

**TESTING THE BOUNDARIES OF ZIMBABWE'S FISCAL DECENTRALISATION
FOR URBAN COUNCILS**

By

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UN PROMOTER: *of the*
WESTERN CAPE

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Thursday, 25 November 2010

DECLARATION

I declare that *Testing the boundaries of Zimbabwe's fiscal decentralisation for urban councils* is my own work. All citations, references and borrowed ideas have been duly acknowledged. None of the present work has been submitted previously for any degree or examination in any other University.

Student name

Signature



Date

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CHAPTER ONE

INTRODUCTION

1. Background to the study

There is a realisation that urbanisation has overstretched the ability and efforts of central governments to serve from the centre, thus, giving rise to the search for a robust decentralisation policy that vests urban local governments with some level of autonomy.¹ It is in this context that decentralisation has become critical in order to sufficiently respond to the varied service delivery challenges brought about by increasing urbanisation. However, all efforts to capacitate urban councils through the process of decentralisation are futile if the urban local governments lack the necessary financial means to fulfil their responsibilities.

The nature and extent of fiscal autonomy enjoyed by urban councils in Zimbabwe is a matter of debate. The current thinking in central government is that Zimbabwean urban councils already have at their disposal boundless fiscal powers and that they are in a strong position to mobilise resources for service delivery programmes.² It is alleged that the assignment of any further fiscal autonomy to urban local governments will threaten equitable development.³ They are of this view because equitable development calls for commitment and political will of the highest order.⁴ Other levels of government are assessed as lacking in their capacity to ensure equitable distribution of resources.⁵ On the other hand, there are those who are of the view that urban local governments in Zimbabwe lack fiscal autonomy. They argue for the assignment of more fiscal autonomy to urban local governments.⁶ They point to the failure of urban local authorities to absorb and deal with the challenges resulting from rapid urbanisation. In particular, they point to the huge revenue gaps as the major reason for obsolete infrastructure in urban areas.

¹ Fjeldstaad 2003: 133.

² Ministry of Local Government 2008: 2.

³ Ministry of Local Government 2008: 2.

⁴ Ministry of Local Government 2008: 2.

⁵ Ministry of Local Government 2008: 2.

⁶ Ministry of Local Government 2008: 8.

The lack of fiscal autonomy is often cited as the reason behind the failure by urban councils in Zimbabwe to provide social goods and services to ratepayers. The overall degeneration is evidenced by poor roads, lack of clean water and lack of capacity to collect refuse.

Some suggest that there is a political dimension to the failure by central government to give more fiscal autonomy to urban councils. This relates to the fact that an opposition party, Movement for Democratic Change (MDC), now controls all the thirty-two urban councils in Zimbabwe.⁷ The strategy used by the ruling Zimbabwe African National Union PF (ZANU PF), some argue, is to undermine the urban councils such that they are denied revenue streams to carry out service delivery and thus expose them as unviable alternatives to ZANU PF councils.⁸ The strategy also involves withholding fiscal autonomy so that MDC urban local governments have to negotiate with ZANU PF for the development and acceptance of new sources of revenue for all urban councils.⁹

2. Statement of the problem

As the foregoing suggests, there is no agreement regarding the level of autonomy enjoyed by urban councils. With the view to determine the extent to which the current system of decentralisation entrenches the fiscal powers and financial autonomy of the urban councils in Zimbabwe, the study will attempt to answer the following questions:

- What constitutional provisions are there in place for sustaining the fiscal autonomy of urban councils?
- Can urban councils identify and develop new revenue streams independent of central government?
- Is the arrangement of revenue raising powers between local government and central government reflective of good fiscal decentralisation policy?.
- Do urban councils enjoy expenditure discretion?
- How much freedom do urban local authorities have with respect to borrowing?
- Is the legislative basis for intergovernmental fiscal transfers adequate?
- Who determines the institutional setting within which the preceding questions are answered?

⁷ IDAZIM 2010: 31.

⁸ Bland 2010: 8.

⁹ IDAZIM 2010: 49.

3. Focus and objective of the study

The research discusses how far Zimbabwe has gone in empowering urban communities by strengthening their urban councils and systems of sub-national government finances. The research will analyse legal provisions in the Zimbabwe Urban Councils Act (Chapters 29:15) of 1996¹⁰ as they relate to the characteristics of local government financing. The study will also highlight the need for the Zimbabwe government to address the need for a better fiscal decentralisation framework which addresses the concerns of urban local governments.

4. Significance of the research

The thesis focuses on fiscal decentralisation in general and fiscal autonomy for urban local governments in particular. The thesis may assist central and urban local governments in Zimbabwe in identifying contentious issues around the lack of fiscal autonomy. The clarification of issues of fiscal autonomy will contribute towards addressing the reasons that led to deteriorating service provision in all the urban towns and cities in Zimbabwe.

5. Literature review

Very few authors have written about fiscal decentralisation in Zimbabwe. Matongo and Nhemachena are of the view that while the Zimbabwe government appears keen to decentralise and has, in fact, decentralised some major functions, this exercise has not always been followed by a decentralisation of fiscal powers.¹¹ The lack of fiscal autonomy is blamed for placing excessive financial burden on urban councils to the extent that service provision of health, education, roads and other services in general has suffered.¹²

Similarly, Wekwete notes that the Zimbabwe government has been assigning new responsibilities to urban local governments, including health and education, without providing additional financial resources or fiscal powers. Such responsibilities are coming during a difficult period in which the urban local governments are trying to meet growing service demands while unifying their inherited administrative systems based on segregated

¹⁰ Legislation in Zimbabwe, except for subsidiary legislation such as statutory instruments and regulations is identified by way of chapters and classified in accordance with the subject matter. In this regard, the Urban Councils Act is Vol. 15 of Chapter 29.

¹¹ Matongo and Nhemachena 2000: 2.

¹² Matongo and Nhemachena 2000: 15.

services. He further argues that if the urban local governments are to continue to operate effectively, they must enjoy fiscal autonomy.¹³

Nyoni and Dingani make the specific point that the government of Zimbabwe has decentralised to urban local governments the responsibility for the provision of health services without providing the urban councils with the necessary revenue to cover the expenditures.¹⁴ They further argue that urban local governments are incurring huge deficits in their health accounts that have translated into serious cash flow problems in that they have had to finance these deficits through very expensive bank overdrafts.

Most of the material available in Zimbabwe on decentralisation is general in nature with most writers choosing to commit only a few sentences or one paragraph at most on fiscal decentralisation much less on fiscal decentralisation for urban councils. However, those who have written on decentralisation make the general observation that decentralisation did not result in the fiscal autonomy of urban local governments in Zimbabwe.

6. Methodology

The fiscal decentralisation policy for urban local governments in Zimbabwe will be reviewed by examining books, reports, case law, regulations, the Constitution, relevant legislation, literature, policy papers from the Ministry of Local Government and other relevant documents. Electronic sources will also be used.

7. Structure of the study

The chapters in the study are organised as follows:

Chapter Two introduces the subject of fiscal decentralisation. It aims to determine the nature and meaning of fiscal decentralisation. It will attempt to achieve this through the identification of the essential features of the building blocks of fiscal decentralisation. Whenever relevant, it will refer to the experiences of other countries on fiscal decentralisation.

Chapter Three discusses salient features of fiscal decentralisation for urban councils in Zimbabwe from a historical perspective. The aim is to put the current local government

¹³ Wekwete 1992: 13.

¹⁴ Nyoni and Dingani 2000: 3.

financing arrangements for urban councils into perspective. It seeks to achieve its objective by discussing revenue, expenditure, borrowing and intergovernmental fiscal transfers in the context of local government financing policy from 1890 to 1996. The Chapter attempts to assess from a historical perspective the trends in the financial clout of the urban local governments during the period 1890 to 1996.

Chapter Four seeks to analyse the legal framework for fiscal decentralisation for urban councils in Zimbabwe as provided in the Urban Councils Act (Chapter 29:15) of 1996. The chapter will attempt in earnest to evaluate the fiscal autonomy enjoyed by urban councils in Zimbabwe.

Chapter Five concludes the study and gives few recommendations.



CHAPTER TWO

INTRODUCING FISCAL DECENTRALISATION

1. Introduction

Chapter Two introduces the subject of fiscal decentralisation. It aims to determine the nature and meaning of fiscal decentralisation. It will attempt to identify the essential features of fiscal decentralisation. Whenever relevant, it will refer to the experiences of other countries. For purposes of maintaining a coherent structure, the research paper will confine itself to the experiences of South Africa, India and Nigeria. The constant reference to the three countries as examples does not in any way suggest that they practise better fiscal decentralisation. The idea, is rather, to use laws and practices of those countries to explain the essential features of fiscal decentralisation. The four aspects of fiscal decentralisation which the research paper will refer to are: revenue, expenditure, borrowing and intergovernmental fiscal transfers.

2. Fiscal decentralisation in a nutshell

Fiscal decentralization is about the transfer of taxing and spending powers from central government to sub-national governments such as urban councils.¹⁵ Broadly speaking, there are four aspects that make up fiscal decentralisation. These are revenue, expenditure, intergovernmental fiscal transfers and borrowing.

Any discussion about the revenue of urban councils is two pronged. First it raises the question of who between central government and urban local government should tax where and what.¹⁶ Second, it is compelled to answer the important question of what other revenue sources are assigned to urban councils.¹⁷ Another issue that is pertinent to the discussion on revenue is the extent of discretion sub-national governments can exercise in raising revenue.¹⁸ Expenditure, on the other hand, relates to the discretion of urban councils to commit and manage their financial resources without the interference of central government.

¹⁵ Fjeldstad 2003:133.

¹⁶ UNDP 2010: 4.

¹⁷ UNDP 2010: 4.

¹⁸ UNDP 2010: 4.

Beyond the allocation of responsibilities, expenditure discretion is a good indicator of the commitment of central government to fiscal decentralisation.¹⁹

An intergovernmental fiscal transfer refers to budgetary support from central government to urban councils for purposes of funding public services.²⁰ Although intergovernmental fiscal transfers are used for a wide variety of purposes, they are mainly used to ensure:

- “vertical” fiscal balance (providing additional resources to urban councils), so that there is a balance between their fiscal needs and available resources to them;
- funding of specific national priorities; or
- that the effects of externalities are counter-acted.²¹

Finally, borrowing powers refers to authority granted by central government for an urban council to finalise loan arrangements with a willing financier.²² This is especially the case where there is glaring disparity between the expenditure and revenue of urban councils.

There are a number of reasons why fiscal decentralisation could be adopted. It is often argued that fiscal decentralisation brings urban local governments closer to ratepayers in the sense that it establishes a direct connection between expenditure programs and community needs.²³ The context of fiscal decentralisation, it is argued, results in a situation where expenditure decisions are more likely to be appropriate and acceptable because they mirror the tastes of local communities. Another reason often put across in favour of fiscal decentralization is that citizens within urban local governments are likely to be more willing to contribute financially in support of development activities that are identified and implemented at the local level. Fiscal decentralisation promotes experimentation and political accountability at the local level.

It is pertinent to mention that the value of fiscal decentralization is the subject of contestation among academics and local government practitioners. Put briefly, those firing a broad shot at fiscal decentralization point to the threat it poses in worsening regional disparities.²⁴

¹⁹ UNDP 2010: 3.

²⁰ UNDP 2010: 5.

²¹ UNDP 2010: 5.

²² UNDP 2010: 6.

²³ UNDP 2010: 2.

²⁴ Smoke 2001: 13.

Specifically, they make reference to the asymmetries in service provision caused by varied revenue bases across urban councils. To bolster their argument, they point to the fact that the poor and those with low incomes can be excluded from accessing goods and services if decentralisation takes the form of devolution.²⁵ According to this view, central government is presented as the only credible institution that has a broad political mandate to ensure some degree of equity in the distribution of goods and services and sufficient political power to redistribute resources.²⁶ It is also argued that fiscal decentralisation can lead to an intensification of local networks of corruption and the capture of expenditure programs of urban councils by the rich and powerful.²⁷ It would appear that there is no such thing called standard fiscal decentralisation. The type of fiscal decentralisation practised in any country appear to be shaped by historical and political dynamics, among other variables.

From the foregoing, it is clear that any discussion on fiscal decentralisation raises a significant number of key issues about the arrangement of fiscal powers and authority between central government and urban local authorities. First, a key question on fiscal decentralisation that begs to be answered is the extent of the relative powers of central government and urban councils to raise revenue. Second, fiscal decentralisation need not only be about the question of raising revenue but also about the extent to which urban local governments are empowered and how much authority and control they exercise over the use and management of devolved financial resources. Third, fiscal decentralisation ought to be about the extent to which urban councils can exercise their borrowing powers without central government standing in their way. Fourth, it must demonstrate that central government support for urban councils in the form of intergovernmental financial transfers, does not lead to loss of autonomy.

2.1 Revenue

As indicated earlier, revenue is about the availability of the financial means to fulfill the objectives of expenditure programs of urban councils.²⁸ The sources of revenue for urban local authorities include service fees, rates and fines. The presence of constitutional or equivalent backing for the revenue raising powers of urban councils is one of the major

²⁵ Smoke 2001: 13.

²⁶ Smoke 2001: 13.

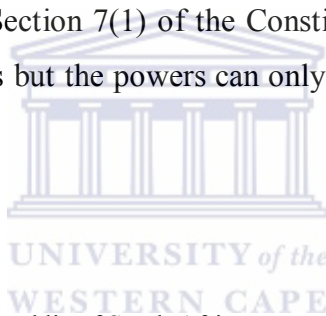
²⁷ UNDP 2010: 2.

²⁸ UNDP 2010: 2.

indicators of good fiscal decentralisation.²⁹ For example, in South Africa, the fiscal powers of urban municipalities are encoded in the Constitution of 1996.³⁰ The situation is different in India, where urban local authorities do not boast of original revenue raising powers as fiscal powers are assigned to urban councils at the discretion of States. Article 243 of the Constitution of India³¹ succinctly captures the subordinate nature of the revenue powers of urban councils. It provides that, the legislature of a State may, by law,

“authorise a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits; and assign to a municipality such taxes, duties, toll and fees levied and collected by the State Government for such purposes and subject to such conditions and limits.”

The revenue raising powers of urban councils in Nigeria are accorded constitutional protection, although the powers appear to be limited when compared with those of South African urban local authorities. Section 7(1) of the Constitution of Nigeria provides for the revenue powers of urban councils but the powers can only be exercised with the approval of state governments.³²



²⁹ UNDP 2010: 8.

³⁰ S 229 (1) of the Constitution of the Republic of South Africa grants urban local governments in South Africa fiscal authority to impose:

- (a) “rates on property and surcharges on fees for services provided by and on behalf of the municipality; and
- (b) if authorized by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, sales tax or customs duty.”

³¹ The Constitution of India recognises two levels of government, the Union and States. The Union is the equivalent of federal government. Below the Union are States. Urban local government is not recognised in the Constitution. It is a creature of the statute, which reports and is shaped by the States. There is no direct interaction between urban local governments and the Union. The interaction between urban councils and the Union is mediated by the States. The fiscal powers of urban councils are left to the states to determine.

³² S 7 (1) of the Constitution of Nigeria reads: “The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the government of every state shall, subject to S 8 of this Constitution, ensure their existence under a law which provides for the financeof such councils.” The Constitution of Nigeria recognises two levels of government, the federal and state

The presence of sufficient revenue powers is ordinarily assessed as evidence of national government commitment to fiscal decentralisation.³³ However, it is not enough that urban councils are granted taxing powers. It is also important to assess whether the taxes that are assigned are productive or not.³⁴ This is not the case in South Africa where all the productive sources of revenue are resident with the national government.³⁵ Examples of national sources of revenue are income tax, value-added tax, general sales tax, and customs duties.³⁶ In fact, there appears to be no limits to national government's taxation powers.³⁷ On the other hand, urban councils are in charge of low yielding sources of revenue such as property rates and surcharges on fees for services.³⁸ Similarly, the Constitution of India assigns productive and elastic sources of taxes such as income tax, corporation tax, customs duty to the Union.³⁹ The deficiency in taxing powers assigned urban local authorities in India left property tax as the only important source of revenue for urban councils.⁴⁰ Other sources of revenue such as taxes on the consumption, sale or supply of electricity, advertisements, non-motorised vehicles, theatre, milch and dogs have failed to elevate the financial positions of urban councils as they do not generate enough revenue.⁴¹ The case of urban councils in Nigeria is not different from that of South Africa and India. In fact, the constitutional demarcation of revenue powers in Nigeria promotes vertical imbalances and horizontal inequities which put urban local authorities at a disadvantage.⁴² The low yielding sources of revenue which fall within the legal and administrative jurisdiction of urban councils in Nigeria are licenses and

governments. Below the federal government are states. Urban local government is not recognised in the Constitution. It is a creature of the statute, which reports and is shaped by the States. There is no direct interaction between urban local governments and the federal government. The interaction between urban councils and the federal government is mediated by the states. The Constitution mentions the need for state governments to ensure that urban councils are financially provided but leaves the determination of the fiscal powers of urban councils to individual state governments.

³³ UNDP 2010: 3.

³⁴ Fessha 2008: 450.

³⁵ Stanton 2009: 176.

³⁶ Steytler 2007: 333.

³⁷ Steytler 2007: 333.

³⁸ Steytler 2007: 333.

³⁹ Mathew and Hooja 2009: 185.

⁴⁰ Mathew and Hooja 2009: 185.

⁴¹ Mathew and Hooja 2009: 185.

⁴² Galadima 2009: 251.

fees on television and wireless radio; market and trading licenses and fees; car park duties; and advertising fees.⁴³ The assignment of marginal fiscal authority can be said to be a strong indicator of the low status associated with urban councils, more so in view of the fact that they are creatures of statute.⁴⁴

The level of revenue discretion assigned to urban councils is an important issue. In relation to this, the setting of the upper limits on council charges by central government is a practice which is at variance with the implementation of good fiscal decentralisation.⁴⁵ It is a practice which affirms the lower fiscal authority of urban councils. This is the situation in South Africa where the Ministers of Local Government and Finance decide the total revenue derived from rates on all property categories or how a rate on a specific category of property may be increased. Section 43 of the Municipal Finance Management Act of South Africa reinforces the inferiority of urban councils in revenue generation by determining upper limits of municipal tariffs and taxes. In addition, the Minister of Finance is responsible for coming up with the national norms and standards for imposing municipal user fees and surcharges.⁴⁶ The fiscal autonomy is eroded further by the legislative provision authorising the Minister of Local Government to regulate the general framework of municipal property rates.⁴⁷ Similarly in India⁴⁸ and Nigeria⁴⁹ state governments prescribe frameworks for tariffs and rates for urban local authorities.

The foregoing discussion has identified a few issues pertinent to revenue for urban councils. One of the issues identified is that the mere provision of revenue powers in the Constitution is not enough. What is important is whether urban local authorities can exercise the revenue discretion assigned to them by the constitutional process. Linked to this is the issue of whether the sources of revenue assigned urban councils are productive or not. Only when

⁴³ Galadima 2009: 27. Galadima argues that the revenue sources that fall under the jurisdiction of urban councils are non-bouyant and inelastic. They cannot yield sufficient revenue to make any significant impact on the structure of local finance. In practice, only one source of tax, markets, is exploited by urban councils. Interestingly, even the tax source universally considered a local tax, namely property taxes and rating, is in reality under the legal jurisdiction of the state.

⁴⁴ Galadima 2009: 251.

⁴⁵ Zhang and Zou 1998: 221.

⁴⁶ S 8.2 (a) of the Municipal Fiscal Powers and Functions Act, 1997.

⁴⁷ S 83 of Municipal Property Rates Act, 2004.

⁴⁸ Mathew and Hooja 2009: 186.

⁴⁹ Galadima 2009: 253.

high yielding sources of revenue are availed can the process of fiscal empowerment make a difference to the fiscal structure of urban councils.

2.2 Expenditure

Good local fiscal autonomy for urban councils is often associated with the absence of a legal framework for regulating the financial expenditure of urban local authorities.⁵⁰ More often than not, the expenditure discretion of urban councils is subject to national regulatory framework.⁵¹ For example section 215 (2) (a) of the Constitution of South Africa provides that “[n]ational legislation must prescribe-(a) the form ofmunicipal budgets”.

Section 216 of the Constitution of South Africa entrenches the control of financial processes of urban councils. It allows for central government control by prescribing that urban councils introduce generally recognised accounting practice⁵², uniform expenditure classification⁵³ and uniform treasury norms⁵⁴. Urban councils are threatened with withholding of intergovernmental transfers if they commit a persistent or material breach of the measures outlined above.⁵⁵ De Visser also alludes to the tight regulation of municipal expenditure, accounting and reporting by National Treasury.⁵⁶ Similarly, the financial processes of urban councils in India are legislated and regulated by the State.⁵⁷ For example, urban councils require state government clearance in order to incur expenditure beyond a certain threshold, exposing them as institutions of limited financial authority.⁵⁸ With no independent expenditure powers except those assigned or shared by the state, the form of regulation of expenditure thresholds for urban local governments vary from state to state in India. For example, village panchayats (councils) in Kerala, India, can implement projects without the need to secure the approval of the state only if the value of the project is RS100,000 (US\$2, 064) or below.⁵⁹ In Nigeria, the regulation of urban local authorities is provided for in

⁵⁰ UNDP 2010: 7.

⁵¹ Stanton 2009: 177.

⁵² S 216 (1) (a) of the Constitution of South Africa, 1996.

⁵³ S 216 (1) (a) of the Constitution of South Africa, 1996.

⁵⁴ S 216 (1) (a) of the Constitution of South Africa, 1996.

⁵⁵ S 216 (2) of the Constitution of South Africa, 1996.

⁵⁶ De Visser 2009: 283.

⁵⁷ Mathew and Hooja 2009: 188.

⁵⁸ Mathew and Hooja 2009: 189.

⁵⁹ Mathew and Hooja 2009: 189.

outdated financial control instruments such as those contained in the Finance (Control and Management) Act of 1958.⁶⁰ The Act constitutes the legal bed rock upon which the urban council accounting manuals, treasury circulars, financial regulations and financial instructions are founded.⁶¹ In addition, the financial memoranda issued by states regulate the accounting processes, the books of accounts to be maintained and procedures to be followed in the preparation of accounts and financial statements.⁶² Perhaps the most important aspect of the Act is that it regulates the accounting format and the basis of accounting for urban local authorities.⁶³ Further to this, the rules and guidelines issued by the state governments deny urban councils any expenditure discretion and in many ways do not enhance the capacity of those entrusted with local public funds to better manage them.⁶⁴

One of the important factors in relation to the discretion of expenditure is the nature and extent of post-budget controls. The existence of post-budget controls for urban councils is often regarded as a practice at variance with good fiscal decentralisation.⁶⁵ Post-budget controls are systems put in place by states to monitor the budgets of urban councils which have already been approved.⁶⁶ There are many ways of controlling budgets of urban councils. One way of effecting control is by limiting the expenditure discretion of urban councils.⁶⁷ Another mechanism is to constantly dispatch auditors from states to go and verify compliance in the expenditure programs of urban councils.⁶⁸

State governments in Nigeria regulate the financial processes of urban councils, reducing their autonomy to freely commit their finances in line with local preferences. Well after

⁶⁰ Aruwa 2005: 4.

⁶¹ Aruwa 2005: 4.

⁶² Aruwa 2005: 5.

⁶³ Aruwa 2005: 5.

⁶⁴ Aruwa 2005: 6. The Finance (Control and Management) Act covers the following key areas in government accounting: the operation of funds, the external controls for operating the accounting system in terms of audit and investigations, and the appropriation procedure. It forms the basis for the audit powers of states. Ironically, the federal and state governments in Nigeria are reported to be taking their time to review the Finance (Control and Management) Act of 1958 despite the existence of clear evidence presented to them demonstrating how the Act has constrained the expenditure discretion of urban councils.

⁶⁵ Galadima 2007: 28.

⁶⁶ Zimbabwe Institute 2009: 7.

⁶⁷ Mathew and Hooja 2009: 189.

⁶⁸ Galadima 2007: 28.

budgets are in operation, the states in Nigeria have got mechanisms in place for imposing further controls on what urban councils can do.⁶⁹ For example, state governors use their audit powers to assess the compliance of urban councils with regard to the usage of financial transfers. In the case of South Africa, national treasury has the powers to cause urban councils to furnish it with any financial information on conditional and unconditional grants.⁷⁰ This is particularly the case where urban councils receive budgetary support from national government for specific projects.⁷¹

The preceding discussion has identified a few issues. One of the issues is that expenditure discretion is important. Only when urban local authorities enjoy expenditure discretion are they in a position to link expenditure to the tastes of urban communities. Linked to this issue is the impact of central government control of the expenditures of urban councils. Another issue is the impact of central government control on the ability of urban councils to develop capacity for managing their own financial resources. Yet another issue is the restrictive nature of the constitutional and statutory provisions on expenditure control. Finally, the excessive monitoring of expenditure through post-budget controls is detested for the reason that it affirms the subordinate nature of urban councils.

2.3 Borrowing

The ability of urban local governments to execute borrowing powers with minimal interference from central government is another phenomenon indicative of the assignment of substantive fiscal powers.⁷² Other features that are key to the existence of a good environment for borrowing include the absence of norms, thresholds and state approval for borrowing by urban councils.⁷³ Urban local authorities must also be in a position to approach lending institutions of their choice and conclude loan terms without national or state

⁶⁹ Galadima 2009: 254.

⁷⁰ National Treasury 2010: 3.

⁷¹ The Municipal Finance Management Act, 56 of 2003 regulates revenue, expenditure, borrowing, intergovernmental transfers, financial reporting, budgeting, accounting and reporting of urban municipalities.

⁷² UNDP 2010: 5.

⁷³ UNDP 2010: 5.

governments coming into the picture.⁷⁴ It is often said that the role of central government should be confined to the setting of a broad framework for sub-national borrowing.⁷⁵

One of the key issues to be considered is whether there is a constitutional basis for borrowing by urban local governments.⁷⁶ This is not always the case. For example, urban councils in South Africa enjoy constitutional protection to borrow.⁷⁷ In India⁷⁸ and Nigeria⁷⁹, borrowing by urban councils takes place at the behest of state governments. A cross cutting issue for the urban councils in the three countries is that the powers to borrow from external sources are subject to national regulation.⁸⁰

Another issue related to the discretion to borrow is the purpose for which the loan is sought. Often, the right to borrow for urban councils is granted under the specific condition that such borrowing be used for funding capital expenditure and not recurrent deficits.⁸¹ This is a common feature of borrowing by urban councils in South Africa, India and Nigeria. Borrowing for consumption is disallowed. In Nigeria, borrowing is permitted only for projects that will achieve economic and infrastructure development in urban councils.⁸² Only when urban local authorities have secured borrowing powers from national government are they in a position to source funds for capital projects from lending institutions.⁸³ In other words, central government must give approval to the borrowing power application.

From the foregoing, it is clear that urban councils are limited in how they can exercise their financial discretion to borrow. An issue which is often topical is whether there is constitutional or statutory basis for borrowing. A related aspect is the legal provision

⁷⁴ UNDP 2010: 5.

⁷⁵ UNDP 2010: 5.

⁷⁶ UNDP 2010: 5.

⁷⁷ S 230A (1) of Constitution of South Africa, 1996.

⁷⁸ Mathew and Hooja 2009: 186. State governments in India have the flexibility to determine the framework within which urban councils can borrow from the market.

⁷⁹ Galadima 2009:250. Urban local authorities in Nigeria cannot borrow without the authority of the state government, which guarantees the debt.

⁸⁰ UNDP 2010: 2.

⁸¹ The theme of borrowing for capital development and not recurrent expenditure is covered by many writers on fiscal decentralization. The theme also finds application in South Africa, India and Nigeria. In these countries borrowing is allowed for capital development and not recurrent expenditure.

⁸² Galadima 2009: 250.

⁸³ UNDP 2010: 6.

empowering the state to determine the outcome of the borrowing power applications of urban councils. Equally important is whether borrowing is allowed for both capital and recurrent expenditure. Yet another consideration is from which institutions borrowing is permitted. The last aspect of significance is the regulatory procedure for borrowing by urban councils.

2.4 Intergovernmental financial transfers

Intergovernmental fiscal transfers are considered a feature of local government policy financing throughout the world.⁸⁴ Central government support through grants is justified on the basis that there is always misalignment between assigned tasks and income sources for urban councils.⁸⁵ The other reason is that there is always disparity in income per-capita across urban councils.⁸⁶ The objective of transfer equalisation is to narrow down the economic disparities within and between urban councils.⁸⁷

In principle, there are two types of intergovernmental grants, which are conditional and unconditional grants.⁸⁸ A conditional grant is funding received by an urban council from central government for a specific project. It has prescriptions stating both the substance and the project outcomes of execution. The dispensing government ministry must satisfy itself that funding was expended according to the framework it set.⁸⁹ Conversely, unconditional grants come with no conditions attached and urban councils are not constrained in their expenditure programs.⁹⁰

The existence of constitutional provisions for intergovernmental transfers is often an aspect associated with good fiscal decentralisation.⁹¹ Urban councils in South Africa⁹², India⁹³ and

⁸⁴ UNDP 2010: 7.

⁸⁵ UNDP 2010: 5.

⁸⁶ UNDP 2010: 8.

⁸⁷ See for example S 214 (2) (g) of the Constitution of South Africa, 1996.

⁸⁸ Stanton 2009: 178.

⁸⁹ Galadima 2010: 28.

⁹⁰ Stanton 2009:178.

⁹¹ UNDP 2010: 7.

⁹² S 227 (1) Constitution of South Africa, 1996.

⁹³ Mathew and Hooja 2009: 187. Article 243X of the Constitution of India provides for grants-in aid to urban councils from the Consolidated Fund of the State.

Nigeria⁹⁴ enjoy constitutional protection of intergovernmental fiscal transfers. Although the constitutional protection of intergovernmental financial transfers is commended, the question that begs an answer is whether the transfers are conditional or unconditional.⁹⁵ Section 214 (1) of the Constitution of the Republic of South Africa entitles urban municipalities to an equitable share of nationally collected revenues, with individual municipal allocations determined through the local government equitable share formula. Although the impression created is that equitable share is unconditional, one has to look at the commitment of the funding to appreciate the element of conditionality built into it.⁹⁶ The prescriptive nature of the funding is linked to the execution of nationally determined indigent policies on free basic water and electricity. To add salt to a festering wound, the equitable share is subject to national treasury regulations, creating a situation where urban councils have to increase lines of accountability going upwards rather than downwards. The problem with conditional grants is that it undermines the fiscal autonomy of urban councils in that the allocation and renewal of funding is linked to the ability of the urban council complying with the terms of usage for the funds set by the government ministry giving out the funds.⁹⁷

Similarly, the increase in the disbursement of specific-purpose (conditional) grants as opposed to general-purpose (unconditional) grants is indicative of increased centralising tendencies by states and the federal governments.⁹⁸ The payment in Nigeria of the block

⁹⁴ Galadima 2007: 27. Article number 160 of the Constitution of Nigeria of 1999 provides for intergovernmental fiscal transfers. State and urban local governments are in terms of Article number 160 (5) of the constitution required to maintain “Local Government Accounts” into which the transfers are deposited. The amount of money credited to the “Local Government Account” of an urban council is distributed on such terms and in such a manner as may be prescribed by the House of Assembly of a State.

⁹⁵ UNDP 2010: 7.

⁹⁶ Stanton 2009: 178.

⁹⁷ Stanton 2009: 179. Another example of a grant with conditions attached is the municipal infrastructure grant which is allocated to urban councils in South Africa. Its objective is to enable urban local authorities to renew their infrastructure. The grant is predetermined as it sponsors projects linked to poverty alleviation such as water and road infrastructure. The expending of the grant is supervised by national authorities who are tasked to ensure that funding is not diverted to other projects. Submission of acquittals is a prerequisite for securing additional funding for the next cycle of funding. Although municipal infrastructure grants provide a financially important stop-gap measure for urban renewal, they weaken the fiscal resolve of urban councils. At its worst, the municipal infrastructure grant relegates urban local authorities to positions of central government implementing agencies, contrary to the spirit of good fiscal decentralisation.

⁹⁸ Galadima 2007: 27.

grant, which falls between the specific-purpose and general-purpose grants shows a decline overtime confirming fears that the centralising tendencies of state and federal governments of Nigeria are on the ascend.⁹⁹ Generally, the attachment of conditions to grants dispensed to urban councils is one of the tenets which is often regarded as being at variance with good intergovernmental financial transfers. Another dimension worth noting is that urban councils have no discretion over the commitment of the funds received from the states as grants. The reason for this is that the funding has conditions attached which prescribe an implementation role only for urban councils.¹⁰⁰ For instance funding received for poverty alleviation programs cannot be spent on a project different from that agreed with the State. The lack of financial flexibility of urban councils is further demonstrated by the fact that they can only deduct administrative fees from the grants with the rest committed as dispensed by the state government.

Another issue of importance to fiscal decentralisation is the amount of intergovernmental financial transfers to urban councils. In Nigeria, state governments are accused of retaining some of the allocations due to urban councils from the Federal Account.¹⁰¹ Although the rationale of the grants in India is to reduce the horizontal fiscal imbalances¹⁰² inside the urban councils, this objective is not achieved as the grants fail the key test of sufficiency in that they are nominal in value.¹⁰³

Yet another issue is the extent to which urban councils are dependent on national or state governments for funding.¹⁰⁴ In Nigeria it is said that the extent of dependence is so bad that some urban councils are now largely dependent on constitutional entitlement to nationally raised revenue with some urban local authorities reported to be 99% dependent on the entitlements.¹⁰⁵ The situation is not different in India where urban councils are 96% dependent on intergovernmental fiscal transfers.¹⁰⁶ A divergence, is found in South Africa where urban councils are 14% dependent on national grants.¹⁰⁷

⁹⁹ Galadima 2009: 251.

¹⁰⁰ Mathew and Hooja 2009: 187.

¹⁰¹ Galadima 2007: 28.

¹⁰² Mathew and Hooja 2009: 187.

¹⁰³ Mathew and Hooja 2009: 187.

¹⁰⁴ Mathew and Hooja 2009: 187.

¹⁰⁵ Galadima 2009: 251.

¹⁰⁶ Mathew and Hooja 2009: 186.

The existence of a stable formula for calculating revenue sharing is also associated with good fiscal decentralization.¹⁰⁸ This is not the case in Nigeria where the unilateral amendment of the revenue sharing formula by President Olusegun Obasanjo in 2003 affirmed the fact that federal government shapes the boundaries of the fiscal powers of the other two orders of government.¹⁰⁹ President Obasanjo changed the revenue sharing formula by using an executive order without engaging state and local governments.¹¹⁰ Affirming the superiority of the federal government in matters of sharing of fiscal powers, President Obasanjo used an executive decree to allocate 48.5%, 24% and 20% of the Federation Account to federal, state and local governments respectively.¹¹¹ As if the tampering with the revenue sharing formula was not bad enough, the fiscal powers of urban councils were further reviewed by state governments, leaving them with watered down fiscal authority.¹¹² Although the states in India have instituted a system of sharing revenue generated by the states, the systems are not uniform between states.¹¹³

A few cross cutting issues emerge from the preceding paragraphs. It was noted that intergovernmental fiscal transfers are considered a feature of local government policy financing throughout the world. In principle, there are two types of intergovernmental grants, which are conditional and unconditional grants. Constitutions of some countries provide for intergovernmental fiscal transfers while in other countries a statutory basis suffices. In yet other countries, the framework for intergovernmental fiscal transfers is left to political processes. Generally, unconditional grants are preferred by urban councils compared to conditional grants. The amount received in intergovernmental transfers has implications on the fiscal structure of an urban council. Another issue discussed is that the more an urban council is dependent on national or state governments for funding, the less its autonomy. Yet another issue discussed is the desirability of a stable formula for calculating revenue sharing.

¹⁰⁷ National Treasury of South Africa 2008: 8.

¹⁰⁸ UNDP 2010: 7.

¹⁰⁹ Galadima 2009: 251.

¹¹⁰ Galadima 2009: 251.

¹¹¹ Galadima 2009: 251.

¹¹² Galadima 2007: 28.

¹¹³ Mathew and Hooja 2009: 187.

3. Conclusion

Fiscal decentralization is about the transfer of taxing and spending powers from central government to sub-national governments such as urban councils. Broadly speaking, there are four aspects that make up fiscal decentralisation. These are revenue, expenditure, borrowing and intergovernmental transfers. The mere provision of revenue powers in the Constitution is not enough. What is important is whether urban local authorities can exercise the revenue discretion assigned to them by the constitutional process. Linked to this is the issue of whether the sources of revenue assigned to urban councils are productive or not. Only when high yielding sources of revenue are availed can the issue of revenue powers make a difference to the revenue structure of urban councils.

Expenditure discretion is considered a key aspect of fiscal decentralisation. The practice is for central governments to restrict the expenditure discretion of urban councils. The restriction of urban councils takes many forms. It includes the suspension of the right of to expend money on certain budget lines without central government authorisation to post-budget control audits. The absence of expenditure discretion presents problems in that it constrains the ability of urban councils to endear themselves to the service needs of urban communities.

The power to borrow is an important aspect of fiscal decentralisation. A central issue in relation to borrowing is whether there is a legal provision empowering the state to determine the outcome of the borrowing power applications of urban councils. There is also the issue of whether borrowing is allowed for both capital and recurrent expenditure. Another consideration is from which institutions borrowing is permitted.

From the study, it also emerged that intergovernmental fiscal transfers are considered a feature of local government policy financing throughout the world. There are two types of intergovernmental grants, which are conditional and unconditional grants. Intergovernmental fiscal transfers can have constitutional or statutory basis. In the absence of a legal framework, the framework for intergovernmental fiscal transfers is left to political processes. By and large, unconditional grants are viewed positively compared to conditional grants. An issue of interest is that the majority of urban councils are dependent on national or state governments for funding. Another issue of importance is the appeal of a stable formula for calculating revenue sharing.

Using the same issues identified in this chapter, the study will proceed to analyse the fiscal autonomy of urban councils in Zimbabwe. Before that, however, the next chapter will discuss the salient features of fiscal decentralisation for urban councils in Zimbabwe from a historical perspective. The idea is to put the current urban local government financing system in Zimbabwe in perspective.



CHAPTER THREE

FISCAL DECENTRALISATION AND URBAN COUNCILS

IN ZIMBABWE: A HISTORICAL PERSPECTIVE

1. Introduction

Chapter Three discusses the salient features of fiscal decentralisation for urban councils in Zimbabwe from a historical perspective. This chapter seeks to achieve this objective by discussing revenue, expenditure, intergovernmental fiscal transfers, and borrowing in the context of local government financing policy from 1890 to 1973. It also discusses in broad terms the types of local governments, powers of urban councils and the sources of revenue provided in the Urban Councils Act (Chapter 214, thereafter referred to as UCA) of 1973. It will show that the relationship that existed between local and central government in the period between 1890 and 1996 can be likened to that of principal and subordinate with the state as the principal and urban councils as subordinate. During this period, urban local governments faced a big financing challenge. At its worst, the problem was characterised by the existence of a big gap between their financial resources and expenditure needs.

2. Fiscal decentralisation and urban councils from 1890 to 1959

Any explanation of the type of local government system set up in the early years in Zimbabwe has to be informed by an understanding of the type of urban settlements that existed on the ground in those days. No urban local authority existed at the time of the formation of the first recorded urban settlement in what is now known as Harare. In the period between 1890 and 1923 Zimbabwe was run by a private company, the British South Africa Company. The Company set up the Salisbury Sanitation Board in 1892 in response to pressure from the residents of the emerging town who were worried about sanitary conditions. Arguably, the Salisbury Sanitation Board can be regarded as a single-purpose urban local government structure as its function was only refuse removal and management. A single-purpose urban council is a municipal body established and assigned one mandate of service provision.¹¹⁴ The Salisbury Sanitation Board was established by central government

¹¹⁴ Steytler 2009: 399. Examples of other single purpose urban councils are found in the United States, and to a lesser extent in Canada and Switzerland. In the United States, they perform important functions and provide

to manage environmental concerns in the urban settlement under formation.¹¹⁵ It was subordinate to central government in that Board members were appointed and reported to central government. The boards of management of the single purpose local authorities¹¹⁶ set up in the fast emerging towns were made up of four elected members and three members nominated by the company. They were subservient to the company, had no executive powers, depended on the company for funding and lacked their own revenue powers. What was clear in 1891 was that there was reluctance on the part of central government to treat the Salisbury Sanitation Board as a second order of government in the making. Most notable was the delay in according it legal status to facilitate service provision. The delay in setting up the enabling legal framework is interpreted by some as an indication that urban local government was grudgingly established.¹¹⁷ It is said that authorities were content to have a local government system that was subordinate to central government.

Building on the experience of Harare, other sanitary boards were set up in 1894 in the urban centres of Bulawayo, Mutare and Gweru. As in the case of Harare, the company appointed three people to the sanitary boards. In 1897, Harare and Bulawayo became fully fledged urban councils, with all council members elected through the ballot system. There was no change in the status of urban councils up to 1923 when there was termination of the Company's administration on the granting of self-government to Rhodesia. Company rule ended after a majority of those voting in a referendum chose self-rule rather than being incorporated into the Union of South Africa.

There appeared to be reluctance on the part of central government to link the institutional design for the new urban local government structure to sustainable funding models. The Salisbury Sanitation Board's scope of unfunded mandates was later increased to include water supply, public lighting and native housing. The assignment of additional functions was

services such as portable water, wastewater treatment, transit, housing and port services. The most important of these are the school districts.

¹¹⁵ The term central government is used to cover the period when Zimbabwe was run by the British South Africa Company. The administration of the Company was terminated in 1923 on the granting of self government to the country.

¹¹⁶ The Boards were the equivalent of the present day urban councils. Just like the present urban councils, they undertook service provision work, although this was confined to sanitation issues at first.

¹¹⁷ Hlatshwayo 1998: 10.

matched by marginal fiscal powers. The example of the Salisbury Sanitation Board in many ways captures the disposition of central government towards local government financing policy. It was consistent with the idea that urban local authority was an inferior order of government.

It was not until 1897 that the Salisbury Sanitation Board was accorded some form of funding mechanism through access of loans from the market. Even then, central government had to approve its borrowing powers. In 1898, the Board was given authority “to levy an annual rate of ten shillings on the owners of every plot in the township.”¹¹⁸ A year later the sanitation boards of Harare, Bulawayo, Mutare and Gweru (also referred to as town councils) raised fees in exchange for providing services such as water, electricity, sanitary services and housing.¹¹⁹

The prospects for a better framework for financing urban councils arose in 1901 when central government agreed to give land rights to urban councils which had attained municipal status.¹²⁰ The possession of land rights enabled urban local authorities to raise revenue through land sales to private individuals and those who bought the land for purposes of constructing business premises. Once the business operations were up and running, they contributed to the revenue coffers of urban local governments under whose jurisdictions they operated.

In 1910, central government injected funding into urban councils to assist with the effort of setting up infrastructure for the urban areas under formation. With the growth of urban settlements, municipal trunk infrastructure programs such as water and sewerage works

¹¹⁸ Nhemachena and Matongo 2000: 3.

¹¹⁹ Nhemachena and Matongo 2000: 4.

¹²⁰ Chakaipa 2010: 36. There is a hierarchy of urban councils in Zimbabwe. The lowest level of urban councils consists of local boards, followed by town councils, then municipalities and lastly we have cities. Local boards and town councils have limited land rights compared to municipal councils and cities. The land rights of urban councils below municipal councils was and continues to be subject to central government control with serious implications for their financial liquidity. The elevation and graduation of urban councils is a feature associated with Zimbabwe urban councils since the early days when the country was under company rule. Section 4 (1) of the UCA and section 4 (1) of the 1996 Urban Councils Act (Chapter 29:15) provides for the establishment of different levels of urban councils. It can be argued, that the Salisbury Sanitary Board, was the equivalent of the present day local board. It was the lowest order in the hierarchy of urban councils.

benefited from intergovernmental fiscal transfers.¹²¹ These were mainly high impact service programs whose establishment was beyond the financial means of individual urban local governments. The scope of central government financial support was widened the same year (1910) to cater for the provision of urban networks that would link towns to the hinterlands.

In 1958 a select committee of parliament was appointed to consider financing arrangements for all urban local governments. The Committee noted in its findings that urban councils with small revenue bases were struggling compared to those with varied revenue bases. It was affirmed that bigger urban local governments used their varied revenue bases to cushion themselves against a lack of readily available revenue raising powers.¹²² Their finances were buoyed by revenue coming from rental fees, license fees, supplementary charges, revenue generating projects, interest on investments, revenue from service delivery and rates on property and land.¹²³

3. Fiscal decentralisation and urban councils from 1960-1972

As it was the case during the period between 1890 to 1960, an appreciation of the type of local government established from 1960 to 1972 should be informed by an understanding of the historical imperatives in place during the period under review. The Second World War resulted in a period of industrial growth in the urban areas of Zimbabwe.¹²⁴ This led to the phenomenal growth of towns, necessitating the need for an increase in the number of urban councils. In response to the new imperatives, seven urban councils including Harare and Bulawayo were conferred city council status by private Acts of parliament in 1967.¹²⁵ The city councils were subservient to central government. Their revenue and expenditure powers were subject to regulation by central government. In many ways they were creatures of statute which existed at the whims and discretion of central government. During that period, 26 town management boards and 3 local committees were established to provide services in the smaller towns. The boards and committees relied on central government for funding and were very much subject to centralising tendencies.

¹²¹ Nhemachena and Matongo 2000: 4.

¹²² New revenue raising powers needed central government approval before execution. This legal requirement is the subject of condemnation by urban local authorities who would like to see central government confine its mandate to the environmental management of local government sector.

¹²³ Nhemachena and Matongo 2000: 8.

¹²⁴ Marsh, Roper and Kotze 1974: 188.

¹²⁵ Marsh, Roper and Kotze 1974: 188.

The exclusion of smaller urban councils in 1961 from administering land rights adversely affected their balance sheets. An opportunity was missed to settle the question of local government financing when the Judges Commission was tasked to study modalities for optimally providing education in 1962 but failed to address the funding modalities for local government. It was largely in keeping with the findings of the Judges Commission that a decision was taken in principle in 1963, that future responsibility for the provision of primary education should “fall mainly upon local government and its constituent communities”.¹²⁶ Another opportunity to substantively address the question of funding modalities for local government was missed when the Prime Minister’s Policy Directive on Local Government was issued in July 1965. Sir Edgar Whitehead, the then Prime Minister, said that government would be decentralising some of its functions in line with the principle of subsidiarity.¹²⁷ Although central government adopted a broad plan for the implementation of local government as national policy in Zimbabwe in 1965, the landscape of urban local government financing continued to be characterised by intergovernmental financial transfers.¹²⁸

A pattern of central government domination of urban local government fiscal powers emerges again in 1966 from an analysis of the centre-local relationship. Local government was subordinate to central government in that its revenue powers were validated by the centre.¹²⁹ The centre increased the subordination by entrenching its use of intergovernmental transfers as a tool to control urban councils. Thus, roughly fifty percent of the revenue of urban councils, about \$4 million, was derived from government subsidies.¹³⁰ The subsidies included initial grants given to urban councils in the first year to help establish themselves. In 1967, urban councils also received block grants on a formula basis varying with the amounts of rates collected. This formula decreased after a figure of Z\$10 000¹³¹ had been raised in rates. The increased reliance on transfers adversely impacted the local autonomy of the urban councils.

¹²⁶ Ministerial Statement on African Education and Community Development 1963: 4.

¹²⁷ Nhemachena and Matongo 2000: 5.

¹²⁸ Passmore 1980: 92.

¹²⁹ Passmore 1980: 93.

¹³⁰ Passmore 1980: 93.

¹³¹ Passmore 1980: 93.

4. Fiscal decentralisation and the Urban Councils Act of 1973

As the foregoing discussion suggested, centralisation tendencies characterised the history of local government between 1890 to 1973. The enactment of the UCA did not improve the status of urban councils since they remained subservient to central government. The legislation came at a time when it was becoming increasingly evident that structural and institutional changes needed to be carried out to strengthen the institution of urban councils. It had become apparent that financing models for local government needed to adapt to the challenges posed by the phenomenon of urbanisation.¹³²

In total, the UCA is organised into 271 sections and four schedules. The UCA provides for other issues pertinent to urban councils besides financing arrangements which are covered mainly from sections 178 to section 254. In broad terms, the UCA provides for the establishment of municipalities, towns, the administration of municipalities, the conferring of city status on urban councils, the powers and functions of urban councils. The Act reserves power to the President to dispense with or modify any provisions in the Act once the President is satisfied that such action will not prejudice anyone. The Act assigns the Minister of Local Government authority to administer the UCA. Of particular interest to this research paper are the wide powers assigned to the Minister as these have grim implications for the fiscal autonomy of urban councils.¹³³ On the next pages, this chapter, using the essential features of fiscal decentralisation developed in the previous chapter, will analyse the UCA with the view to assess the extent to which it provides for fiscal allocation.

4.1 Revenue

The sources of revenue provided for in the UCA included rates on land and property¹³⁴, service charges, fees charged, penalties and fines.¹³⁵ Other sources were license fees, supplementary charges, plan approval and development fees, profit from revenue generating enterprises, lease fees, proceeds from land sale, rental fees and interest on investment.¹³⁶

¹³² Nhemachena and Matongo 2000: 5.

¹³³ An example of such intrusive powers is S 184 (1) (a) of the UCA which gives a blank cheque to the Minister of Local Government to regulate the financial processes of urban councils.

¹³⁴ S 217 of UCA.

¹³⁵ S 178 (1) of UCA.

¹³⁶ Coutinho 2010: 71-86.

Property rates were a viable source of revenue raised on all non-residential properties. High density suburb¹³⁷ properties were charged supplementary charges which was the equivalent of property rates. The growth of non-residential property pushed property and land rates to the frontline of local government financing policy. As a result, rates for non-residential property and land constituted between 20 to 30 percent of council revenue.¹³⁸ However, state land and properties were exempt from property rates.

Service charges were paid by urban residents in exchange for council services they consumed such as refuse collection, sewer and effluent removal, health care and water consumption.¹³⁹ Fees were levied for use of council amenities such as schools, bus termini, caravan parks, bus entry fees, street parking, cemeteries and crematoria. Penalties and fines were also raised from those caught violating council by-laws.¹⁴⁰ Examples of violations included constructing unapproved buildings, illegal parking and environmental pollution. License fees were paid in exchange for permission for activities incidental to owning a dog, bicycle, motor vehicle and trading shop within the jurisdiction of an urban council.¹⁴¹ In order to demonstrate general trends in the contributions of the sources of revenue, the example of the budget of the Municipality of Chinhoyi¹⁴² in 1978 is used. The urban council's budget of \$3 million was financed as follows: refuse collection fees (9%), sewer and effluent removal (5%), health care (1.3%), water fees (15%), school fees (0.97%), bus termini fees (0.3%), cemeteries and crematoria (0.50%), fines (2%), supplementary charges (10%), property taxes (20.93%) and other sources of revenue (9.00%).¹⁴³

¹³⁷ The term high density suburbs is used in Zimbabwe to refer to low income suburbs. These are suburbs where the poor live. Examples of such suburbs in the City of Harare are Mbare, Highfield, Glen Norah and Glen View. City of Harare tariffs for these areas are regulated by the Minister of Local Government. High density suburbs are also known as local government areas.

¹³⁸ Nhemachena and Matongo 2000: 6.

¹³⁹ S 178 (1) of UCA.

¹⁴⁰ S 178 (1) of UCA.

¹⁴¹ S 178 (1) of UCA.

¹⁴² The Municipality of Chinhoyi runs the town of Chinhoyi which is situated 100 kilometres to the west of the City of Harare. It is an agricultural and mining town in the Mashonaland West Province. The advent of the land reform program and the closure of major mining operations around the town has affected the revenue of the municipality. Similarly, the industrial sector is in slow growth mode, thus affecting the regeneration of the town.

¹⁴³ Ministry of Local Government 1979: 7.

A few issues emerge from the previous paragraphs on revenue. The sources of revenue assigned to urban councils under the UCA were insufficient. In relation to revenue, another issue relates to the inadequate revenue powers for urban councils under UCA. Related to this is central government domination of revenue powers of urban councils. This is reflected in the assignment of inelastic and low yielding sources of revenue. The lucrative sources of revenue were kept for central government. The low yielding sources of revenue did not positively impact the revenue structures of urban councils. Yet another phenomenon noticed is that the reliance by urban councils on property tax and service fees did not elevate their revenue status.

4.2 Expenditure

The urban councils were subject to financial control for the funding which they received from central government. In this regard, they had to account for the way they had used the money. Any future disbursement of intergovernmental transfers was predicated on a report confirming that the guidelines and conditionalities imposed on the funds that were transferred to urban local authorities were fully complied with. The Minister of Local Government was empowered under section 251 (4) of the UCA to deploy auditors to go and inspect the books of accounts of urban councils without the consent of the urban local authority concerned. The Minister had legal authority to review the audits done by council auditors.¹⁴⁴ In order to intensify intrusive control, the Minister of Local Government established a parastatal called the Urban Development Corporation¹⁴⁵ to undertake the audit of books of accounts of urban councils. The parastatal takes order from central government.

Similarly, section 245 (3)¹⁴⁶ of the UCA gives authority to the Minister as the only one who could vary expenditures related to the consolidated loans fund although the funds are already

¹⁴⁴ Wekwete 1992: 4.

¹⁴⁵ Wekwete 1992: 4.-Central government tried to justify the establishment of the parastatal by claiming that it would assist urban councils in securing their financial control and that it would offer cheaper audit fees compared with auditors from the private sector.

¹⁴⁶ S 245 (1) provided as follows:

“ where the income accruing to a municipal council in the form of rates levied in terms of section two hundred and twenty exceeds five thousand dollars annually, the municipal council may, in accordance with a scheme prepared by it and approved by the Minister, establish and operate a consolidated loans fund which shall be used to account for all moneys borrowed, the redemption

resident with urban councils. A consolidated loans fund is a fund used to account for all moneys borrowed, the redemption or interest thereof and the payment of interest thereon.¹⁴⁷ This fund may only be established once an urban council has accrued income in the form of rates in excess of \$500 000.¹⁴⁸ Urban councils need the approval of the Minister of Local Government to establish a consolidated loans fund. Once established, its use is regulated by the said Minister.¹⁴⁹

Section 240 of the UCA forbids urban councils to meet their salary obligations from the capital development fund without authorisation from the Minister. A capital development fund is a fund used to procure equipment for service provision such as road construction equipment, service vehicles, equipment for water provision and sewer works. The foregoing paragraph has shown how urban councils are constrained in exercising expenditure discretion, making them a subordinate order of government.

The restriction of expenditure discretion does not bode well for urban councils in a country claiming to be implementing elements of fiscal decentralisation. The lack of expenditure discretion robbed urban local authorities the opportunity to build capacity to enable them to be effective as a local order of government. Most importantly, it pronounced the vertical imbalance in the distribution of power, with central government carrying more political clout.

4.3 Borrowing

Borrowing by urban councils for purposes of financing recurrent expenditure was not provided for in the UCA. Instead, borrowing powers were authorised for the following long term capital development projects:

- the acquisition and construction of permanent works or undertakings;¹⁵⁰
- the acquisition of immovable property or any interest therein;¹⁵¹
- the making of advances authorised by this or any other Act;¹⁵²
- the payment of compensation;¹⁵³

or repayment thereof and the payment of interest thereon.”

¹⁴⁷ S 245 (1) of the UCA.

¹⁴⁸ S 245 (1) of the UCA.

¹⁴⁹ S 245 (1) of the UCA.

¹⁵⁰ S 238 (1) (a) of the UCA.

¹⁵¹ S 238 (1) (b) of the UCA.

¹⁵² S 238 (1) (c) of the UCA.

- the liquidation of the principal monies owing on account of any previous borrowings;¹⁵⁴
- the relief of general distress occasioned by some calamity in the council area;¹⁵⁵
- the acquisition of plant, equipment, vehicles and the like.¹⁵⁶

Local government financing arrangements could also be entered into with the state, the Local Authorities Pension Fund, a municipal medical aid society, medical aid fund or another local authority.¹⁵⁷ Additionally, funding, with the consent of the Minister of Finance, could also be raised from issue stock, bonds, debentures or bills.¹⁵⁸ In all these instances, urban councils were expected to secure the approval of the Minister of Local Government.

The borrowing power application needed to be presented to the Minister of Local Government for his approval.¹⁵⁹ Although the UCA provided for the sourcing of funding from third parties, the Minister of Local Government could refuse to approve the borrowing power application unless certain conditions prescribed in the enabling Act were met.¹⁶⁰ The thinking was that, unless local borrowing was regulated, urban local government could end up overextending itself financially. There was also fear of the ramifications associated with unregulated local government borrowing driving up the interest rates.¹⁶¹ Worse still was the contention that excessive local government borrowing affects the ability of central government to use fiscal policy to manage macro-economic conditions. The concern arose because central government was expected to assume responsibility in the event that an urban council failed to return the money borrowed from financial institutions.¹⁶² The other reason was that since urban local authorities were part of the public sector, it was often assumed that central government would fund local deficits or guarantee local government arrears.¹⁶³ In

¹⁵³ S 238 (1) (d) of the UCA.

¹⁵⁴ S 238 (1) (e) of the UCA.

¹⁵⁵ S 238 (1) (f) of the UCA.

¹⁵⁶ S 238 (1) (g) of the UCA.

¹⁵⁷ S 238 (5) (a) of the UCA.

¹⁵⁸ S 238 (5) (b) of the UCA.

¹⁵⁹ S 238 (2) (c) of the UCA.

¹⁶⁰ S 238 (3) of the UCA.

¹⁶¹ Nyoni and Dingani 2000: 10. They said that significant indicators to note were the doubling of interest payments from 22% in 1998 to 48% in 2001.

¹⁶² S 238 (4) of the UCA.

¹⁶³ UNDP 2010: 6.

practice, the Ministers of Local Government and Finance jointly put their signatures to each borrowing power certificate, in the process committing central government in the event that an urban council defaulted on its payment.¹⁶⁴

The approval of borrowing powers, provided for in the UCA, was a feature consistent with principal-subordinate relationship that characterised the relationship between central and urban local governments. The procedure of accessing borrowing powers was bureaucratic. For instance, it was said that it took as long as six months before central government satisfied itself that a council met the conditions for borrowing powers.¹⁶⁵ Stringent regulation was often cited as the reason urban councils failed to access private funding for the renewal of urban infrastructure.¹⁶⁶ At times, financiers called off funding because the process of securing borrowing powers was too cumbersome. Only two urban councils, the city of Harare (capital city) and city of Bulawayo (second biggest city) had been given authority to borrow from the private sector by 1992, signifying excessive control by central government on borrowing as a source of funding for urban councils.¹⁶⁷

4.4 Intergovernmental financial transfers

The UCA did not provide for intergovernmental fiscal transfers leaving settlement of the issue to the judgment of central government.¹⁶⁸ In other words, central government exercised unfettered discretion choosing at will the urban councils who benefitted. The lack of constitutional instruction to guide the dispensing of financial transfers also meant that the amount of transfers simply depended on the wishes of central government.

In 1993, the government used to transfer funds to urban councils providing health care in the form of reimbursements for expenditure on capital development. But the reduction in central government grants was most noticeable in 1994.¹⁶⁹ The government ended up providing grants which were on average 3% of health expenditures.¹⁷⁰ This left councils to fund the balance from very expensive overdrafts or unsustainable increases in rates and other

¹⁶⁴ Ministry of Local Government 2010: 10.

¹⁶⁵ Nhemachena and Matongo 2000: 9.

¹⁶⁶ Wekwete 1992: 5.

¹⁶⁷ Wekwete 1992: 4.

¹⁶⁸ Nhemachena and Matongo 2000: 9.

¹⁶⁹ Matongo and Nhemachena 2000: 8.

¹⁷⁰ Matongo and Nhemachena 2000: 8.

charges.¹⁷¹ The health deficits translated into huge cash flow problems for councils in that councils had to finance health expenditures through very expensive overdrafts.¹⁷² Health grants were reduced by more than 100% from 13% of the budget in 1995 to 5% in the 2001 budget.¹⁷³ Although urban councils received budgetary support, the non existence of an institutional basis for the financial transfers entrenched dependence and promoted asymmetries. Budgetary support went towards projects decided on by central government.

A dimension that emerged in 1995 was the use of conditional funding as a tool to regulate urban councils by prescribing the parameters under which the funding was used.¹⁷⁴ There was little central government commitment towards urban renewal demonstrated through an increase in allocations for unconditional funding. Centralising tendencies were entrenched in that what constituted an approved expenditure was determined by the centre. In addition, in order to entrench its oversight role, the centre, in late 1996, began to develop regulations and circulars informing the usage of the grants.¹⁷⁵ The grant system worked with advances and reimbursements based upon approvals. These were based on central calculations of local requirements.¹⁷⁶ Even then, central government was not under any constitutional imperatives to justify the allocation of the transfers. In the absence of a constitutionalised or other agreed upon formula prescribed for calculating the transfers, urban councils could not challenge the allocations.

The argument for entitlement to nationally raised revenue began to manifest in 1995 as it became clear that government grants were declining in real terms. It was said that the equitable share would compensate for the loss of revenue suffered by urban councils given the regulation of their fiscal powers.¹⁷⁷ There was a concern that the grants depended on the discretion of the intermediary ministries. They were viewed by urban local governments

¹⁷¹ Matongo and Nhemachena 2000: 8.

¹⁷² Matongo and Nhemachena 2000: 8.

¹⁷³ Government Budget Expenditures and Estimates for 2001.

¹⁷⁴ Ministry of Local Government 1999: 4.

¹⁷⁵ Ministry of Local Government 1999: 4.

¹⁷⁶ Ministry of Local Government 1999: 4.

¹⁷⁷ Nyoni and Dingani 2000: 21. Arguments for equitable share of nationally generated revenue are influenced by the local government policy financing model in neighbouring South Africa. S 227 (1) (a) of the Constitution of South Africa provides that local government (and each province) “is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it.”

more as a “favour” than an obligation.¹⁷⁸ The transfers were detested as they were tied to particular central government policy outcomes and promoted financial dependence and policy subservience.

4.5 Analysing the Urban Councils Act of 1973

Although the UCA rationalised the revenue raising powers of urban local government, it did not facilitate the assignment of full fiscal powers. The centre assigned revenue powers to urban local governments at its discretion in keeping with the design of the UCA. It could withdraw the assigned powers as it wished. Beyond the provisions in the UCA, the centre confirmed its superiority by ensuring that urban councils would open negotiations with it each time they wished to develop new streams of revenue. On the other hand, expenditure on some budget lines was executed at the will of the Minister of Local Government. Similarly, it can be argued that the urban councils lacked expenditure powers, as these were either restricted by the UCA or were overridden by central government. The division of expenditure powers was skewed in favour of the centre. Equally, the fiscal powers of urban council in relation to borrowing were under siege from the said Minister. Although not provided in the UCA, centralising influences dominated the dynamics of intergovernmental financial transfers. Most importantly, urban councils could not appeal against unfair treatment in their quest for additional fiscal powers as the Minister of Local Government had final authority over the administration of the Act. Generally, the centre continued to dominate the dynamics of local fiscal powers under the UCA.

5. Conclusion

Broadly speaking, urban councils lacked fiscal autonomy during the period between 1890 and 1996. The lack of fiscal authority can be traced from the early days when the first structure resembling an urban council, the Salisbury Sanitation Board, was conceived in 1891. The insincerity of central government to address the issue of the fiscal autonomy of urban councils is discernible as one analyses the status, profile and development of urban local authorities between 1901 and 1965. Centralising tendencies ran supreme and so did the determination of central government to tilt the balance of power in its favour. The picture that emerges during that period is of a central government that is obsessed with its big brother

¹⁷⁸ Nyoni and Dingani 2000: 21.

position by denying urban councils constitutional recognition and subsequent fiscal authority that comes with an elevated position.

The story did not change with the enactment of the UCA of 1973. The position of urban councils as subordinate creatures in the configuration of status and fiscal power is sustained. There was no interest in providing for legal measures that would narrow the gap between responsibility and expenditure. The expenditure discretion of urban local authorities was tightened. The statutory provisions on the approval of borrowing power applications strengthened the ability of the centre to shape the local mandate of urban councils. The absence of a statutory provision for a claim by urban councils to intergovernmental fiscal transfers further weakened urban councils.

Fiscal autonomy was important in as far as it ensured that urban councils fulfilled their mandates to the full. The importance was underscored by the fact that service delivery suffered because sustainable local government financing policy mechanisms were not in place. But law reform over the years failed to settle concerns around the fiscal autonomy of urban councils. Central government seemed happy with the status quo for as long as institutional design accorded it unfettered power to determine financing models for urban councils. As urban local government became sure footed, some argued that central government should have reduced its siege on the fiscal powers of urban councils.¹⁷⁹ Others suggested that central government needed to focus its expenditure programs on activities that involved externalities between urban jurisdictions.¹⁸⁰ The justification was that urban local governments by their very nature do not have the capacity to address income differentials between regions which are often substantial.¹⁸¹ The most important development regarding urban councils came with the enactment of the Urban Councils Act (Chapter 29:15) of 1996. The question that now begs an answer is whether the Urban Councils Act (Chapter 29:15) of 1996 endows urban local authorities with the fiscal authority to translate expenditure into concrete policy outcomes. The next chapter will endeavour to address that question in earnest.

¹⁷⁹ Nhemachena and Matongo 2000: 5.

¹⁸⁰ Nhemachena and Matongo 2000: 5.

¹⁸¹ Nhemachena and Matongo 2000: 5.

CHAPTER FOUR

FISCAL DECENTRALISATION: ANALYSING THE URBAN COUNCILS ACT OF 1996

1. Introduction

The chapter seeks to evaluate the fiscal autonomy enjoyed by urban councils in Zimbabwe within the framework of the Urban Councils Act (Chapter 29:15, thereafter referred to as the 1996 Act) of 1996. It tries to achieve this by analysing the legal framework for fiscal decentralisation for urban councils in Zimbabwe. The chapter commences the discussion by explaining the constitutional framework for urban councils. Following this, it discusses the fiscal powers of urban local authorities. It then discusses the legal framework for revenue. The discussion then shifts to the legal framework for expenditure. This is followed by an examination of the enabling framework for borrowing by urban local authorities. The inter-governmental financial transfers will be discussed in light of the current practice since the Act does not provide for it.

2. The Constitutional framework

The Constitution of Zimbabwe as amended in 1995 does not affirm funding arrangements for urban councils. In fact, the Constitution is quiet on the establishment of local government, preferring instead to recognise the existence of Provincial Governors and Chiefs as sub-national levels of government. In fact, urban local governments are seen as mere creatures of central government existing at its discretion. A notable feature of urban local authorities in Zimbabwe is their lack of independent autonomous status. The Constitution of Zimbabwe is not explicit on local government policy financing arrangements.

The only attempt at entrenching the fiscal integrity of urban local governments presented itself in a draft Constitution which was rejected in a referendum in 1999.¹⁸² The draft Constitution of 1999 provided for central government funding of urban local authorities to

¹⁸² Chidyausiku draft constitution of 1999. The draft constitution was rejected by Zimbabweans in a referendum held in 1999. The failed constitutional process was led by the current Chief Justice, Godfrey Chidyausiku. The draft constitution of 1999 is referred to as the Chidyausiku draft constitution, after the current Chief Justice of Zimbabwe who was appointed by central government to head the search for a new constitutional order.

enable them to carry out functions assigned by law. In the absence of a constitutional status, the institutions of urban councils are perceived as extensions of central government with no capacity to make autonomous decisions on financing issues. The lack of constitutional recognition of urban local government as an order in its own right is often cited as the main cause of fragile urban local authority financing policy in Zimbabwe.

3. The Urban Councils Act of 1996

The major legislation regarding fiscal decentralisation for urban councils is the 1996 Act. Like its predecessor, the 1996 Act is a regulatory framework for urban councils in Zimbabwe. Although in many ways similar to its predecessor, the Act exhibits some features that are unique to itself. First, its enactment is historic, coming as it does after the attainment of majority independence in 1980.¹⁸³ Second, it demonstrates efforts by the administration in power to rid the urban councils sector of varying thrusts, in keeping with efforts to dismantle the provision of services in urban areas along racial lines.¹⁸⁴ Third, it attempts to rationalise procedures for all urban councils. Most important for this research paper, it provides for funding models.¹⁸⁵ The 1996 Act is divided into 321 sections. As its predecessor, it assigns powers of its administration to the Minister of Local Government. The powers to create and abolish an urban council are reserved for the President.

There are 31 urban councils serving urban communities in Zimbabwe. In ascending order, there are local boards, town councils, municipal councils and city councils. Various issues are taken on board when considering the elevation of urban councils to the various strata, including, the size and density of population, the extent to which the local authority provides employment opportunities within the city and the environs, the total valuation of properties therein classified into commercial, retail, industrial and administrative profiles, the provision of social amenities, historical realities and political considerations.¹⁸⁶

¹⁸³ Matumbike 2009: 9.

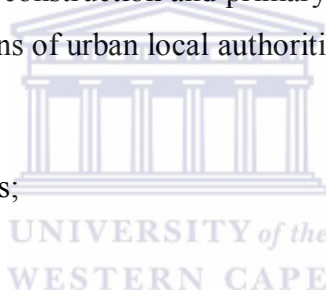
¹⁸⁴ Matumbike 2009: 9.

¹⁸⁵ Matumbike 2009 :9.

¹⁸⁶ First schedule (S 14) of the 1996 Act. On the other hand there are 60 rural district councils which carry out similar functions as urban councils but their area of focus is the rural areas. The Rural District Councils Act (Chapter 29:13) of 1996 establishes rural district councils. The Minister of Local Government administers both the 1996 Act and the Rural District Councils Act (Chapter 29:13). Both the urban councils and rural district councils are creatures of the statutes and therefore enjoy delegated powers.

The Act sets a framework for the operation of urban councils, including matters such as the service provision mandate of urban local authorities.¹⁸⁷ Currently, fifty four functional areas are mentioned in Second Schedule¹⁸⁸ as comprising the operational scope of urban councils in Zimbabwe. The functional areas are executed in terms of the enabling legislation but in practice depend on the financial capacity of urban councils. The functions assigned to urban councils can be divided into mandatory and permissive functions with the mandatory functions being those services considered a must for any urban local authority. Examples of mandatory functions include road construction and maintenance, water reticulation, environmental management, primary health care, building regulation and enforcement of the protection of the land-use.¹⁸⁹ Permissive functions are those services over which they have discretion in providing. Examples of permissive functions include fire protection, parks, recreation, cultural facilities, libraries and provision of cemeteries irrespective of size, geographical location or capacity. They also complement central government in the delivery of essential services such as road construction and primary health care.¹⁹⁰ Mushamba¹⁹¹ lists the categories of the main functions of urban local authorities as:

- development functions;
- forward planning functions;
- financial functions;
- governance functions; and
- regulatory functions



Content is given to the fifty-four functional areas of urban local authorities by policy statements, statutory law and infrequently court judgements.¹⁹²

4. Fiscal powers of urban local governments

Zimbabwe is a unitary state with the most lucrative fiscal sources of revenue assigned to central government. Examples of lucrative taxes accorded to national government include

¹⁸⁷ S 198 (1) of the 1996 Act.

¹⁸⁸ Second Schedule to the 1996 Act.

¹⁸⁹ S198 as read with Second Schedule to the 1996 Act.

¹⁹⁰ S 198 as read with Second Schedule to the 1996 Act.

¹⁹¹ Mushamba 2009: 105.

¹⁹² S 198 as read with Second Schedule to the 1996 Act.

customs duty, excise duty, sales tax, company tax and income tax.¹⁹³ Many reasons are given for the dominance of central government in the fiscal powers of urban councils. Some of the reasons relate to the need for national unity, stability and equitable development. There is also concern that urban local governments could make regional disparities wider than they already are if they are provided with unfettered access to additional sources of revenue.¹⁹⁴ Furthermore, it is argued that placing taxes such as customs duty and excise duty in the hands of urban councils could create distortions in the economy.¹⁹⁵ Finally, revenue sources that are assigned to urban councils are being said to be acceptable politically as they relate to service consumption by the taxpayers.¹⁹⁶ The distrust in the ability of urban councils to administer devolved fiscal powers is evident from the fact that the power of the Minister of Local Government to regulate local government financing is entrenched in the 1996 Act.¹⁹⁷

As indicated earlier, the urban local governments in Zimbabwe derive their fiscal powers largely from the Act which is administered by the Minister of Local Government. Other fiscal powers of urban local governments are found in other Acts which are not administered by the Minister of Local Government. Examples of such Acts include the Water Act (Chapter 20:22), the Education Act (Chapter 20:04), the Land Survey Act (Chapter 20:12), the Electricity Act (Chapter 13: 05), the Liquor Licensing Act and the Roads Traffic Act (Chapter 13:11). The discussion in this chapter will be confined to the 1996 Act since it is the only Act from which the fiscal decentralisation for urban councils in Zimbabwe can be assessed meaningfully.

4.1 Revenue

Section 269 (1) of the 1996 Act provides for property taxes as a source of revenue for urban local authorities. Property taxes are easier to administer at the local level as properties are visible, fixed and a clear indicator of one form of wealth. A major area of concern has been the inability of many urban councils to collect property rates.¹⁹⁸ Inadequate data capture has

¹⁹³ S 101 of the Constitution of Zimbabwe of 1995.

¹⁹⁴ Ministry of Local Government 2009: 9.

¹⁹⁵ This is the response of the ruling party (ZANU PF) to suggestions from (ZAPU) a regional opposition party that the current constitution making process result in the devolution of fiscal powers to provinces and local governments.

¹⁹⁶ Ministry of Local Government 2009: 10.

¹⁹⁷ Mushamba 2010: 114.

¹⁹⁸ Coutinho 2010: 73.

meant that many urban councils are losing revenue. In addition, the exemption of state land and government buildings from the payment of property rates diminishes further the revenue that accrues to the financial coffers of urban councils.¹⁹⁹ Yet another constraint in the collection of property rates is the failure by urban local governments to set up rating zones and rating units to be assigned to residential properties for rating purposes.²⁰⁰

Fees are the other major source of revenue for urban councils. For example, section 219 (1) (a) (1) of the 1996 Act provides for the collection of fees in exchange for removal of refuse from properties of ratepayers.²⁰¹ Water fees as a source of revenue for urban councils are provided for in the Act.²⁰² In addition, section 96 (3) of the 1996 Act authorises urban councils to run health care facilities.²⁰³ Section 219 (1) (a) (111) of the 1996 Act, on the other hand, forms the basis for cemetery fees²⁰⁴ and primary school fees²⁰⁵ as sources of revenue for urban local authorities. Generally speaking, the fees do not generate adequate

¹⁹⁹ Coutinho 2010: 73.

²⁰⁰ Coutinho 2010: 73.

²⁰¹ S 229 (2) of the 1996 Act. Although refuse collection fees are a viable source of revenue for urban local authorities, residents do not always settle their accounts on time in protest against erratic service. The Minister of Local Government has authority under the 1996 Act to reduce the tariff for refuse collection. Residents and ratepayers associations make the situation worse by calling on their membership to boycott payments until service delivery improves.

²⁰² S 219 (1) (a) (1) of the 1996 Act.

²⁰³ Coutinho 2009: 74. Note that urban local governments are constrained as their health fees are subject to regulation by central government. The thinking of central government in prescribing health fees seems to be that allowing urban councils to effect full cost recovery on primary health care disadvantages poor members who may be pushed out of the health care system and yet the right to life is not negotiable.

²⁰⁴ There are problems associated with cemetery fees as a source of revenue for urban local authorities. It is said that urban councils do not realise much revenue from selling burial space because of the social nature of cemetery fees. The cemetery fees they collect for providing burial space do not come close to covering the administration costs which they incur. Often there are complaints that cemetery fees are so low that they do not cover the costs of running and maintaining the cemetery. As is the case with primary health care, other cost centres are responsible for sustaining cemeteries owned and run by urban councils.

²⁰⁵ Although provision of primary education is a local government function, it is said that not much revenue is realised from school fees. In conformity with central government policy, urban local governments are not allowed free rein in determining levels of school fees in the schools that they run. Council schools in urban areas have to be sustained by other income generating accounts as is the case with primary health care and cemeteries. In the past, this mandate used to benefit from beer profits but contrary to expectation central government chose to reduce this source of revenue by collecting excise duties on the beer produced²⁰⁵. This effectively shifted the burden of financing the service onto other urban council general taxes such as rates and supplementary charges.

revenue for most urban local authorities. This is attributable to a number of problems associated with the general administration of the fees. For example, water user fees are normally set at sub-economic levels as urban local authorities attempt to subdue consumer backlash. As a result, the majority of urban local governments in Zimbabwe do not use the cost recovery charging systems which tie the amount of money paid directly to the water consumed.²⁰⁶ Added to this is the scenario presented by different political groups grappling for power taking over ratepayers concerns about high water fees for political gains. It is said that there is often political pressure on the local tax administration to relax user fees and revenue collection in the period leading to crucial elections.²⁰⁷ There are also other problems associated with charging fees. For instance, payment of refuse fees is erratic as residents protest the failure of urban councils to offer a sustainable service.²⁰⁸ The clinic fees are not determined on the basis of full cost recovery. It is said that the clinic fees do not even come close to recovering a quarter of the cost of health drugs in stock.²⁰⁹ This leads to a situation where primary health care is subsidised by other cost centres within urban local governments.²¹⁰

It is pertinent to note that urban councils' capacity to raise revenue from fees is further limited by the fact that they have to seek the Minister of Local Government's approval of any tariff for suburbs where poor people live.²¹¹ Section 219 of the 1996 Act affords urban councils some measure of discretion over sources of revenue by stipulating that a full council resolution is the basis for setting charges. However, the Act compels an urban local authority to seek the Minister's approval before executing a tariff in a poor suburb where the majority of ratepayers are located. The objective of the policy is to ensure that the poor are not excluded from municipal services by their lack of ability to afford municipal charges for services. Only when objections to the tariff have been resolved and the tariff has been gazetted by the Minister of Local Government does the tariff come into operation in the poor suburbs.²¹² This limits the revenue which urban local authorities can raise.

²⁰⁶ Coutinho 2009: 74.

²⁰⁷ Chirisa and Jonga 2010: 8.

²⁰⁸ Coutinho 2010: 74.

²⁰⁹ Nhemachena and Matongo 2000: 17.

²¹⁰ Nhemachena and Matongo 2000: 18.

²¹¹ S 219 (1) (c) proviso (a) of the 1996 Act.

²¹² S 219 (b) proviso 1 of the 1996 Act.

Section 228 (2) of the 1996 Act authorises urban local authorities to come up with by-laws with revenue implications. Examples of by-laws with revenue implications include dog and hawkers' licenses.²¹³ The powers of urban councils to come up with by-laws with revenue implications are subject to the approval of the Minister of Local Government. The Minister of Local Government has authority to approve or disapprove any by-laws.

The inadequacy of revenue is evident in many ways. An analysis of the performance of a budget of an urban local authority can reveal misalignment between revenue and expenditure. In this regard, the existence of a budget deficit is compelling evidence of inadequate revenue. For example the City of Harare budgeted to collect revenue amounting to US\$230.09 million in 2010 against expenditure target of US\$275.63million, resulting in a budget deficit of US\$45.54 million.²¹⁴ Similarly, an analysis of the water account of the City of Harare for the 2010 financial year shows that the City is set to collect a mere US\$77.33 million or (33.6%)²¹⁵ of total revenue of US\$230.09 million. This is a drop in the ocean compared to the same period in 2001 when the contribution of the water account was steady at around 45%²¹⁶ of council total revenue. The property rates which were previously considered the cash cow of the City of Harare are showing poor performance at US\$47.96 million or (20.8%)²¹⁷ contribution in the 2010 budget against performances averaging 30%²¹⁸ of the total budget in the early 2000s. Inadequate revenue results in poor service provision, which is notable through poor water supply, refuse removal and sewer system.²¹⁹ Besides reducing the fiscal autonomy of urban councils, inadequate funding makes urban local authorities subservient to central government in many ways. It increases the commitment of urban councils to central government and exposes them to centralising tendencies which scuttle efforts to link communities' expenditures to own revenues. It creates a situation in which urban councils increasingly look to central government to bail them out financially, strengthening the perception that central government is a superior order of government.²²⁰

²¹³ Coutinho 2010: 75.

²¹⁴ Coutinho 2010: 78.

²¹⁵ Coutinho 2010:78.

²¹⁶ Ministry of Local Government 2004: 2.

²¹⁷ Coutinho 2010: 78.

²¹⁸ Ministry of Local Government 2005: 3.

²¹⁹ Coutinho 2010: 84.

²²⁰ Matongo and Nhemachena 2000: 5.

4.2 Expenditure

As indicated in chapter two, the role of urban councils in developing and executing their expenditure programs with minimal central government oversight is considered a key aspect of good fiscal decentralisation.²²¹ This is not the case with urban local authorities in Zimbabwe where the intrusive nature of the Ministry of Local Government is legislated and permeates all local expenditure programmes. For instance, section 309 of the 1996 Act compels urban councils to supply the Minister of Local Government any records he may require to discharge his duties.²²²

Consistent with the modern trends of fiscally empowered sub-national units, the principle of subsidiarity needs to be reflected in the expenditure of urban councils.²²³ This is not the situation in Zimbabwe where the Minister of Local Government exercises control over urban councils through monitoring their expenditure patterns. In this regard, the Minister ensures that the budgets of urban councils manifest a skew in favour of capital development.²²⁴ Consistent with national best practices, the Ministry of Local Government enforces the wage service bill ratio of 30% to 70%.²²⁵ The rationale is to release more funding for capital development. The net result is that urban councils are restricted from committing more than 30% of their budgets on recurrent expenditures such as salaries.²²⁶ Furthermore, the Ministry emphasises the need for urban councils to conceive modest salaries in order to spur economic recovery. In addition, urban councils are urged to design and operationalise innovative

²²¹ UNDP 2010: 6.

²²² Mushamba 2010: 114.

²²³ UNDP 2010: 3.

²²⁴ Ministry of Local Government 2010:2.

²²⁵ Ministry of Local Government 2010: 2.-The 30% to 70% is a formula for managing the budgets of urban councils. It is used to release more resources towards capital development. According to the formula, 70% of the budgets should be funding going towards projects such as water supply, sewer works, road maintenance, street lighting, refuse removal and primary health care. Only 30% of budgeted funds should go towards salaries and other recurrent expenditures. Urban councils are compelled to demonstrate compliance with this requirement before the Minister of Local Government gazettes their tariffs. Thus it is a control tool in the hands of central government for monitoring the expenditure of urban councils. The idea (and quite a noble idea) is to prevent a situation where all revenue collected goes towards meeting the salary obligation. It prevents the creation of salary urban councils.

²²⁶ Ministry of Local Government 2010:2.

organisational structures that seek to reduce overhead costs.²²⁷ The general idea is to restrict the expenditure patterns of urban councils so that they do not have an adverse effect on the national economy.²²⁸

The existence of central government controls on the usage of finances weakens the expenditure discretion of urban councils. The end result is that they are slow to endear themselves to the demands and preferences of residents. Another disadvantage is that urban local authorities are left to battle service delivery backlogs and get blamed by residents for not being proactive. It would appear that the institutionalisation of financial controls is a well thought out central government strategy to rein in on the autonomy of urban councils, especially as it relates to their expenditure. The financial controls go to the core of the autonomy of urban local authorities and create a situation where the ability of urban councils to fulfil their mandates is paralysed.

4.3 Borrowing

Section 290 (1) of the 1996 Act sets out a framework within which urban councils may source for external funding for expenditure programmes. Urban local authorities are permitted to borrow in order to finance capital projects subject to restrictions set out in the Act. The capital projects for which they can borrow are:

- the acquisition and construction of permanent works or undertakings;²²⁹
- the acquisition of immovable property or any interest therein;²³⁰
- the making of advances authorised by this or any other Act;²³¹
- the payment of compensation;²³²
- the liquidation of the principal monies owing on account of any previous borrowings;²³³
- the relief of general distress occasioned by some calamity in the council area;²³⁴
- the acquisition of plant, equipment, vehicles and the like.²³⁵

²²⁷ Ministry of Local Government 2010:2.

²²⁸ Ministry of Local Government 2010: 2.

²²⁹ S 290 (1) (a) of the 1996 Act.

²³⁰ S 290 (1) (b) of the 1996 Act.

²³¹ S 290 (1) (c) of the 1996 Act.

²³² S 290 (1) (d) of the 1996 Act.

²³³ S 290 (1) (e) of the 1996 Act.

²³⁴ S 290 (1) (f) of the 1996 Act.

²³⁵ S 290 (1) (g) of the 1996 Act.

Borrowing by urban councils for recurrent expenditure is not permitted. Section 290 of the 1996 Act spells out criteria which all urban councils must meet before they are granted borrowing powers. The discretion to grant borrowing powers is the joint prerogative of the Ministers of Local Government and Finance.

A council resolution must be in place before the borrowing power application is presented to the Minister of Local Government for his approval. The resolution to borrow the money must have been approved by the majority of the councillors in a full council meeting.²³⁶ The Mayor of an urban council must not have used his casting vote for the full council resolution on borrowing to be secured. The borrowing power application should state upfront the projects and amount of money to be borrowed²³⁷ and whether any objections raised by members of the public had been resolved. The application, which is then forwarded to the Minister of Local Government, must be accompanied by objections received from the public.²³⁸ The law authorises the Minister to use his discretion to approve part or the entire application for borrowing powers received.²³⁹ In addition, the 1996 Act grants authority to the Minister to set conditions and the period of validity of the borrowing powers.

Urban councils can borrow funding from the State, the Local Authorities Pension Fund, a municipal provident fund, a municipal medical aid fund, sick fund and from another local authority.²⁴⁰ With the consent of the Ministers of Local Government and Finance, funding can be raised from the issue of stock, bonds, debentures and bills.²⁴¹ Funds borrowed may not be used on other projects that deviate from those for which the borrowing power was processed. Short-term borrowing by means of a bank overdraft or short-term loans is permitted once the Minister of Local Government has approved the borrowing powers.²⁴²

The regulation of sub-national borrowing entrenches the intrusive control of urban local authorities by central government. Although borrowing should be coordinated, central government should not impede urban councils' reasonable access to other sources of revenue.

²³⁶ S 290 (2) (a) of the 1996 Act.

²³⁷ S 290 (3) (a) (1) of the 1996 Act.

²³⁸ S 290 (3) (d) of the 1996 Act.

²³⁹ S 290 (4) of the 1996 Act.

²⁴⁰ S 290 (5) (a) of the 1996 Act.

²⁴¹ S 290 (5) of the 1996 Act.

²⁴² S 291 of the 1996 Act.

Another issue raised is the importance of restricting borrowing to capital development. Yet another issue is the general displeasure expressed over central government subjugation of the rights of urban councils to borrow.

4.4 Intergovernmental financial transfers

The 1996 Act does not provide for intergovernmental transfers for urban local governments. As a result, the direct injection of annual central government funding can only take place at the discretion of central government. Similarly, the allocation process is masked in secrecy, giving legitimacy to claims that political considerations are at the centre of the disbursements. Although the intergovernmental financial transfers inject needed revenue, others have argued that the continued reliance of urban local governments on intergovernmental financial transfers entrenched dependence and subservience. Central government has availed funding equivalent to around 3% of the budgets of the cities of Harare and Bulawayo in intergovernmental financial transfers over the past ten years to assist the metropolitan cities overcome immense urbanisation challenges. Put in money terms, US\$250 000 was injected as budgetary support. Much of the funding went towards renewal of urban infrastructure.²⁴³ Specifically the funding went into the renewal of water supply and sewer infrastructure which had been overwhelmed by a situation caused by rural-urban migration dynamics.²⁴⁴ The grants were conditional. The funding was also decided by central government officials who determined the requirements of each urban council in the absence of a constitutionally protected formula.

Central government grants to urban councils come in two forms; block grants and tied grants.²⁴⁵ Block grants are unconditional in that central government does not specify the use to which they are to be put except that the councils have to account for the use to central government. These grants are an important sources of finance for implementing projects identified by the villages and wards in the district. However, tied grants, as the name suggests, come with strings attached in that they have to be spent for specific services indicated by central government or its agencies. The grants were always tied to specific policy objectives which increased central government's oversight. These grants are an important source of funds to finance services such as education, health, roads and

²⁴³ Ministry of Local Government 2009: 4.

²⁴⁴ Ministry of Local Government 2009: 4.

²⁴⁵ Zimbabwe Institute 2005: 20.

administration. Capacity to absorb these funds and to comply with central government criteria is important variables determining future disbursements.²⁴⁶

Central government support for urban councils has been on a steady decline for the past two decades.²⁴⁷ The intergovernmental financial transfers began to decline with the worsening of the macro-economic conditions caused mainly by the flight of donors following the implementation of the land reform program. The decline of intergovernmental fiscal transfers is especially evident in what is usually referred to as public sector investment programs.

In the late 1990s, the term Public Sector Investment Programme began to be used to denote government grants. The Public Sector Investment Programme was a conditional grant given to urban local authorities to assist them renew urban infrastructure.²⁴⁸ The grant was used in capital intensive projects such as expanding the sewer works of urban councils. These were capital intensive projects which the private financiers were reluctant to fund because the balance sheets of most urban local governments made them credit unworthy. Central government bureaucrats determined how much money was allocated to urban local authorities.²⁴⁹ In addition they came up with stringent conditions accompanying expenditure.²⁵⁰ The funding was discontinued three years ago because of funding challenges, with some projects abandoned before completion.²⁵¹ The table below illustrates the sharp decline in government support for capital expenditure programmes of urban councils:

²⁴⁶ Zimbabwe Institute 2005: 20.

²⁴⁷ Nhemachena and Matongo 2000: 6.

²⁴⁸ Ministry of Local Government 2009: 7.

²⁴⁹ Ministry of Local Government 2009: 2.

²⁵⁰ Ministry of Local Government 2009: 3.

²⁵¹ For example, the budget for the City of Harare for 2010 does not make provision for government grants. It can be argued that this shows how skeptical urban councils have become about the ability of central government to support them through intergovernmental financial transfers. Instead, the budget makes reference to a loan of US\$50 million, ironically obtainable from central government. In addition the city will be financed by a loan of US\$12.97 million, obtainable from private financial institutions.

Table 1: The declining Public Sector Investment Program (1997-2000)

Urban council	Allocation 1997/98 (Z\$)	Allocation 1999 (Z\$)	Allocation 2000 (Z\$)
Bindura Municipality	16 025 000	9 759 000	3 600 000
Bulawayo City Council	67 255 000	21 229 000	9 009 000
Chegutu Municipality	26 160 000	3 740 000	1 250 000
Chinhoyi Municipality	28 040 000	27 520 000	5 500 000
Chitungwiza Municipality	23 151 000	22 520 000	2 000 000
Gwanda Municipality	10 930 000	4 670 000	1 500 000
Gweru City Council	22 900 000	22 809 000	-
Harare City Council	67 016 000	23 870 000	5 220 000
Hwange Local Board	5 000 000	3 727 000	1 375 000
Kadoma City Council	11 270 000	19 030 000	1 256 000
Kariba Municipality	17 260 000	33 000 000	18 714 000
Karoi Town Council	12 950 000	7 750 000	1 400 000
KweKwe City Council	11 450 000	10 926 000	1 500 000
Marondera Municipality	20 082 000	56 893 000	18 000 000
Masvingo City Council	9 600 000	15 565 000	2 500 000
Mutare City Council	22 920 000	47 736 000	11 637 000
Norton Town Council	21 470 000	22 840 000	9 600 000
Redcliff Municipality	25 610 000	18 000 000	11 185 000
Rusape Town Council	12 039 000	12 125 000	1 600 000
Ruwa Local Board	-	2 500 000	2 000 000
Shurugwi Town Council	8 835 000	8 765 000	1 600 000
Victoria Falls Municipality	23 500 000	36 600 000	11 546 000

Source: Reserve Bank of Zimbabwe (2004: 5)

The drastic reduction in intergovernmental financial transfers has not been accompanied by an increase in the revenue powers of urban councils. The net outcome is that urban councils now have nothing to replace the funding which is no longer coming their way. Much as this paralyses their operations, it also exposes them to a lot of unfunded mandates. The lack of constitutional or statutory standing for intergovernmental fiscal transfers in Zimbabwe

deprives urban councils of the legal basis for holding central government to account for neglecting its obligation to disburse equalising grants.

5. Conclusion

The Constitution of Zimbabwe does not recognise local government. Nor does it extend any form of autonomy, let alone fiscal autonomy to urban local authorities. Although the Act is the basis for the statutory powers of urban councils to raise revenue, central government regulation through the Minister of Local Government is a major constraining factor. The revenue raising powers of urban local authorities are under siege as they are subject to central government control and direction. The statutory powers assigned to the Minister of Local Government present serious challenges on the fiscal autonomy of urban local authorities.

Urban local authorities enjoy restricted expenditure discretion. They are legally constrained to take autonomous decisions on matters of local finance without input from the Minister. The Act grants the Minister of Local Government excessive powers to regulate the funding arrangements of urban local governments. The Minister can set aside council decisions on financing arrangements even where they were influenced by a public consultation process. Urban Councils cannot exercise their full fiscal powers for fear of the oversight authority of the Minister of Local Government.

The budgets of urban councils are subject to a regulatory framework set by central government, watering down the authority of urban councils to structure their budgets to meet local preferences. For instance every year budget guidelines are issued to all urban councils reminding them to draw up their budgets in accordance with the Standardised Accounting Budgeting System, Procedures and Policies Manuals. These are all documents developed by central government for purposes of budget standardisation and the pooling together of statistical data from urban councils. The freedom by urban local authorities to expend funding without recourse to central government is considerably constrained to the extent that their expenditure programmes have fiscal and monetary policy implications. This has rendered the budgets of urban councils no better than wish lists, raising queries on their credibility and reliability as a basis for financing expenditure. The existence of post-budget controls for urban councils is another practice which is at variance with good expenditure assignment.

Urban councils in Zimbabwe are legally constrained in exercising their borrowing powers to source funding from lending institutions. The right to borrow is granted under the specific

condition that such borrowing be used for funding capital expenditure and not recurrent deficits. The position of this paper is that the regulation that all borrowing by urban local governments be subject to clearance by central government is contrary to the spirit of creating financially sound urban councils.

Although the intergovernmental financial transfers are not provided for in the Act, their availability whenever central government can spare financial resources is making negative inroads into the institutional autonomy of urban councils. The use of conditional grants is increasingly associated with central government agendas to influence the pattern of expenditure of urban councils and assertion of control.

A lot still needs to be done to ensure that urban councils are endowed with financial resources and authority that is consistent with their status. The absence of constitutionally protected intergovernmental financial transfers is ample demonstration of the lack of political commitment to the use of grants to equalise and enhance financial capacities of urban councils. Similarly, the increase in the conditional grants as opposed to unconditional grants dispensed to urban councils demonstrates central government's dominance of local fiscal powers. The attachment of inflexible conditions to grants dispensed to urban councils is at variance with the tenets of good intergovernmental financial transfers. To have impact, the four building blocks of fiscal decentralisation need to be viewed as an impeccable system that complements each other. A lot still needs to be done to ensure that urban councils in Zimbabwe are fiscally empowered in order to fulfil their mandate. The next chapter summarises key study findings and offer few recommendations.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

1. Introduction

The study sought to establish how far Zimbabwe has gone in empowering urban communities by strengthening their urban councils and systems of sub-national government finances. After introducing the subject of fiscal decentralisation and identifying the building blocks of fiscal decentralisation the study proceeded to analyse legal provisions such as the Zimbabwe UCA and 1996 Act as they relate to the fiscal autonomy enjoyed by urban local governments. It first discussed the salient features of fiscal decentralisation for urban councils in Zimbabwe from a historical perspective. It sought to achieve this objective by discussing, revenue, expenditure, intergovernmental fiscal transfers, and external funding in the context of local government financing policy from 1890 to 1996. It then evaluated the fiscal autonomy enjoyed by urban councils in Zimbabwe within the framework of the 1996 Act. It tried to achieve this by analysing the legal framework for fiscal decentralisation for urban councils. It discussed the fiscal powers of urban councils, the legal framework for expenditure assignment, revenue assignment and borrowing by urban local authorities. The inter-governmental financial transfers were discussed in the light of the current practice since the 1996 Act does not provide for it.

Chapter Five has two objectives. First, it restates the major findings of this study. Second, through recommendations, the study highlights the need for the Zimbabwe government to address the concerns of urban local governments for more fiscal autonomy.

2. Conclusion

In Zimbabwe, the decentralisation of major functions has not always been followed by a decentralisation of fiscal powers, resulting in unfunded mandates. The statutory framework for urban councils (the 1996 Act) assumes the form of delegation, where in practice fiscal autonomy is diminished by overriding national mandates, thereby rendering urban local authorities fiscally accountable to central government. The current alignment of functions and revenue sources is unsatisfactory in respect of both the amounts of revenue and the suitability of revenue sources in terms of local linkages. Zimbabwe's current system of fiscal

decentralisation points to a steady increase in the centralisation of fiscal autonomy for urban councils. In relation to revenue, urban councils lack revenue autonomy.

The mere provision of revenue powers in the 1996 Act has not sufficed. What has been shown is that urban local authorities lack revenue discretion. Linked to the last observation is the question of sources of revenue assigned to urban councils that are not productive. In the absence of high yielding sources of revenue, urban councils have struggled with their service mandate. In addition, the revenue autonomy of urban local authorities to decide alternative financing options is restricted.

One of the fundamentals coming from the study is that the expenditure discretion of urban councils is under blockade from centralising tendencies. The determination of urban council's expenditure powers is a function which is subject to central government approval in Zimbabwe. Unless authorised by the Minister of Local Government, all expenditure is carried out within the framework of a hard budget. Some expenditure cannot be executed without the Minister's approval. In some instances the Minister can suspend the expenditure powers of an urban council and instead direct expenditure processes. Although in legal terms, some expenditure authority has been devolved, the parameters prescribed by central government limit the exercise of such authority by urban councils. The net result is that urban local government expenditure authority becomes predominantly a delegated function.

Another dimension with significant implications for urban councils relates to the failure of urban councils to exercise their right to borrow funds from lending institutions. Although there is statutory provision for sub-national borrowing, it cannot be exercised without the approval of central government. The right to borrow takes place at the behest of the Minister of Local Government. Entrenching centralising tendencies, the Minister of Local Government approves which institution an urban council should borrow from. In addition, the Minister has the final word on the size of the loan sought. The process for borrowing power application is often lambasted for being too burdensome.

Generally, the absence of a clear policy on the grant system is a major reason contributing to the financial demise of urban local authorities in post independent Zimbabwe. In the absence of a constitutional instruction for dispensing grants, central government has adopted an adhoc approach to intergovernmental fiscal transfers. On the other hand, urban councils have no legal basis for challenging central government to honour its obligation.

The lack of a good framework for decentralisation does not fiscally support urban councils. First, the revenue powers of urban councils are subordinated through statutory provisions in the 1996 Act. Second, their expenditure discretion is ring fenced. Third, the statutory framework denies them unfettered right to borrowing. Fourth, intergovernmental fiscal transfers are dispensed at the whims of central government in the absence of constitutional and statutory instruction. The picture that emerges is of an urban council sector that is under heavy barricade from central government (see table 2).

Table: 2: Theoretical and practical matrix of fiscal decentralisation of urban councils in Zimbabwe

Theoretical Measure	In Practice
Is fiscal authority protected by the Constitution	No
Do urban councils have authority to determine rates and local taxes?	Very limited authority
Are the majority of transfers formula-based and unconditional?	No
Are unconditional grants unrestricted	No
Are urban councils accountable for expenditure?	Yes, 65% to central government, 35% to local constituents.
Is there alignment between local expenditure responsibilities and own revenue capacity?	No
Are urban councils reliant on intergovernmental financial transfers?	Yes, but these are erratic and not constitutional or statutory.
Do urban councils have autonomy to determine tariffs	No
Do urban councils have autonomous borrowing powers?	No

3. Recommendations

An enabling environment for fiscal decentralisation in Zimbabwe should begin with constitutional or legal mandates for some minimum level of autonomy, rights and responsibilities for urban local authorities. There is need to develop robust and clearly defined constitutional and legal provisions to support fiscal decentralisation and the strengthening of urban local governments. In addition, the existence and objectives of urban councils should be incorporated into the Constitution, on the grounds that urban local authority is an essential component of the overall system of government in Zimbabwe. The constitutional imperatives of fiscal decentralisation should accord considerable detail to the revenue powers of urban councils. The constitutional review process currently underway in Zimbabwe provides an opportune platform to constitutionally entrench urban councils and encode fiscal powers thereof.

Equally, urban local authorities should have access to sufficient revenue to enable them to provide all the services for which they are responsible at a standard which is acceptable. They should have sufficient revenue raising powers to obtain most of the funds needed to render service from their own resources. This may be achieved through a combination of the following: (1) creation of new revenue raising powers; (2) transfer of some existing central government raising powers to urban local authorities and (3) sharing of some of the existing revenue raised by central government with urban councils. Local finances should be placed on an assured basis instead of being dependent on a year-by-year central government decisions.

There is need for a constitutional protection of the expenditure powers of urban councils given the disproportionate powers which the Minister of Local Government wields over the expenditure discretion of urban councils. At present, some of the expenditure powers of urban local authorities are executed at the behest of the Minister of Local Government. In the spirit of fiscally empowering sub-national entities, urban local authorities need to be accorded greater expenditure autonomy. Central government must avail financial resources to cover the costs incurred by urban local authorities in complying with certain requirements under central government statutes, regulations and policies.

In order to fiscally empower urban local governments, a constitutional framework should give instruction to the fair allocation of nationally generated revenue. Such an arrangement should dispense with the present discretionary disbursement process which does not afford

urban councils entitlement to nationally raised revenue. Revenue sharing can only be assured if it is grounded in the Constitution. To ensure equity, transparency and accountability, the revenue share needs to be based on an objective formula. The grants dispensed should be based on an agreed formula, which takes account of the variations in revenue raising capacity between urban councils. The intergovernmental financial transfers should provide cover for urban local government fiscal imbalances, supplementing inadequate local own-source revenues to improve the ability of urban councils to meet their expenditure. The transfer process should be clear and transparent so that urban councils are able to trace their transfer receipts to the national budget provisions.

There should be no doubt as to whether or not an intergovernmental fiscal transfer will be received in any budget period. The idea is to allow urban councils to make appropriate plans linking expenditure plans to revenue streams. The mechanism should be fair in respect of the amount of the share that urban local authorities are entitled to. Financial transfers from central government to urban councils (including the transfer of funds provided by foreign donors or other external agencies) should be made from the Ministry of Finance to the urban local authorities without passing through line Ministries responsible for the relevant sectors.

The disproportionate powers which the Minister of Local Government wields over sub-national borrowing for urban councils should be rationalised so as to accord urban councils rights to unfettered borrowing. It is recommended that the legal cornerstone of borrowing, section 290 of the 1996 Act, be reviewed and replaced by a legal provision which does not subordinate the rights of urban councils to borrow. It is further suggested that the successor legal dispensation to section 290 of the 1996 Act should prescribe a facilitative role for the said Minister. In relationship to sub-national borrowing, it would be better if the facilitative role of central government as well as the fiscal discretion of urban councils were enshrined in the Act.

The search for a new constitutional order which is currently underway in Zimbabwe needs to create a local government financing system which is sustainable and one which affirms the fact that the services which urban local authorities provide are prerequisites for local and national economic development. In particular, the new constitutional order should permanently settle the issue of local government autonomy. Although this paper has outlined areas which legislative reforms could focus on, the need for further research and debate on these areas cannot be overemphasised.

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