevance of these institutions under the new constitutional dispensation and to provide lessons for the development of a system of intergovernmental relations. At independence, the majority-led government was not only faced with the challenge of doing away with the racial system of government. The government also had to deal with the huge challenge of ensuring that majority of the citizens who lacked access to basic public services under the colonial era had access to such services. Such a challenge could only be addressed through effective governance. Through policies and legislation, the national government established a number of institutions to promote effective governance, including coordinated policy formulation and implementation. The Prime Minister's Directives on Decentralisation and Development of 1984 and 1985 provide the foundation for post-independence attempts to ensure effective governance in Zimbabwe.[57] As highlighted in Chapter Three, the directives were used to create hierarchical structures to coordinate government activities, including

[54] See Muchadenyika 2014: 137.
[55] Similar findings were observed in the South African context. See Levy & Tapscott 2001: 2.
[56] Levy & Tapscott 2001: 20. Levy and Tapscott argue that poor intergovernmental coordination and integration is frequently a problem of capacity and efficiency rather than procedure.
[57] Makumbe 1996: 36, Makumbe 1998: 28.

development planning and implementation.[58] The directives received legal recognition through the Provincial Councils and Administration Act, RDCA and Traditional Leaders Act, which make provision for establishment of structures and procedures to facilitate coordination of government activities and bottom-up planning.[59] Attention is given to the role of the Ministry of Local Government, provincial governors and provincial councils, provincial development committees and rural district development committees.

5.1 Ministry of Local Government

The Ministry of Local Government is a key national institution charged with coordination of government activities.[60] It has offices at the national, provincial and local levels for this purpose.[61]

5.1.1 National level

At the national level, there is the Minister who is supported by various directorates with a responsibility to coordinate government activities countrywide.[62] Besides coordinating government activities, the Minister plays a dispute resolution role. Usually, disputes between local authorities or between a local authority and an agent of the national government are resolved by the Minister. The role of the Minister as a political figure to resolve disputes between various state actors has the advantage of ensuring that disputes between governments which usually are of a political nature are resolved using political means.[63] It is a less costly dispute resolution mechanism than alternatives, such as the courts.

5.1.2 Provincial level

The Ministry has provincial administrators (PAs) who are stationed at provincial level for the purposes of coordinating government activities, among other duties.[64] This means that there are ten PAs, one in each of the ten provinces. As highlighted in paragraph 5.1 of Chapter Three, PAs constitute deconcentrated authority of the Ministry.[65] Other ministries and

[58] See para 4.3.
[59] PlanAfrica 2000: 40.
[60] Ministry of Local Government 2013: 14. See Pasipanodya *et al* 2000: 80, Chatiza 2010: 15, Wekwete 1990: 47.
[61] Chakaipa 2010: 33.
[62] Ministry of Local Government 2013: 10.
[63] For a detailed discussion, see Levy &Tapscott 2001: 20.
[64] Ministry of Local Government 2013: 10, Chigwata 2012: 46. See also Chakaipa 2010: 33, Masuko 1996: 51.
[65] Chakaipa 2010: 33, Chatiza 2010: 15, Makumbe 1996: 37, Sims 2013: 9.

agencies of the national government have officials placed at the provincial level in line with this deconcentration model.[66] PAs chair provincial development committees which are charged with development planning and coordination at the provincial level, as will be discussed below.[67] PAs also supervise district administrators (DAs) at the local level.

5.1.3 Local level

The Ministry has DA(s) who are stationed at local level to coordinate government activities, in addition to other duties they may carry out.[68] DAs are the most senior representatives of the national government at this level and report to the Minister through PAs.[69] In some urban local authorities, there are more than one DA whereas in rural local authorities, it is usually one DA per rural local authority. DAs chair rural district development committees which, as discussed below, are charged with coordination of government activities and development planning at local level.[70] Several other ministries and agencies of the national government have officials placed at the local level, following the deconcentration model.[71] This has allowed these ministries and agencies to deliver certain public services directly to the citizens.[72] This also means that coordination and alignment of activities at the local level has become a necessity due to the involvement of a multitude of governmental actors in the delivery of various public services.

5.1.4 General assessment of the role of provincial and district administrators

Although their functions are not provided in any legislation, PAs and DAs are in charge of most interactions between local officials and the national government at subnational level.[73] PAs and DAs serve as communication mediums for information from the national government to subnational government as well as from the subnational level to the national government. These officials have played an important role in coordinating the implementation of government programmes across all sectors, including implementation of development projects, poverty alleviation programs, hunger relief programmes and the administration of elections. They have largely been effective in carrying out this role.

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[66] See Wekwete 1990: 47, Makumbe 1996: 37. Pasipanodya *et al* 2000: 70.
[67] See Wekwete 1990: 47.
[68] Ministry of Local Government 2013: 10. See also Chakaipa 2010: 33, Chigwata 2012: 26, Wekwete 1990: 47.
[69] Chatiza 2010: 15, Makumbe 1996: 37, Chakaipa 2010: 33.
[70] See S 60(4) RDCA.
[71] See Wekwete 1990: 47, Makumbe 1996: 37. Pasipanodya *et al* 2000: 70.
[72] See Wekwete 1990: 47.
[73] Bland 2010: 22.

Wekwete argues that there is a need for more cooperation between governments and coordination of government activities to complement the role which is being carried out by PAs and DAs at subnational level.[74] This will not only have the advantage of reducing conflicts among officials of various governments but can also reduce resource wastage through duplication of duties. Thus, it is submitted that PAs and DAs should continue to coordinate government activities at subnational levels. They could carry out that role in a supporting capacity to political structures established to coordinate government activities.

5.1.5 Relations between the ministry and local authorities in practice

The character of relations between the Ministry and local authorities has gradually changed since independence. Prior to 1999, relations between the national government and local authorities were largely cordial as the ruling ZANU-PF commanded majorities in almost all local authorities in Zimbabwe. With the formation of the MDC in 1999 and its subsequent hold on power at the local level, central-local relations have not been cordial.[75] They have been strongly driven by political affiliation with local authorities administered by the ruling party-led councils enjoying relatively sound relations, while those run by MDC-led councils have had sour relations with the national government.[76] PAs and DAs have been accused of adopting a confrontational rather than collaborative approach when dealing with local authorities, especially those that are run by opposition-led councils.[77] Most if not all of these officials are generally viewed to be aligned and sympathetic to the ruling ZANU-PF party.[78] While there is nothing wrong with being aligned to a certain political party it is submitted that PAs and DAs should take a non-political approach when discharging their duties, as required by the 2013 Constitution.[79] If PAs and DAs promote or undermine the interests of political parties they will be acting unconstitutionally and warranting disciplinary action, including dismissal.

[74] Wekwete 1990: 50.
[75] Chigwata 2012: 40.
[76] See Bland 2010: 5, 28; Chigwata 2012: 40-1.
[77] Jonga & Chirisa 2009: 167.
[78] Jonga & Chirisa 2009: 167.
[79] See s 200(3) Constitution.

5.2 Provincial Governors and Provincial Councils

As mentioned above, the Prime Minister's Directive on Decentralisation of 1984 and 1985 made provision for the role of provincial governors (PGs).[80] The Lancaster House Constitution was amended to make provision for their role.[81] The role of PGs is further given effect by the Provincial Councils and Administration Act.[82] Unlike the Lancaster House Constitution, the 2013 Constitution does not make provision for the role of PGs. It however does not prohibit the establishment of the role of PGs although, as argued below, that will be contrary to the 'spirit' of devolution since the Constitution has established the position of a chairperson of provincial or metropolitan council.[83] It is submitted that these chairpersons should carry out the functions which were carried out by PGs rather than creating another parallel governance structure at the provincial level.

In terms of section 4 of the Provincial Councils Administration Act, PGs are appointed by the President and practice suggests that such appointment was based on party lines.[84] PGs represented the President at the provincial level and undertook developmental and coordinative functions.[85] They chaired provincial councils, which were charged with development planning, implementation and evaluation at the provincial level.[86] PGs were required to have close working relationships with PAs and other provincial heads of ministries and agencies of the national government who however did not report to them but were expected to inform them of developments in the province.[87] As in India where the national government appoints Governors of States, the appointment of PGs by the President in Zimbabwe was one of the mechanisms employed by the national government to ensure the effective implementation of national policies at the provincial level.[88] PGs reported to the President through the Minister responsible for local government. They acted as agents of the national government and in particular of the ruling ZANU-PF, given that they were appointed along party lines.[89]

[80] Makumbe 1996: 40.
[81] S 111A Lancaster House Constitution.
[82] See Part II Provincial Councils and Administration Act.
[83] See Chapter 14 Constitution.
[84] See Chigwata 2012: 41.
[85] Wekwete 1990: 44, Makumbe 1996: 40, Bland 2010: 22, Mutizwa-Mangiza 1990: 427.
[86] See s 10 and s 13 Provincial Councils and Administration Act.
[87] Makumbe 1998: 32.
[88] See Tapscott 1998: 18.
[89] See Chigwata 2012: 45.

As shall be discussed later, PGs and the provincial councils they chaired failed to carry out effectively the development and planning and coordinative role due to a number of reasons, including the fact that they lacked financial resources.[90] The absence of financial resources meant that planning decisions at provincial level were not linked to budgetary allocations at the national level.[91] Thus, structures such as provincial councils acted as forums of mere participation without visible consequence since they could not implement their plans. As argued below, to be effective, intergovernmental planning has to be matched with resource-allocating powers at the level where the planning occurs.[92] However, PGs were very effective in ensuring that the national government exercises firm control of the provinces. Thus, the abolition of these structures under the 2013 Constitution is commendable.

5.3 Provincial Development Committees

The Provincial Councils and Administration Act makes provision for the establishment of provincial development committees (PDCs) which are charged with development planning, implementation and coordination at the provincial level.[93] PDCs acted as technical arms of provincial councils.[94] They are composed of the PA; town clerks, secretaries and senior officials of local authorities; senior officials of the security services; and provincial heads of each Ministry and department in the province.[95] A PDC is chaired by the PA.[96] Through PAs, PDCs coordinate the activities of departments of the national government stationed at the provincial level.[97] For example, the implementation of programmes such as the construction of infrastructural projects by the national government at provincial level is coordinated by PDCs. In the case of natural disasters such as droughts, PDCs coordinate the mobilisation of state resources towards disaster response. The question is whether PDCs are still relevant under the new constitutional dispensation where provincial and metropolitan councils are the key governance structure at the provincial level.

It is submitted that PDCs are still relevant structures under the new constitutional order. They provide a platform where administrative officials of the three tiers of government can consult

[90] Wekwete 1990: 44, Pasipanodya *et al* 2000: 72, Chakaipa 2010: 35.
[91] Chigwata 2012: 43.
[92] See Wekwete 1990: 50, Chigwata 2012: 43.
[93] S 28 Provincial Councils and Administration Act.
[94] Chatiza 2010: 15.
[95] S 26(2) Provincial Councils and Administration Act.
[96] S 27 Provincial Councils and Administration Act.
[97] Mutizwa-Mangiza 1990: 427. See also Pasipanodya *et al* 2000: 72.

each other on matters of mutual concern and make recommendations to the political representatives at their levels. Their composition, which is dominated by officials of the national government, nevertheless means that subnational governments have little influence on decision-making by PDCs.[98] This emphasises the argument that PDCs were established to spearhead the implementation of national policies at the provincial level and not necessarily to promote locally determined development.[99] It is therefore submitted that PDCs should be reformed so as to increase the number of local officials in their membership. This will allow subnational governments to have a strong voice in the decision-making processes of the PDC.

5.4 Rural District Development Committees

The RDCA requires each rural local authority to establish a rural development committee (RDDC) as one of the committees of the council.[100] The Act provides that an RDDC is composed of administrative officials of rural local authorities, and senior officials of various ministries and departments of the national government stationed at the local level.[101] RDDCs are tasked with development planning, implementation and coordination of government policies at the local level.[102] For instance, RDDCs coordinate the implementation of national programmes such as immunisation and poverty reduction programmes, which usually require the involvement of multiple agencies. The question is whether RDDCs are still relevant under the new constitutional dispensation. As highlighted above, both the national and local governments deliver certain services directly to the people. Mechanisms for the alignment and harmonisation of activities by various governments at local level become critical for the effective delivery of these services. The RDDCs can provide such a platform for that purpose. They may enable officials of both the national and local governments to consult each other on matters of common interest, share information and coordinate and align their activities.[103]

[98] Makumbe 1998: 31.
[99] Makumbe 1998: 31.
[100] S 60 RDCA.
[101] S 60(1) RDCA. These officials are the district administrator, chairmen of every committee established by a rural local authority, chief executive officers and other officers of a rural local authority, the senior officer in the district of the Zimbabwe Republic Police, Zimbabwe National Army and Central Intelligence Organisation, the district head of each Ministry and government department, and others members appointed by the Minister of Local Government.
[102] S 60(5) RDCA. See Mutizwa-Mangiza 1990: 427.
[103] See Mutizwa-Mangiza 1990: 429.

It is argued that RDDCs were effective in horizontal coordination of government activities at the local level in the 1980s and 1990s.[104] However, the composition and structure of the committee may undermine their effectiveness. First, an RDDC is chaired by the DA who is a central government official. This means that the national government through the DA have significant influence over decision-making in the RDDC.[105] Second, the composition of the committee is very much in favour of the national government's field administration.[106] All heads of national government ministries and agencies stationed at the local level are members of the RDDC. Thus, the national government is unlikely to have not less than ten members on the RDDC. A local authority on the other hand is only represented by the Chief Executive Officer and the chairman of every committee of the council, which normally do not exceed or equal ten. Thus, local officials are usually outnumbered in the RDDC and consequently their influence is minimal compared to officials of the national government. It can be argued that a coordinative structure does not necessarily have to be composed of equal numbers of officials from different governments. Nevertheless, development of cooperative relations among governments may require that such structures are characterised by a relationship of equality among participants, which may be achieved in part by making provision for equal numbers of participants from the tiers of government involved. It is submitted that while the RDDC may be an effective tool of coordinating government activities at the local level, there may be need to review its membership in favour of local representation.

5.5 Provincial and Metropolitan Councils

As discussed above, the 2013 Constitution requires tiers of government to cooperate with one another.[107] It directs the national government to take measures to promote cooperative governance and coordination of government activities.[108] Such mechanisms may include the establishment of institutions to facilitate cooperative governance and coordination of government activities. As argued in paragraph 3.1.2 of Chapter Six, provincial and metropolitan councils may carry an intergovernmental relations role. As observed in Chapter Five, provincial and metropolitan councils are composed of members of both the national and local governments.[109] This makes them suitable institutions to foster cooperation and

[104] Mutizwa-Mangiza 1990: 429.
[105] See Makumbe 1998: 31.
[106] Schou 2000: 125.
[107] See s 194(1)(g) Constitution.
[108] See s 265(3) Constitution.
[109] See para 2.1. See also s 268(1) and s 269(1) Constitution.

coordination between the national and local governments.[110] The councils may provide a platform where the different tiers of government can consult each other on areas of mutual interest, including implementation of national legislation and policies.

The Constitution has already assigned to these councils the responsibility to coordinate government activities and monitor use of public resource tasks which have a direct bearing on intergovernmental relations.[111] It would appear from the composition and responsibilities of these councils that the Constitution positions them as institutions of intergovernmental relations rather than as a level of government with distinct powers.[112] Thus, it is recommended that national government through legislation should consider assigning to these councils additional responsibilities relating to intergovernmental relations. They could discuss and consult on implementation in the province of national policies and legislation, draft national policies and legislation affecting provinces and local authorities, development of provincial policies and consider reports from low level intergovernmental relations structures such as RDDCs.[113] Further, with the participation of the Minister responsible for finance, these councils could be used as platforms for discussing sharing of nationally raised revenue across the three tiers of government.

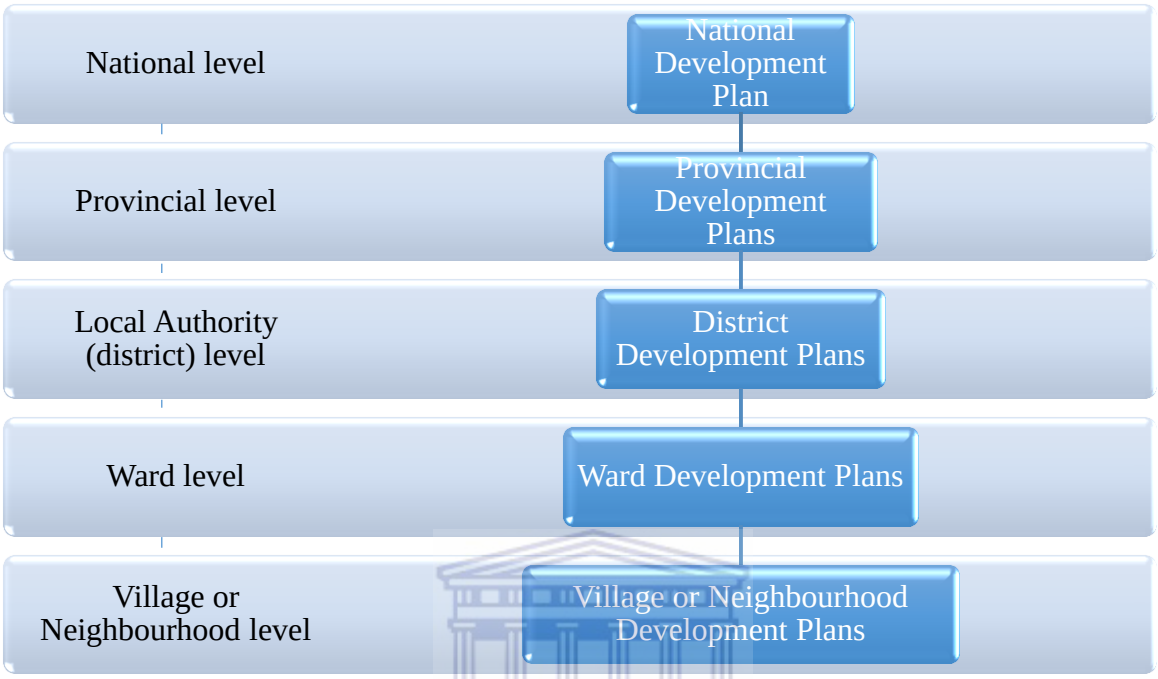
6. Intergovernmental planning

The achievement of development goals such as universal access to basic services by all citizens, reduction of inequalities and elimination of poverty requires coherent and integrated governance. Coherent and integrated governance requires alignment of polices and priorities across tiers of government. This can be undertaken through intergovernmental planning and budgeting. The Prime Minister's Directive on Decentralisation (and subsequent policies) introduced a five year and annual development planning and budgeting process at subnational level. As shown in Figure 23 below, development planning and budgeting is supposed to start at the village level through the ward, district and provincial structures feeding into the national development planning and budgeting system.[114] The effectiveness of this planning process is examined in this section with the objective of providing lessons for development of

[110] Machingauta *et al* 2014: 16.
[111] See s 270 Constitution.
[112] Machingauta *et al* 2014: 16.
[113] For lessons on roles of provincial intergovernmental relations structures, see s 18 Intergovernmental Relations Framework Act, South Africa.
[114] See Ministry of Local Government 2013: 56. See also Schou 2000: 126, PlanAfrica 2000: 40, Chatiza 2010: 4, Makumbe 1998: 27-32.

an intergovernmental planning and budgeting system which can better achieve the objectives of the 2013 Constitution.

Figure 23: Development planning process



Source: Extracted from Ministry of Local Government 2013

6.1 Ward, village and neighbourhood development plans

As highlighted in paragraph 4.3 of Chapter Three, ward and village development committees are some of the structures which were created by the Prime Minister's Directives on Decentralisation of 1984 and 1985.[115] The committees are responsible for development planning, implementation and coordination geared to facilitate bottom-up development. Development planning starts at the village and neighbourhood levels, spearheaded by village and neighbourhood development committees in urban and rural local authorities, respectively.[116] Citizens identify their priorities which then form the village or neighbourhood development plan. The plans are then forward to the ward level where they are consolidated to form the ward development plan.[117] Planning at the ward level is spearheaded by ward

[115] The Traditional Leadership Act of 2001 made VIDCOs and WADCOs technical committees of Village Assemblies and Ward Assemblies, respectively.
[116] Schou 2000: 126. See Makumbe 1996: 45.
[117] PlanAfrica 2000: 56.

assemblies with the assistance of ward development committees. The ward development plan is then forwarded to the district or local authority level to form the district development plan.

In practice, the committees (and their assemblies) have failed to undertake the planning function effectively as they usually do not have the necessary skills and are not the dominant arenas for development discussions, among other reasons.[118] PlanAfrica claims that village development plans are virtually unheard of and it is doubtful if any were ever produced and submitted since 1984 when the Prime's Directives on Decentralisation came into operation.[119] Instead, councillors in association with the technical staff of local authorities produce ward development plans.[120] Makumbe argues that both VIDCOs and WADCOs have proved to be incapable of producing development plans which have been accepted or utilised by either RDDCs or PDCs.[121] They usually lack the technical expertise to formulate plans. A significant number of people who reside in rural areas were said to be unaware of the existence of the committees or assemblies.[122] These institutions require renovation to promote effective governance as required by the 2013 Constitution.[123]

6.2 The District Development Plan

The District Development Plan (DDP) is designed to serve as a tool for aligning planning and the priorities of the tiers of government at local level. Section 60 of the Rural District Councils Act requires RDDCs to formulate a DDP.[124] When formulating the DDP, RDDCs are required to consider development plans produced by various wards in the local authority area.[125] The formulation of the DDP is also informed by development plans and priorities of agencies of the national government operating at district or local level. The input of the agencies of the national government into the RDDC is coordinated through the DA. Upon approval by the RDDC, the DDP is forwarded to the council of a rural local authority for approval before 31 May in every year.[126] After approval, the DDP is then forwarded to the provincial development committee for inclusion in the Provincial Development Plan.

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[118] See Schou 2000: 134, Makumbe 1996: 113, Moyo 2013: 143.
[119] PlanAfrica 2000: 56.
[120] See Schou 2000: 134, Makumbe 1996: 47.
[121] See Makumbe 1996: 47.
[122] Makumbe 1996: 50.
[123] See s 264(2) Constitution.
[124] See s 60 RDCA.
[125] Schou 2000: 126.
[126] S 60(6)(9) RDCA. In the council meeting to approve the plan, only councillors have the right to vote.

The DDP can be a key tool for integrating the activities of national and local governments. It can also be effective in facilitating bottom-up planning as it is informed by development plans from the lowest level, ward and village. Practice however suggests that development planning at the district or local level has been a highly technical activity largely undertaken by national government officials.[127] These officials tend to dominate the activities of the RDDC as they have superior technical competence and resources compared to local officials.[128] It has been argued that a number of projects included in district plans are not considered by PDCs when formulating provincial plans as they are considered to be merely an aggregated 'shopping list'.[129] The effectiveness of the DDP as a tool of aligning priorities across levels of government is also questionable given that there seem to be weak linkages between RDDCs and PDCs which are tasked with the formulation of provincial development plans.[130] Despite the fact that RDDCs are represented at the provincial level, provincial development plans have largely been disjointed from district plans.[131] It is submitted however that the development planning process is still relevant although there is a need to improve the communication system and alignment strategies between the provincial and local structures.

6.3 The Provincial Development Plan

Section 13 of the Provincial Councils and Administration Act requires provincial councils to formulate provincial development plans (PDP).[132] The formulation of the plan is carried out by the council with the assistance of the PDC.[133] Administrative officials of the national government who are stationed at the provincial level and senior officials of local authorities in the province participate in the formulation of the PDP.[134] The PDP is both a long-term and short trajectory of development priorities of the province covering a variety of sectors. Ideally, the PDP is informed by both national priorities and development plans from various local authorities in the province.[135] Each provincial council is required to submit on an annual basis its PDP to the national planning agent for inclusion in the National Development Plan.

[127] PlanAfrica 2000: 57.
[128] See Chigwata 2012: 39.
[129] Mutizwa-Mangiza 1990: 432. See also Schou 2000: 134.
[130] See Makumbe 1996: 53.
[131] See Makumbe 1996: 53.
[132] S 13 Provincial Councils and Administration Act. See also s 28 Provincial Councils and Administration Act.
[133] See s 28 Provincial Councils and Administration Act.
[134] See s 26(2) read together with s 28 Provincial Councils and Administration Act.
[135] See Chakaipa 2010: 65.

The participation of officials of the national, provincial and local governments in the formulation of the PDP means that the PDP could be a useful tool for the alignment of priorities across levels of government. The potential of PDPs to act as a tool for alignment of policies across levels of government has however been limited by a number of factors. First, local authorities, especially urban local authorities, are reluctant to be involved in the activities of provincial councils as they consider the councils to lack 'real' power.[136] Instead, they consider it more useful to engage directly with the national government through the Ministry of Local Government. Hence, there tends to be a lack of alignment between most provincial plan(s) and those of local authorities, especially in respect of cities.[137] As discussed below, there is also little evidence to suggest that PDPs are actually considered by the national government when determining priorities, including budget allocations. At the end of the day, practice seems to suggest that PDPs are formulated merely to comply with the law and do not seem to influence what is implemented in practice. The planning process is not synchronised with budget prioritisation at all levels of government.[138]

6.4 The National Development Plan

6.4.1 Planning process

The responsibility for national development planning has been assigned to a number of institutions, including the Ministry of Finance, Office of the President and the Reserve Bank of Zimbabwe.[139] These institutions have over the years produced various national development plans[140] which defined short- and long-term development priorities for the whole country. When formulating the national development plan (NDP), the national planning agent is expected to consider PDPs. The NDP has always been used as one of the vehicles for aligning the development plans of the provinces and the priorities of the national

[136] Makumbe 1996: 112.
[137] See Chigwata 2012: 38.
[138] See Chakaipa 2010: 65.
[139] See Wekwete 1990: 45, Schou 2000: 126.
[140] National Development Plans adopted since independence are: the Growth with Equity of 1981, the Transitional Development of 1982, the Five-year National Plan of 1986-89, the Economic Structural Adjustment Programme (ESAP) 1991-1995, the Zimbabwe Programme for Economic and Social Transformation (ZIMPREST) 1996-2000, Millennium Economic Recovery Programme (MERP) 2000, Ten Point Plan 2002, National Economic Revival Programme (NERP) 2003, Macroeconomic Policy Framework 2005-2006, 'Towards Sustained Economic Growth', Expansionary Monetary Policies 2003–2008, National Economic Development Priority Programme (NEDPP) 2007, Short-term Emergency Recovery Programme 2009, the Three Year Macroeconomic Policy and Budget Framework 2010-2012 (STERP II), the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim-Asset) 2013-2018.

government. However, as argued below, the alignment of priorities of different governments has been weakened by the lack of participation of provincial and local tiers of government in the actual formulation of the NDP.

While mechanisms were put in place to promote intergovernmental coordination and integration of plans at provincial and local levels, Mutizwa-Mangiza argues that very little has been done to achieve the same ends at the national level.[141] There is no evidence to suggest that plans from the provincial and local levels were considered when formulating national plans or the annual public sector investment programme budgeting process.[142] This nullifies the effort that was put into coordinated planning at subnational levels and ultimately popular development priorities are not reflected in most national development plans that have been formulated since independence.[143] That is partially the reason why it has been difficult for the national government to mobilise support for the implementation of these NDPs. The majority of NPDs were partially implemented and subsequently abandoned. The recent NDP, the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZimAsset), is likely to face the same challenges.

6.4.2 The Zimbabwe Agenda for Sustainable Socio-Economic Transformation

The ZimAsset is the new economic blueprint adopted by the ZANU-PF-led government soon after the 2013 elections, covering the term 2013-2018. It seeks to 'achieve sustainable development and social equity anchored on indigenisation, empowerment and employment creation which will be largely propelled by the judicious exploitation of the country's abundant human and natural resources'.[144] There is no doubt that the ability of the plan to achieve desired results depends in part on 'sound' relations between different tiers of government. The plan has significant consequences for subnational governments, especially local authorities who under the plan have the important duty to deliver core public and social

[141] Mutizwa-Mangiza 1990: 432.
[142] See Chigwata 2012: 39.
[143] See Mutizwa-Mangiza 1990: 433, Schou 2000: 134.
[144] Government of Zimbabwe, Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim-Asset) 'Towards an empowered society and a growing economy' October 2013-December 2018, 2013: 6.

services.[145] To improve performance, the plan requires the institutionalisation of performance contracts for all senior public sector managers, including parastatals and local authorities.[146]

The Office of the President and Cabinet is the lead government agency that will provide the necessary leadership and guidance in the implementation, monitoring and evaluation of the ZimAsset.[147] It will also coordinate the implementation of the plan to ensure attainment of set goals.[148] Giving the Office of the President the responsibility to administer implementation of the ZimAsset is commendable. This has the advantage of providing a strong political backing to the implementation of the plan. However, strong political backing by itself is not enough to ensure the successful implementation of the plan. Significant financial resources and the general support of other stakeholders such as political parties, civic groups, the private sector and the population at large are pivotal. These groups are likely to support the implementation of an economic blueprint if they provide input in the planning process. Evidence on the ground suggests that ZimAsset was wholly formulated by ZANU-PF and lacks essential backing from some local authorities, opposition political parties, and economic groupings outside ZANU-PF. Funding has been identified as the major hindrance to the implementation of the ZimAsset.[149] Equally important is the absence of effective intergovernmental relations mechanisms. As a result, the prospects of ZimAsset to realise its intended objectives are under these circumstances small. The economic blueprint will likely follow the path of previous NDPs, which were half-implemented and later abandoned without realising any meaningful results.

6.5 General Assessment

As argued in Chapter Two, benefits associated with a multilevel system of government are likely to be realised when there is effective upward communication of local needs, on one hand, and consideration of local priorities by senior governments when determining national

[145] ZimAsset 2013: 6.
[146] See ZimAsset 2013: 65. Institutionalisation of performance is part of results-based management (RBM), a governance model adopted by government which emphasises achievement of tangible and high quality results with limited resources. See ZimAsset 2013: 47.
[147] ZimAsset 2013: 47.
[148] ZimAsset 2013: 7.
[149] *The Herald* 'Cash package for ZimAsset' 2014. It is reported that Zimbabwe needs at least US$10 billion to successfully implement the plan. The government does not have such an amount of money and is currently battling to meet its expenditure programmes including payment of civil servant salaries. As of July 2014, the national government was looking for financial support from China and other private investors to finance the ZimAsset.

priorities, on the other.[150] Such effective upward communication of local needs has not been realised in Zimbabwe. In cases where local priorities have been communicated to the national government, such priorities have not received budget prioritisation. This section will provide a general analysis on the development planning and budgeting process with particular attention to obstacles to effective planning.

6.5.1 Domination of the planning process by the national government

It was stated above the intergovernmental planning process was designed to facilitate bottom-up communication of priorities.[151] This has not been realised yet in part due to the domination of the process by the national government officials.[152] As noted above, the hierarchical institutions (RDDCs and PDCs) which were created for the purposes of facilitating development planning are dominated by technical staff of the national government.[153] There is need for a reform of these structures to allow effective representation of subnational governments.

6.5.2 Gap between intergovernmental planning and budgeting

Another weakness identified with the intergovernmental planning process is that there is a gap between intergovernmental planning and budgeting.[154] While planning at provincial and local levels involves officials from the national government and local authorities, budgeting and implementation of policies occurs separately.[155] Officials of the national government work along sectoral lines whilst local officials implement their own policies determined by their respective councils.[156] As a result, the production of short- and long-term plans is considered to be a 'barren ritual' as very few of the proposed projects in any year are funded and subsequently implemented.[157]

6.5.3 Non-inclusion of subnational governments in the budgeting process

The allocation of funds to various sector ministries and agencies of the national government as well as to subnational governments has largely been influenced by priorities in the national

[150] See De Visser 2005: 210.
[151] See Chigwata 2012: 29.
[152] Chigwata 2012: 39-40.
[153] Bland 2010: 19.
[154] Chigwata 2012: 38-9.
[155] Mutizwa-Mangiza 1990: 432.
[156] Mutizwa-Mangiza 1990: 432.
[157] Mutizwa-Mangiza 1990: 432, Chigwata 2012: 39.

development plan. The Public Sector Investment Programme (PSIP) has been the main vehicle for financing projects which are prioritised in the NDP.[158] While sector ministries and agencies of the national government are represented in the annual PSIP budget meeting, where the final national priorities are set, provinces and local authorities lack representation.[159] This means that provincial and local governments have limited opportunities to influence the national budgeting process. Even though some initiatives have been embarked upon to involve local authorities through organised local government, these have so far not been effective in providing local governments with an opportunity to influence the budgeting process.[160] Hence, it was submitted in Chapter Seven that provincial and metropolitan councils and local authorities should be involved in the national budget and fiscal system.[161]

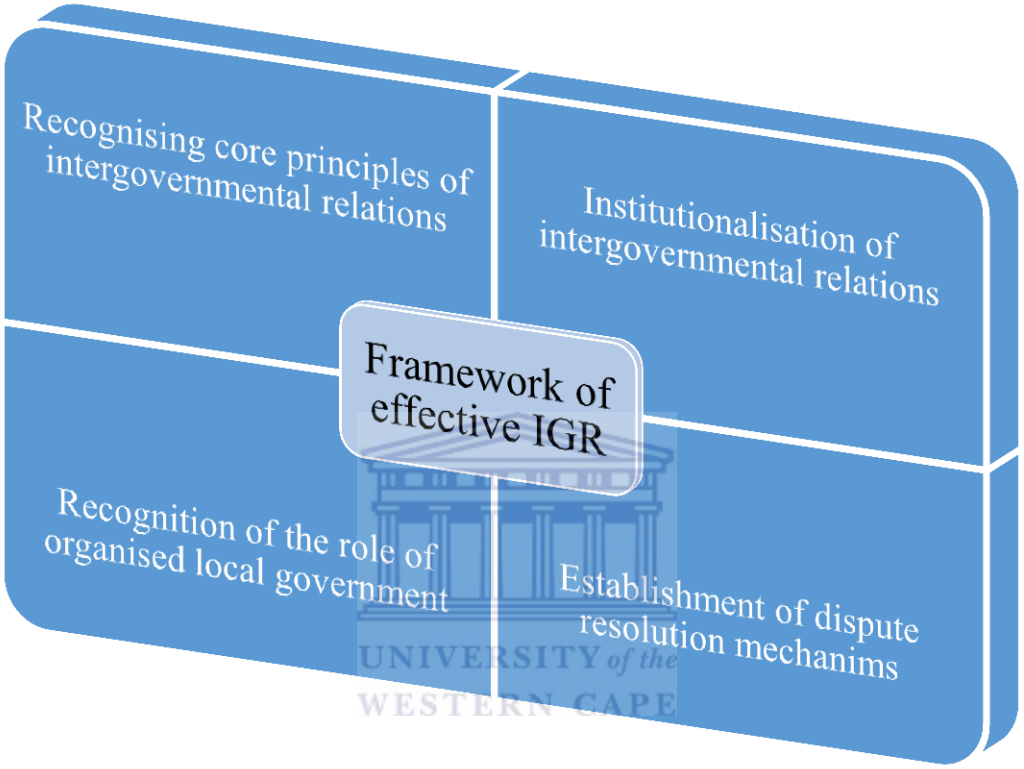
7. Towards an intergovernmental relations framework for Zimbabwe

From the discussion above it can be observed that the system of government under the Lancaster House Constitution was designed to promote coordination of government activities.[162] Unlike the Lancaster House Constitution, the 2013 Constitution requires the establishment of mechanisms not only to promote coordination of government activities but also cooperative relations among the three tiers of governments.[163] Thus, under the new constitutional dispensation, the Ministry of Local Government has an important role of guiding the evolution of intergovernmental relations in Zimbabwe by developing relevant policies and legislation.[164] In this section, the chapter discusses important features and aspects of an effective system of intergovernmental relations framework with guidance from design features put forward in paragraph 6.5 of Chapter Two. The purpose of the section is to provide proposals which may be considered when developing a framework of intergovernmental relations in Zimbabwe. As shown in Figure 24 below, the framework comprises the recognition of core principles of a system of intergovernmental relations, institutionalisation of intergovernmental relations, recognising the role of organised local

[158] See Schou 2000: 126.
[159] Schou 2000: 126.
[160] Pasipanodya *et al* 2000: 228.
[161] See para 4.7.
[162] PlanAfrica 2000: 76.
[163] See s 265 Constitution.
[164] Machingauta *et al* 2014: 11, Muchadenyika 2014: 139. See also Pasipanodya *et al* 2000: 235.

government and establishing dispute resolution mechanisms.[165] The chapter appreciates that intergovernmental institutions and processes discussed in Chapter Two will have to be adapted to meet the constitutional, political, economic and social conditions of the Zimbabwean polity.[166]

Figure 24: Components of an effective framework of intergovernmental relations



7.1 Legal and institutional recognition of core principles of intergovernmental relations framework

As highlighted above, principles which are central to any effective system of intergovernmental relations include participation, consultation, respect, equality, transparency and predictability.[167] It was contended in Chapter Two that these principles should generally inform the conduct of intergovernmental relations.[168] The Constitution has recognised the importance of these principles by indirectly referring to some of them.[169] For instance, as discussed above, the Constitution requires tiers to inform and consult one another on matters

[165] See Machingauta *et al* 2014: 11.
[166] See Watts 2001: 23.
[167] See Watts 2001: 26, 39. See also Article 4(6) European Charter of Local Self-Government.
[168] See para 6.5.
[169] See for example s 265(1) Constitution.

of common interest.[170] Thus, the Constitution has provided a framework for intergovernmental relations and cooperation. As argued in this chapter, what is left is for the national government to provide content to this framework by formulating relevant policies and legislation to promote cooperative governance.[171]

7.2 Institutionalisation of intergovernmental relations

It was contended in paragraph 6.5.2 of Chapter Two that an effective system of intergovernmental relations may require the establishment of institutions or forums where the executive and/or the administrative officials of governments at various levels meet to discuss issues of common interest.[172] These institutions of intergovernmental relations may be established to promote vertical and horizontal integration.

7.2.1 Mechanisms to promote vertical integration

Vertical integration may be realised by establishing hierarchical institutions placed at different levels where government is organised. These hierarchical institutions may provide a platform to ensure that there is regular dialogue and cooperation among different tiers of government.[173] Further, these institutions can be charged with overall coordination at different levels of government.[174] In Zimbabwe, it is suggested that the institutions to promote vertical integration may be established at national, provincial and local levels.

7.2.1.1 National forums

At the national level, the President could chair a forum (President's forum) composed of the Minister responsible for local government, chairpersons of provincial and metropolitan councils from the ten provinces, representatives from organised local government and other persons invited by the President.[175] The President's forum could be a central forum to which other intergovernmental relations forums could be linked, forming channels of communication across sectors and spheres.[176] At the time of writing, there is a platform where provincial ministers of state meet regularly with the President to discuss provincial

[170] S 265(1)(b)(c)(d) Constitution.
[171] See Local Governance Community Capacity Development Trust 2014: 8.
[172] See Machingauta *et al* 2014: 11.
[173] See the Aberdeen Principles 2005: 6.
[174] See Muchadenyika 2014: 137.
[175] See S 6 Intergovernmental Relations Framework Act, Act No. 13 of 2005, South Africa.
[176] See Department of Provincial and Local Government 2007: 65.

matters.[177] Such a platform could be extended to chairpersons of provincial and metropolitan councils and representatives of organised local government. The purpose of the President's forum will be to allow the President

a) to raise matters of national interest with provincial and metropolitan councils and organised local government and to hear their views on those matters;
b) to consult provincial and metropolitan councils and organised local government on the implementation of national policy and legislation in provinces and local authorities;
c) to consult provincial and metropolitan councils and organised local government on the co-ordination and alignment of priorities, objectives and strategies across national, provincial and local governments;
d) to discuss performance in the provision of services in order to detect failures and to initiate preventive or corrective action when necessary;
e) to consider reports from other intergovernmental forums on matters affecting the national interest; and
f) to consider any other matters of strategic importance that affect the interests of other governments.[178]

7.2.1.2 Provincial forums

Provincial and metropolitan councils can serve at intergovernmental relations forum at the provincial level especially given that the Constitution assigns to them the responsibility to coordinate and implementing governmental programmes.[179] These councils could feed into the President's forum and Parliament, since some members of the councils are also Members of Parliament.[180] The potential role of provincial and metropolitan councils as intergovernmental relations forums was explored in paragraph 5.5 above, but it is important to stress that these councils can serve as central structures of intergovernmental in each province. It is however submitted that this role does not mean that other intergovernmental relations may not be established at the provincial level.[181] For example, the chairperson of the provincial or metropolitan council could establish a forum composed of mayors and chairpersons in the province as well as chairpersons of committees of the provincial or metropolitan council.[182] Besides these political structures, other forums can be established at the national and provincial levels which will be composed by administrative officials of the

[177] For a discussion on the role of provincial ministers, see paragraph 2.3.3 of chapter five.
[178] See s 17 Intergovernmental Relations Framework Act, South Africa.
[179] See s 270(1)(b) Constitution.
[180] See s 268 and 269 Constitution.
[181] See s 17 Intergovernmental Relations Framework Act, South Africa.
[182] For the role of committees, see s 271 Constitution.

various governments involved. These structures can act as technical committees of political structures.[183]

7.2.1.3 Local forums

At local level, the mayor or town clerk could chair a forum composed of officials of the councils and those of the national government stationed at the local level.[184] The forum feeds into intergovernmental relations structure(s) at the provincial level.[185] It can serve as a forum where officials of local authorities and officials of the national government stationed at the local level could discuss and consult on matters of mutual interests, including:

a) draft national and provincial policy and legislation relating to matters affecting local government;
b) the implementation of national and provincial policy and legislation in the area under the jurisdiction of the local authority;
c) matters arising in the provincial or metropolitan councils or any other forums at the provincial level;
d) the provision of services in the local authority;
e) coherent planning and development in the local authority; and
f) the coordination and alignment of the strategic and performance plans and priorities, objectives and strategies of the local authority and the national (or provincial) agencies operating in the local authority area.[186]

7.2.1.4 Sectoral forums

Hierarchical institutions may be complemented by sectoral institutions of intergovernmental relations designed to promote intergovernmental cooperation within a specific function or sectoral area (such as water, finance and energy) that transcend the jurisdiction of two more tiers of government.[187] Sectoral institutions of intergovernmental relations may take the form of cluster committees led by officials of the national government and comprising officials of the provincial and metropolitan councils and local authorities.[188] For example, a committee may be established with particular a focus on finance, economy and social matters. In these forums, issues of national interest can be discussed, views and requests from provincial and

[183] Department of Provincial and Local Government 2007: 71.
[184] This could take the form of RDDCs discussed in para 5.4 above.
[185] For lessons on the potential role of these forums, see Part 4 Intergovernmental Relations Framework Act, South Africa.
[186] See s 26 Intergovernmental Relations Framework Act, Department of Provincial and Local Government 2007: 70.
[187] De Visser 2005: 244.
[188] See Department of Provincial and Local Government 2007: 66.

metropolitan councils and local authorities can be heard, policy and legislative recommendations can be developed, service delivery can be monitored, and strategies (including policies and objectives) as well as priorities in that functional area across all tiers of government can be aligned.[189] A finance forum is particularly important to provide a platform where the Minister responsible for finance can meet with representatives of provincial and metropolitan councils and local authorities to consult on fiscal, budgetary and financial matters affecting lower tiers of government.[190] Such a forum could also provide a platform where officials of the three tiers of government can consult on revenue-sharing before enactment of the relevant legislation.[191] While it is appreciated that lower governments may not necessarily participate in these institutions of fostering vertical integration as equal partners with those of higher governments, it is submitted that they should be given a certain measure of respect.

7.2.2 Mechanisms to promote horizontal integration

It is argued that the institutionalisation of horizontal integration may not be necessary, unlike at the vertical level.[192] Horizontal integration may be promoted by establishing a legal and institutional framework that allows and encourages governments within the same level to integrate their policies and actions.[193] For instance, the delivery of health services by the City of Harare affects citizens from the neighbouring local authorities of Norton, Epworth and Ruwa as they rely on the City for the delivery of this important service. There is therefore need for legislation which provides for how governments in the same level can deal with matters such as spillover effects of policies, joint planning and partnerships in delivering of public services. It is submitted that governments within the same level should be allowed to establish forums to promote cooperative relations between them, including coordination of the provision of public services. This could take the form of inter-provincial or inter-municipal forums. For example, the Metropolitan Council of Harare Province could establish a forum with the Provincial Council of Mashonaland Central Province.[194] The forum may undertake a number of roles, including information-sharing, sharing best practices, capacity-

[189] See Department of Provincial and Local Government 2007: 66.
[190] See Department of Provincial and Local Government 2007: 67.
[191] See s 301 Constitution.
[192] See De Visser 2005: 182.
[193] See the Aberdeen Principles 2006: 6.
[194] See s 22 Intergovernmental Relations Framework Act, South Africa.

building and cooperating on provincial developmental challenges affecting the two provinces.[195]

7.3 The role of organised local government

It was contended in paragraph 6.5.4 of Chapter Two that local governments are unlikely to engage meaningfully with higher tiers of government as single units except for large or metropolitan cities which might have that capability.[196] Effective engagement with other tiers of government requires that local government acts as a collective through organised local government structures.[197] Hence, an argument was made for the right of local authorities to associate so that they are in a better position to promote and protect their interests when engaging with senior governments or any other parties.[198] Against this background, what is the place of organised local government in Zimbabwe?

7.3.1 Status of organised local government

Organised local government has never received constitutional or statutory recognition both in the pre- and post-colonial eras. It has always taken the form of voluntary associations of local authorities established to promote and protect the interests of local government despite its long existence since 1923, when the Local Government Association of Southern Rhodesia was formed.[199] The UCA and RDCA implicitly recognise the right of local authorities to form associations by giving them the power to pay subscription fees to such associations.[200] There are two associations of local authorities. The Urban Councils Association of Zimbabwe (UCAZ) represents and promotes the interests of urban local authorities, while the Rural District Councils Association represents and promotes the interests of rural local authorities.[201] The two associations functioned on parallel tracks for many years.[202] In 2006, there were attempts to merge them to form the Zimbabwe Local Government Association (ZILGA), but that has not materialised in practice. The merger was promoted by the Rural District Council Association and strongly supported by the Ministry of Local Government. Some scholars argue that the merger was driven to achieve political reasons rather than to

[195] See s 23 Intergovernmental Relations Framework Act, South Africa.
[196] Watts 2001: 29, Steytler 2009: 430.
[197] Steytler & De Visser 2011: 22-127. See also Department of Provincial and Local Government 2007: 9.
[198] Article 10 European Charter of Local Self-Government.
[199] Bland 2010: 31, Chakaipa 2010: 56.
[200] See First Schedule RDCA and Second Schedule UCA.
[201] Pasipanodya *et al* 2000: 228, Chatiza 2010: 18, Jordan 1984: 86.
[202] Bland 2010: 31.

strengthen organised local government as UCAZ is seen to be sympathetic to MDC while the Rural District Council Association is argued to be aligned to ZANU-PF.[203] It was believed that a merger of the two associations would neutralise the influence of urban local authorities, driven by UCAZ, since they are less than half the number of rural local authorities.[204] Pasipanodya *et al* claim that the merger was hailed as a turning point in local government in Zimbabwe as it effectively signalled the demise of the anachronistic dual perception of local government in terms of rural and urban.[205] The merger nonetheless failed to work properly as the two associations continued to run parallel programmes and fundraised separately. This has been met with increasing pressure from the national government for the two associations to merge.

The Herald newspaper of 3 April 2011 reported that the Minister ordered the immediate merger of all associations representing local authorities to form a single association.[206] The Minister is reported to have stated that the 'prevailing set up where urban local authorities fall under [UCAZ] and the rural councils report to the Rural District Council Association was untenable'. [207] He was quoted by the newspaper as having said that, 'Come June 1 2011 there should only be one local government association so that the disjointed manner of operations does not exist'.[208] As of July 2014, the two associations have not fully merged and continue to run parallel programs. This has had the disadvantage of dividing the 'voice' of local government and its ability to engage meaningfully with other tiers of government.

7.3.2 Role of organised local government in intergovernmental relations

Both the UCAZ and Rural District Council Associations have not been able to represent, promote and protect the interest of local authorities especially when engaging with senior governments. This can be attributed to a number of causes, including the lack of constitutional and/or statutory recognition, fragmented bodies representing local governments and the absence of a guaranteed source of funding.[209] This section will analyse the lack of

[203] See Bland 2010: 31.
[204] See Bland 2010: 31.
[205] *The Herald* 'Local government associations ordered to merge' 2011.
[206] *The Herald* 'Local government associations ordered to merge' 2011.
[207] *The Herald* 'Local government associations ordered to merge' 2011.
[208] *The Herald* 'Local government associations ordered to merge' 2011.
[209] Most of the activities of ZILGA have been donor-funded as the Ministry of Local Government or the Treasury is not obliged to financially support ZILGA. The role of ZILGA has, therefore, been undermined since for organised local government to be effective there is need for reliable and sufficient sources of finance.

constitutional or statutory recognition and absence of adequate financial resources, since the impact of fragmented representation has already been discussed above.

7.3.2.1 Lack of constitutional and/or statutory recognition

As highlighted above, the role of organised local government is not recognised in the Constitution and is only implied in UCA and RDCA.[210] The lack of explicit constitutional and statutory recognition has meant that the participation of organised local government in intergovernmental relations depends on the 'goodwill' of officials of the national government. These officials of the national government are usually reluctant to consult organised local government when formulating and implementing policies. As a result, the voice of local government has been weak in the development of national policies, even when these affect local government. To strengthen the role of organised local government it is suggested that Parliament should consider giving statutory recognition to the role of organised local government.[211] In particular, the requirement for consultation of organised local government on any issue which directly affects the institutional integrity and powers and functions of local authorities should be recognised in legislation.[212] Nonetheless, it is important to note that statutory recognition of the role of organised local government by itself is not enough to enhance the potential of local government to engage with other tiers of government.[213] Other mechanisms of strengthening organised local government such as stable financial resources are equally important.

7.3.2.2 Financing organised local government

The role of organised local government in Zimbabwe to represent and promote the interest of local government has been undermined by the absence of stable financial resources. Organised local government relies on voluntary contributions from their members as well as donor contributions to finance their operations.[214] Large local authorities tend to contribute more than smaller local authorities. For example, the City of Harare is reported to pay US$35

[210] See First Schedule RDCA and Second Schedule UCA.
[211] Machingauta *et al* 2014: 11. The legislation to provide for mechanisms and procedures to facilitate coordination between the national, provincial and local government in terms of s 265(3) of the Constitution, will be the appropriate place to recognise such a role.
[212] See UN-Habitat 2007: 5, De Visser 2005: 236. Such issues may include any proposed changes to the boundaries of a local authority, establishment of a new local authority and assignment of a function to a local authority.
[213] See De Visser 2010: 235.
[214] See Chakaipa 2010: 56.

000 in subscriptions to UCAZ every year, while some smaller local authorities pay subscription fees under US$1000.[215] Such a funding model for organised local government, which is characterised by greater reliance on voluntary subscriptions, is not sustainable.

It is suggested that in addition to subscriptions from their members, organised local government should receive financial support from the national government. The funds can be provided through the budget of the Ministry of Local Government, since it seems unrealistic that provision for financing of organised local government can be made when sharing nationally raised revenue.[216] Financial support from the national government however is likely to undermine the independence of organised local government which is an essential feature for the effective representation of local government. It is submitted that, in Zimbabwe, whether organised local government finance their operations from subscriptions or are funded by the national government they are not immune from political influence from the national government.[217] As observed above, the national government has directed organised local government to undertake certain actions even though the national government does not fund its operations. Thus, in the Zimbabwean context and at the expense of independence, what may be important is the provision of adequate resources to organised local government so that it has enhanced capacity to engage with senior governments.

7.4 Dispute resolution mechanisms

Disputes between governments are inevitable in any multilevel system of government due to 'overlapping areas of jurisdiction or constitutional language that encourages divergent interpretations of the respective limits of national, provincial and local powers'.[218] Thus, mechanisms to avoid or resolve these disputes are required to ensure effective governance. Dispute resolution mechanisms strive to eliminate or reduce the costs to the public[219] which may arise due to protracted disputes between governments. This is important to ensure that no government, at any level, is hindered from delivering on its mandate by another government. Disputes between governments may be resolved by way of intergovernmental negotiation culminating in an agreement resolving the issue or by appeal to courts to

[215] *The Herald* 'Council threatens pullout' 2012.
[216] See ss 298 and 301 Constitution.
[217] See *The Herald* 'Local government associations ordered to merge' 2011.
[218] Watts 2001: 27.
[219] Costs to the public may be in form of disrupted delivery of public services caused by a dispute between governments which are jointly involved in the delivery of a public service.

adjudicate the dispute.[220] This section discusses these two methods of resolving disputes between governments and how they can be applied in the Zimbabwean context. The presence of dispute resolution mechanisms however does not mean that governments should not have a duty to avoid intergovernmental disputes. Governments at all levels should always strive to avoid disputes with other governments.[221] One of the ways of avoiding disputes recognised in the 2013 Constitution is the requirement that tiers of governments should 'assume only those functions' conferred on them by the Constitution or an Act of Parliament.[222] Further, tiers of government are must from 'exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another tier of government'.[223]

7.4.1 Intergovernmental negotiation

In the event that intergovernmental disputes arise they may be resolved at the political level through intergovernmental negotiation in intergovernmental relations forums or through use of an intermediary.[224] Intergovernmental negotiation is an effective dispute resolution mechanism especially given that contentious issues in intergovernmental relations are generally of a political and not technical nature.[225] It provides an 'opportunity to reach a compromise in which each bargaining government is able to protect those interests which it considers vital'.[226] This mechanism of dispute resolution is more effective if it is given legal recognition so that agreements bind the parties concerned. Hence, it is recommended that the national government should consider giving legal recognition to intergovernmental negotiation. Besides intergovernmental relations forums, the political party in power at both levels may also play some mediating role over intergovernmental policy differences. Where that is not the case, as is the scenario in Zimbabwe as of July 2014, the possibility of inter-party conflict sharpening intergovernmental conflict is very high. As discussed below, in such

[220] Watts 2001: 28.
[221] See s 40(1) Intergovernmental Relations Framework Act, South Africa.
[222] S 265(1)(b) Constitution.
[223] S 265(1)(c) Constitution.
[224] Watts 2001: 37. As stated above, the Minister responsible for local government has on several occasions served as an intermediary in disputes involving various governments.
[225] Levy & Tapscott 2001: 20.
[226] Watts 2001: 37.

cases, the courts may be the only option available for resolution of intergovernmental disputes.[227]

7.4.2 Role of the courts

In a number of countries which have adopted multilevel systems of government, the courts have played an important role in adjudicating disputes between governments. Countries such as Germany, South Africa, Canada and Kenya have established constitutional courts whose function it is to interpret the Constitution, including constitutional allocation of powers and functions to various spheres of governments. In these countries, the courts have been relied upon to resolve intergovernmental disputes only as a last resort.[228] South Africa and Kenya have gone a step further than other countries by providing in their Constitution the requirement that spheres of government and organs of state must 'exhaust all other remedies' before approaching the courts for adjudication of disputes.[229] The Constitution of South Africa goes even further to empower the courts to refer an intergovernmental dispute for resolution by the parties involved if it is satisfied that the parties did not exhaust all other remedies before approaching the court.[230] The courts in South Africa have exercised these powers in practice.[231] In South Africa, public officials of any government may also be held individually liable for pursuing unnecessary intergovernmental relations litigation. For example, the Division of Revenue Act of 2014 provides that if a dispute is referred back by a court due to the court not being satisfied that the organ of state approaching the court has not exhausted available dispute resolution mechanisms, the litigation costs must be regarded as fruitless and wasteful expenditure.[232] The Act further requires that such expenditure must be recovered from the public official who caused the litigation.[233] Such legal liability can be effective in reducing unnecessary intergovernmental litigation.

The newly established Constitutional Court of Zimbabwe has a key role to play in adjudicating intergovernmental disputes. The role of the Constitutional Court is however

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[227] See Watts 2001: 37. The use of the courts has some disadvantages, including that it is costly and time-consuming. Watts argues that 'once an issue goes to the courts a government loses control of the results and resort to the courts always involves the risk of losing the case'.
[228] Watts 2001: 37.
[229] See s 41(3) Constitution of South Africa, s 189(3) Constitution of Kenya.
[230] S 41(4) Constitution South Africa.
[231] See, for example, Uthukela District Municipality and Others v President of South Africa and Others CCT 7/02.
[232] S 33(2) Division of Revenue Act, Act No. 10 of 2014.
[233] S 33(3) Division of Revenue Act 2014.

likely to be minimal given that there is limited constitutional allocation of distinct powers and functions to provincial and local governments. Under the Lancaster House Constitution, the courts played little or no role in the adjudication of intergovernmental disputes, partly because the powers of subnational governments were determined by the national government. Thus, technically an intergovernmental dispute could not arise as the national government had legitimate claim to any governmental power. Similarly under the 2013 Constitution, the majority of powers and functions of provincial and local governments are assigned by acts of Parliament. The effect of this is that the role of the courts is likely to be limited as the national government determines what subnational governments may do.

The 2013 Constitution nonetheless requires devolution of power and responsibilities to provincial and local governments.[234] As argued in Chapter Six, the Constitution further provides various principles and objectives of devolution which, if given effect through legislation, may result in the creation of strong provincial and local governments.[235] This constitutional recognition of devolution has provided a claim to power for provincial and local governments which was not available to them.[236] Thus, potentially a significant number of disputes may arise relating to the distribution of powers and functions across the three tiers of government. For example, the courts may be called upon to decide on who has the final powers to appoint senior officials of local authorities given that local authorities now have the 'right to govern' their areas which could mean also the right to appoint their own personnel.[237] Thus, the Constitutional Court is likely to be faced with a number of disputes relating to the distribution of powers across tiers of government and devolution in general.

8. Conclusion

The Lancaster House constitutional order did not provide a framework for intergovernmental relations and cooperative governance. It emphasised coordination of government activities through structures such as the Ministry of Local Government, provincial governors, provincial councils, PDCs and RDDCs. Under the new Zimbabwean multilevel system of government, the achievement of national and local objectives requires the development of a system of intergovernmental relations which is not only geared towards coordination of government activities but cooperation among tiers of governments. The realisation of

[234] S 265(1) Constitution.
[235] Preamble of Chapter 14 and s 265(2) Constitution.
[236] See para 2 and 4.1 of chapter Six.
[237] See s 276(1) Constitution.

objectives such as development, democracy and sustainable peace requires effective and coherent governance by the three tiers of government. It was argued in this chapter that the 2013 Constitution provides the necessary framework upon which an effective system of intergovernmental relations and cooperative governance can be built. What is required is the development of appropriate policies, legislation and institutions to give effect to this framework. This chapter provided some core attributes of an effective system of intergovernmental relations and cooperation which may be useful in this regard. It was submitted that the principles of participation, consultation, respect, equality, transparency and predictability should inform the development and conduct of this system. A case was also made for the codification of intergovernmental relations and cooperation as well as institutionalisation of vertical and horizontal integration. It was submitted however that the codification of intergovernmental relations and cooperation itself is not enough to promote the development of constructive relations among governments. Political will and the development of capacity of each government to engage with other governments is pivotal.

Chapter 10

Concluding analysis

1. Introduction

This study is an examination of the Zimbabwean multilevel system of government with particular focus on the ability of provincial and metropolitan councils and local authorities to assist in the realisation of development, democracy and sustainable peace. The examination focused on the law, institutions and practice under the Lancaster House Constitution and 2013 Constitution. An argument was made in Chapter Two for the role of subnational governments in development, democracy and sustainable peace. Design features which are necessary for that role were also proposed, against which the Zimbabwean multilevel system of government was measured in the rest of the study. In this chapter, the study provides the concluding analysis and offers recommendations to improve the ability of subnational governments to deliver on development, democracy and sustainable peace objectives. The chapter will provide major findings of the study before presenting recommendations. It concludes with an answer to the research question presented in Chapter One.

2. Political autonomy

It was contended in Chapter Two that political autonomy is perhaps one of the most critical elements of a multilevel system of government.[1] A multilevel system of government ought to promote political autonomy at subnational level if it is to realise development, democracy and sustainable peace. Political autonomy requires that subnational governments should be recognised in national legislation and where possible in the Constitution as autonomous subnational units.[2] It has various dimensions, which the Zimbabwean multilevel system of government was measured against. The findings are discussed below.

2.1 Elected subnational governments

2.1.1 Election of members of provincial and local governments

Subnational governments should be composed of leaders who are directly elected by the citizens under an electoral system which guarantees regular, free, fair and inclusive

[1] See Bahl 1999: 5.
[2] UN-Habitat 2007: 6.

elections.[3] To be politically significant and to allow local concerns to dominate the local electoral cycle, national and local elections should be separated. The electoral system should also require a minimum level of qualifications for one to be elected into office so that capable individuals are elected into office. In Chapter Five it was observed that local authorities in Zimbabwe are only composed of directly elected officials, whereas provincial and metropolitan councils are composed of a majority of indirectly elected officials. Thus councils of local authorities are more democratic than councils at the provincial level.

It was highlighted in Chapter Five that the Constitution of Zimbabwe makes provision for harmonised elections for national, provincial and local offices.[4] Under such an electoral system national factors will influence local voting behaviour. Voters are likely to respond to the performance of the political party rather than that of individuals. It was contended in Chapter Two that the implication of this is that electoral accountability, which is key to responsive local government, will be undermined. It was further observed that the legal framework does not provide minimum educational qualifications for both provincial and local levels. This brings into question the quality of representatives elected into office, especially at the local level. The majority of councillors in Zimbabwe lack the necessary skills required to effectively represent their constituencies. Hence, there may be a need to stipulate in legislation the minimum educational qualifications for election to the position of a councillor.

2.1.2 Removal of members of provincial and local governments from office

Once officials at subnational level have been elected into office, higher levels of government should not be empowered to arbitrarily remove them.[5] Elected officials should be removed from office only after following due process of the law or through democratic means such as elections. The term of office of locally elected leaders should also be limited to reduce chances of local authoritarianism.[6] The discussion in Chapter Eight showed that in Zimbabwe senior governments do not have the power to remove from office officials of provincial and local governments. Unlike the Lancaster House Constitution, the 2013 Constitution has assigned that duty to an independent tribunal. It is submitted that the 2013 Constitution has provided the necessary safeguards for the tenure of office of officials at subnational level,

[3] See the Aberdeen Principles 2005: 6, 8; Article 3(2) European Charter of Local Self-Government.
[4] See s 277(1) Constitution.
[5] Bland 2010: 55.
[6] See Bland 2010: 57.

which was lacking under the Lancaster House Constitution. As at July 2014, the tribunal(s) had not been established and was awaiting enactment of the relevant Act. It is important that the tribunal is established as soon as possible to address the vacuum (in terms of disciplining at local level) that exists at the time of writing. When it comes to the term of office of local officials, it was observed that the Constitution has not limited the term of office of officials occupying key positions at subnational level as it does for the President and other senior public servants at national level.[7] To reduce chances of local authoritarianism it is suggested national legislation should limit the term of office for mayors, chairpersons, town clerks, and clerks of provincial or metropolitan councils to a term of five years, renewable once.

2.2 Inclusive provincial and local governments

It was contended in Chapter Two that decision-making structures at all levels of government should be as inclusive as possible. One way of ensuring that decision-making structures are as inclusive as possible is by establishing an electoral system which guarantees the representation of marginalised groups such as minority ethnic groups, youths, women and people with disabilities. The 2013 Constitution provides mechanisms to guarantee the representation of marginalised groups, especially women. It was observed in Chapter Five that for the first two terms of Parliament, the Constitution guarantees 60 seats for women in the National Assembly who have automatic membership on the provincial or metropolitan council.[8] Further, the election of 10 councillors in provincial councils guarantees the representation of women, which otherwise would not be available through the ballot.[9] When it comes to people with disabilities, the Constitution makes provision for the election of two individuals to represent people with disabilities in the Senate.[10] Unlike at the national and provincial levels, there are no mechanisms to guarantee the representation of women and people with disabilities on local councils. It is thus submitted that legislation should provide for mechanisms to guarantee the representation of marginalised groups on councils, in the leadership of committees and in mayoral positions. Further, there may be a need to reform the electoral system of Zimbabwe to guarantee the representation of minority ethnic groups and youths as they might not be effectively represented through the ballot.

[7] See s 91(2) Constitution.
[8] Ss 124(1)(b), 197, 205(2) Constitution.
[9] S 268(1)(h)(3) Constitution. The councillors are elected under a system of proportional representation from a list headed by women in an alternating format with men.
[10] See s 120(1)(d) Constitution.

2.3 Decentralisation of powers and functions to provincial and local governments

Political autonomy entails elected subnational governments with distinct powers and functions.[11] It is contended that these powers and functions ought to be original, relevant and clearly demarcated. Further, subnational governments should have the power to make final decisions on these functions. Moreover, the decentralisation of powers and functions should take into account differences at subnational levels.

2.3.1 Original powers and functions

It was argued that subnational governments should have original powers. It was observed in Chapter Six that provincial and metropolitan councils have original powers in that their powers and functions are recognised in the 2013 Constitution of Zimbabwe.[12] The same cannot be said for local authorities whose powers and functions are determined by national legislation. This means that the extent to which the Constitution may be relied upon to prevent recentralisation of local powers and function is limited. However, it was established that the national government is not entirely free when determining powers and functions of local authorities, as the Constitution has given local authorities the 'right to govern' their areas with 'all' the necessary powers to do so.[13] This implies that the national government should decentralise to local authorities significant powers and functions which allow these lower governments to fully exercise their 'right to govern' the areas for which they have been established.

2.3.2 Relevant powers and functions

The powers and functions of subnational governments ought to be relevant for development, democracy and sustainable peace. This is because what subnational governments can achieve depends on the responsibilities they are granted.[14] It was observed in Chapter Six that provincial and metropolitan councils are responsible for socio-economic development of their respective provinces.[15] Socio-economic development is geared towards improving people's socio-economic welfare both in qualitative and quantitative terms. Thus, provincial and metropolitan councils have responsibilities with a direct relationship to the realisation of

[11] See Fessha & Kirkby 2012: 255.
[12] S 270(1) Constitution.
[13] S 276(1) Constitution.
[14] World Bank 2000: 109.
[15] See s 270(1) Constitution.

development, democracy and sustainable peace. The responsibility of socio-economic development however is only relevant for development, democracy and sustainable peace depends on whether councils are allowed to carry our substantive functions and not merely oversee the implementation and coordination of national programmes. Moreover, without law-making powers, the councils are unlikely to be significant as a tier of government capable of realising socio-economic development. Hence, it is submitted that provincial and metropolitan councils should be allowed to carry out 'real' responsibilities pertaining to socio-development development.[16] For example, the councils should be allowed to adopt and implement policies and laws on tourism and conservation of the environment. The national government is advised to devolve more responsibilities to these councils in line with the spirit of devolution in the 2013 Constitution.[17]

As for local authorities, it was argued that they are in charge of a wide variety of responsibilities, including water supply, health and education, which are relevant for the realisation of development, democracy and sustainable peace. With the 'right to govern' which local authorities enjoy under the 2013 Constitution, it is submitted that the national government should consider devolving more relevant powers to local authorities, especially to cities which have the capacity to carry out decentralised responsibilities.[18] For example, cities can be assigned the power to establish a police force with arresting powers. This will ensure that cities are in a position to effectively implement their by-laws, especially those relating to traffic, parking, environmental conservation and public health.

2.3.3 Clearly demarcated powers and functions

The effective performance of decentralised functions by subnational governments requires clear demarcation of powers and functions of each level of government.[19] In Chapter Six it was observed that the powers and functions of provincial and metropolitan councils are not clearly demarcated. It was contended that the responsibility of provincial and metropolitan councils for socio-economic development covers a variety of sectoral areas. This makes it difficult to delineate the boundaries of the competencies of provincial and metropolitan councils. It is submitted that legislation should clarify the competence boundaries of provincial and metropolitan councils to reduce ambiguity in the performance of the

[16] See Sims 2013: 2, Moyo 2013: 152. See also s 183 Law Society Draft Constitution.
[17] See Preamble Chapter 14 and s 264 Constitution.
[18] See s 276(1) Constitution.
[19] See Bardhan & Mookherjee 2006: 13, Shah 2004: 7.

responsibility for socio-economic development. At local level, it was contended that a majority of the powers and functions of local authorities are clearly demarcated. However, responsibilities such as education, health and land use planning should be clearly demarcated by identifying competence boundaries for each tier of government. Clarification of the division of responsibilities between rural local authorities and chiefs is also required.

2.3.4 Final decision-making over decentralised functions

It was contended in Chapter Two that subnational governments should have final decision-making powers over their functions.[20] In Chapter Six it was observed that provincial and metropolitan councils and local authorities do not have final decision-making powers over their functions. The financial decision-making powers of provincial and metropolitan councils are limited by the fact that these councils do not have law-making and resource-raising powers. This means that the councils have to rely on other tiers of government to implement their decisions. The decentralisation of these powers will improve the extent to which councils may make final decisions on their functions. The final decision-making powers of local authorities are limited by requirements for approval of certain decisions by the national government. For example, the Minister has the power to approve by-laws, resolutions and income-generating projects at local level. Thus the national government is heavily involved in the local decision-making process. It is submitted that such unlimited involvement in local affairs undermines the autonomy of local authorities and constrains the overall process of decentralisation, in contravention with the principle of devolution which is one of the founding principles of the 2013 Constitution.[21] Thus, the powers of the Minister which unjustifiably limit the final decision-making power of provincial and local governments should be abolished.

2.3.5 Asymmetric distribution of power and functions

A one-size-fits-all approach when decentralising powers and functions may not be appropriate for a coherent multilevel system of government, given that subnational governments are unlikely to have equal capabilities to deliver and finance services.[22] It may be useful to have a multilevel system of government that is sensitive to these differences with a clear set of rules about when a subnational government graduates from one status to

[20] Bardhan & Mookherjee 2006: 13.
[21] See s 3(2)(l) Constitution.
[22] See National Planning Commission 2011: 387.

another.[23] The study showed that asymmetric decentralisation is one of the key aspects of the 2013 Constitution of Zimbabwe. The Constitution provides for the establishment of provincial and metropolitan councils to govern provinces that are partly urban and rural, on the one hand, and those that are wholly urban, on the other hand. It recognises different types of local authorities to manage rural and urban areas.[24] The Constitution further allows the devolution of powers and functions to each provincial council, metropolitan council or local authority, depending on capacity.[25] The UCA provides rules for the graduation of local authorities from one category to another.[26] It was however argued in Chapter Four that such rules have to be reformed to create transparency and to promote participatory democracy in governance processes relating to change of local authority status.

2.4 Security of existence of provincial and local governments

Security of existence of subnational governments is a key component of political autonomy.[27] It can be provided through constitutional and statutory entrenchment of subnational governments as an order or tier of government.[28] It was observed in Chapter Four that provincial and metropolitan councils have constitutional recognition. The number and names of provinces is also recognised. Such recognition has provided the highest level of security of existence to each province, provincial council or metropolitan council.[29] On the contrary, the 2013 Constitution of Zimbabwe only recognises local authorities as tiers of government but does not go further to safeguard the existence of each local unit. Hence, there will always be the threat of abolition or the merging of local authorities. To provide some form of security of existence to each individual local authority, it is submitted that national legislation should require the consultation of the concerned local authority before it can be abolished or have its boundary, status or name changed.

[23] Bahl 1999: 10. Eaton & Schroeder 2010: 174.
[23] Fessha & Kirkby 2008: 12.
[23] Eaton & Schroeder 2010: 175.
[24] S 5 Constitution.
[25] S 264(1) Constitution.
[26] S 14 UCA.
[27] Kalin 1998: 1.
[28] See the Aberdeen Principles 2005: 6.
[29] S 267(1) Constitution.

2.5 Citizen participation in governance processes

It was contended in Chapter Two that the ability of a multilevel system of government to realise development, democracy and sustainable peace relies in part on opportunities available for citizen participation. Hence, citizens should be given the opportunity to participate actively in local democratic processes, including budget formulation, planning, establishment of new local governments and alteration of local government boundaries.[30] It was also argued that public information should be made easily accessible and available so that the citizens can make informed decisions.[31] The study in various chapters showed that citizens have limited opportunities to participate in local governance processes. For example, there are no legal requirements for consultation of citizens in the drafting of budgets, establishment of urban local authorities and determination of local boundaries. It was observed that public information is not easily accessible. The implication has been that citizens do not participate in governance processes because they are not aware of council proceedings. If they do participate, their contributions often do not bring much value to better local decision-making as they do not have the necessary information to make an informed contribution. Hence, it is submitted that the envisaged local government Act should provide for mechanisms for citizen participation in local decision-making processes. It should further mandate councils to make key documents such as budgets and plans easily accessible to the public. Councils should also advertise notices of the time and venue of its meetings within reasonable time periods.

2.6 Accountable governments

Accountability is the cornerstone of democracy and a prerequisite for responsive governance.[32] Thus, when designing a multilevel system of government it is vital to ensure that there are specific rules, mechanisms and institutions to promote the accountability of various governments to the citizens as well as to other governments placed at other levels.[33] This study showed that in Zimbabwe there are various mechanisms which have been put in place to promote accountability at all levels of government. The organisation of regular elections in Zimbabwe at all levels of government may promote local accountability. The

[30] See the Aberdeen Principles 2005: 7.
[31] Ford 1999: 13.
[32] Geldenhuys 2008:93.
[33] Bardhan & Mookherjee 2006: 13, the Aberdeen Principles 2005: 7.

Constitution has established independent institutions including Parliament, Judiciary and Office of the Auditor-General to undertake an oversight role. It was observed in this study however that the ability of these institutions to exercise their duties has been undermined by a number of challenges, including lack of adequate resources.

As discussed in Chapter Eight, the 2013 Constitution of Zimbabwe makes provision for a multilevel system of government allowing governments organised at various levels to hold each other accountable for their actions or lack thereof.[34] It was observed nevertheless that this form of intergovernmental accountability is weak given that provincial and metropolitan councils and local authorities do not have distinct constitutionally assigned powers and functions. This therefore weakens the extent to which they can counterbalance the national government. The UCA and RDCA make provision for various standing and audit committees to enforce horizontal accountability.[35] It was also noted that the public has not been able to effectively hold the government accountable due to government information which is not easily accessible and lack of effective participatory mechanisms, among other reasons.

3. Fiscal and budget autonomy at provincial and local levels

What subnational governments can achieve depends in part on the resources they have and the discretion they have to spend those resources.[36] Thus it is important that subnational governments have adequate resources and budget autonomy. Do provincial and local governments in Zimbabwe have fiscal and budget autonomy?

3.1 Resource-raising powers

It was submitted in Chapter Two that subnational governments should be given the power to mobilise sufficient revenue to finance their expenditure and development needs.[37] Revenue can be mobilised through imposing taxes and borrowing. It was observed in Chapter Seven that provincial and metropolitan councils do not have constitutionally assigned taxing or borrowing powers. This brings into question the extent to which they can be classified as a tier of government since a government usually has the power to impose taxes. The 2013 Constitution of Zimbabwe however allows the national government to devolve revenue-

[34] See s 5 Constitution.
[35] See Part VI UCA and Part VIII RDCA.
[36] World Bank 2000: 109, Steytler 2000: 6.
[37] The Aberdeen Principles 2005: 8.

raising powers to provincial and metropolitan councils.[38] It is suggested that national government should give these councils some resource-raising powers to promote local accountability and efficient spending of public resources at the provincial level, among other benefits.

Unlike provinces, the 2013 Constitution envisages local authorities exercising some resource-raising powers. The Constitution provides that an Act of Parliament may confer on local authorities the power to levy rates and taxes.[39] In terms of the UCA and RDCA, local authorities have various taxing powers, ranging from the power to impose user-charges and property rates to imposing licencing fees. It was established in Chapter Seven that while local authorities have these resource-raising powers they have not been able to raise sufficient revenue to meet their obligations and development needs. This is attributed in part to the economic meltdown in Zimbabwe. The other reason is that local authorities are in possession of the majority of resource-raising powers which have weak resource-raising potential. The control of tax rates by the national government has also undermined the local resource-raising effort. It is suggested that the national government should devolve more resource-raising powers to local authorities, such as business licensing, land taxes and vehicles taxes. Further, the exemption of certain property from property rates should be abolished to improve the local tax base. It was also observed that local authorities may mobilise fiscal resources through borrowing from internal and external bases. However, the discussion in Chapter Seven showed that borrowing is highly regulated. It is submitted that such a form of regulation is necessary given the unstable economic environment being experienced in Zimbabwe, which requires careful macro-economic management.[40]

3.2 Right to set tax rates

The assignment of taxing powers to subnational governments is likely to be of little relevance for revenue mobilisation and fiscal autonomy if not accompanied by the right to set tax rates. Effective revenue mobilisation requires that subnational governments have some control over tax rates or user tariffs or the definition of those revenues.[41] It was observed in Chapter Seven that local authorities in Zimbabwe do not have the right to set tax rates for the majority of their taxing powers. The national government determines rates applicable to user-charges,

[38] S 270(1)(f) Constitution.
[39] S 276(2)(b) Constitution.
[40] See Eaton & Schroeder 2010: 182.
[41] Eaton & Schroeder 2010: 180, Bardhan & Mookherjee 2006: 13, World Bank 2000: 117.

property rates and fees, among other local taxes. This has negatively affected revenue mobilisation at the local level. To improve local resource mobilisation, it was submitted that the national government should relinquish control of the determination of rates applicable to local taxes and user-charges to local authorities. However, the national government should retain the power to set the national framework within which local authorities may determine tax rates to promote equity, among other local and national goals.

3.3 'Real' tax base

The decentralisation of taxing powers is likely to be ineffective for local resource-raising if there is no 'real' tax base.[42] It was observed in Chapter Seven that the majority of urban local authorities have a 'real' tax base, unlike their rural counterparts. There is a high level of economic activity in urban areas which implies that urban local authorities may derive significant revenue from property rates, user-charges and taxes due to the wide tax base. On the other hand, in rural areas there are little or no economic activities, which implies that there is no 'real' tax base. Thus, rural local authorities are not in a position to raise significant revenue like their urban counterparts. The assignment of power to impose land tax on rural local authorities may allow the raising of significant resources in rural areas given that most rural local authorities have abundant land under their jurisdiction. Thus, the tax base is 'real' in as far as land tax is concerned. There is a need to develop a clear legal framework on how rural local authorities can benefit from the exploitation of natural resources in their jurisdictions. It is further submitted that intergovernmental grants should be provided to complement locally raised revenue in rural local authorities. This is necessary to ensure that all local authorities are in a position to provide public services that meet the minimum standards set by the national government.

3.4 Budget autonomy

It was contended in Chapter Two that subnational governments should have a certain measure of discretion to determine expenditure choices.[43] It was further contended that the degree to which subnational governments have control over their own revenues is important for development and, in particular, for adjusting the mixture of services to closely match local

[42] Rondinelli 1983: 48, Bahl 1999: 61.
[43] Bahl 1999: 61.

preferences.[44] In Chapter Seven it was observed that in Zimbabwe provincial and local governments do not have budget autonomy. The national government does not only set expenditure frameworks at the local level but also approves the budgets of local authorities. While the setting of expenditure frameworks is necessary to protect the realisation of certain goals, it is submitted that the requirement for the approval of budgets by the national government undermines the institutional integrity of local authorities, which is recognised in the Constitution.[45] Hence, the requirement for approval of local budgets should be abolished but the national government should retain the power to set expenditure frameworks to influence local prioritisation.

3.5 Equalisation and redistribution

An argument was made in Chapter Two for a balanced system of intergovernmental transfers for equalisation and redistribution purposes.[46] It was further argued that the equalisation and redistributive potential of an intergovernmental fiscal system is likely to be enhanced if it is transparent, predictable, equitable, flexible and participatory. Chapter Seven sought in part to establish the extent to which the Zimbabwe intergovernmental fiscal system complies with this normative framework.

3.5.1 Transparency

It was observed in Chapter Seven that the allocation of intergovernmental grants to local authorities under the Lancaster House Constitutional order was not transparent.[47] Intergovernmental grants were transferred to subnational governments at the discretion of the national government. The 2013 Constitution of Zimbabwe seeks to change this practice. It provides general criteria to guide the sharing of nationally raised revenue among the three tiers of government. This implies that nationally raised revenues will not be allocated to provincial and local governments arbitrarily. Any allocations to provincial and metropolitan councils and local authorities have to be based on the criteria set in the Constitution. To enhance transparency, as argued below, provincial and local governments should be involved in national decision-making processes relating to sharing of nationally raised revenue.

[44] See Bardhan & Mookherjee 2006: 13
[45] See s 265(1)(c) Constitution.
[46] See Shah 2004: 25-5, UN-Habitat 2007: 9, Dafflon & Madies 2009: 40.
[47] See Marumahoko & Fessha 2011: 49, Zhou & Chilunjika 2013: 243, Phelps 1997: 27.

3.5.2 Predictable and flexible

As argued in Chapter Two, a system of fiscal intergovernmental relations should be predictable and flexible.[48] In Chapter Seven it was observed that the allocation of intergovernmental grants under the Lancaster House Constitution of Zimbabwe was highly unpredictable. This affected multi-year planning and budgeting at local level.[49] It is suggested that the national government should adopt mechanisms which provide some predictability in the allocation of intergovernmental grants to provincial and metropolitan councils. This could include adopting a system of publishing multi-year projections of future allocations to provincial and metropolitan councils and local authorities. Intergovernmental grants could also be kept reasonably stable from year to year. The 2013 Constitution of Zimbabwe can be commended for providing only basic components of an intergovernmental fiscal system. The Constitution leaves the detail of the intergovernmental fiscal system, such as the formula of the actual sharing of nationally raised revenue among tiers of government, to the determination of the national government through legislation and policies. This creates flexibility by allowing the continual adjustment of the intergovernmental fiscal system in response to the changing political, social and economic environment, unlike if the detailed provisions of the intergovernmental fiscal systems were captured in the Constitution.

3.5.3 Equitable

The design of the intergovernmental fiscal system should ensure that nationally raised revenue is shared among tiers of government, depending on the responsibilities which they have. Furthermore, the allocation of intergovernmental grants to subnational government should advance equity by ensuring that poor jurisdictions receive more intergovernmental grants, both in terms of amount and variety of grants, relative to rich regions.[50] It was observed in Chapter Seven that under the 2013 Constitution provincial and metropolitan councils and local authorities are entitled to not less than five per cent of nationally raised revenue in each financial year.[51] It was contended that five per cent is not enough considering the huge service delivery obligations which these subnational governments have, especially local authorities. Thus, it is submitted that provincial and local governments should be given

[48] Litvack *et al* 1998: 13, Bahl 1999: 24, the Aberdeen Principles 2005: 8.
[49] See Bahl 1999: 24, World Bank 2000: 118.
[50] Shah 1994: 45.
[51] See s 301(3) Constitution.

more than five per cent. A share of not less than 15 per cent of nationally raised revenue will go a long way in complementing the local resource-raising effort. The horizontal sharing of nationally raised revenue should also be equitable. It was observed in Chapter Seven that the allocation of intergovernmental grants to subnational governments under the Lancaster House Constitution was not equitable. Some subnational governments received from the national government larger and more various grants than others without any justifiable ground. It is submitted that formula-based allocations may be an effective way of ensuring equitable sharing of revenue between provincial and metropolitan councils as well as among local authorities.

3.5.4 Participatory

The sharing of nationally raised revenue among tiers of government has a direct impact on the financial sustainability of subnational governments.[52] Thus, subnational governments should have mechanisms for influencing the sharing of nationally raised revenue.[53] It was observed in Chapter Seven that neither the Constitution nor national legislation explicitly provides for the participation of provincial and metropolitan councils and local authorities in the sharing of nationally raised revenue. Furthermore, practice does not suggest that these subnational governments influence the sharing of nationally raised revenue and the allocation of intergovernmental grants to subnational level. It is submitted that legislation should make provision for the involvement of subnational governments in the decision-making processes that decide revenue sharing. This is in line with the constitutional principle of cooperative governance, which in part means that tiers of government must consult each other on matters of common interest such as revenue sharing.[54] For example, before the sharing of nationally raised revenue among tiers of government, the Minister of Finance could be obliged to consult representatives of organised local government and provincial and metropolitan councils. Specific forums can be established at various levels where tiers of government may consult on matters around revenue sharing and general financial matters.

4. Administrative autonomy of provincial and local governments

Political and fiscal autonomy is not enough for subnational governments to contribute meaningfully to the realisation of development, democracy and sustainable peace, if not

[52] Bardhan & Mookherjee 2006: 13.
[53] UN-Habitat 2007: 9, Article 9(6) European Charter of Local Self-Government.
[54] See s 194(1)(g) Constitution.

accompanied by administrative autonomy.[55] Administrative autonomy entails the discretion which subnational governments have in relation to appointment, remuneration, disciplining and dismissal of their staff as well as the determination of internal administrative procedures.[56] The question which Chapter Six in part sought to answer was whether provincial and metropolitan councils and local authorities have administrative autonomy. It was observed that provincial and metropolitan councils and local authorities do not have authority over their personnel issues. Although the UCA and RDCA give local authorities power to hire and fire staff, such power has been taken away by the Minister's directive which requires each local authority to seek the approval of the national government before it can hire staff. Further, the Local Government Board has to approve the appointment and dismissal of senior officials in urban local authorities. It was further observed in Chapter Six that local authorities do not have full control over the determination of conditions of employment of senior employees. These are determined by the council but have to be approved by the Local Government Board. When it comes to other employees, the UCA and RDCA suggest that council has the power to determine their salaries. Practice suggests however that the national government influences the determination of salaries of local authorities.

It was also observed in Chapter Six that provincial and metropolitan councils and local authorities do not have autonomy to determine their internal procedures. The establishment and role of committees at both the provincial and local levels is highly regulated. The Provincial Councils and Administration Act, RDCA and UCA give these subnational governments little local discretion to establish committees and to determine their functions. It is submitted that the 'right to govern' which local authorities enjoy under the 2013 Constitution arguably includes the right to appoint, dismiss and remunerate their own staff.[57] It also includes the right to exercise a certain measure of discretion to determine internal procedures. Thus it is submitted that legislation should give local authorities the power to hire, remunerate and fire staff as well as to determine their internal procedures. Such authority however should be exercised within a framework determined by the national government. For example, the framework may comprise minimum qualifications for appointment into certain key positions, salary scales and broad internal organisation.

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[55] Bahl 1999: 5. See Fessha & Kirkby 2008: 259.
[56] Fessha & Kirkby 2008: 12.
[57] See s 276(1) Constitution.

5. Supervision of provincial and local governments

Supervision is one of the core elements of a multilevel system of government that can realise development, democracy and sustainable peace. Thus it was contended in Chapter Two that senior governments should have the power and obligation to supervise junior governments. It was further submitted that such supervision should take the form of regulation, monitoring, support and intervention.[58]

5.1 Regulation

National government should have the power to regulate the activities of subnational governments by setting national frameworks within which subnational governments operate.[59] In Chapter Eight the study established that the national government in Zimbabwe has the relevant powers to regulate the institutions, finances and functions of provincial and local governments. The discussion in Chapter Eight however showed that the powers of the national government under the Provincial Councils and Administration Act, RDCA and UCA go beyond the setting of national framework. These laws give the Minister unlimited powers to regulate the activities of provincial and local governments. In some cases, the Minister has discretion to determine what has to be regulated and when such regulation should take place. Under this legal arrangement, the autonomy of local government depends entirely on the ability of the incumbent Minister to exercise restraint. Sectoral regulation on the other hand tends to give subnational governments some measure of discretion when undertaking their functions. It is submitted that the Provincial Councils and Administration Act, UCA and RDCA should be reformed by limiting the role of the Minister to setting the national framework within which subnational governments operate.

It was contended in Chapter Two that the decentralisation of fiscal resources should be carried out simultaneously with measures to promote better financial management at subnational level to safeguard and ensure effective use of public finances.[60] It was observed in Chapter Seven that in Zimbabwe the national government has the necessary powers to regulate the financial affairs of provincial councils and local authorities. Nonetheless, the study noted that in some cases the UCA and RDCA provides different financial rules for rural and urban local authorities without any justifiable ground for such differences. This means

[58] See De Visser 2005: 170.
[59] The Aberdeen Principles 2005: 9.
[60] Bahl 1998: 8.

that in such cases the national government oversees the implementation of almost two separate regulatory regimes in urban and rural local authorities. It is suggested that where differentiation is not required the regulatory framework should provide for a single framework within which all local authorities are required to operate.

5.2 Monitoring

It was contended in Chapter Two that the legal and institutional design of a multilevel system of government should enable higher levels of government to monitor the activities of junior governments. Monitoring is necessary to detect non-compliance with legal and policy frameworks, gaps or capacity constraints at subnational level that may undermine the performance of subnational governments. In Chapter Eight the study found that the national government has the necessary power to monitor the activities of provincial and local governments. The study however established that some of the monitoring mechanisms relied upon by the national government are 'too' intrusive on local autonomy. These include the power of the Minister to approve certain resolutions and by-laws of local authorities, as well as the requirement for rural local authorities to submit council and committee minutes to the Minister. It is submitted that such monitoring mechanisms should be reformed to be in line with the 2013 Constitution which requires that local authorities exercise a certain measure of local discretion.[61]

Concerning finances, Chapter Eight found that a number of mechanisms have been put in place to allow the financial monitoring of provincial and local governments. Such mechanisms include the requirement for regular financial reporting, the auditing of financial statements by the AG, and the appointment of investigators to inquire into financial problems at local level. A number of challenges which undermine effective monitoring of financial affairs were also identified. Chief among them is the failure by local authorities to submit financial statements on time. It is suggested that legislation should provide for sanctions in cases involving failure by a subnational government to submit financial statements on time. This could take the form of intervention. The study also established that the national departments of local authorities charged with direct supervision of provincial and local governments lack the necessary resources to effectively monitor local authorities. Thus, there

[61] Ss 264(2), 265(1) and 276(1) Constitution.

is need to adequately resource national institutions so that they are in a position to carry out their mandate effectively.

5.3 Support

It was contended in Chapter Two that senior governments should support junior governments, particularly low level (or poor) subnational governments, which usually lack the capacity to raise revenue, administer programmes and comply with financial rules.[62] To ensure that such support is given to junior governments, it was submitted that it may be necessary to compel the national government to support subnational governments before it can exercise its powers to intervene.[63] The study in Chapter Eight found that there is no explicit constitutional or legislative obligation on the national government to provide general support to provincial and local governments. General support to provincial and local governments depends on 'goodwill' of national ministries and departments. This is in part the reason why general support to subnational governments has been sporadic. It is submitted that Parliament, through legislation, should consider imposing an obligation on the national executive to provide general support to local authorities, especially before exercising the power to intervene in subnational affairs.

Like general support, there is no obligation on the national government to provide support to provincial and local governments to improve financial management. The study found that although the national government used to provide technical support to rural local authorities in the preparation of financial statements, such support has been withdrawn. It established that a significant number of local authorities, particularly rural local authorities, have struggled to comply with the required accounting, auditing and financial reporting standards. It is submitted that such technical support should be reintroduced to support struggling local authorities, especially rural ones.

5.4 Intervention

If monitoring and support mechanisms suggest persistent problems at the subnational level that threaten the attainment of national and/or local objectives, it may be necessary for the national government to intervene. This means that the national government ought to have the

[62] See Bahl 1999: 9, UN-Habitat 2007: 4, the Aberdeen Principles 2005: 9.
[63] For example, section 151(4) of the Constitution of South Africa, which mandates the national and provincial governments to support and strengthen local governments to carry out their functions.

power to intervene in subnational affairs to protect local and national interests. It was argued that because intervention is the form of supervision which has most the significant impact on local autonomy, it must be exercised within certain confines.

5.4.1 Explicit legal recognition of grounds of intervention

Legislation should specify the conditions upon which a senior government can intervene in subnational affairs.[64] The discussion in Chapter Eight showed that in Zimbabwe the Provincial Councils and Administration Act, UCA and RDCA give the Minister unfettered power to determine when an intervention should take place. The conditions under which the Minister may intervene are not explicitly listed in legislation. This allows liberal interpretation of the intervention powers which can be used to achieve selfish ends, such as undermining the authority of a subnational government administered by an opposition political party. Thus, it is submitted that these laws should be reformed by providing in explicit terms the circumstances in which the Minister may intervene at subnational level.

5.4.2 Oversight on intervention powers

The exercise of intervention powers should be subjected to oversight mechanisms for checks and balances.[65] The argument is that there is always a threat of intervention powers being used for what they were not intended for. Thus, oversight of the use of intervention powers is necessary to protect the autonomy of subnational governments. It was observed in Chapter Eight that the Minister has a variety of intervention powers which are exercised without any form of oversight. For example, when directing a council to reverse its resolution the Minister is not required to report to any other body. The powers of the Minister to adopt budget deficit mechanisms at local level are also exercised without any form of oversight. Under such a system, there are no means to check whether the intervention powers are being exercised for the purposes for which they were intended. Thus, it is submitted that Parliament, in particular the Portfolio Committee on Local Government, should have the responsibility to exercise oversight of the use of intervention powers. For instance, before the Minister may reverse a council resolution, he or she should seek the approval of the Portfolio Committee. If Parliament is not in session, the Portfolio Committee can review the decision to reverse the council resolution once Parliament resumes sitting.

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[64] Article 8(1) European Charter of Local Self-Government.
[65] UN-Habitat 2007: 7.

5.4.3 Proportionate intervention measures

The powers to intervene should be 'exercised in such a way as to ensure that the intervention by the senior government is kept in proportion to the importance of the interests which it intends to protect.[66] It was observed in Chapter Eight that in Zimbabwe the Minister may intervene in subnational affairs in a variety of ways. It was also shown that the Minister has the discretion to choose the manner of intervening at subnational level because he or she has unfettered powers. Thus, under this arrangement the use of proportionate intervention measures is not guaranteed. Hence, it is submitted that legislation should provide for the nature of interventions measures which can be utilised to address certain problems. For example, if a council fails to supply water the Minister should not assume other local responsibilities such as provision of health services. The guiding principle of intervention is that it should not be punitive but corrective in nature.

5.4.4 Resumption of duty by a subnational government after intervention

Following the suspension or dissolution of a local elected body or local executives, the law should determine the resumption of their duties in as short a period of time as possible.[67] The same should apply in cases where a senior government will have assumed a local function or responsibility.[68] The discussion in Chapter Eight showed that assumption of local responsibilities has been one of the most controversial issues in local government in Zimbabwe. After dismissing the entire council in some local authorities, the Minister has continuously renewed the term of office of caretakers. For example, the City of Harare was administered by caretakers for several years even though the UCA is explicit about the role of caretakers being temporary and abolished as soon as the council is able to carry out its mandate or when a new council is elected.[69] Such cases present a clear violation of legal prescriptions, which brings into question the application of the rule of law.[70] This has negatively affected local democracy since citizens are deprived of democratic representation in cases where a local authority is under administration by the national government. While legislation provides for immediate resumption of responsibility by a subnational government after intervention, there is a need for a change of culture on the part of national government

[66] Article 8(3) European Charter of Local Self-Government.
[67] UN-Habitat 2007: 7. See Article 202 Constitution of Uganda.
[68] See Article 8(2) of the European Charter on Local Self-Government.
[69] See s 80(1) UCA. See also s 158(1) RDCA.
[70] See *Stevenson v Minister of Local Government and National Housing and Others 2002 (1) ZLR 498 (S).*

officials by complying with legislative prescriptions. Subnational governments are also advised to make use of the courts to protect and promote their right to govern which they enjoy under the 2013 Constitution.[71]

6. Intergovernmental cooperation

Intergovernmental cooperation was identified as one of the core aspects of a multilevel system of government than can deliver on national and local goals such as development, democracy and sustainable peace.[72] The basic components of an effective intergovernmental cooperation were identified as an enabling legal framework, appropriate institutional framework and nurturing a political culture of cooperation.[73]

6.1 Enabling legal environment

Written rules of intergovernmental relations in the constitution or legislation can provide a foundation for nurturing a culture of cooperation in countries which have recently adopted multilevel systems of government where such culture might not exist because of a history of domination by the centre.[74] The study found that the 2013 Constitution of Zimbabwe provides the necessary enabling framework for intergovernmental relations and cooperation. What is required is for the national government to provide content to this framework by developing appropriate policies and legislation. Such policies and legislation should make provision for the establishment of mechanisms to foster intergovernmental cooperation. These could include establishing intergovernmental planning and budgeting procedures, dispute resolution mechanisms, coordination mechanisms and the requirement for consultation among tiers of government on matters of common interests. Provision can be made for the establishment of institutions of intergovernmental relations and also assignment of an intergovernmental relations role to institutions such as the provincial and metropolitan councils and Parliament.

[71] See s 276(1) Constitution.
[72] Steytler 2009: 427, Geldenhuys 2008: 88.
[73] Watts 2001: 39.
[74] Watts 2001: 24.

6.2 Enabling institutional environment

The development of constructive relations among tiers of government requires institutionalisation of vertical and horizontal integration.[75] Institutionalisation involves designing appropriate institutional arrangements to channel the participation of various tiers of governments in decision-making processes at various levels of government, and defining the procedures through which such involvement is structured.[76] Such institutionalisation can be established so that subnational governments can influence law-making, policy-making and fiscal matters at national level. Subnational governments should be given the platform to participate in the national legislative processes.[77] Other mechanisms of enabling subnational governments to influence national law-making process include requiring the national government to consult subnational governments on any constitutional and legislative changes which affect their status, institution, powers and functions.[78] In Chapter Five it was observed that in Zimbabwe some members of provincial and metropolitan councils are also members of the National Parliament. Such dual membership allows the representation of subnational interest at the national level. Local authorities on the other hand do not have the means of influencing national law-making process. It may be necessary for legislation to provide for the consultation of organised local government before enactment of legislation with a direct impact on local authorities.

Subnational governments should also have the platform and mechanisms to influence policy formulation at the national level. In Chapter Nine it was established that in Zimbabwe although intergovernmental planning and budgeting was established to allow provincial and local governments to influence national policy-making, these lower governments have not been able to effectively influence national policy-making. This can be attributed to committees, organised at various levels and designed to promote coordination and development planning processes, being dominated by officials of the national government. Thus, provincial and local governments have little influence over decision-making in these structures. A further reason is that the policy-making structures of the national government give little or no consideration to input made by subnational governments. To address this challenge, it was submitted that there is a need to establish intergovernmental relations

[75] De Visser 2005: 211-12.
[76] UN-Habitat 2007: 5, Hanf & Morata 2012: 141.
[77] Tarr 2011: 172.
[78] See World Bank 2000: 113, Watts 2001: 31.

structures with balanced representation of all tiers of government while also encouraging the national government to consider input from subnational governments.

6.3 Nurturing a culture of cooperation

Even if the legal and institutional environment is conducive to intergovernmental cooperation, in practice, effective intergovernmental relations requires considerable time, effort and will.[79] Thus, it was argued in Chapter Two that a political culture of mutual respect, tolerance and equality among tiers of government is vital for nurturing constructive relations.[80] The discussion in the previous chapter showed that such a culture does not exist in Zimbabwe primarily because intergovernmental relations are new phenomena, born out of the 2013 Constitution. What is required for that culture to develop is for officials of the national government to accept that the system of government has changed. They should recognise that not all relationships under the new multilevel system of government are supervisory in nature, others are cooperative in nature. In order to nurture a culture of cooperation, officials at higher levels of government are encouraged to engage officials of junior governments from a point of equality, mutual respect and tolerance.

6.4 The role of organised local government

Local governments are unlikely to engage meaningfully with senior governments as separate units except for a few large local units.[81] Hence, it was contended in Chapter Two that for effective engagement with senior governments it may be necessary to recognise the role of and provide support to organised local government.[82] In the previous chapter it was observed that the role of organised local government is not recognised in the Constitution or legislation. This has meant that the participation of organised local government when engaging with senior governments relies on the goodwill of officials of senior governments. It was submitted that the lack of constitutional or legal recognition is in part the reason why organised local government has not been able to effectively represent, promote and protect the interests of their members. Further reasons relate to the absence of adequate financial resources and fragmented bodies representing local authorities. Hence, it is submitted that legislation should recognise the role of organised local authorities, including participation in

[79] See National Planning Commission 2011: 386, Hanf & Morata 2012: 142.
[80] See National Planning Commission 2011: 386.
[81] Article 10(2) the European Charter of Local Self-Government. See also Watts 2001: 29.
[82] Steytler 2009: 429, Watts 2001: 29, Article 10(1)(2) of the European Charter of Local Self-Government.

intergovernmental relations structures. The national government is advised to give organised local government financial support so that it can effectively represent and promote the interests of its members. Financial support could be provided from the budget of the Ministry of Local Government. Alternatively and preferably, funds could be appropriated directly by Parliament with the Ministry only required to transfer the funds to organised local government.

7. Recommendations

In the preceding sections the chapter provided major conclusions or findings of this study. In this section the chapter provides proposals which can be considered when reforming the multilevel system of government, especially given that legislative and institutional reform is on the agenda of government in the election term 2013 to 2018.[83] The study established that a significant number of provisions of the Provincial Councils and Administration Act, UCA and RDCA are inconsistent with the 2013 Constitution. The question is whether the alignment of these provisions with the Constitution is enough to adequately give effect to the multilevel system of government provided in the 2013 Constitution. Can the constitutional requirement for devolution be given full effect by mere alignment of legislation with the Constitution? It is submitted that alignment is likely not going to be enough. What is required is the development of a new statutory framework that reflects the constitutional 'spirit' of multilevel governance and devolution of power. Some of the issues which may be considered when developing a new statutory framework are provided below.

7.1 Single piece legislation

The study identified a number of inconsistencies in the UCA and RDCA, which govern the activities of urban and rural local authorities, respectively. The UCA provides rules for urban local authorities which are different from those provided by RDCA for rural local authorities. For example, there are different quorum requirements in urban and rural local authorities. The maximum period of time which caretakers or commissioners can administer a local authority is different in urban and rural local authorities. It was argued that there is no justification for some of the different rules. Thus, it is submitted that where differences in the regulation of local authorities are not necessary, uniform rules should govern both urban and local authorities. What may be required is a single piece legislation which governs both urban

[83] See ZimAsset 2013: 32, 63.

and rural local authorities. Thus, the national government has taken the right direction by harmonising the UCA and RDCA in the expected new local government Act. Such harmonisation should eliminate the inconsistencies but, as suggested below, maintain asymmetric decentralisation.

7.2 Asymmetric decentralisation

A single piece local government legislation should not be construed to mean elimination of the asymmetric mode of decentralisation. The study showed that there are huge differences between urban and rural local authorities with respect to resource mobilisation, population size and capacity to carry out tasks. It is submitted that while both urban and rural local authorities can be governed by a single piece legislation, there is need to recognise differences between urban and rural local authorities. For example, large urban local authorities should have the power to carry out more responsibilities than do rural local authorities because they have capacity to undertake such responsibilities relative to rural local authorities. This implies that the two categories of local authorities should not be given equal powers and functions.

7.3 The role of the Minister

It was observed that the Minister has unlimited supervisory powers over provincial and local governments. Such powers include the power to approve resolutions, by-laws, budgets, income-generating projects, cooperative agreements, rates and user-charges. Further, the Minister may issue directives, assume local responsibilities, implement measures to eliminate budget deficits and make laws on behalf of local authorities. While some of these powers fall within the confines of supervision set out in Chapter Two, it was argued that a majority of these powers goes beyond supervision. They are a significant threat to the autonomy of provincial and local governments which is necessary if these subnational governments are to play a role in democracy, development and sustainable peace. Thus, it is submitted that there is a need to redefine the role of the Minister so as to establish an appropriate balance between the requirement for supervision and the need for local autonomy, as put forward below.

7.4 Towards balancing local autonomy, cooperation and supervision

The study established that while the 2013 Constitution does not explicitly provide distinct powers of provincial and local governments, it is laden with values, principles and objectives especially relating to devolution. For example, devolution is identified as one of the founding

principles of the Constitution.[84] The preamble of Chapter 14 of the Constitution carries in itself a constitutional instruction for the national government to devolve power to provincial and metropolitan councils and local authorities to achieve, among other goals, development, democracy and sustainable peace. Chapter 14 also provides values, principles and objectives of devolution as well as provincial and local governments.[85] What this means is that the nature of the Zimbabwean multilevel system of government is rooted in these values, objectives and principles. The determination of local autonomy, supervisory powers and cooperation should be informed by these values, principles and objectives. The allocation of responsibilities across tiers of government should further be informed by international principles such as the principle of subsidiarity and UN International Guidelines on Decentralisation and the Strengthening of Local Authorities discussed in Chapter Two.

8. Answering the research question

The overall question of this thesis was whether the legal and institutional framework of multilevel governance in Zimbabwe has potential to promote the role of subnational governments in development, democracy and sustainable peace. In Chapter Two design features of a multilevel system of government that promotes the role of subnational governments in development, democracy and sustainable peace were put forward. The study established that the Zimbabwean multilevel system of government lacks the key design features which are necessary if subnational governments are to play a role in development, democracy and sustainable peace. Thus, the overall conclusion of this study is that the multilevel system of government is less likely to realise development, democracy and sustainable peace. However, the 2013 Constitution provides a foundation upon which a multilevel system of government that can respond to development, democracy and sustainable peace goals can be built. What is required is the full implementation of this Constitution by enacting relevant pieices of legislation and establishing relevant institutions. The national government government 'must' devolve power to lower governments as required by the Constitution. The right of communities to manage their own affairs at subnational levels 'must' be respected, protected and promoted. It is hoped that the national government, in particular Parliament, will be supportive of the idea of a non-centralised system of government by decentralising powers and responsibilities to the provincial and

[84] S 3(2)(l) Constitution.
[85] See Ss 264, 265, 274, 275, 276 Constitution.

local levels. Provincial and local governments should be given adequate resource-raising powers, significant expenditure responsibilities and some measure of discretion when undertaking decentralised functions. The achievement of both national and local goals will require the higher governments to supervise lower governments. Such supervision however should be regulated and exercised within certain limits. The development of mechanisms of promoting intergovernmental cooperation should be underscored.

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