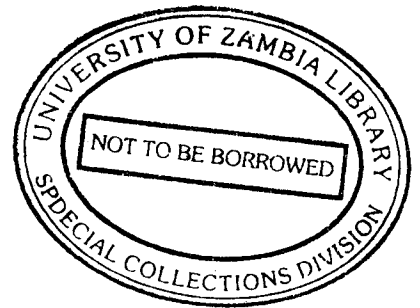


DECENTRALIZATION IN THE LOCAL AUTHORITIES IN ZAMBIA. WHAT IS THE WAY FORWARD? A CASE STUDY OF LUSAKA CITY COUNCIL



BY

**MUMBI MUBANGA
(99312697)**

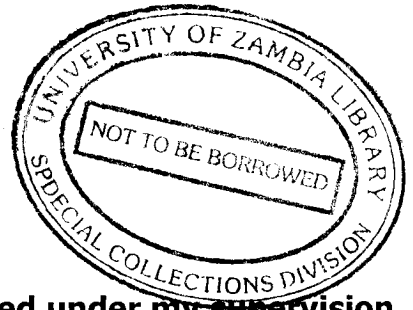
**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA
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THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B)**

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DECLARATION

I declare that the contents of this dissertation are my conceived ideas, based on my research findings. With due acknowledgements given to the various scholars and associates and any person who contributed their ideas to the success of this work. I nonetheless remain the owner of this work.

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DEDICATION

This study is dedicated to my beloved son Nyambe Chocho who was born on the 15th September 2005 the very year of the study. It was not easy, but to God be the glory I managed. I also wish to dedicate this study to my parents Mr. and Mrs. Mubanga for the encouragement and support that they tirelessly rendered to me during the whole period of my study at the University of Zambia. They are a great source of inspiration and may God continue giving them the best of health that they deserve.

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PREFACE

The Government of a modern society is an enormous task involving the social economic and political aspect of the inhabitants of a particular country. For this reason most countries find it necessary to decentralize their administration. Such decentralization can take a number of forms, for example; functional decentralization in which a particular service or function is hired from the Central Government to a semi-independent organization referred to as “quango” (quasi-autonomous non-governmental organization)¹. Another form is regional devolution; which involves the limited transfer by central government of specific functions with all of the administrative, political and economic attributes that these entail, to Local (i.e. Municipal) government which are independent of the centre within a legally delimited geographic domain.

Local government is an example of such devolution, but on a local basis. Local government is self government involving the administration of the local community. Although subject to the central government in many ways, it must possess a considered amount of responsibility and discretionary power. The Zambian Local Authorities have over the past 40 years undergone changes in their internal organization. Confidence and optimism, sustained and reflected in their expanding budgets, have given way to reduced spending plans and reduction in service provision. They are currently experiencing a longer term and conspicuous threat which can be described as “delocalization” meaning;

¹ Byrne (1881) Local Government in Britain, p. 1 - 2

central government is always concentrating its power at the centre and not devolving it to local levels. This is evidenced by loss of resources to adequately deliver social services² This is caused by inter alia, drainage of Council revenue bases through changes in taxation policy i.e., through macro-economic reforms and privatization; ‘penetration’ by Central Government of the District and Sub –District level (the establishment of Constituency Development funds committee, the presidential housing imitative to win general elections in 1996; and the new posts created by presidential order in 1998; the District Commissioner.

The primary objectives of a decentralized system are to facilitate the efficient delivery of services and to promote accountable and transparent governance, which responds to and benefits all sectors of society, particularly the poor and which strives to eradicate all forms of exclusion. Thus the need for Local Government arises together with the need to bring the government closer to the communities³.

² Ministry of Local Government and Housing (2002) Report on Decentralisation and Local Government, p.17.

³ “government Decentralisation in Comparative Perspective in Developing Countries”, International Review of Administrative Science, Roundinelic (1998) p.47

CHAPTER ONE

GENERAL OVERVIEW

1.0 INTRODUCTION

National states are often prompted to launch a Decentralization Policy when realities on the ground show that over centralization of power, authority and resources under the control of the central government does not give rise to desirable development in the political, economic including administrative domains. Zambia is not an exception to this trend. Decentralization may therefore be instituted as a reform measure aimed at improving performance in the art of governance, economic management and the overall administration of the country. It is often a constitutionally enshrined element mainly under local governance, where the local populace become the key players in the management of their own affairs and make decisions that suit the local conditions and needs.¹

Decentralization may be understood as dispersal of power, authority and resources from the centre to the field. By the term 'centre' reference is made to the national capital, for example Lusaka, where elected policy players exercise executive power and authority through the institution of cabinet located at the centre. On the other hand, the term 'field' may refer both to the geographical area and the people inhabiting it away from the immediate influence of the central authorities. Thus communities in the provinces, districts, sub-districts and villages are some of the illustrations of the term "field."² The government of Zambia Decentralization paper defines the concept of decentralization inter alia as:

¹ B. Smith, *Field Administration An Aspect of Decentralization P2 (1967)*

² *Ibid*, P. 3

... 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 is institutionalized by constitutional means. For example, 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 determine local taxes, raise own revenue and decide on how to use it. Under this form of decentralization leadership is accountable to the local population through a system of elections;

It is in light of the above definition of decentralization that the process will be analysed whether decentralization in Zambia has remained inspirational or has attained the intended objectives. The government admits in the policy paper the absence of decentralization, when President Mwanawasa says:

“Through this policy, the long term vision of government is to achieve a fully decentralized and democratically elected system of Governance characterised by open, predictable and transparent policy making and implementation process at all levels of the public service, effective local community participation in decision making and development administration while maintaining sufficient linkages between central and local government...”³

The need for and commitment to administrative decentralization and political devolution in Zambia has been strongly articulated many times in discussions and comments by government

³ The government of the Republic of Zambia, National Decentralisation’ Policy-Towards Empowering the people – Page (i)

representatives of the New Decentralization Policy. Actual progress on formulating a clear policy on decentralization has been slow with the result that there has been little actual decentralization with respect to restructuring of authority between central and local government. It would appear that rather than devolving power to local government. The central government has sought to strengthen its authority over the sub-national government. In fact there is evidence of a strong re-centralizing tendency during the past two decades for example, although rural and urban areas are normally governed by elected councils and maintain their own cadre of staff, the authority exercised by these bodies is limited, by the Minister of Local and Housing retaining power to overturn council decisions. Central government has also sought to tighten its political grip by creating the post of District Administrations (DA) to coordinate all government activities at the district level.⁴

With such failings of the modern state, the framework for decentralization has yet to be decided, important reforms are needed in the local government system. Reformers on decentralization and local governance such as; Jean Paul Faguet advocate for the decentralization of political authority and public resources to sub-national levels of government as a general cure for the ills of corruption, clientelism insensitive bureaucracy and political alienation operating through the reduction of government to more manageable dimensions. Thereby making it responsive and accountable to the governed.⁵ The extent to which the local community effectively participates in the management of their own affairs depends in reality on the level of their power and independence to make decisions and implement them through their respective local authorities. Consequently the decentralization of local authorities to give them such power is cardinal so as to

⁴ Government of the Republic of Zambia, Report on Decentralization and Local Government, PP (xii)
⁵ J.P. Faguet, Decentralization and Local Government Performance Pg. 1 December, 1997

ensure they deliver the appropriate economic, political, social services to the Zambian community effectively and efficiently.⁶

The question which is analysed in this study is how decentralization can be fully realised in the Zambian Local Government System and how it can help improve the performance of local authorities. Therefore, can and should Laws on decentralization be introduced or existing laws revised in order to enhance and strengthen the powers and functions of local authorities to give them more power to make independent decision in administering local affairs according to local needs? Or perhaps there is need to revise and enhance the administrative, financial and political capacities of councils in delivery and provision of social services.

1.2 STATEMENT OF THE PROBLEM

Local government is essentially a method of getting various services run for the benefit of the community to make decisions that suit the local conditions and critical needs of the local community. Local Government is a complex system in that local authorities are required to perform a number of functions that ensure the provision of various services to their inhabitants in the most efficient, economical and effective manner. These services that local residents expect councils to provide include among many others; safe and clean environment, education, shelter, health, roads, agricultural services to mention but a few. In order for Local Authorities to perform their functions effectively they should be given a great measure of independence in decision making and administration of local affairs with little or no interference at all from Central Government. One effective method of ensuring for effective performance of Local authorities is through decentralization. Decentralization has been defined according to the Zambian Government Policy

⁶ Ibid, at p. 2

Paper on Decentralization;⁷ as the transfer of responsibilities, authority, functions as well as power and appropriate resources to provincial, district and sub district levels.

A lot of factors have hindered the effective performance of local authorities which has resulted in very poor delivery and provision of services to the Zambian Community. Firstly, the historical background of developing a viable and vibrant local government administrative system at the grassroots level has been difficult because central government has always sought to centralize its power rather than devolve this power to local levels. For instance, the central government has often made partisan appointments such as district administrators to coordinate government activities at district level mainly due to political expediencies. Such officers perform their duties mainly to appease the appointing authority rather than serve the interests of the local community.⁸ The district administrators are now known as district commissioners. Secondly government policies have weakened local government financially and, administratively. Financially, the Local Government Act provides that; government shall make specific grants to the council for water sanitation, health services, fire services, road services to mention but a few.⁹ Among these only grants for fire services and, road services are so far being provided to a few councils, (mostly rural councils) the rest of the grants have never been provided. Further District Councils currently receive an average of between 1% and 3% of their total funds from Central Government; these inadequate funds are often late in arriving. Councils also face crushing burdens of arrears of pay, pension contribution and retrenchment payment for their employees. They have also been

⁷ See Supra Introduction, PP 2

⁸ Hicks, Local government and Finance in Developing Countries of the Common Wealth (1961) at PP 20-21

⁹ Section 45 (2) a-g of the Local Government Act, Cap 281 of the laws of Zambia.

deprived of many former powers to mobilise resources¹⁰. And despite the fact that rates on commercial and domestic properties are the largest source of councils revenue, councils are restricted in imposing rates and personal levy without the prior approval of the minister¹¹. This has reduced the expansion of council's revenue prospects.

Other problems that local authorities face are; poor managerial skills due to lack of appropriately qualified personnel. They also have overstaffed manpower who are unable to deliver services adequately and efficiently. Interference from central government with council operations has caused further problems. For example despite the fact that councils are empowered by the Local Government Act to provide health and education the central government has created boards to transfer this power to. In addition the Laws and regulations on Local Government in Zambia are flawed in many ways by various omissions and ambiguities. For example the selection process in Zambia used to choose candidates for election as councillors seem to have failed to produce representatives who are rooted in and broadly representative of their communities. This is revealed by the widespread and damaging popular cynicism about motives and capacities of councillors, which tends to label them as individuals solely in pursuit of personal advantage. Councillors in return respond with disillusion and passivity. This is mainly attributed to the fact that councillors do not possess a minimum educational requirement which could assist them understand ideal local government policies.

¹⁰ For example the revision of Motor licensing function to government, most grants have been withdrawn by government i.e. Unit grant (a rent subsidy) and the wide exemption on rateable properties under the rates Act, No 12 (1997)s

¹¹ Section 70 (2) Act, Cap 281.

The Local Government Act, Cap 281 provides for a number of permissive powers that council must perform while, some of these powers are made mandatory by other statutes¹² The laws also confer a lot of discretionary powers on the Minister of Local Government and Housing over administering of local affairs such that local authorities in reality do not exercise adequate independence in decision making and execution of programmes in accordance with local needs. For instance section 88(1) of the Local Government Act empowers the Minister of Local Government to suspend a council which is democratically elected, by reason of the refusal or inability of a council to discharge all or any of its functions adequately. Such powers are contrary to the principles of democracy which are vital for good governance as one man or woman is given the power to over-rule the wishes of the majority of the local people.¹³

The problems outlined above have impacted negatively on the general operations of the City, Municipalities and District Councils. These problems have also frustrated many development initiatives and has placed government efforts in reducing poverty through the poverty Reduction strategy paper (PRSP) in doubt. The government of Zambia has however embarked on a National Decentralization Policy aimed at improving the operations of Local Authorities and other areas of the national economy. The objectives of the National Decentralization Policy are the most recent attempts at achieving decentralization of local authorities through devolution of some powers and functions with matching resources to councils. But it remains to be seen whether in practice the policy will produce the type of decentralised Local Government administration which can be referred to as devolution. Hence the decentralization policy must uphold the dignity of the local community by espousing the needs and aspirations of the Zambian people and ultimately

¹² For example section 62 (4) of the Local Government Act grants permissive powers to Councils while Section 65 and 66 of the Public Health Act, Cap 295 gives mandatory owners to Councils.

¹³ Hicks, Local Government and finance in Developing Countries of the common wealth (196) PP 22

contribute to the economical and social development of the nation. It should not like other government policies remain on the shelf gathering dust but must be implemented within the shortest possible time.

1.3 IMPORTANCE OF DECENTRALIZATION

The governance of a modern society is an enormous task. In Zambia half the nation's income flows through the hands of government, meaning half of the labour force are employed in the state sector¹⁴. Government also has a number of functions to perform, among these the most important being maintenance of law and order. Therefore institutions such as Local Authorities off-load responsibilities from Central government and the civil service, who would otherwise be overburdened with work. Government is therefore, big business. For this reason most countries find it necessary to decentralise their administration. In other words to arrange for services to be provided and decisions to be made away from the centre or capital and instead be made locally. Thus local government exists for the purpose of working in partnership with government in administration of public affairs in each locality. However, for local government to carry out its functions effectively it needs to possess freedom and initiative which justifies their being described as bodies exercising local self government. In other words they need to be autonomous bodies, free to decide for themselves questions of policy affecting the localities administered by them. This can be attained through a decentralised local authority which can take initiatives and experiment: they can seek a variety of solutions to society problems. They may innovate and pioneer new services or methods of administration and successful ideas may be spread to other authorities. For example decentralised local authorities in Britain have originated schemes such as devolved

¹⁴ Due to Privatisation, most industries laid off their employees leaving a sizeable and manageable workforce in the private sector while government remains the biggest employer.

budgets to schools, free birth control, comprehensive education, mobile libraries, advice centres, special housing pensions, free bus travel to mention but a few¹⁵.

Therefore decentralisation in local authorities, contributes a great deal to nation development.

1.4 BRIEF HISTORY OF DECENTRALIZATION IN ZAMBIA

At independence, Zambia inherited a tradition of Local Government, based upon principles of English Municipal authority and British colonial rule. The historical background to decentralization in Zambia can be divided into three stages as follows:

1965 – 1980: The Local Government system that operated in Zambia during this period was based on the Local Government Act of 1965, which came into operation on 1st December 1965. This system was adopted from the former colonial master; Britain. This system was suitable to a multi party system of government, which Zambia embraced at independence. The 1965 Act, provided for four types of Local authorities namely; City, Municipal, Township and Rural councils. The president was empowered to confer the title of “City” on a deserving Municipal Council. The Municipalities and Townships and Rural councils were divided into wards, each of which elected a single Councillor who served for three years. However, the Minister responsible for Local Government was empowered to appoint persons to a Council, provided that the number of appointed Councillors did not exceed three. For each Municipal and City Council, there was a Mayor and Deputy Mayor, and for each rural and Township Council there was a Chairman and a Vice Chairman, elected annually by Councillors amongst themselves. Town Clerks and Council

¹⁵ Byrne (1990) Local Government in Britain Pg.7

Secretaries constituted the executive wing of the Council for Cities, Municipal and rural councils respectively¹⁶.

Most writers on Local Government have alluded to the fact the period 1965 to 1972 was the most stable period in local government service delivery¹⁷. During this period, electricity distribution was controlled by the Local authorities and yielded substantial surpluses, which helped finance capital projects and general development. Local Authorities also received steady and generous Central Government grants for community development such as housing, roads, fire services, police and health services. This stable and predictable flow of resources enabled Local Authorities to plan and implement adequate service delivery programmes and pertinent infrastructure development.

However, this trend began to decline between 1973 and 1980 when the Local Government financial base began to deteriorate. The major factors among many other was the withdrawal of several grants such as police, health and fire grants owing to general economic difficulties that the country was facing. The withdrawal of long term capital had disastrous consequences especially on the local authority's capacity to maintain essential services such as water supply to increasing urban populations.¹⁸

1980 – 1990: In January 1980, the government enacted the Local Administration Act number 15 of 1980 to replace the Local Government Act of 1965. The major reason given for the repeal of the Act was that it had proved ineffective because of lack of integration and co-operation between different levels and institutions, such as the state and administration, party organs and local councils. The 1980 Act had three principal objectives. These were to;

(i) decentralise power to the people

¹⁶ The Mungomba Constitution Review Commission, p. 487.

¹⁷ A.J.F Simmance, Hawkerworth, Local Government in Zambia, p.2 (1974).

¹⁸ *ibid*

- (ii) ensure an effective integration of the primary organs of local administration in the district;
and
- (iii) to enable district councils to play a more direct and substantial role in the development process than they had done in the past.¹⁹

Central and local government administration was merged with party administration, under one party rule. By merging party, local government and district administration it enhanced supremacy of the party as opposed to facilitating the co-ordination of development programmes. District governors were appointed as chairperson of the councils which undermined democratic governance in civic politics. Central Government functions were transferred to the district level without matching resources. For example, the registration of villages, construction of feeder roads and water supply schemes were all transferred to local authorities without matching resources. The integrated district administration system, resulted into bloated administrative structures at all levels, with most key positions being filled by party cadres resulting in ineffective service delivery and wastage. It is on record that this is the period when the performance of local government worsened.²⁰

1991 – 2001: In 1991 with the introduction of multi-party democracy from the one party state the new government Movement for Multiparty Democracy, enacted a new Local Act (the Local Government Act of 1991) to replace the 1980 Act. At National level, the Ministry of Decentralisation was transformed to the Ministry of Local government and Housing. This ministry was responsible for provincial and district administration. In 1995, the government introduced the National, Provincial and District Development Coordinating Committees to coordinate activities at

¹⁹ A.J.F Simmance, Hawkerworth, Local Government in Zambia, p.1 (1974).

²⁰ Republic of Zambia, The National Decentralisation Policy “Towards Empowering the people” (2002) pp3-4

respective levels. At this phase centralisation of authority continued to be a bottleneck for effective decision making at lower levels for example, the provincial heads of departments were controlled from the centre and their budgetary allocations determined from there. The District Development Coordinating committee (DDCC) chaired by the Town Clerk/Council Secretary did not perform to Governments satisfaction. The major reason was the lack of legal framework to back the operations of the DDCC and lack of involvement of communities in development programmes.²¹

The councils under the current law are composed of elected councillors representing wards, elected members of parliament in the district and two representatives of the chiefs in the district appointed by all the chiefs in the district. There is a Mayor and a Deputy Mayor for City and Municipal Councils, elected by the Councillors from amongst themselves. These officials are elected annually and can only hold office for a maximum of two consecutive terms. The councillors constitute the legislative wing while the appointed officials headed by the Town Clerks (City and Municipal councils) and Council Secretaries (for District Councils) constitute the executive wing of councils. The councillors represent their wards and are responsible for making and supervising the implementation of policies. The appointed officials are responsible for rendering technical advice to the councillors as well as implementing policies²².

The minister of Local Government and Housing, councillors and the appointed officials are the key actors in the local government policy process. The minister is responsible for laying down broad policy guidelines for the bureaucrats in the ministry to implement, and is accountable to parliament and the president for all acts and omissions in the ministry²³.

²¹ Ibid at p.2

²² The Mugomba Constitutional Review Commission Draft Report, p.488

²³ Ibid at p.489

CONCLUSION

In Zambia no serious attempt at devolution has been made to date. Councils in Zambia have been operating under very unfavourable circumstances to the extent that they have lost the confidence of the public whom they are supposed to serve. Administrative reforms made in the past can only best be described as an attempt at deconcentration. The objectives and provisions of the National Decentralization policy are the most recent attempts at achieving decentralization through a devolved system of Local Government. It therefore remains to be seen if in practice the policy will produce the type of decentralised Local Government administration which can be referred to as devolution. It is the objective of this research to establish whether or not the policy and other efforts by government to implement a decentralised local authority will in reality improve the performance of Local authorities for the better.

CHAPTER TWO

THE CURRENT PERFORMANCE OF LOCAL AUTHORITIES IN ZAMBIA

2.0 INTRODUCTION

Local government as discussed in the first chapter deals with matters that concern the inhabitants of a particular district, town or city and which it is thought desirable should be administered by local authorities subordinate to the central government²⁴.

Local government may thus be defined as;

“A body of persons elected or legally appointed, have independent powers to exercise jurisdiction over a defined geographical area to make the good rule and government of the area and the provision of services to such an area.”²⁵

They are however other definitions as to what local government means and interestingly all school agree that for development to be democratic, the grass root must participate in the process. Other scholars define local government as; a form of government whose legitimacy depends on the consent of the governed. This is also linked to the principle of participatory development, in project planning and implementation and decentralization of authority to local and regional centers where possible²⁶.

They are therefore certain activities which require local attention and those that require national attention. For instance central government decides policy on a national basis and gives this policy effect by passing enabling legislation to support such policy. i.e. central government decides on

²⁴ Hicks Local Government and finance in Developing countries of the common Wealth (1961) at Pg 4

²⁵ Hart (1968) Introduction to the Law of Local Government and Administration Pg 6

²⁶ The National Mirror, 22nd February, 2005

the standards of services and then, by law authorises, local government to provide these services. This does not however mean that local government is merely an agent of central government. The whole essence of successful democratic local government is the degree of discretion (autonomy) it is given to act in what it considers to be the best interests of the citizens it represents²⁷.

2.1 THE CURRENT LOCAL GOVERNMENT SYSTEM

The present Local government system in Zambia is established by the Local Government Act, Cap 281 of the Laws of Zambia, this is the principal Act governing the operations of the Local authorities. The Local Government Act, 1991 provides for an integrated three tier Local administration system. Under the present system, there are three types of councils namely City, Municipal and District councils which is basically a return to the system which existed during the 1965-1980 period. It is based on universal adult suffrage.²⁸ The ruling party is delinked from local authorities and there is a separate district administration headed by the District Commissioners appointed by the President. The office of District Commissioners is not covered by any legislative instrument. The District Council Secretaries or Town Clerks who are principal officers of the councils, have no legal or financial powers over the line ministry representatives and have apparently been seriously marginalised since the appointment of District Commissioners previously known as District Administrators²⁹.

There are 73 Councils established throughout Zambia in all three categories of councils. District Councils in the rural areas and city or Municipal Councils in the urban areas. These are however

²⁷ Jean P. Faquet, *Decentralization and Local Government Performance*, 16-18 December 1997, London

²⁸ See Article 109 (2) of the constitution of Zambia, Cap 1 of the Laws of Zambia.

²⁹ District Commissioners are appointed by the President they were firstly appointed by President Fredrick Chiluba second Republican President as District Administrators

no sub-District Local government bodies either elected or delegated, although there is a plethora of ward, area and village consultative committees created either by the activities of the district sector offices, or adhoc by donor organisations and projects. Because of the lack of sub-district Local government the sub-district such as villages are usually marginalised when it comes to Local representation and development³⁰.

There is no major difference between City, Municipal and District Councils in terms of legislative provisions. The difference is essentially related to location and to some extent, scale and diversity of activities. In this regard, City Councils are usually larger in organization structure and the services provided, generally corresponding to the size of the served population. Municipal Councils occupy the middle range in terms of the magnitude of their infrastructure provision and the population coverage. The District Council is the smallest in the hierarchy. It is usually located in a peri-urban region, and its coverage usually spans across the district. Although its physical coverage may sometimes be larger than that of a city of Municipal council, its population is usually separately scattered and smaller³¹.

The Local Government Act of 1991-95 does not clarify which functions are allocated exclusively to Local Authorities and which ones are allocated to central Government, line ministries or which functions might be shared. It appears that there is some duplication between functions that are supposed to be performed by councils and those to be performed by line ministries at the district level especially in agriculture, health and education. For a further illustration see Table A, under the

³⁰ Ministry of Local Government and Housing (2002) Report on Decentralization and Local government, Pp 6-7

³¹ Ibid at Pp 7

appendices page, showing the various functions performed by councils and the sharing of these functions between Central and Local Government.

Councils also have several powers which include the powers: to make by-laws; impose fees, levies and charges, borrow money, enter into contracts, make standing orders; hire and fire staff, make investments' prepare and adopt annual estimates, and institute legal proceedings. Most of these powers are subject to the approval of the Minister of Local Government and Housing. Councils are generally given such powers and functions because they are better placed to translate government development programmes into concrete action on the ground as they have the requisite administrative structures at the grass root level³². What is however, lacking is the capacity for councils to carry out these functions due to various financial, administrative and political constraints. These will be discussed in detail under paragraph 2.4 of the dissertation.

2.3 REVENUE SOURCES FOR LOCAL AUTHORITIES

The funding sources for local authorities include the following: rates from property owners (property taxes); personal levies on formal sector employees; licences trading and liquor licensing; fees charges – market fees, and parking fees; national government grants. Other levies are imposed through by-laws, such as fish levies, agriculture produce levy. Some district councils have other taxes including personal levies and property taxes (the two largest sources) levies, for cattle, maize, timber, grass, potato, sweet potato, hide, reed mat, mango and chicken. However, these levies are not adequate enough to sustain the operations of councils, mostly because the levies charged are very low³³. And even if locally these sources of revenue could be easily exploited, this

³² Section 67 of the Local Government Act, 1991

³³ Ministry of Local Government and Housing (2002) Report on Decentralisation and Local Government, p.26 to 27

largely depends on the approval by the Minister of Local Government and Housing, by-laws and external borrowing³⁴.

2.4 WIDELY RECOGNISED DIFFICULTIES IN THE LOCAL AUTHORITIES

It is not in doubt that the present Local Government system is facing severe difficulties. This is recognised by most scholars in Local government and government documents on governance. For instance a senior civil servant made a comment on in a local paper that:

“the Local Government Act, Cap 281 of the Laws of Zambia gives councils, the legal right to do just about everything, but in practice they hardly do anything³⁵.”

Further the former Minister of Local Government and Housing Sylvia Masebo talking about grassroots participation in democratic governance said:

“The objectives of decentralization in Zambia stem from the need for the citizenry to exercise control over its Local affairs and foster meaningful development. Decentralization could not operate in a vacuum unless there was good governance at the local level. Currently councillors enter council chambers with pocket agendas without consulting and sitting with the

³⁴ Most revenue sources for local authorities are subject to the Minister’s approval for example Rates, Section of Cap 281 of the Laws of Zambia Most revenue sources for local authorities are subject to the Minister’s approval for example Rates, Section of Cap 281 of the Laws of Zambia

³⁵ Crook and Manor (2001) “Local governance and Decentralization in Zambia,” Draft Final Report, Pp17.

community based organisations and resident development communities which should be avoided.....³⁶

Nawakwi a former minister of finance now forum for Democracy and Development President admits that her former government headed by President Fredrick Chiluba made mistakes by concentrating power at the centre of Government, a situation which did not benefit grassroot communities³⁷.

Local authorities now play an extremely limited role in service delivery and development at the district and local levels. It has been estimated that they are providing only 50-60% of the service needs of their local citizens. One of the main explanations of the current crisis of local government is that the Government's own action over the past ten years have failed to live up to the aspirations contained in its own official policy commitments. Most notably the Poverty Reduction Strategy Paper (PRSP) and National Capacity Building Programme for Governance in Zambia which are landmark documents on governance. Government policies on the contrary, have tended to weaken Local government financially, administratively and politically³⁸.

2.4.1 FINANCIAL CONSTRAINTS

The financial resources available to the Local Councils in Zambia are extremely limited and have been declining over the past decade. There are three main explanations for the ever increasingly serious financial weakness of Zambian Local governments namely:

³⁶ The Post Newspaper, 11th October 2004

³⁷ Ibid

³⁸ Crook E. Manor (2001) "Local Governance and Decentralisation in Zambia," Draft final Report, Pp2

- (a) The transfer of fiscal powers and revenue sources from local to Central Government;
- (b) Lack of capacity in Local governments to realise their revenue potential³⁹.

According to a report on Local Governance and Decentralization in Zambia by; Richard Crook and James Manor. The most authoritative study of the problem using the most recently aggregate statistics shows that, whilst total local government revenues increased in cash terms between 1994 and 1997, from K21.7 billion to K38.8 billion this represented a decline in real terms of 19.7%. This was because projected revenue was not achieved, expenditure was way over receipts, showing a loss in assets due to the sale of housing stock in 1996(i.e. loss of income from rentals). More significantly, lack of capacity even to spend these resources on services has been so serious that actual real expenditures have declined by 36.3%. See Appendix page, Table B showing the decline in collection of local taxes over the past decade.

There are several other explanations for the increasingly financial difficulties in the councils, which are as follows: The reversion of a number of important sources of Local Government revenue to the centre thus depriving the field of revenue for local needs. For example, the revision of motor licensing function to government. Local authorities used the revenue as a substitute for the grants in lieu of rates that they were not receiving from government. This led to the situation whereby the Ministry of Finance removed the Council's right to collect the licensing income. Local Authorities also complain that they no longer receive funds for road construction from the National Roads Agency (NRA) but the NRA implements the work direct. If Local authorities undertook this work it would help support their works department by allowing them to charge fees for project

³⁹ Ibid at Pg 17

management⁴⁰. What has undoubtedly aggravated local authorities' problems; further was the sale of council houses at give away prices as per presidential directive of Fredrick Chiluba, second Republican President. This deprived councils of both rental income and subsequently of the valuation process. The government even deprived councils of the capital receipts by extending the time given to purchasers to actually pay for their properties⁴¹.

There is also, Lack of autonomy in relation to tariffs, recurrent and capital expenditure decision making because most of the levies, charges and annual budgets have to be approved by the Minister of Local Government and Housing. There is also lack of effort to improve the revenue raising capacity of the district councils⁴². The Councils fiscal difficulties are worsened further, by their own poor record in revenue collection and inefficient financial management system for example there is, poor monitoring of the quality of services being generated and the actual amount being consumed. Consequently, there is poor costing of, and low collection from, the services that are delivered. There is also unwillingness partly for political reasons to adjust tariffs in line with cost increases and poor budgeting and expenditure control in Local authority's delivery system. This is expressed in terms of (a) the weak link between plans and budgets and (b) absence of expenditure discipline⁴³.

⁴⁰ The receipts for Motor Vehicle licensing were received by Local authorities on an agency basis as a substitute for the grants in lieu of rates that then were not receiving from government

⁴¹ In addition sitting tenants were given 20% rebate on the total purchase price.

⁴² Ministry of Local Government and Housing (2002) Report on Decentralisation and Local Government, Pp27-28 Most district Council are unable to collect levies and improve levy collection because of lack of adequate funds.

⁴³ Ibid at Pp 48

2.4.2 LACK OF ADMINISTRATIVE CAPACITY

The administration of Local Government has been undermined by serious inefficiencies caused by poor staff motivation and perverse combination of overstaffing with shortages of appropriately qualified manpower. This has arisen partly because most urban and District Councils have been unable to pay their staff, often for very long periods (in most cases for years). This has triggered a substantial exodus of their better qualified staff members. However, large numbers of other, less qualified staff are still on the payroll awaiting retrenchment but contributing very little to the effective functioning of local administration. Most management positions are filled by people without the prerequisite qualification compared to the requirement as outlined in the Local Government Act. See Table C, under the appendices page showing current qualifications held by senior management team for Chongwe District Council. Many Councils, crippled by these problems, have not collected vital information on the number and identity of potential rate payers this is mainly attributed to poor record keeping and the improper manner of articulating and analysing information⁴⁴. Many Councils have in the past not developed proper budgets or had accounts audited. Accounts and budgets are sent by councils to the Ministry of Local Government and Housing for approval and this often takes a long time to be approved. This leads to inefficiency in councils performing their functions for instance, causes delay in carrying out local projects and delays revenue collection. One estimate by Saasa, suggests that councils could increase their revenues by 100% simply by improving collection of existing taxes. The poor record on revenue collections from the public by council officers is also attributed to lack of motivation due to poor conditions of service⁴⁵.

⁴⁴ Saasa, O. 1999. Zambia Fiscal Decentralisation and Local government Finance in Relation to Infrastructure Report, University of Zambia, Lusaka. p.15

⁴⁵ Ibid at p.16

2.4.3 POLITICAL PROBLEMS

Local Government policy has always been closely linked to the prevailing political climate.

Consequently, the ruling party's political views have a strong influence on the policies expounded and the subsequent legislation enacted. The autonomy and discretion of Local Governments has been undermined by continued central government interference in administrative decisions for example by the appointment of District commissioners in 1998, by the Republican President who are responsible to central government rather than to the local people. Because of these appointments, decisions are made based on political expediencies rather than serving the needs of the local communities. Other political decisions made in the past have seriously narrowed councils resource base, for example the sale of council Housing Units instituted under the Chiluba regime by way of a presidential directive in 1996, this seriously narrowed council's resource base⁴⁶. The establishment of Constituency Development and Youth Project Fund committees, these funds are provided by the councils and yet councils have no control over these funds. They are controlled by members of parliament and district commissioners. Councillors and members of parliament are normally reluctant to introduce higher charges on rates and personal levy because of fear of being voted out of power by the local people. There is, also a degree of central financial control through the system of grants and the statutory powers of the Minister to approve estimates of expenditure on scheduled functions, according to section 61 of the Local government Act, Cap 281 of the Laws of Zambia⁴⁷. The latter aspect of central control extends to the issue of instructions on priorities for capital expenditure for example. In 1974 the rate value was reduced unilaterally by 33 per cent by the government. Other grants have now been abandoned, including the Block Grant in 1971 and

⁴⁶ This was a political gimmick meant to gain political mileage for the 1996, Presidential & Parliamentary elections.

⁴⁷ Ministry of Local Government and Housing Circular No. 15/74, 28 May 1974. this advised a limitation on projects & following order of priority; water, housing, roads, fire services, street lighting, miscellaneous.

the Unit Grant (a rent subsidy) in 1974. The most recent grants are specific grants, most notably for roads, public health, fire and grants in lieu of rates (as local authorities do not levy rates on government property). However most of these rates are rarely paid, sometimes not even paid at all⁴⁸.

Currently Presidential and ministerial directives have impacted negatively on the operations of councils. Most notably are; the take over of markets such as Soweto market by a board and take over of Kabwata market by a co-operative. Recently the Minister of lands, Gladys Nyirongo made a public pronouncement on *Zambian Local T.V.*, that Lusaka City Council should stop the process of allocating land located in Makeni because, it was alleged they had not followed the proper procedure before advertising the plots. This was after, Lusaka City council had incurred huge expenses in advertising the plots and putting other logistics in place. This ultimately proves to be a big financial loss to the Council who are already "facing", financial difficulties⁴⁹.

CONCLUSION

The many challenges being faced by Local authorities are a clear indication that there is a lot of work to be done in order to improve their performance. The evidence set out above, and the theoretical framework which it supports identify financial, administrative and political challenges as the most urgent threat to good municipal government in Zambia. These challenges mainly lead to ineffective democratic local representation, lack of accountability among local representatives, an insensitive bureaucracy, political alienation, corruption, to mention but a few. This dissertation aims at assisting to address these challenges and to provide the way forward in good municipal government and one way of attaining this is through decentralization.

⁴⁸ Hart (1968) *Introduction to Local Government*, 349

⁴⁹ W. Tordoff (1980) *Administration in Zambia*, Pp 265-7. And ZNBC News July, 19 2005.

CHAPTER THREE

3.0 CASE STUDY OF LUSAKA CITY COUNCIL

Lusaka City Council is divided into seven departments, namely; Finance, Administration, Legal, Engineering, Public Health and Social Services, City Planning and Valuation department. These departments are headed by directors who are assisted by Deputy Directors and Assistant Directors⁵⁰.

3.1 POLICY AND DECISION MAKING PROCESS

To facilitate its function of policy and decision-making, the Council establishes committees to make recommendations and resolutions in particular areas of Council operations. The full Council then meets and approves or adopts such recommendations and resolutions, which are then passed to the relevant departments for implementation.

Section 31(1) of the Local Government provides:-

“A Council may establish standing and occasional committees consisting of such number of members as the Council may determine, for the purpose of examining and reporting on any matter and of discharging any functions of the Council delegated to them under this Act”

On studying the committee structure of the Lusaka City Council, that it was found that it has established seven committees of council, each charged with certain functions and headed by a

⁵⁰Interview with Chief Committee Clerk – Lusaka City Council.

chairman and assisted by a Chief Officer (Secretary) whose area of operation relate to such functions and who therefore acts like a consultant and advisor to that particular committee⁵¹.

The following are committees established by Lusaka City Council:-

1. Finance and General Purpose Committee

This Committee deals with the general regulation and control of finances and accounts of the Council including matters referred to it by other committees and those matters, which do not fall under the jurisdiction of other committees. Some of the most important financial functions include; consideration of annual estimates of income and expenditure of Council, fixing levying and collection of special rates and taxes, to raise and to provide for repayment of all loan authorised by Council, investment of Council funds, insurance of all Council property, matters relating to the local authorities superannuation fund, arrangement for banking of Council funds. The Committee is attended to by the Director of Finance who gives his or her professional advice on matters relating to its financial functions.

2. Establishment Committee

This Committee is charged with the responsibility of dealing with salaries, conditions of service, training and other related staff matters for Council employees. The Committee is attended by the Director of Administration.

⁵¹ Interview with Chief Committee Clerk – Lusaka City Council

3. Plans, Works and Development Committee

This committee is charged with the responsibility of providing and maintenance of physical infrastructure such as building and maintenance of roads, residential and commercial buildings, land development and allocation, street lighting and approval of building plans. The advisors to this committee are the Director of Engineering and the Director of Legal Services.

4. Public Health , Housing and Licensing Committee

The responsibility of this Committee is to consider and make recommendations on the following matters; control and management of squatter settlement and site and services schemes and administration of housing (Statutory and Improvement Areas Act, 1974). And to attend to matters of public health such as; abattoirs, public conveniences, cholera control, storage and sale of food stuffs, offensive trades and pollution of streams and water courses. This Committee is also responsible for the control and management of Libraries, Museums, Parks and Zoos, recreation grounds, swimming baths, pre-schools, community development work, youth, sports, and societies and to consider and recommend issues of trading licenses for various traders in the city. The chief officer who advises this committee is the Director of Public Health and Social Services⁵².

Under this set up therefore local representatives in the Council take part in policy making and implementation of local affairs and projects through the work of the Council and its Committees. The main factor is that Councilors actually make decisions, which are then implemented, under their supervision, by the mayor. The functions of the Committees are wide and varied and cover almost every aspect of the life of the local residents. The Local Government Act therefore provides for actual participation of local representatives in the policy making mechanism of the district.

⁵² Ibid

3.2 IMPLICATIONS

To test the workability or implementability of decentralization we will look at the views of the local people and the Councillors themselves in areas of decision making and provision of services to the Lusaka residents.

Most Councillors, members of staff of Lusaka City Council and residents of Lusaka interviewed gave the writer an impression that the powers of the Minister of Local Government superseded the powers of the Councillors, as he/she is free to make unilateral decisions on behalf of the Council without necessarily seeking Council approval. For example the former Minister of Local Government and Housing in March this year 2005, made a decision to take over the operations of Soweto Market without seeking Council's approval. This decision is contrary to the Market Act which gives power to Councils to control and manage markets⁵³. On another occasion the Minister made a comment in a local paper that churches should be exempted from paying property rates to the Council⁵⁴. These decisions are made in spite of the fact that the seven Council Committees are given responsibility to direct or take such actions. These and other actions taken by the Minister imply reducing the collective authority of Councillors in the decision making process. Currently the marketers themselves are collecting rents, tolls and fees for the Market when this is the duty for local authorities⁵⁵.

⁵³ See section 4 of the Market Act Cap 290 .

⁵⁴ Zambia Daily Mail ,July 22 ,2003 p.3

⁵⁵ See section 4 of the Market Act Cap 290.

3.3 EVALUATION OF CERTAIN SOCIAL SERVICES PROVIDED BY LUSAKA CITY COUNCIL IN LUSAKA CITY

A survey was conducted in Low, medium and high density areas to assess and evaluate the quantity and quality of some services currently being provided by Lusaka City Council and some results recorded.

Roads and Drainages: a random survey was conducted while some people were interviewed in statutory housing areas in Mtendere and Mandevu concerning the repairs of roads and maintenance of drainages. Most of the people that were interviewed stated that the maintenance of roads and drainages in their area was very poor. A lot of drainages were blocked and also full of litter resulting in unsanitary conditions especially during the rainy season. Some people expressed ignorance about who was responsible for clearing the drainages, while those who knew it was the Council's responsibility indicated that service delivery by the council had deteriorated to unacceptable levels.

Town Planning on Building and Alteration of Buildings: a survey was conducted in some medium density areas such as, Chilenje, Libala, Kabwata and Kamwala. Results indicated that a number of houses were being improved or altered without people seeking planning permission from the Council. This has resulted in altering the actual building plan of the City because people build in places meant for drainages, roads or other public infrastructure, such as parks. These buildings are also built without following Council's plans and specifications. A closer look at some

houses being built one would not tell whether they are meant for worshipping, a school or they are dwelling houses. People also complained of encroachments⁵⁶.

Another survey conducted in self ownership residential areas such as; Kabulonga and Woodlands indicated better environments. These are areas where though the Council does not provide the services required people in these areas make their own efforts to clean their surroundings. The roads were not in very good condition but the drainages were in good state. In other self ownership residential areas where they are self built houses in Kamwala South and South of Woodlands South, indicated better environments but have no proper roads and streets as these are yet to be provided by the Council. Some people in these areas build houses without obtaining planning permission from the Council. This is mainly because Council's building inspectors are not checking on the construction of these houses⁵⁷.

Results from most of the areas; low cost, medium and high cost showed discontentment with the services being provided. The survey revealed that roads and streets where they existed were in bad condition. Most residents interviewed felt that Councils are in need of a lot of support from Central Government in order for them to improve on provision and delivery of social services.

Refuse Collection: Refuse collection in Lusaka City has improved as indicated from local residents interviewed. This can be attributed to the fact that Lusaka City Council has partnered with the Swedish government who are in charge of the waste management unit. This unit is working well as indicated from the interview with the Manager Mr. Michael Kabungo. The Manager indicated that, Lusaka City has been divided into 12 Zones for purpose of Garbage collection,

⁵⁶ Encroachment is the unauthorized extension of the boundaries of land (Concise Law Dictionary)

⁵⁷ According to Section 72 and 73 of the Public health Act building inspectors from the Council are supposed to inspect construction of building in the City.

known as Waste Management Districts. These zones cover all the areas in Lusaka district, for *conventional and peri-urban areas*;

The Council in conjunction with the waste management unit engages contractor s to collect garbage from the various Zones. For example G. L. Carriers collects garbage from Kabwata and Kamwala township on a weekly basis and the local residents pay a sum of K15,000.00 per month for the service, while in high density areas such as Kaunda Square township the local residents pay sum of K5000.00 per month. The contractors through a franchise contract have the sole right and obligation to collect and transport waste from all premises in a franchised waste management District. All other ways of waste disposal, including the use of refuse pits or the burning of waste even in your own yard are no longer allowed⁵⁸.

3.4 A COMPARISON WITH OTHER JURISDICTIONS

Decentralization in other countries has its own challengers but we can learn a lot from such countries, which may be of great assistance in helping to improve our system. Uganda and South Africa provide two excellent examples of properly decentralised system from which a lot can be learnt. In these jurisdictions intergovernmental transfers for local governments are effectively structured and implemented.

3.4.1 UGANDA

In Uganda, the 1995 Constitution and the Local Government Act of 1997 provides under the National objectives and Directive Principle of State Policy that;

⁵⁸ This is according to the Waste Management By-Laws, 2004.

“The State shall be guided by the principles of decentralisation and devolution of government functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.”

The Constitution further provides in Chapter 11 that; appropriate measures shall be taken to enable Local Government units to plan, initiate and executive policies in respect of all matters affecting the people within their jurisdiction. Therefore, local government derives their powers from the constitution.

All local governments retain and exercise to some degree the following powers:

Executive Powers – The Executive Committee of District Councils have important responsibilities inter alia; to initiate and formulate policy for approval by Council; oversee the implementation of Central Government and Council Policies and monitor and co-ordinate activities of non-governmental organisations; monitor the implementation of Council programmes and take remedial action where necessary and at the end of each financial year consider and evaluate the performance of the Council against the approved work plans and plans.

Legislative Powers – District Councils have been vested with powers to make policy and local laws not inconsistent with the constitution or any other law made by Parliament. Councils are also empowered to enforce obedience of their ordinances and local laws by creating offences and penalties. Typical uses of legislation include setting rules of legislation according to community needs. Meaningful legislation should follow a detailed study and agreement on Central Government and Local Government tasks.

Financial and Planning Powers – The financial and planning, powers of local government include the powers to: Formulate, approve and execute budgets and plans provided the budget shall be

balanced; Levy, charge and collect fees and taxes including rates, rents, royalties, stamp duties, personal graduated tax, and registration and licensing fees. No tax can however be imposed by local authority except under the authority of an Act of Parliament.

Administrative Powers – The powers to administer or manage Council services are entrusted to the Chief Administrative Officers in the case of District Councils and Town Clerks in the case of urban Councils. Their duties include the application, monitoring and coordinating the activities of Council employees and Departments and ensuring accountability and transparency in the management and delivery of Council Services, giving guidance to Councils and their Departments in the application of relevant laws and parties⁵⁹.

GRANTS TO LOCAL GOVERNMENTS

The Constitution provides in Article 193(1) that Central Government shall transfer money to Local in three ways: **Unconditional, Conditional and Equalization Grants**; In 2001, unconditional grants accounted for 15%, conditional (recurrent) grants for 63% conditional (development) grants for 21%, and equalization grant for 1% of all transfers. These provisions are reproduced in section 84 of the Local Government Act, 1997.

Section 193 (2) of the constitution defines an unconditional grant as follows:

“Unconditional grant is the minimum grant that shall be paid to local governments to run decentralized services and shall be calculated in the manner specified in the seventh schedule of the Constitution”.

The seventh schedules provides the formula for the annual up rating of unconditional grant in line with price and wage increases and the ***“budgeted cost of running added or subtracted***

⁵⁹ Decentralization in Uganda, Decentralisation Secretariat Ministry of Local Government, August 1997, Pg 7 - 8

services”. This grant is distributed across districts according to a formula including a flat rate allocation based on areas (15% weight) and population 85% weight. The costs, which this grant is expected to cover, are not defined in the legislation although there is a common view that this grant is meant to cover at least general management and administration expenses.

Equalization grants; are defined in the Constitution as subsidies or special provisions, for the least developed districts; and are based on the degree to which a local government unit is lagging behind on the national average for particular services. This grant is calculated on the basis of household expenditure data, as proxy for revenue capacity and population size, child population and length of the road network, to proxy expenditure needs.

Conditional grants; are funded from the Poverty Action Fund (PAF) created in 1998/99 to channel HIPC and other debt relief funds, donor budget support and government resources into activities of the Poverty Eradication Action Plan. There are currently 16 different PAF conditional grants including health, education, water, roads, agriculture, district development and monitoring and accountability grants.

Conditional and Equalization grants are the principal means by which Central Government may influence Local Government Policies and Programmes under Article 193(5) of the Constitution. District Councils are obliged to account/indicate how conditional and equalization grants obtained from Central Government are to be passed to the lower levels of Local Government.

Uganda's Local Government Development Program (LSDP) has also developed an approach, which combine building local government with the implementation of development investments.

This provides non-sector specific development grants to local authorities that qualify to access the grants once they have attained specified minimum governance criteria. The governance criteria are derived directly from requirements set out in the Local Government Act. Local Governments are required to co-finance the development funds received with a 10% contribution in cash, in addition to Scheme-specific local contributions from communities central to the Local Government Development Program design are the minimum access conditions and performance criteria. The “minimum conditions” determine whether a municipality is eligible to access the Local Development fund. The minimum conditions include; Development Planning Capacity, financial management; technical capability and program specific conditions. Municipalities which do not meet the minimum access criteria can still benefit from another grant, the Capacity Building Grant, in order to assist them to qualify for development funding in the future⁶⁰.

3.4.2 SOUTH AFRICA

In South Africa, the constitution specifies that local government is entitled an ***equitable share of nationality raised revenue***⁶¹. This equitable share is designed so as to ensure that local governments are able to fulfill their constitutional obligations to provide basic municipal services to all residents. However, all municipal governments are expected also to make reasonable effort to raise revenues on their own. Equitable share transfers, however, need to be available when municipalities have insufficient revenues to meet the recurrent costs of providing basic municipal services⁶².

⁶⁰ Government of Uganda, “fiscal Decentralization in Uganda-the Way forward, p.20

⁶¹ The Constitution of the Republic of South Africa (1996) Chapter 13 Article 214 (1) (C)

⁶² Department of Constitutional Development: “An Equitable Share for Local Government”, Republic of South Africa. p.8

Starting in the 1998/89 year, the equitable share to local government in South Africa has been allocated using two formulae, the **S (basic services) grant**, and the **I (institutional) grant**. The purpose of the **S** grant is to finance recurrent costs of basic municipal services to poor households, while the **I** grant is to finance the basic institutions of democratic governance in small, poor municipalities. In order to safeguard municipalities from large year to year drops in the equitable allocations, each of them is guaranteed the larger sum of their formula generated **S** and **I** grants or to 10 percent of equitable share allocated in the previous year.

The **S** grant is derived on the basis on the number of poor people in each municipality and so an estimate of what it would cost to provide basic services to each of these people. The **I** grant on the other hand, am to assist struggling municipalities to facilitate democracy in their areas of jurisdiction. In general, funds through this grant will go to those municipalities that do not have the administrative capacity to raise their own revenue, or that perhaps do not have basic infrastructure in place to function properly as municipalities⁶³.

From the foregoing discussion it is clear that South Africa and Uganda are typical examples of countries that have devolved power from central government to local authorities. The Municipalities are the engines of social and economical development. These municipalities are vested with legislative authority and the right to govern on their own initiative, with little or no intervention from central government. They are well funded and are vested with powers that enable them raise revenue to funds their operations. For example, distribution of water and electricity is vested in the councils.

⁶³ *ibid*

CHAPTER FOUR

DECENTRALIZATION AS IT APPLIES TO LOCAL GOVERNMENT IN ZAMBIA

4.0 A CRITICAL REVIEW

This chapter is an assessment of the preceding discussion, and it attempts to discuss the policies and politics of decentralization and to put into perspective the problems of achieving a fully decentralized local government system in Zambia. Thus, this critical review is divided into policies and politics, the visible problems faced by Councils, funding council operations and an analysis of the laws on local government.

4.1 POLICIES OF LOCAL GOVERNMENT IN ZAMBIA

A sound local government system is an important subject of democratic governance, wherein public resources and problems are managed efficiently and in response to the critical needs of society. Effective democratic forms of governance rely on public participation, accountability and transparency. Decentralization and devolution of power are some of the instruments, which can facilitate democratic development. It is therefore clear that centralized planning is an antithesis to good governance⁶⁴. There cannot be democratic governance in Councils if resources are not guaranteed. The current government of President Mwanawasa has launched the decentralization policy, which will transfer responsibilities, 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, therefore empowering local communities to play an effective

⁶⁴ G.Shabbir Cheema, Paper presented by the director, management development and governance division, UNDP, July 1997, p.6.

role in national affairs⁶⁵. The objectives of decentralization in Zambia stem from the need for the citizenry to exercise control over its local affairs and foster meaningful development. Decentralization therefore cannot operate in a vacuum unless there is good governance at the local level. Currently the local government system in Zambia is faced with enormous difficulties (as already discussed in Chapter Two of the dissertation). Unfortunately, Local Government has always been closely linked to the prevailing political climate. Where, central Government has great authority over the policies of local authorities as well as great power and influence. For instance, Zambia has implemented three major local Government reforms since independence in 1964, all for political expediency rather than social and economic development for the local community, whom local government is solely intended to serve⁶⁶

4.2 POLITICAL INTERFERENCE IN THE OPERATIONS OF LOCAL AUTHORITIES

In recent years, there has been too much political interference in the operations of the Councils thus they are failing to deliver the necessary services according to public expectations. Political interference has manifested itself in unlawful sale of land by Councillors and Chairman, sale of Council houses,⁶⁷ collection of bus fees and market fees by party cadres, which has caused conflicts between Local Authorities and Zambia National Marketeers Association (ZANAMA). Currently Soweto Market in Lusaka is being managed by a Board, which is not legally constituted. Management of markets is clearly the mandate for Councils and the Market Act, Cap 280 governs the management and control of markets by local authorities in Zambia⁶⁸.

⁶⁵ Government of the Republic of Zambia, National Decentralization Policy –Towards Empowering The People. p.18

⁶⁶ Transparency International Zambia, Making Local Authorities more effective, transparent and accountable, February, 2003, p.3

⁶⁷ The sale of Council Housing units by Former President Chiluba was unlawful and contrary to democratic procedures of local governance.

⁶⁸ Section 4 of the Market Act, Cap 280.

4.3 BUILDING CAPACITY IN COUNCILS

Currently all councils, be it city, municipal and local councils suffer a deficit in terms of development planning; human resource development and financial mobilisation and management; local government electoral system and the legal framework. A recent study conducted by Transparency International Zambia revealed a general dismal performance of local authorities countrywide. The study cited the major contributing factors to such state of affairs as:

“Lack of finance, low caliber of councilors, poor relations between councilors and council officials, lack of qualified and experienced personnel, unsupportive legislation and undemocratic practices that have hindered active public participation in the affairs of local authorities.”⁶⁹

Some of the most visible symptoms of the problems of local authorities are; run down commercial infrastructure like roads, street lights, water and sewerage systems; huge heaps of uncollected garbage; the rise in street vending; perpetual strikes, erratic payments of salaries (in some councils, workers have gone for more than 18 months without pay); a high de-motivated workforce, therefore, making the proper running of these important institutions virtually impossible.

If the Government's vision to achieve a fully decentralized and democratically elected system of governance characterized by open predictable and transparent policy making and effective community participation in decision-making is to be realized, building the above capacities is imperative⁷⁰.

⁶⁹ International Review of Administrative Science, “Government Decentralization in Comparative Perspective” Rondinelli (1981) p.47

⁷⁰ Hart (1968) Introduction to the Law of Local Government and Administration, p.7

4.4 DEVELOPMENT PLANNING

In a decentralized system funds are allocated to priorities of the local community through the local authorities who are closer to the local residents. Government also provides a legal backing to the development process and output. There is a linkage in the operations of the area through district, provincial and national development committees through the submission of reports and feedback. The managers of District Planning Committees should be qualified in that field. There should be a linkage between planning and national budgetary process. Unfortunately for Zambia Local authorities funds are not allocated to their priorities, but to the center's preferred projects, which become white elephants. For example constituency development funds which are meant for constituency development do not usually serve the purpose intended. In other words they do not serve their economic rationale but serve the personal interests of the initiators who are members of parliament⁷¹.

Sikwibele in his discussion on local government has stated 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 political and development planners have fully recognized the contribution that local government can make in achieving national development”.⁷²

⁷¹ The projects are done a few months before Presidential or Parliamentary elections in order to win votes from local residents.

⁷² Hagreaves, Sikwibele, Community participation in Western Province, A Case study for Lukulu District, Mongu 2-3 June 1997.

4.5 LOCAL PARTICIPATION

Participation in decision making like of political administrative and financial machinery is aimed at taking power to the people at local level. Such participation in the local affairs by local people can be judged from how government responds to their needs, how they are elected to power, how they are represented in the policy making process, increasing the flow of information between government and citizens and promotes accountability to citizens of elected councilors. Participation of the local people in decision making is very important, as this will ensure that local *development is attained in their localities.*⁷³

Local participation by the Zambian people in local government has been unfavorable. This is mainly because Councils have been operating under very trying and unfavorable circumstances to the extent that people have lost the confidence that they previously had in them. This is evident by the reluctance that people display when paying for local services. For example Lusaka City Council previously faced difficulties in collecting rates from defaulting clients. But recently this problem has been curtailed by the Council engaging bailiffs to seize property from defaulting clients through warrants of distress. People, are however still defaulting in paying ground rents. While others have not fully paid for Council houses which were sold in 1996 as per Presidential directive by President F.T.J. Chiluba. A Council Housing Officer Confirmed that the tenants stopped paying rent on the houses as president Chiluba banned evictions. There was no legal basis for such order by the President. Consequently, the Council lost a unique opportunity to raise funds for active support for new housing developments.⁷⁴

⁷³ Jean Paul Faguet; "Decentralisation and Local Government Performance" p.4 December 1997.

⁷⁴ Zambia Daily Mail, March 18, 1996, p.3.

4.6 FUNDING COUNCILS OPERATIONS

Local Government today is, in general, increasingly dependent on direct financial support from the centre, whereas local sources of revenue play a decreasingly important role. Lack of sustained revenue by councils has substantially and adversely so affected the provision of various services which entails large expenditure on both recurrent and capital accounts. The funds for these services are provided by various forms of revenue income and borrowing. But even if local sources of revenue could be easily exploited, this largely depends on the approval by the Minister of Local Government and Housing, by laws and external borrowing⁷⁵.

(i) Central Government Grants

In most jurisdictions grants form an important element in recurrent budgets because they increase the resources of local authorities. The fundamental objective of grants by the central government however, is to exercise some control over local administrative standards either in respect of the quality of the service provided or in respect of personnel engaged, or of the general conduct and layout of local budgets. Grants are provided to Local Authorities pursuant to the provisions of section 45 of the Local Government Act, Cap 281 quoted in part, as:

“(1) The Minister may, on such terms and conditions as he may determine, make constituency development grants ... for the purpose of the discharge by the Council of any of its functions.”

“(3) The Government shall make specific grants to the council concerned for (a) water and sanitation (b) health services (c) fire services (d) road services (e) police services (f) primary education (g) agricultural services.”

⁷⁵ Section 82, 45 and 47 of the Local Government Act, Cap. 281 of the Laws of Zambia.

The grants covered by section 45(1) of the Act are general in the sense that they are given to Councils for the discharge of any of the functions. The grants have the effect of increasing a sense of responsibility of local authorities by enabling them to draw their own budgets unbiased by central Government pressure. On the other hand, Section 24 (3) provides for specific grants. Here, a Council does not exercise any autonomy as to how the money is to be spent. But these are subject to such terms and conditions that the Minister may determine. Broadly, specific grants are useful for three purposes: (a) they assist with current services especially those which might otherwise be neglected; (b) they may offer assistance with the local salary bill' (c) may provide assistance in the provisions of capital assets⁷⁶.

These grants have however, not been forthcoming, and have been falling in recent years. For example in 2001, K9.4 billion was transferred to local authorities. In 2002 this was reduced to K6.6 billion. Of these amounts, only K4.7 billion and K3.3 billion were unconditional transfers. Equally important is that the allocated amounts do not necessarily translate into amounts actually received by the councils. There is reason to believe that political considerations play a role in the disbursement of actual allocations. These grants are also divided between all councils, with no consideration being given to population, poverty or any other criterion⁷⁷.

(ii) Rates

Rates on the occupation or ownership of land and buildings are the most important and largest source of revenue for most local authorities worldwide and for Zambia; it is the City Councils and Municipalities who mostly benefit from rates. Rates are however minimal in District Councils because most land and buildings belong to the government, and churches, or land used for

⁷⁶ Hart (1968) Introduction to the Law of Local Government and Administration p.47.

⁷⁷ Government of the Republic of Zambia, Ministry of Local Government and Housing, Report on Decentralization & Local Government, December, 2002. p.28.

agricultural purposes, on which rates are not leviable⁷⁸. The Rating Act No. 12 of 1997 governs the levying and collection of ordinary rates by local authorities section 3 of the Act empowers the Minister of Local Government to approve the preparation of the main valuation roll.

The main challenges on the process of collecting outstanding rates are;

- (a) The wide exemptions which were granted in the amended 1997 Rating Act for example churches, charitable organisations, and a number of investors were exempted from paying property rates⁷⁹.
- (b) The system of grants in lieu of rates, which is currently being used by central government to avoid paying rates on its properties within local authority areas. The rates are rarely paid, while in some instance they are not being paid⁸⁰.
- (c) Government statements by ministers discouraging owners of new property from paying rate. For instance, Nchanga Member of Parliament Richard Kazala in September, 2003 had cautioned the Chingola Municipal Council against using court bailiffs to recover unpaid rates instead of persuasion. This is contrary to section 25 of the Rating Act, which empowers Councils to use court bailiffs to recover outstanding rates from rate defaulters⁸¹.

(iii) Collection of Levies, Fees and Charges

All levies, fees and Charges imposed by the Council are regulated by laws or resolution of the Council. Interestingly, both Council resolution and by laws are subject to the Minister's approval. In accordance with section 69 of the Rating Act No. 12 of 1997, a Council may impose a levy on

⁷⁸ See section 6 (62) of the Rating Act No. 12 of 1997.

⁷⁹ Section 45 (3) of the Local Government Act.

⁸⁰ Section 20 (6) and (7) of the Rating Act No. 12 of 1997

⁸¹ Times of Zambia, 2nd September 2003, p.2.

the purchase or sale of commodity within the area of the Council, for example, grain, fish, potatoes, cattle, timber levy. Further, a Council may impose fees or charges payable to the Council in conformity with section 70 of the Local Government Act. And for (a) for any licence or permit issued, for example, under the Trades licencing Act, Cap 393 (b) for any services or facility provided or goods or documents supplied by the Council in pursuance of or in connection with the discharge of any function of the Council, for example, Market fees and bus station fees.

4.7 AN ANALYSIS OF THE LAWS ON LOCAL GOVERNMENT

(i) THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA

The constitution of Zambia forms the legal basis for the existence of the Local Government system in the country. Article 109 of the constitution of Zambia establishes the Local Government system and states that the system is based on democratically elected councils on the basis of universal adult suffrage. The constitution therefore does not provide for a decentralized system of Local Government.

(ii) THE LOCAL GOVERNMENT ACT, CHAPTER 281 OF THE LAWS OF ZAMBIA

The Act provides for the creation of councils as body cooperates and defines their functions. Councils are mandated to perform a number of functions, they also have several powers but these are subject to the approval and discretion of the Minister of Local government and Housing. The statutory powers of the Minister to appoint a public officer to be the Auditor to the council and to approve estimates of expenditure on scheduled functions greatly diminishes councils financial control over its operations⁸². For instance, according to section 39 of the Act, annual estimates of revenue and expenditure must be submitted to the minister of Local Government and Housing for

⁸² Section 52 of the Local Government Act, Chapter 281 of the Laws of Zambia, 1991.

approval, this causes delay in implementing developmental projects. According to section 61 as read with the second schedule of the Act, they are a number of functions that councils are required to perform however; government has not provided additional financial resources required to carry out the new tasks. These functions are as indicated under Table of the Appendices page .The minister is also empowered according to section 67 of the Act, to prohibit the sale of land or buildings by councils. According to section 56 and 57 of the Act the minister sets the minimum level of rates and personal levies, which are the most important sources of councils revenue. The minister may also appoint a public officer to be an Administrator of the council, suspend all councilors and dissolve the Council when he/she considers it necessary or expedient, by reason of the refusal failure or a council adequately to discharge all or any of its functions⁸³. This is contrary to democratic local governance. How can a single minister have power to suspend or dissolve a duly elected council? This has also eroded the sub-national governments' "autonomy" and caused service delivery to deteriorate.

Further, the current amendment to the Local Government Act, which provides that individuals and institutions cannot execute against Councils for debts owed to them by the councils creates further problems. This leads to local authorities being more reluctant to fulfill their obligations. In addition people people's confidence in the local authorities is eroded and they also become reluctant to honor the debts that they owe to the Council⁸⁴.

The Local Government Act has therefore not provided for an autonomous local authority, which is able to perform its functions independently.

⁸³ Section 88(1) and Section 93(1) of the Local Government Act, Cap 281 of the laws of Zambia.

⁸⁴ Statutory Instrument No. 9 of 2004 Local Government (Amendment) Act 2004.

(iii) THE LOCAL GOVERNMENT ELECTIONS ACT, CHAPTER 282 OF THE LAWS OF ZAMBIA.

The Act regulates the conduct of Local Government elections. It mainly regulates the ordinary election of councillors, the Mayor and Council chairman. The Mayor and Council chairman are elected annually, among councillors, at the first ordinary meeting of the council held after the 1st September in that year. The Mayor and, the Deputy Mayor are elected among the fellow councillors. A mayor is elected for every city or municipal council whereas for a District Council a chairman is elected.⁸⁵ These top civic leaders are in charge of the overall administration of the Council at policy level and preside over council meetings. The Mayor or chairman of the Council also has the power to authorise the Principal Officer to take action on any matter of extreme urgency on the recommendation of a standing committee or its chairman, as may be appropriate in the circumstances.⁸⁶ One serious flaw with the Act is that, it has not set the minimum educational qualifications for persons aspiring to be elected as councillor as result the calibre of councillors elected is very low. These councillors usually lack the capacity to articulate ideal policy issues and to understand ideal local governance.

(iv) THE IMPACT OF OTHER LEGISLATION

A series of Acts have altered the powers and functions of Local councils. It is important to note that the Local Government Act, 1991, section 61 as read with the second schedule of the Act gives local authorities permissive powers. Some of these permissive powers are made mandatory by other statutes and this may result into some confusion. The Act provides that:

⁸⁵ See Section 16 of the Local Government Act as amended by Act No. 31 of 1993.

⁸⁶ Ministry of Local Government and Housing – STANDARDISED ORDERS FOR COUNCILS, standing order no. 6.

“Save as otherwise expressly provided by the Act, a council shall discharge any function conferred on it by or under this Act subject to and in accordance with the provision of any other written Law relating to the discharge of that function by the council.”⁸⁷

This provision, when considered along with the permissive powers of district councils set out in the second schedule to the Local Government Act, gives rise to doubts and can produce anomalies. It can be taken to mean that all functions of councils are specified in the Act and that it is only in the method of carrying out a particular function that reference must be made to other statutes. Alternatively it can be taken to mean that there are functions conferred upon councils under the Local Government Act which are duplicated by duties imposed by other statutes in which the councils must conform to the provisions of the later. The question that arises is that, why should the same functions appear both in the Local government Act and also in the statutes? According to the Local Government Act a number of councils functions are permissive while, some of these functions are made mandatory by other statutes⁸⁸.

Other Acts of parliament give councils powers which are not mentioned in the Local Administration Act. Some of these powers are:

- (a) To establish market (Market Act, Cap 290 of the Laws of Zambia.
- (b) To collect Personal levy (Personal levy Act, Cap 329 of the Laws of Zambia.
- (c) To act as licensing authorities (Trading, Licensing Act, Cap 393

⁸⁷ Section 62 (4) of the Local Government Act, 1991.

⁸⁸ For example section 62 of the Local Government Act grants permissive functions to Councils while section 65 and section 66 of the Public Health Act, Cap 295 grants mandatory functions to Councils.

(e) To collect rates on ownership of land and building. The rating Act No. 12 1997 governs the levying and collection of ordinary rates by Local authorities.

4.8 REVENUE AND FINANCING

A series of measures, some legislative, some by executive orders have fundamentally changed the revenue power and financial capacity of Local Councils for the worse. For instance, the Superannuation (Amendment) Act of 1992 forced compulsory retirement on all council employees with more than 22 years of service and the Rating Act of 1997 drastically reduced revenue from property rates by giving wide exemptions to various categories of property.⁸⁹ The personal Levy Act of 1994 fixed very limited minimum and maximum amounts for the Local personal levy tax⁹⁰. Finally a proposal to create a special fund for district development was transformed in 1995 into the constituency Development and Youth Project Funds. Councils bear the cost of administering these funds but they are however controlled by local members of parliament and ruling party officials. Thus, councils derive no benefit from these funds. Each constituency receives between K60m and K70m per annum from these funds, which might otherwise have gone into council determined projects⁹¹.

From the preceding discussion it is clear that the Minister's powers are too wide covering almost all council operations. Sometimes he/she may use his discretion to the detriment of Council's well being. The Minister might refuse to approve the kind of revenue by by-Law proposed, possibly on account of political consideration. For instance in the year 2003, the Council's Legal Department

⁸⁹ The Rating Act, No.12 (1997) of the Laws of Zambia, exempted payment of rates on properties in education, agriculture, mining electricity telecommunications, sport and recreation without any compensation to the councils.

⁹⁰ Section 3 of the Personal Levy Act, Cap 329 of the Laws of Zambia.

⁹¹ Crook and Manor: "Local Governance and Decentralisation in Zambia", Final Report, June 12, 2005

drafted a by-Law for the revision of service charges on land and the prices set were according to that year's economic rates. Once they were sent for approval to the Minister they were rejected on the grounds that Councils could not set its charges like private institutions. The rates were unfortunately reduced to very minimal amounts. Thus this takes away from the councils their powers to decide on how much revenue they should be able to raise in a given financial year, and affect their ability to plan and implement their annual activities. This is certainly disastrous for development and adversely affects the operations of Local Authorities⁹².

In summary, the legislative, administrative and political framework of administering of local authorities has generally been considered as not being supportive to the existence of well functioning local Government System. The overwhelming powers of the Minister of local Government and Housing have, particularly, been cited as being a stumbling block to the realization of an efficient, effective and democratic Local Government system. It is a general concern that the powers of the Minister, as provided for in the Local Government Act, need to be reviewed and subsequently, reduced in order to enhance autonomy and check political interference. It is surprising that the Minister's power range from the approval of annual budgets, confirmation of by-laws, amendment or revocation of by-laws, fixation of rate levies to suspension or dissolution of popularly elected councils and so on⁹³. But it must be stressed that local self-government denotes the rights and abilities of local authorities, within the limits of law, to regulate and manage a substantial share of public affairs under their own responsibility in the interest of the local population.

⁹² W. Tordoff (1980) Administration in Zambia, P.267.

⁹³The Local Government Act Cap 281, Part VIII (By-Laws and Regulations).

CHAPTER FIVE

CONCLUSION

5.0 INTRODUCTION

This chapter summarizes the discussions of previous chapters and recommends the best way to achieve decentralization deemed necessary for the efficient and effective functioning of the Local Government system in Zambia.

5.1 SUMMARY

The need for decentralization in the *Zambian Local Authorities* has been more than emphasised in the dissertation. It is critical for the development of Local Government and also for national development. The essential notion of democratic governance is the concept of self-governance and administration closest to the people. Inhabitants of a given area should have the right and responsibility to make decisions on those issues that affect them most directly. This is not only a question of social justice, but also of efficiency. Thus, the role of local government in general and decentralization in particular, in a democratic dispensation is of fundamental importance in the promotion of good governance.⁹⁴

The foregoing chapters indicate several factors responsible for the inability to achieve decentralization. One of the major factors is the inadequate funding to the councils, inappropriate legal framework for the independent operations of Council i.e. the constitution, the Local Government Act and other relevant statutes. The inadequate political and administrative capacities for the independent operations of Councils, i.e. lack of qualified members of staff, misplacement of

⁹⁴ Maipose, S. S., 1999, *Zambia: Decentralization under the New Democratic Era; Changes and Continuity*, p.12

staff, political interference in Council operations by government officials such as members of parliament and lack of integration between traditional authorities and the modern Local Government system.

Zambia, like many countries in the progressive world, is committed to good governance, which is essential to economic and social development. The essentials of good governance include constitutional legitimacy, accountability, participatory development and transparent decision-making procedures.⁹⁵

5.2 CONCLUSIONS AND RECOMMENDATIONS

One of the most effective means to improve the operations of local authorities in Zambia is to decentralize power and resource to them in a co-ordinate and integrated fashion. Thus decentralization through devolution is the best way to attaining this. Decentralization through devolution will transfer some powers and authority, functions and resources by legal and constitutional provisions to the lower levels (the local authorities). The transfer should be within formal political structures and institutionalized by constitutional means.⁹⁶ Once this is attained democratically elected Councils, local authorities or regional governments will be able to determine their own local taxes, raise their own revenue and decide on how to use it. In other words they will be able to make their own independent decisions according to their local needs.

Malamo Nyambe Commenting on curing of the malaise of our local government system has this to say:

“Local authorities are ready and willing to take responsibilities from

⁹⁵ Ibid at p.13.

⁹⁶ Government of the Republic of Zambia, National Decentralization Policy – Towards Empowering the People, p.iii

***Central government. What is needed is to sharpen the current local government system as a service delivery vehicle By carrying on surgical reforms devoid of political inclinations and considerations*⁹⁷**

The author agrees with Malamo Nyambe and other writers on Local Government who advocate for reformation of local authorities in Zambia and therefore makes recommendations and conclusions as follows:-

5.3 THE LEGAL FRAMEWORK

First and foremost effective decentralization through devolution of power to local communities should be recognised and entrenched in the constitution. It is worth noting that until 18 May 1996, when the Constitution Amended Act No. 188 of 1996 came into force, the previous Republican Constitutions made no direct mention of or reference to local government. Even the present Republican Constitution merely provides, under Article 109, that:

"There shall be such system of Local Government in Zambia prescribed by an Act of Parliament. The system of Local Government shall be based on democratically elected Councils on the basis of universal adult suffrage."

This means that the local government in Zambia has been left to operate within the provisions of an Act of Parliament (Local Government Act, Cap. 281 of the Laws of Zambia), which could be changed at, will to suit a given political situation.

⁹⁷ The Post Newspaper, July 20, 2005, p.9.

The Zambian Constitution like that of Uganda should be amended to include that the State shall be guided by the principles of decentralization and devolution of government functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.⁹⁸

The Constitution should also give powers to Councils to provide services as is deemed fit with the exception of those for which central government is responsible for, i.e. those involving matters of national security. Councils should be empowered to make by-laws and ordinances without the approval of the Minister of Local Government. This can be done under the authority of an Act of Parliament According to the Constitutional Review Commission Draft Report, a number of petitioners stated that in order to have a strong, effective system of local Government, general principles relating to objectives, structures, functions and the financing of local authorities should be clearly defined in the constitution. The commission has amply stressed the need for a devolved system of local government that will devolve functions, powers and responsibilities from Central Government to the province, district and sub-districts; to devolve decision making powers to the people at all levels; to promote people's participation and democratic control in decision making.⁹⁹

Secondly, the Local Government Act, Cap 281 of the Laws of Zambia has many weaknesses which need to be urgently addressed;

Article 109, of the Uganda's Constitution of 1997.
Draft Report on the Current Constitutional Review Commission by the Mungomba Commission, p.495

The Act does not expressly define the purpose and objectives of local government. This means that the Act is not all embracing.¹⁰⁰ The Act should be amended so as to clearly define the objectives of local government. For example to state that local government shall assume a leading role in representing local communities protecting people's basic needs. The powers and functions of local authorities whether they are city, municipal or rural should be different for each type of Councils – for example district councils are believed to have limited resources and capacities to perform functions like building infrastructure, such as roads, schools or clinics. These must be assisted by government through grants to build such infrastructure. The Local Government Act must provide that Rural Councils will be entitled to a particular type of grant to help them attend to their basic needs. For instance, Ugandan constitution provides for equalization grants; which are subsidies or special provisions, for the least developed districts and is based on the degree to which a local government unit is lagging behind on the national average for particular services.¹⁰¹

Thirdly, under the Local Government Act, the Minister's wide and excessive powers are of serious concern. These must be curtailed to meet the standards of powers exercised in a democratic nation. For instance the Act gives the Minister power to suspend all Councillors who are democratically elected and to dissolve all the Councils and administer the country with appointed local government administrators. This is done with the approval of the President.¹⁰² This is clearly not in line with democratic governance. Councils are independent bodies democratically elected hence should have power to determine who administers local

¹⁰⁰ For instance the Constitution of Uganda in Chapter II provides the principles that apply to all levels of Local Government, from higher to lower Local Government i.e. that democratic governance shall be realised at all Local Government levels.

¹⁰¹ Article 193(5) of Uganda's Constitution of 1997.

¹⁰² Section 88(1) and Section 93(1) of the Local Government Act.

authorities. Further the extensive decentralization of sector specific services such as education, health and agriculture over the past decade, combined with a switch of resources and investment to these sectors has meant that these services are mainly provided by sector agencies rather than Councils. This causes a problem for any attempt to enhance democratic participation as Councillors are perceived as powerless to intervene in areas which most concern their constituents in their every day lives.¹⁰³

To resolve this problem Councillors should be added to the Consultative management boards. Ultimately, however, an integrated and accountable district system would require some co-ordination between the Council and a sector Ministry by a Strategic Planning Committee of the Council. This is to enhance council's autonomy in decision making.

The current amendment to the Local Government Act that individuals and institutions cannot execute against the councils for debts owed to them as stated on page 46 paragraph two of the dissertation must be repealed and central government should help councils settle their outstanding debts. When the debts are settled, councils can assume their responsibilities. However for such measures to be sustained, councils should be well funded.

5.3 THE CAPACITY OF COUNCILLORS

There is need to enhance Councillors duties and capacities to make them more representative of their local communities. Steps need to be taken which will make the social balance more inclusive with respect to gender (very few women are elected as Councillors). Possibly age, class and minimum qualifications could be considered. To improve capacity of Councillors skills training in

¹⁰³ Malamo Nyambe, The Post Newspaper, July 20, 2005.

meeting procedures, budgeting and local policy issues should be continued. Other ways of improving the process would be to:

- (i) amend the electoral laws so as to require local not just district residence of Councilors in their respective constituencies;
- (ii) to establish reserved seats for women candidates;
- (iii) require local community meetings in each ward where candidates (Councillors) would have to justify themselves to their respective communities.¹⁰⁴
- (iv) the electoral laws should provide minimum qualifications for persons aspiring to be elected as Councillors. These qualifications should be that those aspiring to be Councillor: at least be able to understand and speak English and should have attained the minimum of grade nine qualification or its equivalent; and
- (v) the office of Mayor and Council Chairman must be subjected to popular elections based on universal adult suffrage. This will make such offices accountable to the local citizens and not their fellow Councillors or politicians as the situation is at the moment¹⁰⁵.

5.4 HUMAN RESOURCE INVENTORY AND QUALIFICATIONS

Most Councils in Zambia are overstaffed with inadequate resources to maintain the staff. Councils may require reducing the current establishment by at least 50%. For instance Kalomo and Kapiri District Councils have continued to lay off excess staff through natural wastage.¹⁰⁶ Lusaka City Council has made an attempt to implement a well-outlined retrenchment plan but could not

¹⁰⁴ NORAD's work in Northern Province and German Technical Assistance Agency (Crook and Manor, final Report on local Governance and Decentralization in Zambia, June 2001. p.33. Transparency International Zambia.

¹⁰⁵ Ibid at p.32

¹⁰⁶ Local Governance and Decentralization Zambia (Final Report) Zambian Ministry of Local Government and Housing and Donor Reference Group, Lusaka, Richard Crook and James Manor, p.19

continue due to financial limitation. The ministry of Local Government and Housing has been working on improving performance of local authorities through retrenchment programs but these have not been supported by funding and are not based on any established criteria. Councils have a lot of unqualified staff in management and other key positions¹⁰⁷.

To resolve this, embarking on capacity building plan will be a mammoth task requiring enough resources not only for training but improvements in other areas, such as improving conditions of service in order to develop capacity to attract and retain qualified personnel. Performance appraisal system should be made "open" which will provide for feedback and opportunities to learn from past performance. Councils should consider introducing performance based contracts for its employees¹⁰⁸. Workshops and seminars in strategic management would be of great help to enhance skills

5.5 INTEGRATION BETWEEN TRADITIONAL AUTHORITIES AND THE MODERN LOCAL GOVERNMENT SYSTEM

Democratic decentralisation is meant to give citizens power to control their own affairs in matters that most closely affect their lives. There are many voices now clamoring for "traditional structures" to be integrated into any new set of sub-district local government institutions. Such policy would, however, have to confront the wide variation in the role and powers of chieftaincy which exists among different societies in Zambia, from the formal hierarchy of the Barotse Kingdom to the

¹⁰⁷ Ibid at p.41

¹⁰⁸ These are contracts where targets are set and are to be attained by the employee as set out in the contract of service.

traditional “Chiefless Societies” of the Tonga.¹⁰⁹ Chieftaincy is viewed as one of the most “embedded” forms of effective leadership at the grass roots level. At present, two chiefs, or their representatives sit ex-officio on the District Councils. But this is a formal participation which has little relevance to the actual role which chiefs and village headmen might play at the local level.

It is therefore, recommended, that serious considerations be given to incorporating traditional authorities into local-level governing structures, which will be called Village Councils or Village Development Committee, in ways which take account of local cultures. There will however depend upon a community willingness to unite around developmental objectives. In order to accommodate local cultural variations, the legal specification of the proposed Village Development Committee must leave their composition fairly open. For instance, they should consist of 10 people, chaired or presided over by the village headman or chief, or an elder's in a way which would not infringe on the dignity of the traditional office¹¹⁰.

5.6 IMPROVING COUNCILS FINANCIAL CAPACITY

We saw in the second chapter that Zambia's local authorities are desperately short of funds. It is critically important that the dialogue between Government and the donors (both of whom have a part to play in funding Councils) focus on solutions to this problem. Central government needs to develop mechanisms that will ensure an equitable, predictable, and stable source of funding for local government, the principal objective of which should be to assure minimum standards of service provision across all areas of the country.

¹⁰⁹ This is according to the evidence of informants from Government, Civil Society and the donor Community.

¹¹⁰ Local Government and Decentralization in Zambia (Final Report) Ministry of Local Government and Housing and Donor Reference Group, Crook and Manor, p.35

Recommendations in this area are as follows:-

1. **Central Funding and the Creation of Local Government Finance Commission (LGFC)**

One of the most stable and secure forms of government funding is central distributable pool (DP) or consolidated fund based on a guaranteed and mandatory share of national revenue. Such a provision may be embodied in the constitution, or provided for in entrenched legislation. The exact percentage to be allocated to the DP in the first instance is a matter of both political decisions and careful analysis of the minimum requirements of local authorities in relation to their mandatory functions. The main advantage of such a fund is that, as a percentage of national revenue it would be buoyant year by year and not subject to political manipulation. This fund should be administered by independent local government finance Commission (LGFC) whose status should be legally protected.¹¹¹

The Local Government Finance Commission will be responsible for the following tasks:

- (i) Developing a formula for the allocation of the Distributable pool funds amongst the 72 local authorities, to redistribute resources to poorer areas. Various criteria can be used: Population size or density, per capital income, access to facilities, degrees of remoteness, revenue effort (to create incentives for local resource mobilization, cost disparities. The criteria would be transparent and each local authority should understand and predict the basis of its funding. Allocations should be in the form of block grants, either untied or with a capital element, especially in the current situation where local authorities have a backlog of infrastructural needs which need to be improved.
- (ii) Ensuring that funds from central government are paid directly to the Councils and not through Ministry of Finance.

¹¹¹ Local Governance and Decentralization in Zambia, final Report by Crook and Manor, June 2001, p.37.

(iii) Administering and auditing the distribution of funds.¹¹²

5.6.1 TAX SHARING

In addition to a central block grant distributed as above, local governments should be able to share yields of certain national taxes, which would provide wider base of revenue collection for Councils¹¹³.

If decentralization is to lead to local governments being responsible for an integrated budget, then ultimately all earmarked funds should be transferred through a suitably enhanced District Treasury or Finance Department with the Local Government. Before attaining a fully decentralized local government, funds for sectors such as education and health will still come through the sectors Ministries who are delivering the services.¹¹⁴

5.6.2 LOCAL REVENUE MOBILIZATION

Local authorities must take every effort to expand their local revenue sources and increase efficiency in collecting existing taxes. It is worth noting that, local authorities already have a number of basic taxes available to them but their ability to maximize them has been undermined by central government measures. It is essential to restore the efficiency of these local taxes.¹¹⁵

For instance property rates the most efficient (in terms of cost of yield) and suitable revenue for local governments. The yield available could be increased by:

¹¹² Ibid p.38

¹¹³ Zambia Revenue Authority should pattern with Councils to collect base Tax on a commission basis, from the informal sector i.e. market fees, bus fares and taxi fees.

¹¹⁴ Ibid

¹¹⁵ Malamo Nyambe, The Post Newspaper, July 20, 2005.

- a) Abolishing the system of grants in lieu of rates currently used by central government to avoid paying rates on its properties within local authorities areas. Government should pay rates on all rateable property that they own.
- b) To repeal the powers of the minister to grant exemptions on rates. And instead the Councils should be given powers by the local Government Act to grant exemptions to individuals and institutions as they deem fit;
- c) Instruct the Rating Tribunal to expedite the valuation approvals of all Council houses which were sold in 1996; and
- d) To help Councils to improve the effectiveness of the tax by: updating valuations, improving billing procedures and tightening up on pursuit of defaulters.¹¹⁶

5.6.3 THE PERSONAL LEVY ACT

The Act should be reformed so as to remove the current minimum and maximum amounts, which are so low to make the tax uneconomic to collect. It would be preferable, both in terms of social equity and economy, to make a flat 1% of gross income; payable as personal levy. Means of assessing personal incomes should be improved possibly by computerizing the information required for personal levy collection.¹¹⁷ Other sources of local taxation should be developed such as poll levies to charge fees on erection of polls within the cities, municipalities and districts.

User charges should be further developed where they are economic. For instance, though major sources of income from utility services such as water and electricity have already been lost to Councils, through privatizations and contracting out. These could be reverted back to Councils in

¹¹⁶ Maipose, G. S., 1999, Zambia; Decentralization under the New Democratic Era, Changes and continuity, p.17

¹¹⁷ Ibid at p.21.

part. For instance the distribution of electricity could be a mandate of Councils this could raise the revenue capacity of local authorities. This however requires a transfer of adequate and sufficient resources to Councils to help them carry out this additional task.¹¹⁸

Last but not the least **emergency measures** are needed to help local authorities begin the process of rebuilding their capacities over the next two or three years. The period of 10 years proposed for the implementation of the National Decentralization Policy is too long. Local government needs immediate and urgent reform. Therefore access to capital funds for development is urgently required. As noted, earlier, the Local Government Finance Committee Distributable pool fund could be used to contribute to this. Local authorities might also be given direct access to donor funding, although this would have to be regulated to avoid distorted or inequitable patterns of development from occurring¹¹⁹.

In summation, it is worth noting that the State should take reasonable measures within a reasonable period of time, within its available resources, to achieve progressive decentralization of local authorities in Zambia. Legislative, administrative and political measures as suggested in this dissertation should be embarked on in the nearest future. This should provide for standards for the achievement of a fully decentralized local authority through devolution of power and resources to local authorities. And unless recommendations contained in this chapter are unreservedly implemented, no decentralization for Councils is likely.

¹¹⁸ We could learn from the South African experience where Distribution of electricity is a mandate of local authorities. *Supra* at p. 36

¹¹⁹ Local Government and Decentralization in Zambia (Final Report) Ministry of Local Government and Housing and Donor Reference Group, Crook and Manor, p.37

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6. Zambia Daily Mail, July 22, 2003
7. The Post Newspaper, July 20, 2005, p.9
8. The National Mirror, 22nd – 28th February, 2005

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1. The Constitution of Zambia, Cap 1
2. The Local Government Act, 1965, Cap. 480
3. The Local Government Elections Act, Cap 282
4. The Local Government Service Regulations, 1966, (S.I NO. 115 of 1996)
5. The Market Act, Cap. 290
6. The Personal Levy Act, Cap 329
7. The Rating Act No. 12 of 1997
8. The Rent Act, Cap 206
9. The Trades Licensing Act, Cap 393.
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PERSONAL INTERVIEWS

1. Interview with, the Chief Committee Clerk Mr. Gilbert Lungu – Lusaka City Council.
2. Interview with Mr. Michael Kabungo, Manager Waste Management Unit – Lusaka City Council.
3. Interview with Mr. Mwaba Chimpuka from the Decentralization Department, Cabinet Office, Lusaka
4. Interview with Housing Officer Mrs. Edina Zulu – Lusaka City Council.

APPENDICES

TABLE A

FIGURE 2:1 SHARING OF RESPONSIBILITY BETWEEN CENTRAL AND LOCAL GOVERNMENT.

SERVICE	CENTRAL GOVERNMENT	LOCAL GOVERNMENT	SHARED
General Public Service			
1. Administration			
2. Physical (Town/City) planning			
3. Road Maintenance and Car Parking			
4. Issuing of trade licences			
5. Tax			
6. Rates and Personal levy collection			
7. Registration of births, deaths, marriages and voters.			
8. Land Allocation			
Education			
1. Pre-School			
2. Primary, Secondary and Tertiary			
Health			
1. Hospitals and Rural health Centres			
2. Clinics			
3. Environmental health (e.g. Malaria and Cholera controls)			
Housing			
Construction and Management of Housing			
Community Amenities			
i. Inspection of hotels, bars restaurants and abattoirs			

ii. Prevention and abatement of Public nuisances.			
iii. Construction and management of markets			
Economic Services			
i. Water supply, treatment and reticulation			
ii. feeder road construction and maintenance			
iii. Solid waste management			
iv. Electricity Production and supply			
v. Commercial undertakings (shops, bars, rest-houses farms e.t.c.			
vi. Street lighting in Urban areas.			

Source: Extract from a Report on Decentralization and Local Government, December, 2002 by Ministry of Local Government and Housing.

TABLE B: INADEQUATE OWN REVENUE SOURCES OF DISTRICT COUNCILS

Type of Council	Total Local Taxes Million (K)	Average Local Taxes Million (K)
City (4)	44,820	11,205
Municipality (13)	11,796	907
District Council (53)	8,358	158
Total	64,974	928

Table B indicates wide discrepancy in the revenue raising capacity respectively of the cities, municipalities and district councils. The need to support the latter two entitles with greater funding from the center and to raise their revenue raising capacity is clearly evident.

TABLE C: CURRENT QUALIFICATIONS HELD BY SENIOR MANAGEMENT TEAM, CHONGWE DISTRICT COUNCIL

Job Title	Current Qualifications	Job Requirements
Acting Council Secretary	ILGAZ	Fellow of ILGAZ, Public Administration
Director of Works	Certification Accounts and Business Studies	Degree in Civil Engineering
Chief Administrative Officer	ILGAZ	Associate – ILGAZ, PA Degree
Assistant Deputy Treasurer	Certificate in Accounts and Business Studies	Member of ZICA
Revenue Collection	Form III	
Community Development Officer	Grade 12	Degree/Diploma in Social Work
Works Foreman	G7 Trade Tested	
Acting Assistant Treasurer/Auditor	Certificate in Accounts and Business Administration	Diploma in Accountancy/NATEC
Levy Assistant Officer	CABS	
Senior Administration Officer	Certificate in ILGAZ	
Acting District Treasurer	Zambia Diploma in Accountancy	Fellow/Associate of ZICA
Officer Acting District Planning	Diploma in Civil Engineering	Degree in Social Work

TABLE D: RECOMMENDED MINIMUM QUALIFICATION FOR LOCAL GOVERNMENT STAFF

JOB TITLE	RECOMMENDED QUALIFICATION
Council Secretary	Degree – Public Administration, Fellow – ILGAZ
Deputy Council Secretary	Degree – Public Administration, Member – ILGAZ
District Treasurer	Fellow, Associate of ZICA, ACCA, CIMA or equivalent
Internal Auditor	ACCA, CIMA or equivalent
Chief Administration Officer	Associate, ILGAZ, Diploma/Degree Public Administration
Director – Works	Associate – ILGAZ, Diploma/Degree Public Administration
District Planning Officer	Degree in Social Work such as Demography
Community Development Officer	Diploma in Social Work

Source: Extracts from a Report on Decentralization and Local Government, December (2002) by Ministry of Local Government and Housing.