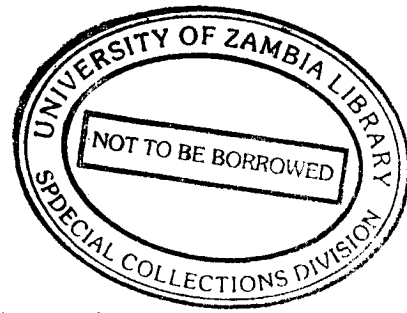


THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW



I recommend that the obligatory Essay prepared under my Supervision

BY

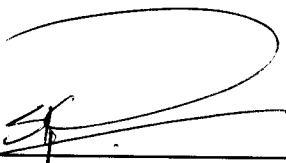
IZALA ZIGWAMA TEMBO.

(21072001)

ENTITLED

**A CRITICAL ANALYSIS OF THE LOCAL GOVERNMENT ACT. IS IT
EFFECTIVE ENOUGH TO GUARD AGAINST THE PROBLEMS OF LOCAL
GOVERNANCE ACT IN ZAMBIA TODAY?**

**Be accepted for examination. I have checked it carefully and I am
satisfied that it fulfills the requirements relating to the format as laid
down in the regulations governing obligatory essays.**



Mr. Simon Kulusika
SUPERVISOR.

29/01/2007
Date.

A CRITICAL ANALYSIS OF THE LOCAL GOVERNMENT ACT OF ZAMBIA. IS IT EFFECTIVE ENOUGH TO GUARD AGAINST PROBLEMS OF LOCAL GOVERNANCE IN ZAMBIA TODAY?



BY

**KAIZALA ZIGWAMA TEMBO
(21072001)**

AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA LAW FACULTY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B)

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
PO BOX 32379
LUSAKA.**

DECEMBER 2006.

TABLE OF CONTENTS

	PAGE
Dedication.....	
Acknowledgements.....	
Abstract.....	

CHAPTER ONE

1.1 Introduction.....	1
1.2 General Overview.....	1
1.3 What is Local Governance?.....	5
1.4 The prevailing Local Government system in Zambia Today	7
1.5 Conclusion.....	9

CHAPTER TWO.

A SCRUTINY OF THE LOCAL GOVERNMENT ACT OF ZAMBIA.	9
2.1 Introduction.....	9
2.2 The Office of a Councillor.....	11
2.3 The office of a Mayor.....	16
2.4 Local government system at Provincial Level.....	19

2.5 The Local Government Act and The Minister of Local Government and Housing.....	21
2(5)(i) Power to Suspend and Dissolve a Council.....	22
2(5)(ii) Approval of Council Annual Budgets.....	26
2 (5)(iii) Approval of Council By Laws.....	27
2.(5)(iv) The President and Local Governance.....	27

CHAPTER THREE.

THE EFFECTS OF THE FLAWS OF THE LOCAL GOVERNMENT ACT

3.1 Introduction.....	29
3.2 General overview.....	30
3.3 The effects on Financial mobilization.....	33
3.4 The effect on Office of the Mayor.....	39
3.5 The effects of the Powers of the Minister.....	42
3.6 Conclusion.....	42

CHAPTER FOUR.

CONCLUSION

4.1 Introduction.....	44
------------------------------	-----------

4.2 Conclusion.....	45
4.3 Recommendations.....	47
4.4 Recommendations by The Mung’omba Constitutional Review Commission	47
4.5 Devolution of Power.....	49
4.6 Minimum Educational Requirement for Councilors.....	51
4.7 Constitutionalising Revenue Collection.....	51
4.8 Composition of Councils.....	52
4.9 The term of office for Mayors.....	53
4.10 Constitutional Funding of the Councils by the Government.....	54.

DEDICATION

This dissertation is dedicated to my Late Brother and sisters in the names of Petrols Mangiza Tembo (1987-2003), Esnart Tembo (1980-1986), Rhoda Mwango Tembo (1978-2006). My brother and my sisters I still remember you very well and you will never be erased from my memories. I may not be able to see you physically but I know that you are watching me from where ever you are. I promise that I will never fail you in my quest to leading a life of abiding by the will of God because I understand that it is the will of God that you departed from this mother earth. You were humble on this earth; you starved, you slept in the cold, others humiliated you, yet you remained firm in the Glory of God and I promise you once again, that I will not fail you on this mother earth. May your spirits be with me as I contribute to this noble, legal profession. Grant me the Vigour to have a heart for the poor in the legal profession because I was born among the poor and from the poor and I shall serve the poor.

May your Souls rest in Peace

KAIZALA ZIGWAMA TEMBO

ACKNOWLEDGEMENTS

This Study would not have been a success without the fatherly but professional guidance of my Lecturer and Supervisor, Mr. Simon Kulusika who wholeheartedly directed his minds to see to it that it has substance. I pass my special and sincere gratitudes to you sir! I would also like to pass my warm gratitudes to Mr. Mumba Malila, who at the time this study was started, was the Coordinator for this Research. The massive contribution of Mr. Khan Fogel cannot be ignored. He came in at the time when he was needed the most, to replace Mr. Mumba Malila who could not continue to coordinate this dissertation due to very important commitments.

I would also like to thank all the Lecturers in the School of law with particular mention of Late Professor Alfred Chanda who was my Dean and passed away a week before completion of this obligatory essay. May his soul rest in peace. To all Members of staff of the law school including the support staff, the success of this Essay is a reflection of the input of all of us.

I also wish to thank Kelvin Mujelemani for being there for me as my best friend even in the most difficult times. Kalaluka Mutemwa cannot be forgotten as well because he has proved to be a very good friend. My Classmates in the names of Lameck Mwale, Gibson Banda, Kennedy Mambwe, Vincent Lungwangwa, Lawrence Nyeleti, Destiny Kalusopa, and Ruth Mbambi among others, should be thanked for their considerable support at the time of my stay in the Law school. To you Mpundu "Kalebalika" Kalebaila, you deserve a special mention because I feel you have always been dear to me and I promise that I will always be good to you.

The acknowledgements would be incomplete without thanking my Sweetheart and fiancée, in the name of Hellen Chola Chilumbi for having been giving me all

the love and support that I need. Baby Hellen, keep it up and let us be good to each other in order to achieve the promises we have decided to consider.

My particular thanks go to brother Daniel Tembo for his assistance; both moral and financial. Danison Makandauko, my cousin, is greatly thanked for having contributed greatly to my life as a selfless Guardian. The likes of Lizabeth Kalyata, Jack Makinko, Fearless Musonda, Howard Samukete and Albert Sakwenda are Childhood friends who shaped my life.

Lastly, my family deserves special mention. To my Father and Mother in the names of Davison Shoti Tembo and Beatrice Zulu Tembo respectively, I do not have many words for you because your sacrifice for my education is beyond measure. All I can say is that you invested so heavily in me and now is the time for you to reap where you sowed. I thank God for having kept you this long so that you see my success because my success is your success. To my Sisters, Angela, Getrude and Jenniffer, I thank you for the care you have been giving me. To my brothers, Gideon and Levy, I say that what you are passing through is what I passed through years back. Soldier on with your education and I assure you that there is light at the end of the tunnel.

To my God Jehovah, you have brought me this far for a purpose, guide me and I shall do it. I thank you dearly because you have responded to all my prayers in a way that I have not come to understand. I thank you God.

PREFACE.

The Local Government system in Zambia has not been viable enough to serve the interests of the local communities. This is due to the fact that the Local government act of Zambia, Cap 281, of the laws of Zambia has proved to have admitted a lot of flaws as regards achieving autonomy for local authorities in Zambia today. This is mainly manifested by the gross interference into local governance by the Local authorities. As a result of the this intervention by the Central government in the local authorities, the Councils can not exercise independent decisions without having recourse to the Minister of Local Government and Housing. As a result the councils have failed to perform and deliver services to the people of Zambia in the local communities. The Councils have been completely reduced to nothing but masters of collecting levies from Markets and taverns without providing a reciprocal service to the local communities. In order for the above to be addressed, there is need for a legal reform as regards the Local Government Act. This Obligatory essay therefore, looks at a critical analysis of the Local government Act and asks a question whether it is effective enough to guard against problems of Local Governance in Zambia today. This is discussed in four chapters. Chapter one discusses the Prevailing Local government system in Zambia today. Chapter two looks at the Flaws in the Local Government Act. Chapter three discusses the effects of the flaws of the Local government Act while Chapter Four embraces the conclusion and the recommendations that need to be followed if a viable local government

system is to be attained in Zambia today. Without doubt, this paper is a special solution for addressing the problems of local governance in Zambia today.

CHAPTER ONE

1.1. INTRODUCTION

The Local Government system in Zambia, has been on the limelight for quite sometime for its ineffectiveness. However, it has been criticized without receiving the due attention. It is agreed and accepted that the Zambian Local government system has been wallowing in the doldrums but no solution, if any, has been focused on to address the problems. The major question to be asked revolves around the pivot of the empowering legislation governing Local governance in Zambia and this is the Local Governance Act.¹ It would be prudent to look at the provisions of the Local Government Act in order to ascertain whether or not they are effective enough in guarding against the pathetic Local Government System in Zambia today.

1.2 GENERAL OVERVIEW

→ Without doubt, the Local Government Act has failed us due to many provisions which do not necessitate efficiency. The problems arise on a wide spectrum of views. Some people² have written so intelligibly on the *Decentralisation policies, which would enable* the various Local authorities to operate autonomously, and well detached from the Central government. Without any legislation, this would call for an urgent law reform to include for such provision in the Local Government Act for the current legislation does

¹ Cap 281 of the Laws of Zambia.

² Mumba Chali Davies – *Autonomy in the Management of Local Government System in Zambia. Case Study for Lusaka City Council & Chongwe District Council.* Case ?

not encompass such a provision. It is the view of the author, however, that in as much as a lot of calls have been made to decentralize the Local government system so that the local authorities like Councils operate independently from the Central government, a total detachment of the local authorities from the Central government is impossible. The two cannot be completely detached from each other because they have to work in harmony in fostering development. The contention for this point lies in the fact that even if there is a detachment, various problems that may be experienced by the various local authorities may be of a national character and would therefore demand for a concerted effort by the local authority affected and the Central government. For example, matters of health and security demand a national attention. If one locality has a cholera outbreak, it would be folly of everlasting consequence for the Central government to leave it out for that local authority or it will spread out to the entire nation at large. Similarly, any threat to security be it in one locality or the other is a threat to the nation at large. Therefore, proper coordination and rapport between the local authority and the Central Government is very far from being ruled out. Furthermore, the Central Government cannot solve a problem in one locality without consulting the Local authorities in that area as the people resident in that area are better placed to give an empirical understanding of the problem that has befallen them. It therefore, suffices to state that autonomy of the Local authorities from the Central government in the latter day democracy is indispensable but the two systems should work in harmony.

It has been submitted that generally, Local government systems in most countries in Africa especially Zambia has been very poor due to the fact that there is massive

centralization of policies in most Governments which do not follow with implementation at grassroots level. Mr. Sikwibele Hargreaves³ thus put it succinctly that “most developing countries, including Zambia, have highly centralized governments that concentrate development at the central level. It is only in the recent years that politicians and development planners have fully recognized the contribution that local government can make in achieving national development”. From the above exposition, it is clear that decentralisation has failed the people of Zambia and our local government structure and this calls for an ardent need to decentralize government to the grassroots for easy participation at the grassroots level. “The objectives of decentralisation in Zambia, stems from the need for the citizenry to exercise control over its local affairs to fostering meaningful development”.⁴ Attached to the above, follows the reality that decentralisation cannot operate in a vacuum unless there is good governance which is indispensable in these local institutions which exists for the good of the people and this is the reason why government has to put in place institutional frameworks so that Councils work together with the people in all the grassroots localities.

The rationale for autonomy revolves around the pivot of the view that Zambia is a democratic state. To echo the words of one Democrat,⁵ he defines Democracy as “the government of the people by the people and for the people”. It follows, therefore, that the government is there for the people and there is need for the people to have fuller participation in their own affairs. It is only logical that the same people who are affected

³ Community Participation in Decentralized Planning in Western Province: A Case Study for Lukulu District, 2nd – 3rd June 1997.

⁴ Ibid.

⁵ Abraham Lincoln, former President of U.S.A – ^{16th} President. of the USA (1861-1865)

[Handwritten signature]
29/11/67

by these problems, take part in curbing them and are better placed to strategize on effective policies benefiting the circumstances of the case. Once people are given a platform through which they would actively participate in solving their own problems, they become part and parcel of those problems and would feel part and parcel of their communities and would think of what they would do for their communities and not what the government would do for them. “At any rate, local authorities experience different problems at the same time and what would be a Central government’s priority at one given time may not be what would be a priority with all local authorities.”⁶ For instance, when the Government disburses funds for Education, one local authority would need employment for its people while in another, health would be a priority because there are no hospitals. Therefore, when local authorities operate autonomously they would be able to come up with an on the site policy to deal with the prevailing problem. To sum it all, it would be logical to quote the words of the Minister of Local Government and Housing when she was commenting on grassroots participation in democratic governance that;

“My understanding of this concept of Decentralisation is that it will transfer responsibilities, authorities, functions, as well as power and appropriate resources to provincial district and sub-district levels. Under this arrangement, the district will be the focus for development and service delivery, thereby empowering local communities to play an effective role

⁶ A statement made by Minister of Local Government and Housing on 9th June 2004, Post Newspaper of 9th June 2004, M.?

in national affairs ... Decentralisation could not operate in a vacuum unless there is good governance at the Local level.”⁷

The above alludes even to the government’s recognition of the importance of a viable Local government system. The question, now, arises that despite the government’s recognition of this fact, why do we still have a precarious Local government system? To answer this question, it is callous that we delve into an understanding of our prevailing Local government system.

1.3. WHAT IS A LOCAL GOVERNMENT SYSTEM?

In order to appreciate the tenets of a good Local government system we have to relate it to the prevailing circumstance. What then is a Local government? According to Vosloo W.B.⁸

“A local government alludes to a decentralized representative institution with general and specific powers devolved upon it and delegated to it by the central or regional government, in respect of a restricted geographical area within a nation or state, and in the exercise of which it is locally responsible and may, to a certain degree, act autonomously.”

Therefore, there are certain terms in a Local government, which cannot be divorced from it. These include Decentralisation, Devolution and Delegation.

Decentralisation refers to the transfer of functions and resources to lower level units of the same administrative system while authority over decision-making and use of

⁷ Quoted by Judge Philip Musonda in Chapter Six of his thesis on Local Government.

⁸ Local Government In Southern Africa, PIO (1974).

resources remains with the central government. In case of government administration, this would entail the transfer of some functions performed at the Headquarters of a ministry to provincial, districts and/or sub-district offices while power and authority are retained by the Central government.

Devolution entails the transfer of some powers and authority, functions and resources by legal and constitutional provisions of the lower levels. This transfer is within formal political structures and is institutionalised by constitutional means. This is effected, for instance, when the Central government transfers some of its powers and authority to democratically elected Councils, Local authorities or Regional governments empowering them by law to deliberate on certain issues to their own convenience. Under this form of decentralisation, leadership is accountable to the local population through a system of elections.

Another facet through which Decentralisation may be manifested is through delegation. Delegation connotes the transfer of functions and resources to a subordinate authority with the capacity to act on behalf of the superior authority without a formal transfer of authority in the same structure. In delegation, the lower office will still be required to consult the higher office on matters that require decision making.

From the above facets through which decentralisation may unfold, it is reasonably debatable as to which system is effective given the Zambian social, political and economical atmosphere. However, it is the view of the author that devolution is the most

appropriate and tenable because it is backed up by a legal provision which has a constitutional basis and would therefore have a force of law in its operation. The powers and resources are well outlined through a legal framework and would as such operate according to the stipulated law and abrogation of any of the ways through which it shall operate, would be a violation of the law and hence illegal. This would undoubtedly curtail the massive political interference and the Central government's intervention which is usually exerted, as it will be shown, in order to contain and suit a certain political, social and economical environment.

1.4 THE PREVAILING LOCAL GOVERNMENT SYSTEM IN ZAMBIA TODAY

Having alluded to the above, it is callous that the prevailing Local government system in Zambia today is analysed. The Constitution of Zambia⁹ establishes the Local government system and is based on democratically elected councils on the basis of Universal Adult Suffrage.¹⁰ These Councils comprise Councilors who are elected every five years. The councillors are elected by the people and are therefore responsible and answerable to the people. It lies solely in the judgment of the people to be able to elect councillors of dignity and respected acumen so that they are competently represented. Councillors of calibre and competence are indispensable and the need to have well educated and articulate councillors is an inescapable fact. However, the current legislations do not provide for a minimum educational qualifications for people elected to the office of

⁹ Cap 1 of the Laws of Zambia.

¹⁰ Article 109 of the Constitution of Zambia.

councillor. The Local Government Election Commission alluded to the fact that the calibre of councilors attracted much to be desired and decided through **Statutory Instrument No 111 of 1992** that candidates for election to the office of councillor should attain educational qualifications of not less than Grade Seven or equivalent. However, this decision was annulled in the case of the **Attorney General V. The Local Government Election Commission**¹¹ and the declaration was declared null and void. Though this was annulled through the doctrine of Ultravires, it is surprising why despite having such low qualifications, minimum qualifications have not been set through a rightful procedure by the persons so empowered to do so. In fact, a higher educational requirement such as a Grade Twelve or better would be helpful. It is agreed that people can decide between the educated and uneducated through their vote but it is better not to expose them to a temptation to vote for the uneducated. In the modern day of technology, a literate would perform better than the illiterate without any debate. Therefore, people should realize the importance literacy could contribute to development.

Furthermore, there is the office of the Mayor and Council chairperson. The Mayor and Council chairman are elected annually, among Councilors, at the first ordinary meeting of the Council in that year. Their fellow councillors elect the top two officials and their deputies. A Mayor is elected for every City or Municipal Council whereas for a District Council, a Chairman is elected.¹² This means that there are three types of Councils namely City, Municipal and District Councils. There is also a separate district administration headed by a District Commissioner appointed by the President. It is

¹¹ (1990 – 1992) ZLR (182 H.C).

¹² Section 16 of the Local Government Elections Act as amended by Act No. 31 of 1993

surprising, however, that any legislative instrument does not create the Office of District Commissioner. The Mayor and the Council Chairman are two top Civic leaders in charge of the overall administration and policy level and preside over Council meetings.

To sum it all, the Minister of Local Government and Housing acts as the chief overseer on the operations of these Councils and has very wide powers which, actually, is what has led to the poor performance of the Councils. From the above scenario, a lot of anomalies are inherent, as it will be shown in Chapter Two. A lot of problems arise from the office of the councillor to the office of the Minister of Local Government and Housing. The Local Government Act has precipitated all these and it should be concluded that the problem lies in the provision of the Local Government Act and other subsidiary legislations governing Local governance in Zambia. Chapter two will therefore allude to what is really the problem with the prevailing local government system with specific reference to the legislations governing local governance in Zambia today

CHAPTER TWO

2.1 A SCRUTINY OF THE LOCAL GOVERNMENT ACT OF ZAMBIA.

Introduction

? Chapter two is pronounced and profound around the pivot of alluding to the various problem areas salient in the Local government act. This will be done by focusing on specific provisions of the Local Government Act, which inhibit or fetter the realization of a viable Local Government system. Without doubt, the operation of our Local Government System has been very shoddy and has grossly exhibited stubborn traces of dismal performance. For any problem to be adequately dealt with, a root cause should be adequately identified. As one pundit once put it that “solving a catastrophe without knowing the root cause is like merely curing a disease by alleviating its symptoms”¹³ Indeed, not to take anything away from the above, attacking a problem without having full knowledge of its source is like a person who tries to do away with water from a running tap, by mopping it. Worthwhile, it is known that without closing the tap, one would be mopping the water for the rest of his or her life. Similarly, without knowing where the Local government Act has precipitated some fertile provisions for inefficiencies, our Local Government System will forever fathom in the doldrums and our children and their great descendants will forever hold the generation of today, liable

¹³ Jerome Omasi, (1993) Power of the state, P. 153.

for not taking up the challenge to rectifying the dismal and shoddy performance of our Local Government System.

The Local Government Act alone is nothing without recognising the various officers of Local governance because it is through them that we see its failures and successes. Therefore we shall adjudge the performance of the Local Government Act by looking at the various provisions which it confers on these officers. It arises as a result, that it would be prudent to look at how inefficient the whole Local Government System is starting from the Office of the Councilor to the office of the Minister of Local Government and Housing.

2.2 THE OFFICE OF A COUNCILLOR.

The Office of a Councilor is the smallest unit of a Council because a Council is a conglomeration of various Councilors. Furthermore, the Local Government Act includes even all the Members of Parliament in the district and two representatives of the Chiefs elected by all the Chiefs in the District¹⁴. It seems to the author that the essence of including Members of Parliament is to cultivate an easier way of rapport between the Councils and the Legislature so that problems of Councils are easily heard and acted upon by Government as their Members of Parliament give an empirical view of their Councils through parliamentary debates. It is doubted, however, whether this strategy has done us any good because it is known that the Ruling party is the one which determines where development should go. Therefore, the strength of the ruling party in one particular

¹⁴ Section 9(1) and (2)

area is paramount to the needs of the people. As His Excellency, Mr. Levy Patrick Mwanawasa S.C. once averred that,

“The people of Southern province should not complain that I have not given them enough Ministers in Cabinet and that is the reason why there is no development in Southern province, but they have themselves to blame because they did not vote for me and my party, but development moves with the Government of the day.”¹⁵

President Mwanawasa made a similar pronouncement when he urged people of Eastern province that he was going to reward them dearly for having given him enough votes in the September 28th, 2006. General elections and appointed Vice President, Rupiah Banda, from the Eastern Province. However, the President was quick to castigate the people of Northern province by telling them that he was going to withdraw the Vice Presidency from Northern Province because the people of Northern province had decided to vote for the Patriotic front candidate instead of Mr. Lupando Mwaape who was the serving Vice President before Parliament was dissolved. In his view, it was a privilege to have a Member of Parliament from the ruling party because it was easier for the problems of the electorate to be responded to as it is the Government of the day which determines the allocation of resources to the people. Given R, put it succinctly that “Most Governments, especially in Africa, have intently and deliberately robbed their Local government structures of the much deserved pride because they inculcate a spirit of reward for those Local government units who vote for them and want to plant a seed of bitterness and shock amongst suspicious ones.”¹⁶ As a result, for example, Livingstone city council never received any government funding in 2003-2004 and the Council incurred

¹⁵ In his inauguration speech after the December 27th, 2001 general election.

¹⁶ (1979) The reality of Decentralisation.p43.

monumental salary arrears for its workers for a period of eight months.¹⁷ Conversely Kitwe city council, which was based in the ruling party controlled zone never at all experienced the same problems ¹⁸. Given the above exposition, it is difficult to construe an intelligible construction of how a Council controlled by the Opposition party would have its calls acted upon diligently if we are to move at such a pace.

Initially, Councilors were elected for a period of three years, but it has now been extended to five years to run coterminous with the presidential and Parliamentary term.¹⁹ Principally, one may be made to believe that the extension of the tenure of office for Councilors was for mere convenience so that all the three kinds of elections would be held at the same time to cushion financial expenses. However, enough safeguards have not been put in place in the Local government Act to shoulder any kind of abuse that can arise there from. It should be submitted that the period of five years is too long a period for a Councilor to run without putting in place measures to ensuring that if he does not perform or exhibits high levels of incompetence, he should be removed from his office before his tenure officially expires. On the other hand, it is equally submitted that there is no problem with a term of five years as long as it is not abused because it gives a Councilor and the council in general, sufficient time to formulate policies and be able to execute them without a limiting time factor. Where the problem lies, however, is in the fact that there is no provision, which can facilitate for a way of recalling erring members of the Council so that they are held accountable for whatever they do whilst in office. As it is, the Office of Councilor is subjected to abuse and has contributed to the domestication of arrogant members of the Council. For example, in Livingstone, one

¹⁷ From the Livingstone city council general record (1996-2001)

¹⁸ Kabanje, former Kitwe town clerk stated in the post newspaper of August 14th 2006.

¹⁹ D Chaponda ,H. Mbao and W. Mulongo p20

29/1/07

Councilor was quoted as saying that he held full mandate in the meantime and he had power to do whatever he thought was fit for the people. If the people did not feel satisfied, they just had to wait for the five years to elapse if they wanted to remove him from office²⁰. Surely, such kind of behavior exhibited by most Councilors is a reflection of the failure by the Local Government Act to put enough safeguards to guard against loopholes of abuse. As a result, Councilors have been operating according to their whims and caprices and this is one of the many reasons that have contributed to a weak and non-vibrant Local government system in Zambia today. As Mr. Mwendapole²¹ noted that “Most Councilors go into Councils with a motive to satisfying their personal interests and become their own bosses who are never accountable to the people who put them into office.”²² Today more than ever before, Councilors have assumed the duty of allocating plots of land, but even then, to receive money in return, to their personal advantage. As the Commissioner of lands²³ once reiterated that, “Councillors have no mandate to be allocating land and anyone who shall do so risks being prosecuted”. All what the Councils are empowered to do is to recommend would be tenants to the commissioner of lands because the power of allocation lies in the President through the Commissioner of lands. The above misadventures are a result of the Councillors having unfettered latitude to function without being recalled by their electorate to account for their actions while in office. This is a costly omission of inevitable doom if left unchecked.

Furthermore, the Local Government Act does not provide for minimum educational qualification for anyone elected to the office of Councillor. This has usually led to the

²⁰ From the Livingstone magazine dated 24th-30th 2004.

²¹ Former Livingstone mayor (2002)

²² From a personal interview with the author.

²³ Mr Frightone Sichone.

election of Councillors of very low calibre in the Councils. In the modern day of technological know-how and literacy, it is an inescapable fact that reasonable educational standards can attract better competence and performance standards than anyone who has never been to school at all. This has led to the proliferation of low standard Councillors and Councils which have exhibited poor operations such that very little can be expected from them if we were to aim for excellence in our Local government system. It is taking aback to note that even Government and civil society alike have noticed this need for a provision which can nourish and flourish a spirit of zero tolerance to illiteracy amongst Councillors, but no monumental effort has been exerted and dedicated to it. The Local government elections commission recognised this ardent need for minimum educational standards for persons elected to the office of Councillor and decided²⁴ that candidates vying for the position of Councillor should have attained minimum educational standards of grade seven or better. This pronouncement, however, was declared null and void through the doctrine of Ultra- vires in the case of **Attorney general V. The Local Government Elections Commission**²⁵. Though such a provision could at that particular time not be embraced by the courts on the ground that the commission did not have the power it exercised, it is astonishing almost to breaking point to construe why the relevant body which has such powers cannot move in to enact a statutory instrument that can effect the same through the rightful procedure .The gravity and impact that illiterate Councillors have exerted on the people

²⁴ Through Statutory Instrument no.111 of 1992.

²⁵ (1990-1992) ZR.182 (HC)

and the country as a whole can be painfully felt. As one former mayor²⁶ rightfully admitted that

“The levels of illiteracy in most Councils is high and these illiterate Councillors of very low calibre would constantly want to hijack the process of decision making ignorantly at the expense of the literates because they suffer from an inferiority complex. Conflicts have usually arisen and when their decisions are left to prevail, they are realised at a point of no return that they were impotent and insipid “ Without doubt, the above development is a fertile environment for precipitation of failure and this has contributed greatly to the shoddy and dismal performance of our Local government system. The above exposition all serves to show how the Local government Act has inculcated a leeway for poor performance by Councillors and Councils in general. It is now callous that we focus on the Office of the Mayor, which is also determined by the Councillors.

2.3 THE OFFICE OF A MAYOR

A Mayor and a Council chairperson are elected annually, amongst Councillors, at the first ordinary meeting of a Council held after the first September that year. According to section 16(2) of the Local government act, Cap 281 of the laws of Zambia.²⁷, a Mayor is elected for every City or Municipal Council while a Council Chairperson is elected for District Council. Just like the office of the Councillor, the Local Government Act also has some provisions, which make it difficult for the Office of the Mayor to function

²⁶ Former Livingstone Mayor, Mr Henry Mwendapole.

²⁷ Section 10 of the Local government elections act as amended by Act no.31 of 1993.

progressively and efficiently. From the tenets of Article 16(2),²⁸ it is clear that the term of office of a Mayor is only one year. Without doubt, this is the beginning of the problem. It is submitted that a period of one year is too small a period of time for a Mayor to be able to come up with policies and be able to execute them without being limited by time. What should be understood is the fact that each Mayor would like to come with his own policies that he or she would like to execute and leave a legacy to his name and this trend has failed most Council. Usually this kind of attitude does not achieve goals due to the limited time factor. To make it worse, there is lack of continuity of programmes between successive Mayors. This merely results into a lot of unfinished programmes with no finished one at all. The Chairperson for Local governance in the Patriotic Front²⁹, lamented in the run up to the September, 28th, 2006.election that

“The local government act, has a lot of weak points and one of them lies in the tenure of office for a mayor. There is need to give mayors enough time to be able to settle, consult, formulate ideas and be able to execute them without being constricted by time. Without doubt when the Patriotic Front is given the mandate on the 28th of September, we shall consider making some amendments to pave way for the extension of the tenure for which a mayor shall hold office”

The above exposition shows just how callous this need has been long overdue. As Mr. Mwendapole put it very clearly at his Mayoral handover ceremony that “ The fruits of my work as a Mayor, might not have been seen, but if one was to ask me as to whether I have been successful or not, I will not hesitate to bring him to my drawing board so that he sees what I would have done to this beautiful town if I had enough time. The government should seriously look into this concern because it is for the good of our Local government system.”

²⁸ Local government act. Cap 281 of the laws of Zambia.

²⁹ Mr Wynter Kabinda who is also former Lusaka town clerk.

The above sentiments only serve to show how insidious this problem is.

Furthermore, the whole essence of electing a Mayor is a demonstration of how wanting the Local government electoral system is. The Local government Elections Act governs the local government electoral system. However, it derives power from the Local Government Act, which by virtue of section 11 confers power on it by stating that “No person shall qualify to be elected as Councillor if he does not satisfy the provisions of the Local Government Elections Act”. Now, a problem arises as follows: The Councillors are elected by universal suffrage in a ward, while the Councillors, in turn, elect the Mayor. When the people were electing a Councillor who eventually gets elected as Mayor, they had an impression that he was only fit to represent the interests of their ward and not the entire City or Municipality. It arises, therefore, that a Mayor does not have a direct connection with the people in the wards, as they do not actually take part in his election. It is very conceivable that one might argue that the vote of a Councillor represents the votes of the people in his ward. But is it reasonable to think that the vote of one man can satisfactorily represent the interest of hundreds of men and women in his ward without putting his personal interest as a priority? This makes the election of a Mayor an elitist one. Identifying how elitist the election of a mayor is, it has been stated in the National Decentralisation Policy Paper that “A Mayor/Council Chairperson elected by universal suffrage in the council area will head the council. In order to redress the challenge associated with the local government electoral system, the system of local government shall be based on democratically elected councils on the basis of universal adult suffrage as provided in the Constitution. Without casting any doubt, the above provision is meant to produce a Mayor who is public spirited in the execution of his official duties so that he owes full allegiance to the

whole Council area that is his Constituency and not to the ward and Councillors in the Chambers.

In addition to the above, Mayors do not possess individual powers beyond those of chairing the Council and that of authorizing the principal officer to take action on any matter of extreme urgency on the recommendation of a standing committee or its Chairperson, as may be appropriate in the circumstance; a power enshrined in the Ministry of local government and housing-Standardised standing orders for Councils, They do not have executive or delegated powers. Decisions emanating from the Council must be approved by the Council as a whole unless a Committee has been specifically appointed and empowered to do so. As a result, this limited power of a Mayor coupled with his limited term of office precludes him from playing a pivotal role in the Council. This means that the office of a Mayor is somewhat a dormant one, which has not been very helpful in the enhancement of Local governance. This is not due to failure on the part of office holders but due to the fact that the Local Government Act does not give them enough powers with which to enable them play a cardinal role. The Mayor should be a chief Councillor who should wield enough power to help him spearhead the operations of the Council without owing allegiance to the Councillors, without favour or fear of exercising the powers, which do not accrue to him at the expense of enhancing a viable and prolific Local government system.

The two offices alluded to above represent local governance at a City, Municipal or District level. In essence, the loopholes that have been referred to for the Mayoral office also accrue to the office of a Council chairman. Therefore, we shall be exercising our humble right against duplicity of reasoning by not alluding to the office of Council

Chairperson any further. Henceforth, it is prudent that we allude to the Local governance at Provincial level. Looking at the various offices for Local Governance that have been put in place if any will also do this.

2.4 LOCAL GOVERNMENT SYSTEM AT PROVINCIAL LEVEL.

Judge Musonda Phillip, rightly commented that “there is no local government system at Provincial level in Zambia.”³⁰ The only trace of Local governance that can be talked about lies in the Office of the Provincial permanent secretary who is the administrative head of a Province. He represents the Central government’s mandate within the province. He becomes an officer of Local governance by virtue of one of his functions which is to be the head of the Local government appeals board where employees of a Council who feel unfairly treated can present their case. Other than the above function, the Provincial permanent secretaries have no authority over Local government because there is no Local governance at provincial level. They are not involved in the Council’s technical work, planning or decision-making. The Provincial local government appeals board is well captured in Section 93 of the Act. Apart from the Provincial permanent secretary, there is also the Provincial local government officer established under Section 118 of the Act. It also establishes the office of the District local government office.

The Provincial local government officer is an employee of the Ministry of local government and housing who is mandated to assist Local governance at provincial level by reporting to the Provincial permanent secretary on issues affecting the Councils. He

³⁰ In his dissertation on Local governance as an instrument of grass root participation, p9.

is an intermediary between Ministry of local government and housing and Council through being relied on by either of the two. His roles include: dissemination and enforcement of Central government decision that pertain to Councils, provide technical support, carry out audits of Councils and acts as representatives of Councils towards the Ministry of local government and housing. It should be stated out rightly, however, that despite having these officers at provincial level nothing has been put in place in the Local Government Act to facilitate for a viable Local Government System at Provincial level. All what these offices do is to act as a conduit between the Councils and Central Government and ultimately seeing to it that the Council officers are treated fairly but they do not in themselves provide for a provincial administrative organ responsible for local governance at provincial level. There is need to have a well-structured Local government system at Provincial level which will act as an overseer of an aggregate of Councils in the province. These would try to help Councils on matters pertaining to a sustainable development programme that would help Councils to be self sufficient in terms of Resource mobilisation. All these hinge on the Local government's failure to be able to have such provisions that would provide for a viable and well-structured Local government system in Zambia.

From the Provincial level, the next step is to focus on the national domain in as far as execution of the powers that hinge on Local governance and decentralisation is concerned. At the National level, there are two offices that need to be assessed in order to show what they have done to the prevailing Local government system which so far has proved to operate below the expectations of the people and the tenets of Modern day

democracy which demands for an effective and fuller participation of all people including those at the grass root level.³¹

2.5 THE LOCAL GOVERNMENT ACT AND THE MINISTER OF LOCAL GOVERNMENT OF HOUSING

The Local Government Act, in its current position has exhibited a lot of flaws in as far as powers conferred on the Minister is concerned. This arises from the view that it has granted the Minister of Local Government and Housing a lot of powers which have ended up putting the office to be able to deal with literally everything on matters to deal with Local governance. This mainly revolves around the pivot that the autonomy of the Councils is totally undermined and compromised as the Councils cannot make any independent decision, which can be effected without the approval of the Minister of Local government and housing. This clearly robs the essence of Local governance of its intended meaning as the Minister of Local government and housing only approves those resolutions which , according to the best of his judgment and interests is right. Practically, it follows that the decision, which is at the end of the day deemed to be that of the Council, is actually that of the Minister of Local government and housing.

The Office of the Minister of Local government and housing amasses a lot of powers and these include;

1. Approval of Council by Laws.
2. Power to suspend and dissolve a council.

³¹ Barnae J (1998) The People and Democracy, p65

3. Approval of councils annual budgets
4. Approval to the dispose of property by the Council.
5. Approval for appointment of an Auditor of the council
6. Approval for the preparation of the Valuation roll for rating purposes; and
7. Approval for the discharge of any function by the council outside its area.

From the above seven duties that have been conferred on the Minister, the first three are the ones which have been grossly abused and they are the ones which are further espoused below in order to show how they have contributed to a dismal display of Local Governance in Zambia today.

2(5)1 POWER TO SUSPEND AND DISSOLVE A COUNCIL

Section 88³² pronounces that

“ whenever, by reason of the refusal, failure or inability of a council adequately to discharge all or any of its functions, the Minister considers it necessary or expedient in the interests of local administration to do so, he may, by statutory order(i) suspend all Councillors of the council from performing all their functions as Councillors and empower the local government administrator to discharge all their functions and (ii) after the inquiry due..... dissolve the council after receiving prior approval of the president....”

Though the Minister may appoint a person or persons to inquire into any matter relating to the discharge of the Councils functions and a report or recommendations made thereon to the Minister³³, There is a rider to that provision and it reads that

³² The local government act, Cap 281 of the laws of Zambia.

³³ Section 120(1) of the local government act.

“Nothing in this section shall be construed as requiring the minister, in the discharge of his functions under this act, to give effect to any recommendations made to him under sub section 1.”³⁴

The above serves to show that the powers of the Minister are unfettered as he can even disregard the recommendations that have been made to him. In such a scenario, the Minister is likely to abuse the powers that have been conferred on him, as he is the end of the means and can exacerbate malice when it comes to councils that are run by the opposition parties. For instance, on 24th July 1995, the then Minister of Local Government and Housing, the late Bennie Mwiinga suspended the Town clerk, Mr Wynter Kabimba and all councillors of Lusaka City Council.³⁵ Because the powers conferred on the Minister are so broad, the Minister did not hesitate to justify his actions by stating that he was trying to end the petty squabbles, greed and power struggles that continued to erode the Councils operations.³⁶ Though squabbles and power struggles can never be ruled out from Councils especially from big Councils like City Councils, it is surprising how a Minister as a single official of Government can be allowed by the Local Government Act to overrule suspend or dissolve a Council which has been elected through a due process of the law. It is illogical to construe that a Minister who was elected from one constituency can be granted powers to be able to suspend or dissolve duly elected Councils which did not actually vote for him from any council in Zambia. Since power corrupts and absolute power corrupts absolutely, the Minister can use such powers to settle scores. As Miss Silvia Masebo, the current Local Government Minister noted when she was still a Councillor in Lusaka and Commenting on the Local government Minister’s

³⁴ Sub section 120(3).

³⁵ Times of Zambia, July 26,1995, p.1.

³⁶ Ibid

suspension of the Town clerk and the Council, that “ The suspension of the Council was a result of the personal differences between the Town clerk and the Minister over the Merzarf Housing Development project”³⁷ As can be seen above , the Minister can act maliciously but within the broad powers of the Local government act. In this case, the Minister wanted to portray a view as if he was acting in the public interest by averring that the suspension was on ground that there was division which continued unabated at the expense of giving services to the Lusaka residents. Miss Masebo’s statement could be true because eventually, the Council’s suspension was lifted but the town clerk was discharged from duty. However, it should be noted that councils are generally suspended because of quarrelling, misappropriation of Council funds and gross inefficiency and ineffectiveness in management of the Councils. For example, in 2004, Minister of Local government and housing, Sylvia Masebo, suspended the Town clerk and Kabwe municipal council for having grossly misappropriated about K7.5 million Kwacha that was meant for rectifying the water system in the Kabwe municipal council. An effort for judicial review by the Council failed as the ground upon which they were dismissed had merit.³⁸ From the above exposition, it is patently clear that the powers conferred on the Minister as regards suspension and dissolution of a Council may be subjective and as such open to abuse. The Minister and the President belong to the ruling Party and may be partisan where the policies contained in the manifesto clash with the policies of an opposition controlled Council. In the Kabwe Municipal Council alluded to above, the Councillors contended that they were being victimised because the Council was

³⁷ Ibid

³⁸ The Weekly magazine, 24-31 of September, 2004.

controlled by the Heritage Party which was an opposition party led by Brigadier General Geoffrey Miyanda. Therefore, this provision³⁹ of the Local Government Act is not tenable in the present day democratic dispensation as it compromises the autonomy of councils as councils would be afraid of advocating against illogical and unlawful directives from the Minister and the President with the fear of the Council being dissolved. Furthermore, the appointment of the Local government administrator after dissolution of a Council defeats the whole purpose of elections as the electorate are exposed to a rule by someone they never voted for and therefore, he is deemed to lack legitimacy. Even the way this Local government officer is appointed is questionable, as the Minister will definitely appoint someone who is loyal to him in all respects thereby having a puppet in such a position. This also compromises service delivery to the people as an officer will be more inclined to serving the appointing authorities rather than the people because he does not owe allegiance to them as they never put him into office.

2.(5)ii APPROVAL OF COUNCILS ANNUAL BUDGET

According to section 39 of the Local Government Act, Councils are empowered to prepare and adopt annual estimates of revenue and expenditure for each financial year but these are subject to approval by the Minister. Granted the bureaucracy, which goes with government decision-making process, such approval by the Minister consumes a lot of time such that they are done at an instance when the time and purpose would have long passed. In Livingstone city council, for example, such

³⁹Section 88 of the local government act.

approval of budgets take for as long as five months bringing almost all deliberations of a Council to a halt. According to Section 39(1) of the act states that, “the councils should submit their annual budgets at least sixty days before the end of each year for approval of the minister.”

This means that within that period before the next financial year, the Minister will have the task of approving budgets for seventy-three Councils within two months. This is practically impossible hence the delays exhibited by the Minister. There is need for this provision to be looked into. The Council should be autonomous and be able to plan for what they have, without hindrance from any external forces. The people at the grass root level understand their needs better than the Minister who is even not resident in that Council area. Therefore the council should have exclusive powers to deal with their budgets without being approved by Central government

2.(5)iii APPROVAL OF BY LAWS

According to section 76 of the Local Government Act, Local authorities have powers to make by laws. It is however, amazing that according to Section 82 of the same Act, all by- laws of the Council are to be approved by the Minister. Furthermore, section 84 gives power on the Minister to revoke or amend any by law by statutory order. This implies that the Minister can amend very important decisions like those of fees, levies or charges before or after by laws are confirmed This without doubt takes away

the powers of Councils to decide how much revenue they have to raise. Furthermore, these by laws are not approved in time. Since by laws are like a constitution of a Council, they are enacted in response to a certain occurrence and when they are *delayed, the act for which they were enacted would have long ceased to exist* rendering that particular by law meaningless.

2.(5)iv POWERS OF THE PRESIDENT IN SO FAR AS LOCAL GOVERNANCE IS CONCERNED.

Where local governance is concerned, the only involvement that can be seen from the President is when he approves the Minister's decision to suspend or dissolve a Council in accordance with section 88 of the Local government act. However, it has been noticed that the President does make decisions arbitrarily which affect the Councils. For example, in the run up to the September 28th 2006, general elections, President Levy Mwanawasa reduced bicycle and dog levy at a campaign rally in Chipata.⁴⁰ This grossly reduced revenue for the Councils. It is believed, however, that if the President would want to intervene in Local governance, he would surely do so through the Minister of Local Government and Housing.

2(5)v CONCLUSION

In conclusion, it has been shown how ineffective various provisions of the Local Government Act have been. Without doubt, these provisions have contributed

⁴⁰ His speech on a rally on 21st September, 2006.

immensely to the poor Local government system in Zambia today. These provisions have had a very devastating effect on Local governance and it would therefore be logical to explore them. Chapter 3, therefore, explores the effects that these provisions have on the Local Government System in Zambia today.

THE EFFECT OF THE SHORTCOMINGS OF THE LOCAL GOVERNMENT ACT, CAP 281 OF THE LAWS OF ZAMBIA.

3.1 INTRODUCTION

Chapter three, discusses the effects that the flaws reflected in the Local Government Act have brought about in the Local government system in Zambia today. In chapter two, we saw that there are a lot of flaws in the Local government system that operate counter to a democratic and viable local government system of the modern day. This chapter, therefore, shows a practical outlook of how the Local government system has been made to wallow in the doldrums as a result of the ineffective Local Government Act in Zambia today. Where necessary, we shall draw into the past in order to show how long this problem has been haunting Zambians.

3.2 GENERAL OVERVIEW

As a result of the shortcomings of the Local Government Act already alluded to in chapter two, the Local Government system in Zambia has proved to be inefficient. This can be seen from the functions that have been conferred on Councils. It is submitted that Councils have failed lamentably in executing their functions prescribed by the Local Government Act. The Local Government enumerates sixty- three specific functions, which are the same for all the Councils regardless of size or considering whether it is in a Rural area or Urban Councils. These functions of Councils have been well outlined in Part (vii) of the Local Government Act.⁴¹ The responsibilities include: to prepare and administer scheme for the encouragement of and participation in, community development, to maintain law and order, to establish and maintain a system of lighting in streets and other public services. The public services are not clearly outlined. If the other functions of public nature are outlined, why should others be merely put in the umbrella of public domain without specifically pointing them out? It is difficult to draw a line as to where those public services would end. Though this dissertation mainly focuses on the efficacy of the Local Government Act, there are a few other responsibilities that are delegated to City or Municipal Councils by other Acts of parliament like the Roads and road traffic act⁴² and the Town and country planning Act⁴³. According to the Roads and Road Traffic Act, the Councils are made highway authorities responsible for maintenance

⁴¹ From sections 61-75 of the Act.

⁴² Cap 464 of the laws of Zambia.

⁴³ Cap 283 of the laws of Zambia.

of trunk roads passing within boundaries.⁴⁴ The Councils are planning authorities under the Town and Country planning Act and the Lands act. In the case of Rural districts, the above functions are undertaken at Provincial level by the Provincial land engineer and The Town and country planning authorities offices respectively.

Judge Musonda Phillip notes that “ In practice, most local government responsibilities are still under the control of central ministries or have been taken back given the poor performance of councils. Council activities are generally limited to general traditional local services such as markets, bus stops street lighting, grass cutting, Road maintenance, Construction permits, water provision, Sanitation, drainage and some public health responsibilities.⁴⁵ However, even observing how the Councils have been performing from the few duties left for them by the Central government, a dismal performance can be deduced.

3.3 THE EFFECT ON THE OFFICE OF COUNCILLOR

It is an inescapable fact that Councils have been overwhelmed by low calibre Councilors who are mostly illiterate and sought office mainly with a view to satisfying their personal interests, many councils have failed to yield anything from any investment that they delve into in order to raise funds in their operations. Usually, they engage in these business ventures because of the failure by the Government to procure enough funds for Councils contrary to Section 45(3) of the Local Government Act. Many Councils run commercial business ventures like bottle stores, motels, farms and in the transportation sector which have been running at a loss due to poor management by

⁴⁴ Ibid, section 12

⁴⁵ Thesis on local government as an instrument of Grassroots participation, p22.

Councilors who go into office with a view to personally play a role in the Councils commercial enterprises. A good example of such a misfortune is the Kitwe City Council, which runs the “ Zoo Kiosk” at an annual loss of Forty million Kwacha.⁴⁶ This arises due to lack of providing viable business management policies, which would boost the business ventures. The Councilors fail to distinguish between the business of the Councils and the commercial businesses they engage in order to raise funds. This is coupled by gross intervention by Councilors in the running of these businesses when they have actually no expertise in the field of business. The Livingstone City Council, for instance, had motels, mansions, bars, restaurants which apart from one, have all been closed down due to having incurred heavy losses. Even the only Northeastern mansion, which is left, is in a deplorable state as the Councils have only been getting the proceeds without investing in the repair works to raise it to up to date standards. The Councils have not been employing qualified personnel to run their businesses. This goes back to the very essence of having very illiterate Councilors who leave much to be desired in terms of calibre, character and acumen. As a result, to date, no Council can be identified which can be said to have a successful business venture which has been recording a good profit. The calibre of Councilors unfolds much to be desired but it lies solely in the Local Government Act to put enough measures in law to achieve this. What has to be done is alluded to in the next chapter.

Arising from the fact that Councils have low calibre Councilors, Zambia as a nation has in the past years since independence placed in various trained Technocrats, their placement and remuneration have been constant problems and have led to the flight of

⁴⁶ Chaponda, d, Mbao, h and Mulongo w, p22.

most of the technocrats among them, nurses, Teachers, Doctors, Engineers to neighboring countries. It follows, however, that the decentralization process should be accompanied by appropriate qualified staff surrendered to the Local government structure to perform those functions . The Local government act does not provide for a deepened training needs assessment for councilors and officials. Because most technocrats who would have been best suited for the running of local authorities have left, there is no effective resource both human and financial, for the running of the Councils.

3.4 THE EFFECT ON FINANCIAL MOBILIZATION BY COUNCILS

For any Council to operate viably, be it in a rural or urban setup, there has to be a good financial setup. For the Council to be able to operate successfully, the need for a sound financial prospect should not be ruled out. Part (vi)⁴⁷ of the Local Government Act deals with finances. According to section 45(1),

“The Minister may, on such terms and conditions as he may determine, make constituency development grants or loans of money to a council for the purposes of the discharge by the council of any of its functions”.

It goes further to state⁴⁸ that

⁴⁷ From section 38-60

⁴⁸ Section 45(2) of the local government act, cap 281 of the laws of Zambia

“The government shall make specific grants to the council concerned for water and sanitation, health services, fire services, road and policies services, primary education and agricultural services”.

From the above exposition, it seems that the major funding for the local authorities is the government as councils cannot sustain themselves from the realization of Fees, Levies and Charges. It is surprising that instead of councils enhancing their revenue earning capacity of councils, they have done the opposite. They have clearly ignored their legal duty to finance councils with adequate funds. This can be explained in three dimensions. Firstly, in 1996, the Government of Zambia decided to sell Council houses at a very cheap price despite the fact that those houses were a major source of revenue for the councils by way of rentals.⁴⁹ This was done even without a legal provision backing up the President. Councils being a body corporate that can sue or be sued in their own name, have exclusive authority to deal with their own affairs without their powers being usurped by a political figure. If then President, Dr Fredrick Jacob Titus Chiluba, really had the interest of empowering the Zambian People with houses, the best he could have done was to direct Councils through the Minister of Local government and housing to sell those houses to sitting tenants but even then, after competently involving valuers who could have determined the rightful price. If the Councils had raised enough money from the sale of houses, they could have engaged it into some other forms of business that would have been an income source. Secondly, in as much as Councils are empowered to collect rates for properties located in the Council area, the Government does not pay for properties located in these areas. Unfortunately, Government property occupies vast areas of the Council area and this has been a monumental blow to the council. In short, the

⁴⁹Handbook on Civil Service home ownership, 1996.

government fails to appreciate the boundary that has to be stressed between the local authorities and the central government. Lastly, since government has a mandatory duty under the local government act to provide funds for the operation of councils, the Government has lamentably failed to honour this duty. Government budgetary allocation has been very negligible. The Former Minister of local government and national planning was at one time forced to adjust grants to councils from Six billion to Ten billion Kwacha after the national assembly realized that the allocation was negligible.⁵⁰

Although the sale of Council houses may be viewed as a way of privatization of public rental housing to sitting tenants and its effect of stimulating a housing market and increased investments in housing, the devastating and chaotic management of the programme ranged from failure to follow established legal procedures, the awarding of government prescribed discounts to sitting tenants, to the president himself determining the maximum selling price. This was despite appropriate market prices having been worked out by Council or Government valuers. For example, Former president F.T.J. Chiluba who instigated this sale of council houses, who made an impromptu tour of some Council houses in Lusaka, observed that “Councils asking price was too much and exploitative and directed that considering that the tenants had lived in the houses for so many years, the houses should not be sold at more than five hundred thousand kwacha.”⁵¹ The above averment by the president was not only verbal but also practical. In Chilenje south, Mr. Chiluba brushed aside the council’s argument that houses be valued at K3.8 million and directed that they be sold at K2.0 million . Mr. Chiluba even castigated the

⁵⁰ Daily mail of 24th February of 2005.

⁵¹ Sunday mail, 17th march, 1996 , p2.

council's valuations as being "crazy". In certain instances some houses were even sold as low as K10 000.00 while others were even given out free of charge. In Livingstone, for example, "some houses in Maramba⁵² were sold at K10 000.00 while those for singles⁵³ were actually given out free of charge."⁵⁴ This news went with happiness to sitting tenants but it marked the downfall of the financial base for all councils in Zambia. The financial ineptness we are able to see today is a fruit of such irrational decisions and usurpation of the powers of the Councils by the Government.

Considering the above scenario, the Local Government Act comes in the sense that the provisions it provides are not enough to warrant for the disbursement of funds to local Councils by the Government. Since it is merely an act of parliament, the government who are the major financiers of the local government system have been ignoring the provisions of the local government act with impunity though the disbursement of funds by the government to the local government is mandatory by virtue of section 45(3) of the local government act which is couched with the word "shall". The result of the failure by the government to finance the local government system in Zambia has completely paralysed the councils. The Council has failed to provide the local communities with services such as security, provision of good sanitation, street lighting, Roads and maintenance of infrastructure. David Lamb⁵⁵ says sarcastically that in Africa the word "maintenance" does not exist. The challenge which all the councils face in Zambia today is the lack of financial resources to develop and maintain infrastructure. It is now a normative to find broken infrastructure in terms of sewers, blocked toilets, unpainted houses and

⁵² In the M.B section for those houses without electricity.

⁵³ In the MS section.

⁵⁴ According to Livingstone city council Registry.

⁵⁵ (1984), The Africans, New York vintage books, p. 21.

dilapidated buildings. There is clearly lack of culture of preventive maintenance. “The Central government has succumbed to the allure of massive and massively inefficient “white elephant” public works projects –projects that serve no economic rationale, except the pockets of the initiators.”⁵⁶ The roads are today more than ever before filled with potholes, streetlights are no longer functional, the Council has ignored its planning role under the Town and country planning Act and the Roads and road traffic act already alluded to above. The result is that the local communities are subjected to an environment where a saloon is situated next to a restaurant; Nightclubs are situated next to churches within residential areas.⁵⁷ This has exposed the local communities to a lot of nuisance. All the above arise from the failure by the local authorities to raise enough revenue to be able to operate according to the required standards as stated in Part vii of the local government act, which stipulates the functions of the Council. Without any doubt, the problem has emanated from the Government’s failure to adhere to the provisions of the Local Government Act both by not funding the local government system and by gross interference through political maneuvers. In a bid to avoiding these same drawbacks, the Namibian government decided to entrench a provision as to the financing of the local government system into the constitution. This revolves around the view that when the government comes into power, they pledge to uphold the constitution and the constitution being the supreme law of the land, can not be abrogated as no one has power to over ride the provisions of the constitution.. When this is done, it means that the need to finance the local authorities is a constitutional guarantee, which can even be petitioned in court when it is not honoured. Because of this provision in the Constitution, the Local

⁵⁶ Judge Musonda Phillip, (2004) Local government as an instrument of grass roots participation, p 18.

⁵⁷ A situation presently witnessed in Kabwata in Lusaka and Maramba township in Livingstone.

government system in Namibia is devoid of the Government failing to finance the Local authorities with adequate funds. As one observer⁵⁸ noted that

“ The Namibian local authorities may not be perfect but it is patently clear that the problem of financing the local authorities is not one of the problems that it is currently harboring.”

The above arises from the Governments pledge to raise revenue for the local authorities. It constitutionalises the power to raise revenue. The provision in the Namibian Constitution is couched in the following terms;

The Regional councils have the following powers;

- (1) To elect members of the national council.
- (2) To perform the duties assigned to them by an act of Parliament;
- (3) To raise revenue and to share in the revenue raised by the central government.

The above provision is indispensable for a democratic local government system. In the period between 1995 and 1997, the Councils in Zambia, recorded a big number of Council personnel being retrenched because the councils did not have enough money to sustain them. To crown it all, the council personnel were delayed to be given their dues such that, for some, it took them an average of 3 - 5 years for them to be completely paid off. This is a very unfortunate position in our local government system. To that effect, it is very surprising that former president F.T.J. Chiluba encouraged councils to be self sufficient where financial mobilization is concerned but it is difficult to construe how this can be achieved given that the councils were deprived of their major source of income when the council houses were sold off by

⁵⁸ Mr. Mushakende, a Namibian Local authorities officer resident in Katima mulilo in a personal interview with the author.

the Chiluba Government. Secondly, Government does not honour its obligation under the local government act in terms of financing councils coupled with the fact that the Government is a major defaulter when it comes to paying rates to Councils for Government property located in council areas. This failure by the government to fund Councils is insidious in our local government system and only viable recommendations accompanied by prompt execution can redeem us from this precarious situation.

3.5 THE EFFECT ON THE OFFICE OF THE MAYOR.

In the office of the mayor, as a result of the term of office being one year of which he can be re elected for another one year, the office of the Mayor has always been accompanied with uncertainty as to what exactly a mayor has to do in office. The Mayoral elections have often been delayed so that mayors are given a chance to finish up with their programs, which they initiated and are better placed to execute them. Some mayors do it in order to cover their corrupt traces. Mr. Nkhata states that,

“Sometimes the local government minister issues a directive suspending elections of a council until such a time when she will lift the suspension. This usually happens when a mayor is from the ruling party and a council has a considerable opposition members who may be elected into the office of the mayor.”⁵⁹

This is a very unfortunate position as to begin with; neither the Mayor nor the Minister has power to alter the elections date for the office of a mayor. This is clearly political and merely infiltrated by political agitation by visionless politicians who do not accept the reality of being challenged. As it is today the office of a mayor is seen to be one where a

⁵⁹ Submission on a personal interview with the author.

person goes into to maximize personal gain for a year because the term of office is just too short for an individual to be able to accomplish his mission. Even if the mayors have been exhibiting massive plunder in the office, it is difficult to investigate any plunder case as by the time investigations are concluded, many councilors would have passed through the same office complicating matters further. For example in the Chipata municipal council, an allegation was leveled against the mayor to the effect that he had misappropriated K10 million from the council funds. Legal action was instituted to that effect but by the investigations reached the peak, three other mayors who had passed through the same office had shown the same kind of malpractice which made it practically impossible to carryout further investigations as to successfully prosecute, you have to rely on records from the immediate successive office bearer. This is a major hindrance to transparency and accountability, which are core to democratic principles.

Furthermore, these councils on account of having seen the benefit attached to the office of Mayor have witnessed a lot of bickery in order to frustrate each other. Unfortunately, once a mayor is elected to the office of Mayor, the electorate no matter how arbitrarily his conduct has been in office cannot recall him. As a result, quarrels can never be ruled out for as long as that particular Mayor is in office. For example, there was such in Livingstone in 1997 when Inutu Suba and Solomon Muzyamba were town clerk and mayor respectively. The weekly post reads that

“ Councillors in Livingstone are planning to remove Inutu Suba and Solomon Muzyamba from office of Town clerk and Mayor respectively for allegedly promoting friction between them and the council’s chief officers. As long as they continue to be in office, no development project could take place because there was no understanding between the Mayor and the Town clerk and between them and the councillors.”

In Chililabombwe, the post reported that union officials threatened to quit over council anomalies. Harry Mumba, chairman of the Chililabombwe branch of Zambia United Local Authorities Workers Union has threatened to resign from the council citing misappropriation of funds by the mayor and victimization. He went on to say that the plight of the council workers was not addressed while some councilors were victimizing workers who seemed to oppose their misappropriating council property.

Furthermore, it was reported by the post that

“ Lusaka city council has been turned into a political circus making a mockery of accountable local government in a development that is likely to generate even more disillusionment among rate paying residents. Some councilors allege corruption, mismanagement and secrecy on the part of the council mayor. The mayor also accuses councilors of meddling into routine affairs. The councilors also alleged that the Town clerk was corrupt; that he spent K8 million adding a self contained bedroom to a council house in Nalubutu road in Rhodespark and that he bought a house at 337 industrial avenue worth K50 million for K4.6 million.” All the above serve to show how the mayor and some other council officials like the Town clerk have been so uncommitted in the development of a good local government system”

At the end of everything, it seems self aggrandizement takes full charge of everything. The office of the mayor, therefore, also attracts changes to be made to the Local Government Act as will be shown in the next chapter.

3.6 THE EFFECT OF THE PROBLEMS ARISING FROM THE POWERS CONFERRED ON THE MINISTER OF LOCAL GOVERNMENT AND HOUSING.

When it comes to the Minister of Local Government and Housing, it is clear that the minister has been given a lot of powers which run counter to democratic values and principles. To begin with, a minister does not get into office by any other means but by the fact that he is a politician. A minister is a political head of a ministry but the administrative head is a Permanent secretary. The danger with such a scenario is that the minister makes political decisions at the expense of being objective. The overwhelming powers of the Minister of local government and housing have been cited as the stumbling block to the realization of an efficient, effective and democratic Local government system. If any Local authority is to work efficiently with due appreciation of the view that it operates autonomously, no public officer should be granted powers to approve or overrule the decisions of the Council or else it defeats the whole purpose of decentralisation. As it is today, according to the Local Government Act of Zambia, the Minister of Local government and Housing has sweeping powers to approve Council budgets, Council by laws, power to suspend and dissolve Councils,, the Minister can by Statutory order amend or revoke any by laws by the Council, The Minister may by Statutory instrument, make regulations for any purpose, for which and to the same extent to which a council by or under the act, make by laws and standing orders.

As a result of the above provisions in the Local government Act, the Minister of Local government and housing holds the entire Local government system in his hands as his

powers range from revoking a simple by law to suspension and dissolution of a Council. What has been happening on the ground is that the Minister has been using these powers to assume total control of the Local government system in virtually all decision making matters of all the councils through out Zambia. What this supposes is that councils have been operating according to how the Minister would like them to be run and not according to the councils own decision that know what really affects their Local Communities on the ground. As a result, there is no local government to boast about. The local government seen today is that of delegation where the government merely delegates certain functions to lower organs while decision making remains with the Central government through the Minister of Local government and housing. However, the ideal form of Local governance is embraced in the concept of devolution. Where exclusive decision making is granted to the local authorities thereby granting autonomy to the Local government system.

In Conclusion, it has been shown that our Local government system is faced with a lot of problems mainly emanating from the interventions by the central government through the Minister of local government system. Almost all the offices in the Local government system have shown traces of in efficiencies starting with the office of the Councillor to the office of the Minister of Local government and housing. As a result of the above, all the Councils have been hit by a financial crisis rendering them unable to perform and deliver their services to the Local communities. There is need for these problems to be solved. Chapter four, therefore, gives recommendations as to what really needs to be done if a viable Local government system is to be viable.

CHAPTER FOUR

CONCLUSION

4.1 INTRODUCTION

Chapter four gives the conclusion to the previous Chapters and gives recommendations as to the best way through which the problems of Local Governance in Zambia today can be solved. The authors recommendations will be preceded by the recommendations by the Mung'omba Constitutional Review Commission.

4.2 CONCLUSION

The Local Government System in Zambia has been wallowing in the doldrums. This mainly arises from the fact that autonomy has been compromised by the Central Government. The need for the Local government to operate autonomously is Indispensable in the modern world. This failure by the Local government Act arises from the fact that it confers massive powers on the Minister of local government and housing who represents the Central government. As a result, the Central government has found loopholes, which unfortunately, have worked to the detriment of the Zambian local government system. Furthermore, the Local government act has also proved to be inefficient in terms of the provisions governing the office of the Councilors, and has worked adversely for the local authorities operations of the Councils especially in

financial mobilisation, which is the core necessity for the smooth running of any institution. As a result, the local authorities have found it very difficult, if not impossible, in offering the services they are supposed to give under the local government act. There are a lot of garbage in the streets, Street lighting is an unknown Phenomena. Roads have unmentionable potholes. There is poor planning in the building of Infrastructure in the local communities as councils no longer have the capacity to carry out their duty as mandated by the Town and country planning authority. Streets are overwhelmed by growing grass and trees which have not been cleared for a long time because the Local authorities can no longer afford to employ more employees to clear the streets because they do not have enough money with which to sustain them and the Local authorities have only been reduced to collecting Levies in markets without providing reciprocal services to the People. Since these problems arise form lack of autonomy on the part of local authorities to operate independently, there is need to inculcate devolution of power so that the local authorities can deliberate on their own without external influence. Proffessor Muna Ndulo says that “Effective Devolution of power to local authorities entails the existence of local communities endowed with democratically constituted decision- making bodies and possessed of a wide degree of autonomy with regard to their responsibilities, the ways and means by which these responsibilities are exercised, and the financial resources required for their fulfilment. Devolution of power to local authorities has been recognized in many parts of the world as one of the corner stones of democracy,⁶⁰ In Zambia this autonomy is far from being realized for as long as the current Local government Act continues to be in place. The Current Local government

⁶⁰ Ndulo, m,(1999) The Democratic state in Africa The challenges for institutional building, P.31 Zambia law journal, p18.

 29/1/07

Act is counter to autonomy and there is , therefore, ardent need to have it reformed by repealing and amending certain provisions which have been inhibiting an autonomous local government system in Zambia today. The appropriate Legal framework should be devised in the name of the Local Government Act and other relevant statutes. In order to be effective, the appropriate Political environment and legal framework must be promoted and implemented without any undue delay. The legal framework must clearly include the separation between Government and Party politics giving autonomy to councils to raise their own revenue by deciding their own sources and the rates without any unnecessary but devastating intervention from the Central government, through the Minister of Local government and housing. Without doubt, if the Local government system is to be redeemed, the oppressive powers of the Minister of Local Government and housing will have to done away with. In particular, his power to suspend and dissolve Councils negatives the essence of decentralization of decision-making and democracy, which are key to development. A viable Local Government Act is Indispensable in the modern world.

4.3 RECOMMENDATIONS

The author appreciates the fact that this research was carried out at a time when the Mung'omba Constitutional Review Commission was mandated to collect submissions from the people of Zambia. The author respects the views of the Zambian People and to crown it all, the author is in total agreement with the report from the Mung'omba constitutional review commission serve for the fact that there are other provisions which

the Commission overlooked. Therefore, referring to the provisions of the recommendations from the Commission adds value to this dissertation.

4.5 RECOMMENDATIONS FROM THE MUNG'OMBA CONSTITUTIONAL REVIEW COMMISSION CONCERNING LOCAL GOVERNANCE.

The Mung'omba Constitutional Review Commission collected a number of submissions from the People of Zambia and according to their compilations they came up with the following recommendations,

- (1) Make provision for the system of local government in terms of objectives, structures, functions, financing and Devolution from the Central government of some powers, functions and resources to appropriate local government structure.
- (2) Make provision for adequate and predictable financing of local governments through appropriate resource mobilisation and allocation policies and other measures including directing collection of local taxes.
- (3) Establish an independent commission to determine sharing of resources between Central government and Local government.
- (4) Provide that Mayors and Chairpersons of Councils shall be elected by Universal Adult suffrage for a term of five years.
- (5) To provide that the term of office of Councilors shall be Five years.
- (6) Provide for the Principle of equal Gender representation.
- (7) Provide for recall of non-performing Mayors and Councilors and;

- (8) Provide that the office of Provincial Deputy Minister shall be at the same level as Cabinet Minister and Re-designate the office as that of the Provincial Minister.

The Recommendations made by the Constitutional Review commission are very sound and the author entirely agrees with the Commission. However, there are certain areas, which the Commission did not address itself to in order to, secure for an ultimately efficient and effective Local government system. Therefore the Author adds the following recommendations to those already espoused by the Constitutional Review commission.

- (1) Scrapping off the Sweeping Powers of the Minister of Local Government and Housing as regards Suspension, Dissolution of Councils, Approval of Council budgets and By- laws.
- (2) Providing for a Minimum Educational Requirement for Councilors.
- (3) Constitutionalising funding of Councils by the Central Government.
- (4) Providing for a Comprehensive policy on Infrastructure factored in the National budget and;
- (5) Redefining the Composition of Councils.

4.6 DEVOLUTION OF POWERS

Devolution of powers by the Government is inevitable, as it will facilitate for the autonomous functioning of the Local authorities. Devolution entails the transfer of some

powers and authority, functions and resources by legal and Constitutional provisions to the lower levels. The transfer is within formal political structures and institutionalized by Constitutional means. For example, When the Central Government transfers some of its authority and powers to democratically elected Councils, local authorities or regional governments empowering them by law, to determine local taxes, raise their own revenue and decide on how to use it. Under this form of Decentralisation, leadership is accountable to the local population through a system of elections and this is the beginning point of an autonomous Council. The word “autonomy” simply means the independence in decision-making and in the execution of such decisions by Councils within the framework. Devolution ensures technical efficiency and effectiveness in service delivery and enhances Popular participation. It entails that Power given to Local authorities is extensive without any interference from the Central Government. Once a proper and well-defined system of devolution is effected, the current problem manifested in the gross interventions by the Central government through the Minister of Local government and Housing will be vanquished. The Minister will not have an upper hand in Local governance as he will no longer be empowered to approve Council by laws thereby having influence in determining the levies to be charged because they only have legal backing through by-laws. Approval powers of the annual budgets will be a matter of the past. Revocation of Council by- laws will be unheard of suffice to add that the statutory powers of the Minister and the Republican President that tend to undermine independence of local authorities will cease to exist. It must be stated, however that Devolution can only be achieved not by mere rhetoric, but by a comprehensive legal framework. Therefore, the Local government Act should provide for such a mechanism.

After comprehensively scrutinising the Provisions of the Local government Act, it is only logical that some provisions of the local government Act should be repealed because they are a menace to the achievement of a Devolution Strategy. Henceforth, the powers required to amend or revoke council by laws⁶¹ should be repealed. The provision relating to the Power to determine the charges or to rate levies in respect to owners rates and personal levy⁶² should also be repealed. Another provision that needs to be repealed relates to the requirement for Ministerial approval to dispose of Council Property⁶³. The requirement to approve Councils' estimates of Revenue and Expenditure⁶⁴ should also not be an exception. The requirement for Ministerial confirmation of council by laws⁶⁵ is also a menace to devolution and should also be repealed. Lastly and very important, the requirement for Suspension and dissolution of the Council and appointment of a Local government administrator to manage the affairs of the Council single handedly should also be repealed.⁶⁶ Once the above has been done, coupled with a comprehensive legal framework, our Local government system will be redeemed from interference from the Central Government.

4.7 REQUIREMENT FOR MINIMUM EDUCATIONAL STANDARD FOR COUNCILORS.

It is a notorious fact that Councilors have proved to be of very low calibre following the discussions in the previous chapters. The autonomy of Councils can best be seen to be

⁶¹ The Local government act, Section 83.

⁶² Ibid Section 70.

⁶³ Ibid, Section 67.

⁶⁴ Ibid, Section 39(1).

⁶⁵ Ibid Section 82.

⁶⁶ Ibid, Section 88.

proliferous if they are constituted by literate Councilors who are able to read and write and appreciative of the current technological know how. Since the local government act confers the power as to the qualification of councilors on the Local government Elections act, the Local government Elections Act should be amended to include for a minimum educational requirement for Councilors. The Transparency International Zambia saw the need for this and comments that “ This provision would, among other things, make it easy for councilors to appreciate their roles, improve the quality of debates in, and policies emanating from Council Chambers.”⁶⁷ It is , therefore submitted that the Minimum Educational Qualifications for Councilors in urban areas be set at Grade twelve or an equivalent while that for Councilors in Rural areas be set at Grade nine or an equivalent . The difference in Qualification between the Rural areas and Urban areas lies in the view that there are more People who attain grade twelve in Urban areas while grade nine is an average educational attainment for the rural people. Furthermore, these two classes of people are faced with different Social, economic, legal and economic exposure.

4.8 THE COMPOSITION OF COUNCILS

It is difficult to intelligibly construe why a Member of Parliament should be part of the council. The argument forwarded has been that it is easier for the Member of parliament to table the problems the councils are experiencing in the National assembly. However, a Member of Parliament can still be alerted about the problems the Councils are

⁶⁷ Transparency International Zambia, Making Local Authorities more effective, Transparent and Accountable, February, 2003. P 2.

experiencing without necessarily being a member of the Council. The reason behind this argument lies in the quest to ridding the Councils of any Political misunderstandings. For a big Council like Lusaka City Council, which may be comprised of many Members of Parliament, it may be a problem where they come from different political parties as their argument may not be issue based but rather purely political as each party focuses on a different development ideology. Moreover, the Members of Parliament would want to overwhelm Councilors in terms of Debates as Councilors usually consider them as their superiors. If Members of Parliament were removed from Councils, there would be free debate amongst Councilors and devoid of political interference. Therefore, Section 9 (1)a of the Local Government Act should be repealed to facilitate for the above mentioned.

4.9 THE TERM OF OFFICE FOR MAYORS, COUNCIL CHAIRPERSONS AND THEIR RESPECTIVE DEPUTIES.

Without doubt, the Local government Act, as regards Section 16(2) and (3) has proved to be inefficient by restricting the term of office for Mayors to one year. The argument, here, is very clear and revolves around the pivot of the fact that the term of one year only is not enough for a mayor to be able to come up with policies and be able to implement them. Any reasonable person who heads a council has his own plans on how he intends

the council to perform for the good of the local communities. Unfortunately the one-year period only leaves councils with a lot of unfinished programs with outgoing Mayors leaving with wishes of staying long in office in order to complete their unfinished programs. Furthermore, It is difficult to hold the office of the Mayor accountable over a period of time as fraudulent activities are discovered long after he left office and may be three mayors held office in between thereby making it difficult to institute investigations as all those who held that office would have to be involved. In certain cases, all Mayors in a council exhibit the same trend of Corruption hence they try to cover the trails of the past office bearers in order to protect their interests. As it is today, under the current Local Government Act, it is possible to have Five Mayors or more, in five years at a particular council making transparency and accountability difficult to attain. As a result, it is recommended that the term of office for Mayors, Council chairpersons and their respective deputies be extended to five years to run coterminous with the Parliamentary and Presidential elections. It follows that the office of Mayor and Council Chairperson must be subjected to popular vote based on universal adult suffrage. This would encourage prominent people of our local communities with expertise in local governance to take part in running the Local authorities thereby making the Office of councilor accountable to the people who voted for them into office rather than pledging allegiance and loyalty to Councilors.

4.10 CONSTITUTIONALISING FUNDING TO THE COUNCILS BY THE GOVERNMENT

It is recommended that the provision relating to the funding of the Local councils by the Government should be entrenched in the Constitution so that it becomes very difficult to violate it by the Government. Since the Constitution is the supreme law of the land and no one is above the law, the local authorities would be able to sue the government where the government fails to honour their Constitutional obligation. This entails that the local authorities would be able to claim for funds from the government as of right. As it is presently, the local authorities can easily ignore their obligation under an act of parliament because the ramifications of not abiding by an act of parliament are not as stringent as those for violation of Constitution. When government officials are elected or appointed into office, they swear on oath to uphold the Constitution and failure to do so can lead to impeachment of the President or a ground for dismissal from office of a Minister by the President. The entrenchment of a provision of funds to local authorities by the government in the constitution will surely instill certainty in the way funds will be remitted to the Government. This will not be the first time this will be happening in the world or indeed in Africa because it is currently happening in the neighboring Namibia as already shown in Chapter three. This is reality as the Namibian Government has shown consistency in funding the local authorities making the process of funding certain and predictable. This gives an opportunity to the councils to be able to formulate its programs without uncertainty. The constitutional provision should include the time frame and the minimum amount of funding to the councils, which can be adjusted depending on the inflation levels.

BIBLIOGRAPHY.

- Cross, C.A. (1971). Principles of Local Government law. London: Sweet and Maxell.
- Dunns W. E (1998) The Local Government Systems Of the World, London W and
Printers.
- Evan B, (2001) Grassroots Participation in the Local Governance of the day, New
Delhi, Khagal Publishers
- Friedmann, W. (2002) Legal Theory. Delhi: Universal Law Publications (PVT) Ltd.
- Hicks, U.K. (1961). Development from below-Local Government and Finance in
Development Countries of the Commonwealth. London: George Oxford Clarendon
Press.
- Hinden, R. (1950). Local Government and the colonies. George Allen and Unwin Ltd
- Hawkesworth, Nigel.R. (1974. Local governance in Zambia. Lusaka: Lusaka Lusaka City
Council
- Jackson, R,M (1965). The Machinery of Local Government. London: Macmillan.
- Maud J (1953) Local Government of England and Wales London : Oxford
Press
- Vosloo W. B. et al (1974) Local Governance in Southern Africa. Cape Town and
Academia (PTY) Ltd.
- Schlyter, A. (2002) Empowered with Ownership: The Privatisation of Housing in Lusaka,
Zambia. Lesotho: The Institute of Southern African Studies.