

Putting Democratic Urban Governance In Zimbabwe To Test Through Appointment Of ‘Special Interest’ Councillors

Jephias Mapuva

Department of Geography (Development Studies stream)

Bindura University of Science Education, P.O.Box 1020, Bindura, ZIMBABWE

Abstract

The appointment of special interest councillors in urban councils has courted a lot of controversy as this has been viewed as a political ploy by ZANU PF to counter the MDC-run councils. Both political and official views have been accorded to the appointment of ‘special interest councillors. The arbitrary powers of the Minister of Local Government Rural and Urban development (MLGRUD) has incurred the wrath of the public who view these legislative powers as being used to gain political mileage by ZANU PF party as well as a vindictive measure against residents for failing to vote for ZANU PF in Local Government elections, among other electoral processes. In this paper a normative legislative framework involving international, regional instruments as well as national legislation is used to determine the extent to which the legislation and practice of appointing ‘special interest’ councillors in terms of section 4 A of the Urban Councils Act (2008) complies and resonates with democratic practice. The position of the new Constitution of Zimbabwe on local governance provides a more democratic dispensation.

INTRODUCTION

While the phenomenon of appointing ‘special interest’ councillors has been in existence in rural district councils since independence, it is the adoption of the same practice in urban councils that has attracted much publicity. Through an interparty consensus among the main political parties namely the Zimbabwe African National Union-Patriotic Front (ZANU PF) as well as the two Movement for Democratic Change (MDC) formations, amendment to the Urban Councils’ Act culminated in the enactment of Statutory Instrument 79/2010 which gave rise to section 4 A of the UCA which empowers the Minister of Local Government Rural and Urban Development (MLGRUD) to appoint ‘special interest’ councillors to every urban council. According to the Act, the appointed councillors should not exceed 25% of elected councillors.¹ This paper is a result of a survey of the composition of 20 major urban councils across the country. It is from this composition of appointed special interest councillors that the author seeks to establish the extent to which the composition complies with the elements of democratic urban governance, namely responsiveness, inclusiveness and equity, transparency, accountability, community participation, cooperation between levels of government as well as effectiveness and efficiency.

BACKGROUND TO THE ENACTMENT OF SECTION 4 A OF THE URBAN COUNCILS ACT

The practice of appointing councillors to local councils was put in place as part of the postcolonial local government reforms initially implemented in rural areas. However the practice was only implemented in district rural councils in terms of District and Rural Councils Act². The practice was introduced at a time when ZANU PF was the sole political party with very little or no opposition to its hegemony as has been discussed above. The appointments were therefore made to consolidate ZANU PF hold on political power in rural areas as has been discussed above. The councillors were appointed on the basis of expertise and were known as ‘special interest’ councillors responsible for specialist areas such as education, health, the disabled, women’s affairs as well as legal issues. It should be noted that because ZANU PF was the main political party then, it dominated local government both in rural and urban councils. It was not until the end of the 1990s that ZANU PF began to face a threat to its political hegemony from emerging political parties, notably the Movement for Democratic Change (MDC), a broad-based political movement which became increasingly popular from 2000 onwards. This emergence of the MDC and its subsequent domination of urban councils in the elections that were conducted in the elections of 2000 put ZANU PF’s political hegemony under threat.

This led to ZANU PF seeking ways of diluting the MDC’s dominance in urban councils. On the eve of the 2008 Harmonised Presidential, Senatorial, House of Assembly and Local Government Elections, sensing possible defeat, and vested with much experience in the workings of local government, ZANU PF initiated deliberations to amend the Urban Councils Act to incorporate the practice of appointing special interest

¹ S 4 A (1) (b), Urban Councils Act.

² S11, District and Rural Councils Act.

councillors in urban areas. This culminated in the amendment of the Urban Councils' Act on 8 April 2008, leading to the enactment of section 4A of the Urban Councils Act.

Through statutory instrument 79/2010 which gave rise to section 4A of the Urban Councils Act, the Minister of Local Government is vested with authority to fix the maximum possible number of special interest councillors for every urban area, without consulting the residents in the ward.³ Under this legislation, the MLGRUD makes additional appointments to urban councils. The introduction of special interest councillors was based on the policy rationale that the new elected councillors need to work alongside experienced individuals and to represent interests of marginalised groups in society.

PUBLIC REACTION TO THE APPOINTMENT OF SPECIAL INTEREST COUNCILLORS

The major reason for discussing the issue of appointing special interest councillors emanates from the vigorous reactions and debates that this practice has caused among all and sundry. Most urban local councils argue that the appointment of special interest councillors has become a financial burden on the councils since the appointees should be paid by the respective councils where they are appointed.⁴ The print media has also highlighted the appointment of special interest councillors in terms of section 4A of the Urban Councils Act. A cross section of media reports has presented the appointment of special interest councillors as a controversial practice that has led to a deterioration of relations between the MLGRUD and most urban councils⁵ as well as between residents and the MLGRUD.⁶ Both residents and elected councils have been angered by the fact that while many elected councillors have either been suspended and/or dismissed,⁷ no such action has been taken against appointed special interest councillors. The media reports have also noted that most local councils view the appointment of such councillors by the MLGRUD as abuse of power by the Minister with some threatening to take legal action⁸. Other media reports have expressed the view that the Minister's powers be reduced.⁹ Precious Shumba has acknowledged that special interest councillors may help to enrich debates in local councils. However he has noted that currently special interest councillors are a liability to most local councils that do not have the resources to accommodate such appointments.¹⁰ The Combined Harare Residents' Association (CHRA) has expressed the need for local government reforms¹⁰ as a way of strengthening local democracy, while the Harare Residents' Trust has equally expressed concerns with the way the Minister has been making these appointments.¹¹ All the media reports have roundly expressed criticism of the ministerial powers to appoint special interest councillors with the Media Institute of Southern Africa (MISA) suggesting that the Minister's 'wings be clipped'.¹² This paper seeks to provide a critical analysis of such appointments given that most media reports have gone as far as expressing opposition to such appointments without providing a critical analysis of the practice.

ESTABLISHING A NORMATIVE FRAMEWORK FOR LOCAL DEMOCRATIC GOVERNANCE

Local governance is guided by a series of instruments both at international and regional levels. It is from these instruments that countries derive their respective national instruments to govern local government. In seeking to provide a normative framework for local democratic governance, it is imperative that international, regional and Zimbabwean legislative instruments are used. For this paper, a cursory examination of different local governance instruments are utilised to put in place a normative framework on which to compare with the

³ Veritas (2010) *Urban Councils to get special interest councillors*-Bill Watch 15/2010.

⁴ S4A (2), Urban Councils' Act (2008).

⁵ "Chombo Risks Lawsuit" in *Zimbabwe Daily News*, May 23, 2010; CHRA, 2012- Brian James suspension Exposes Urgent Need for Local Government Reform!.

⁶ Sibanda A 'Bulawayo residents and Chombo to clash over special interest councillors' *Bulawayo24*, 19 May 2012.

⁷ Chombo has of January 2012 suspended a total of four MDC councillors in Harare for corruption. These were five in Rusape, one in Nyaminyami Rural District Council; two in Zvimba Rural District Council; and two in Harare Municipality – Councillors Warship Dumba and Casper Takura who had opened a council probe on the minister on how he had acquired so many properties in Harare, Brian James becomes the latest victim.

⁸ Staff Reporter 'Chombo Risks Lawsuit' in *Zimbabwe Daily News*, 23 May 2010.

⁹ MISA "Residents wants Chombo's powers clipped" Human Rights-*The Zimbabwean*, 18 September 2010. ¹⁰ Shumba P 'Special Interest councillors ideal but not necessary' *SWAfrica Radio*, 17 SW Africa Radio, 26 March 2012.

¹⁰ CHRA, 'Brian James suspension Exposes Urgent Need for Local Government Reform!'

¹¹ Harare Residents Trust. 'Chitungwiza Residents raise concerns with Minister Chombo' *SW Africa Radio*, 13 February 2012.

¹² MISA 'Residents wants Chombo's powers clipped' *The Zimbabwean*, 18 September 2010.

practice of appointing special interest councillors in Zimbabwe. By using the critical features of democratic governance extrapolated from the instruments, the author will be able to provide a critical analysis of section 4A of the Urban Councils Act which empowers the Minister of Local Government Rural and Urban Development (MLGRUD) to appoint special interest councillors.

At international levels, there are several instruments that govern the administration of democracy local governance. However, for this paper, the United Nations-Habitat Urban Governance and the United Cities and Local Governments (UCLG) are discussed, given that they provide a global normative framework. The United Nations-Habitat Urban Governance Index (UGI) is an advocacy and capacity-building tool that assists urban councils and countries in monitoring the quality of urban governance. The UGI provides a blueprint for good urban governance practices in urban areas across the globe and is anchored in its desire to promote participatory local governance in urban areas including participatory budgeting. The UGI puts emphasis on participation as a vital component of democratic governance. Participation in local governance should be through election of councillors by residents. The objectives of the UGI are 'to demonstrate the importance of good urban governance in achieving broad development objectives' at global level, and at local level 'to catalyse local action to improve the quality of urban governance by developing indicators that respond directly to their unique contexts and needs'¹³ and to contribute to the strengthening and improving of urban governance.¹⁴

The UGI is complemented by the United Cities and Local Governments (UCLG) which comprises the largest local government forum in the world that brings together different towns and cities across the globe. The UCLG provides a forum for setting norms and standards for the promotion of local democracy, self-government and decentralization. In addition, UCLG helps in mapping ways of fostering accountable and transparent local governance through forging linkages between communities and NGOs. The UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights of the United Cities and Local Governments (UCLG) recognises people's right to social inclusion, participation and to human rights¹⁵ as well as the importance of local forums as a platform for information exchange among citizens and local authorities. The UCLG's thrust is on representative democracy in which local communities are involved in the decision making processes of public affairs. The critical features of democracy drawn from the work of the Committee on Social Inclusion, Participatory Democracy and Human Rights include citizen participation through electoral processes; inclusion of marginalised groups in decisionmaking processes; accountable local leadership and decentralisation of decision-making powers to local communities.¹⁷

At regional level, a plethora of instruments seek to guide the governance of local government. These include The United Cities and Local Governments of Africa (UCLGA); The Charter for Popular Participation in Development and Transformation (CPPDT) (1990); the African Union Charter on Democracy, Elections and Governance (ACDEG) (2012); the All Africa Ministerial Conference on Decentralisation (AMCOD); the United Cities and Local Governments of Africa (UCLGA); the Victoria Falls Declaration adopted in 1999; the Kigali Declaration of 2006 and the Harare Declaration.

The United Cities and Local Governments of Africa (UCLGA) is a Pan-African forum of African local government institutions and seeks to spearhead local government reforms in most African countries and democratise local government institutions.¹⁶ The UCLGA enjoys the recognition of the African Union and strives for a united and strong Africa.¹⁷ The UCLGA seeks to promote democratic principles and institutions, popular participation in the processes of governance.¹⁸ Most importantly the UCLGA recognises the importance of decentralisation of power from central government to local councils and eventually to communities.

¹³ UN-HABITAT-Good Urban Governance Index 'Urban Indicators Guidelines: Monitoring the Habitat Agenda and the Millennium Development Goals' (2004b).

¹⁴ UN-HABITAT-Good Urban Governance Index(2004b).

¹⁵ From the work of the Committee on Social Inclusion, Participatory Democracy and Human Rights (2011).

¹⁷ Article 9, UCLGA Constitution (2008).

¹⁶ Preamble, UCLGA Constitution (2008).

¹⁷ Preamble, UCLGA Constitution (2008).

¹⁸ Article 4.9, UCLGA (2008).

In addition to the two categories of instruments discussed above, there is a plethora of instruments seek to guide the governance of local government. These include the Charter for Popular Participation in Development and Transformation (CPPDT) (1990); the African Union Charter on Democracy, Elections and Governance (ACDEG) (2012); the All Africa Ministerial Conference on Decentralisation (AMCOD); the Victoria Falls Declaration (1999); the Kigali Declaration (2006); Harare Declaration (1999) as well as Zimbabwe's new constitution. It should be noted that most of these instruments are 'soft laws' which are commitments made by negotiating parties that are not legally binding. 'Soft laws' are characterised by the relatively large amount of discretion which is left to the parties bound by the obligation.¹⁹ However it should be noted that although 'soft laws' are discretionary in nature, they are not without important legal and political effects. They help to promote coexistence and exchange of information among state parties as a way of finding common ground on issues of national, regional and international importance. As such it can be pointed out that soft law instruments are only potentially binding and can be conceived of as the beginning of a gradual process in which further steps are needed to make such agreements binding rules for states.²⁰ This is the premise on which the instruments that are explored for this paper will be regarded. The Charter for Popular Participation in Development and Transformation (CPPDT) is a collaborative initiative by NGOs, grassroots organisations as well as African states.²¹ The major objective of the Charter is 'to sensitise national governments and the international community to the dimensions, dynamics and processes and potential of a development approach'

The focus of the CDDPT is rooted in adopting a community-centred approach to development and recognises the vital importance of a people-based approach to development where communities are part of the governance process at all levels and at all times. The CDDPT provides a blueprint on which participatory democratic principles can be strengthened, including empowering people to make informed political decisions. The CPPDT presents popular participation as a fundamental right of the people to fully and effectively participate in the determination of the decisions that affect their lives at all levels and at all times.²² The Charter asserts the role of popular participation as a determinant and assertive ingredient in democracy and provide a vital cog in the participation continuum and should 'be fully involved, committed and indeed, seize the initiative'.²³ The Charter urges African governments to provide an enabling environment for citizens to freely participate in affairs that affect their lives by way of appropriate legislation at different levels of government 'to yield. Another instrument, the African Charter on Democracy, Elections and Governance (ACDEG) seeks 'to promote adherence by each State Party to the universal values and principles of democracy and respect for human rights premised upon the supremacy of the constitution and constitutional order'.²⁴ Given that the ACDEG is the latest of African initiative to democratise governance on the continent, it stands to contribute to the strengthening of electoral processes. The Charter 'states the minimum requirements for the observance of democratic principles and the protection of human rights and effective democratic governance in Africa'²⁵. The ACDEG shows commitment to the decentralisation and democratisation of local government. The contribution of the ACDEG to local government is that it requires state parties to 'decentralise power to democratically elected local authorities as provided in national laws'.²⁶ In addition, the Charter reaffirms the importance of free and fair elections and the need for political stability in African states.²⁷ As a result the instrument seeks to promote best practices in the management of elections for purposes of political stability and good governance.²⁸

The All Africa Ministerial Conference on Decentralisation (AMCOD) is a manifestation of the growing realisation and recognition of the importance of local governance has resulted in states making concerted efforts and taking initiatives to promote decentralization through public forums. One such forum is the All Africa Ministerial Conference on Decentralisation (AMCOD) which was established in terms of its

¹⁹ Grnchalla- Wesiershi T 'A Framework for Understanding "Soft Law" (2001) *McGill Law Journal* 30(37).

²⁰ Grnchalla- Wesiershi (2001).

²¹ Article (B) (d) and Article (D) (a), Charter for Popular Participation in Development and Transformation (1990).

²² Article 23 (ii), ACPPDT (1990).

²³ Article 23 (iii), ACPPDT (1990).

²⁴ Lee R 'New era for democracy in Africa' (2012) *Open Society for Southern Africa* (OSISA).

²⁵ IDASA (2012) '15 Ratifications of the AU Charter on Democracy, Elections and Governance'.

²⁶ Article 34, African Charter on Democracy, Elections and Governance (ACDEG)(2012).

²⁷ Article 35, (ACDEG)(2012).

²⁸ Article 2 (13), ACDEG (2012).

constitution. The AMCOD is a permanent ministerial forum where Ministers in charge of local governance map out strategies about enhancing local government structures. Through AMCOD forums Ministers responsible for local government in their respective countries deliberate on ways to enhance democratic governance and share democratic governance best practices. Most importantly the AMCOD initiated the drafting of the African Charter on the Values, Principles and Standards of Decentralisation and Local Governance.²⁹ The AMCOD is a persuasive instrument that provides a platform for ministers of local government to make resolutions on ways of strengthening local democracy. The African Union (AU) invites the AMCOD to AU meetings as a way of recognising the concerted effort of African government in enhancing local democracy. The AMCOD links decentralisation and local development.³⁰ In addition, through sub-regional groups of Ministers responsible for local government, Ministers are able to peer-review each other on the extent to which they implement decentralization programmes in their respective countries. Zimbabwe is a member of the AMCOD and as such is bound by the resolutions of the Conference. The AMCOD calls upon AU member states to enact defined laws that empower local authorities to make decisions that address the challenges in the respective constituencies. The AMCOD Constitution sets out several objectives which include 'to promote decentralisation, local governance and participation of citizens and social groups in designing and implementing development policies'.³¹

For this paper decentralisation would translate to the empowering of communities to make decisions on matters that affect their lives and communities, is vital for local democracy. The AMCOD does not provide for appointment of public officials but points out that leadership should undergo the democratic electoral process.³⁴

Another instrument, The Kigali Declaration (2006) seeks to provide a road map for decentralisation and the empowerment of local communities to participate in decision-making processes.³² All the provisions of the Kigali Declaration are in the form of 'soft law' and as such are persuasive and call upon participants to commit themselves to the democratisation of local government through decentralisation in which central government cedes power to subnational government level. In addition the Kigali Declaration calls upon states to enact:

legal and institutional frameworks based on clear decentralisation vision containing the effective process of decentralisation and legal instruments that determine the pace of commitment to decentralisation³³

Just like the Kigali Declaration, The Victoria Falls Declaration comes in the form of 'soft law'. The major provision of the Victoria Falls Declaration includes decentralisation and democratisation of the local government. The Declaration urges sub-Saharan African governments to enact and adopt legislation that provides for decentralisation and devolution of power to promote local democracy.³⁴

The Victoria Falls Declaration puts emphasis on the promotion of democracy and good political governance and enhance the accountability of public office holders³⁵ by seeking to devolve power and responsibility to lower echelons, promote local democracy and good governance, with the ultimate objective of improving the quality of life of the people;³⁶ to be representative of, and accountable to, all sectors of the local population, including marginalised and disadvantaged groups;³⁷ inculcate effective community participation in local governance;⁴¹

Given that Zimbabwe was part of the group of states that signed the Declaration, it has an obligation to recognise the contents of the Declaration.

²⁹ Article 2, AMCOD Constitution (2008).

³⁰ Article 23, AMCOD Constitution (2008).

³¹ Part I (2), AMCOD Constitution (2008). ³⁴ Article 17, AMCOD (2012).

³² Preamble, Kigali Declaration on Leadership Capacity Building for Decentralised Governance and Poverty Reduction in Sub-Saharan Africa (2005).

³³ Kigali Declaration (2005).

³⁴ Article 3 (1), Victoria Falls Declaration (1999).

³⁵ Article 3 (3).

³⁶ Article 3 (3).

³⁷ Article 3 (b).⁴¹

Article 3 (c).

The new Constitution of Zimbabwe, commonly known as the Zimbabwe Parliamentary Select Committee (COPAC) Constitution, takes cognisance of democratic local governance and provides for decentralisation and devolution of powers to local communities. Given that local government in Zimbabwe has been in existence since colonization with varying degrees of undemocratic practices, the new constitution holds prospects for representative democratic governance. A brief discussion of the COPAC constitution on decentralisation and devolution is provided below.³⁸

THE ZIMBABWE PARLIAMENTARY SELECT COMMITTEE (COPAC) CONSTITUTION

The COPAC Constitution (herein referred to as ‘the Constitution’) gives a detailed description of local government in four sections under the following headings: Devolution of Governmental Powers and Responsibilities;³⁹ Urban Local Authorities;⁴⁰ Functions of Local Authorities;⁴¹ and Elections and Local Authorities.⁴²

Devolution of Governmental Powers and Responsibilities

The provisions on devolution in the Constitution present a first attempt in Zimbabwe to provide constitutionally protected powers of local government institutional and legislative frameworks. Under devolution, the Constitution exhibits the desire to reform local government by empowering local councils and enhance their autonomy. In addition, the comprehensive provision of local government in the Constitution provides for structures and institutions that should comprise the new local government system in the country. In this regard the Constitution provides that:

governmental powers and responsibilities must be devolved to provinces and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively.⁴³

In addition, the Constitution recognises

“the right of communities to manage their own affairs and to further their development”⁴⁴

The Constitution is different to all constitutional and legislative provisions in the history of the country because it recognises the right of communities to contribute to local democracy primarily through the election of local council officials. The draft presents local governance as seeking

“to give powers of local government to the people and enhance their participation in the exercise of State powers in making decisions that affect their lives”⁴⁵.

No other legislative or constitutional framework in the constitutional history of Zimbabwe ever provided for the ceding of State powers to communities and the incorporating of communities in the decision-making processes through electing local leadership. The Constitution recognises the importance of devolution by empowering local councils and local communities through the

“transfer [of] responsibilities and resources from national government in order to establish a sound financial base for each provincial and metropolitan and local authority”⁴⁶

Urban Local Authorities

The Constitution makes specific reference to urban local governance and provides the primary purpose of urban local councils as seeking “to represent and manage the affairs of people in urban areas”.⁴⁷ In addition, the provision recognises the importance of elected councillors in the management of urban council affairs by stating that

“urban local authorities are managed by councils composed of councillors elected by registered voters in the areas concerned”⁵²

This provision does not make any reference to the appointment of councillors by local communities or councils. This provision reaffirms the need for community participation in the election of local leadership.

Functions of Local Authorities

³⁸ S14.11, COPAC draft (2012).

³⁹ S 14.1 COPAC draft (July 2012).

⁴⁰ S 14.11, COPAC draft (July 2012).

⁴¹ S 14.13, COPAC draft (July 2012).

⁴² S 14.14, COPAC draft (July 2012).

⁴³ S14.1 (1) COPAC draft (July 2012).

⁴⁴ S14.1 (2) (d) COPAC draft (July 2012).

⁴⁵ S14.1 (2) (a) COPAC draft (July 2012).

⁴⁶ S14.1 (1) (2) (f) (2012).

⁴⁷ S14.11 (1) COPAC draft.⁵²

S14.11 (2) .

This is one of the most important provisions of the Constitution with regard to the establishment of autonomous local councils. The draft provides for the creation of autonomous local councils that “[have] the right to govern on [their]own initiative, the local affairs of the people within the area for which [they have]been established, and shall have all the powers necessary for [them] to do so”⁴⁸

The provision is confirmation that the Constitution recognises the importance of autonomy of local authorities. In addition this provision recognises and acknowledges the importance of investing power in local authorities to represent their interests. In addition the draft recognises that locally-elected leadership understands community needs although in reality this might not be the case. The draft does not make provision for the appointment of councillors local by communities.

Elections and Local Authorities

The Constitution recognises the importance of locally-elected councillors in local councils and stipulates when (and how) as well as under what circumstances these should be elected into office.⁴⁹The draft reaffirms the view that councils should be established for every locality and that the respective communities should be responsible for the election of local council officials to administer the affairs of the communities.⁵⁰ The Constitution also recognises the fact that mayors should be appointed by those councillors elected to represent different wards in council.⁵¹

EXTRAPOLATING ELEMENTS OF DEMOCRATIC URBAN GOVERNANCE

The different legislative instruments that were explored above have all yielded several elements of democratic governance. The most salient and dominant elements of democratic urban governance that have frequently dominated the stipulations of different instruments is that democratic urban governance should be characterised by **community participation** in the operations and decision-making processes of local councils. Community participation would come in the form of consulting residents in such important issues as budgetary processes and coming up with citizen charters where the role of citizens in urban governance is made clear. Communities can also participate in the administration of local councils through **election** of councillors to represent their needs. In addition the different instruments have cited **decentralisation** of decision-making processes from the centre to localities. Given that local government is closer to communities, it is best positioned to understand the challenges of residents and to work closely with such communities in finding long-lasting solutions.

Local democracy has also been indicated as creating an enabling environment where local communities are able to choose/elect local leaders without interference from the centre. The different instruments have also agreed on the need for **responsiveness** on the part of local councils which must respond to the needs of the residents. Different residents have different needs and the centre cannot provide a strait-jacket set of regulatory framework to govern all urban councils without leaving a leeway for independent decision-making. As a result **local autonomy** is a requirement for urban democratic governance where local communities are given the opportunity to exercise their right to choose their leadership and make independent decisions without interference from the centre. Closely associated with decentralization is the practice of **devolution** in which local councils are empowered to enhance their autonomy. The provisions on devolution in the COPAC draft present a first attempt in Zimbabwe to provide constitutionally protected powers of local government institutional and legislative frameworks. Devolution provides the opportunity to transfer powers from central government to local communities. **Transparency** in the operations of local councils, in budgetary processes and in the appointment of local officials is vital in urban governance if trust is to be earned from residents. In addition, elected councillors should be **accountable** to residents whose needs the councillors should seek to address. Cooperation between levels of government is also encouraged in different instruments as a prerequisite for democratic governance.

The COPAC exhibits elements of democratic governance, providing for the election of local councillors as well as mayors and other public office bearers. The COPAC draft also recognises the role of communities in determining the choice of local leadership. The draft also recognises the significance of elections and elected leadership. Most importantly devolution is provided for as acknowledgement transfer of power and functions should help to facilitate participation of communities in decision making processes with limited central government intervention.

⁴⁸ S14.113 (1) .

⁴⁹ S14.14 (1) COPAC draft.

⁵⁰ S14.14 (2) .

⁵¹ S14.14 (2) (a).

PROVISIONS OF SECTION 4A OF THE URBAN COUNCILS' ACT

The amended section 4A of the Urban Councils Act is made up of three sub-sections. It stipulates the quota of appointed special interest councillors in each urban local council. The legislation also determines how the incumbents should relate to the MLGRUD. In addition the legislation provides the benefits that should accrue to the incumbents in their capacity as councillors, although they do not vote. Below is the full provision of section 4 A of the Urban Councils Act:

Subject to this Act, every municipal and town council shall consist of-

- (1) (a) One elected councillor for each ward of the council area; and
- (b) Such number of appointed councillors representing special interests, not exceeding onequarter of the number of elected councillors, as the Minister may fix in respect of the council by statutory instrument, and who shall hold office during the pleasure of the Minister
- (2) Appointed councillors shall participate in the business of the municipal or town council to which they are appointed and perform the same functions and be entitled to the same benefits in every respect as if they were elected councillors, except that they shall not have a vote at meetings of the municipal or town council concerned.

Unpacking section 4A of the Urban Councils' Act

In this section the author unpacks the implementation of the legislation and how it resonates with representative democracy. In the discussion of the legislation, the author highlights elements such as deciding on the numbers to be appointed and elected; selecting candidates for appointment based on interest; deciding on tenure of incumbents; and status of appointed special interest councillors.

Deciding on the Numbers

Section 4A (1) (a) provides for the election of at least one ward councillor for each ward. This is in line with representative democracy where residents are able to elect local leadership of their choice. This section also recognises the right of residents to elect leaders of their own choice. In this section there is no evident influence of the MLGRUD in the election of councillors, or if such influence is there, it is limited. Such election of local councillors is legitimate as it is (or should be) done in terms of the Zimbabwe Electoral Act.⁵² This in turn stipulates the number of councillors to be elected for each ward. This section of the Act is thus important in that it sets the foundation on which the number of special interest councillors will be based. However the Minister may deviate by going over the 25% threshold since he/she is empowered to fix the number of those individuals that may be appointed as special interest councillors.⁵³ Once the councillors are elected, the Minister would then appoint more than 25% of elected councillors.⁵⁴ This means that the higher the number of elected councillors in a constituency, the higher the possible number of appointed special interest councillors. This element of discretion on the part of the Minister to fix the number of appointed councillors could be the reason for different numbers of appointed special councillors in urban councils with the same number of elected councillors. It is left to the Minister to determine the number of special interest councillors not exceeding one quarter of the elected councillors. This means that the Minister may decide to appoint less or an equivalent of a quarter of those elected to council. More details in this regard are presented under paragraph 3.4.2 the survey of 20 urban councils which shows different numbers of appointed special interest councillors in different local councils.

Selecting candidates based on expertise

Section 4A (1) (b) calls upon the MLGRUD to make the necessary appointment of individuals with the special skills (and in some cases with relevant expertise as with former mayors). Although section 4A (1) (b) mandates the MLGRUD to make the appointments, it does not provide guidelines or criteria and the process of appointing councillors is left at the discretion of the Minister. However practice has shown that the common fields that have been considered as special interest areas include skills and expertise (experience) in education, health, the disabled, women and other fields that the Minister may from time to time identify. In addition, the legislation does not provide for ways to determine the level of skills and/or expertise of the appointees. This means that the Minister may appoint anybody as long as according to the Minister's judgment, the individual is suitable. Thus it is the Minister who makes the final decision without being restrained by any statutory criteria. Thus also there is no guarantee that the appointed special interest councillors indeed possess the required expertise or indeed represent special interests.

Deciding on the length of the tenure

⁵² Article 23 (1), Zimbabwe Electoral Act (2006).

⁵³ S 4 A (2), Urban Councils Act.

⁵⁴ S 4 A (2), Urban Councils Act.

In addition to providing for the selection of candidates for appointment as special interest councillors, section 4A (1) (b) also decides on the length of tenure of the appointees. The appointed councillors shall hold office during the pleasure of the Minister.⁵⁵ This means that they may operate as long as the Minister wants them to and can be dismissed or have their tenure renewed, whether they are performing well or not. The fate of special interest councillors is thus in the hands of the Minister to retain or dismiss them.

Status of the appointed special interest councillors

Section 4A (2) empowers the appointed special interest councillors to take part in municipal business and to perform the same functions as their elected counterparts. The appointees receive the same benefits as their elected counterparts, with their salaries being paid by the local authority and not by the Minister. However the major difference between appointed and elected councillors is that of voting rights. While elected councillors can vote, appointed special interest councillors do not have the right to vote. Despite the fact that the appointed special interest councillors have no voting rights, they are influential in terms of providing expertise and skills. In addition, appointed councillors enjoy the personal recognition of the Minister unlike the elected councillors who are chosen by the local communities. Therefore they can be regarded as vital to the implementation of policy in local councils due to their expertise and skills in local government.

SURVEY OF 20 MAJOR URBAN COUNCILS

In order to establish the extent to which the appointment of special interest councillors in terms of section 4 A of the Urban Councils' Act presents democratic urban governance, the author carried out a survey of 20 major urban councils showing the total number of elected councillors, their appointed counterparts, political affiliation, gender as well as the expertise/skill on whose basis they have been appointed into council.

City/Town	d	Gender			Party affiliation		Skill/expertise	%
		M	F	ZANU	MDC			
Bulawayo	29	7	7	-	7	-	All rejected by residents	25%
Chinhoyi	15	1	-	1	1	-	unconfirmed	7%
Gweru	18	4	4	-	4	-	res ass, disabled, commerce, educ	22%
Kadoma	17	4	1	3	4	-	1 former mayor(m) 3females- med doc educ, media	24%
Kwekwe	14	0	0	0	0	0	No appointments	-
Marondera	12	3	2	1	3	-	Former mayor, dep. mayor, finance chair	25%
Mutare	18	4	4	0	4	0	Legal,finance,admin	22%
Redcliff	9	2	2	0	2	0	Business,artisan	22%
Shurugwi	13	0	0	0	0	0	No appointments	0%
Vic Falls	11	1	1	0	0	1	business	9%
Harare	46	11	9	2	11	0	1 disabled,1 res ass, 1 bus, 8 former cllrs	24%

⁵⁵ S 4A (2), Urban Councils Act.

Gwanda	11	2	2	0	2	0	Business,former cllr	18%
Kariba	9	1	1	0	1	0	Former mayor	11%
Karoi	10	3	2	1	3	0	Former mayors	30%
Zvishavane	12	2	1	1	2	0	Business,former myr	17%
Masvingo	17	3	2	1	3	0	Disabled, bus,educ	
Rusape	13	2	1	1	1	1	Former cllr,educ	15%
Chegutu	15	1	1	0	1	0	Former mayor	7%
Bindura	8	2	2	0	2	0	Former cllrs	25%
Chitungwiz a	23	4	4	0	4	0	Bus, former myr, 2 former cllrs	17%
TOTAL	320	57	4 6	11	55	2	44 skills/expertise	18%

JUSTIFICATION FOR THE ENACTMENT OF SECTION 4 A OF THE URBAN COUNCILS ACT

It can be noted that section 4A (2) brings up questions of the desirability of special interest councillors given that they are non-elected individuals, enjoying similar benefits as their elected counterparts. It has been argued that their presence can be important because they contribute to debates in councils and help influence policy towards specific interest groups. By virtue of their experience and expertise, special interest councillors are necessary to retain continuity of council business after the election of new and inexperienced MDC councillors.⁵⁶ It can be noted that there are several justifications for the enactment of section 4A of the Urban Councils Act. The justification for appointing special interest councillors using the practice as a way of promoting multi-party democracy, as a bulwark against corruption or as a partisan practice by a dominant political party. On the other hands there are political reasons for appointing special interest councillors in urban councils. The two positions will be discussed under separate headings, namely 'official policy position' and 'political reasons'.

OFFICIAL POLICY POSITION

The argument under the official position was that since most of the elected MDC councillors are still inexperienced in local governance, they needed to work alongside experienced former councillors, hence the need to incorporate experienced councilors mostly from ZANU PF. It should be noted that only ZANU PF held the position of councilors in most local councils because it was the only dominant political party with no challenges to its rule until 2000 with the participation of the MDC in local government elections. The existence of inexperienced councillors mostly from the MDC justified the need to appoint special interest councillors.

Need for expertise in local council

During the enactment of section 4A of the Urban Councils Act it was argued that the appointment of special interest councillors would help to integrate experienced councillors and other civic leaders into local councils to strengthen and promote balanced debate. It was envisaged that such experienced councillors and civic leaders would draw from their years of exposure to local council business. The experience of the appointed councillors would be of help to the elected MDC councillors most of whom did not have any prior local government experience. Therefore in order to have continuity in local council business the appointment of experienced councillors, mostly ZANU PF candidates who had lost in local government elections was justified.⁵⁷

Promoting multi-party democracy

⁵⁶ Shumba P (2012) 2.

⁵⁷ Grabmore G'Ignorance Chombo's primary aim is to frustrate MDC councils' *New Zimbabwe Forums*, 18 May 2012.

It was argued that confining the composition of local councils to elected councillors would limit the composition of most local councils to MDC councillors who are usually the preferred political party, especially in urban areas. Therefore finding alternative ways of opening up the composition of local councils through incorporating other political parties and constituencies without passing through the voting process would enable more voices in local councils.⁵⁸ Incorporating different social groups would give voice to different sections of the local community. Despite the fact that the MDC party had won in most urban councils, but the incorporation of individuals from other political parties would facilitate the cross fertilisation of ideas in local councils and a culture of tolerance among different political parties. It was envisaged that having one political party in council would not be in the spirit of multi-party democracy. The appointment of special interest councillors coming from different political, social and economic backgrounds would not only enrich the debates and expertise within local councils, but would also promote multi-party democracy.⁵⁹ In addition, the appointment of different social interest groups within local councils would ensure representation of different social groups. Bringing in specific groups such as women, the disabled and youth would ensure the representation of their interest in local government policy formulation and implementation. Appointing special interest councillors for these and other groups would also enable local councils to make informed policy decisions that serve the interests of different groups.

Bulwark against corruption and protection of residents

It was argued that special interest councillors were appointed to provide checks and balances on the performance and activities of elected councillors from the same political parties who might want to engage in corrupt practices.⁶⁰

There were also claims by the MLGRUD that the enactment and subsequent implementation of section 4A was necessitated by central government's desire to protect residents from unscrupulous councillors. The MLGRUD justified the intervention in local councils as seeking to 'protect residents' from the excesses of inexperienced MDC councillors.⁶¹ This is the official version of what the Minister presents as the justification for making additional appointments to urban councils that are dominated by the MDC councillors elected in their respective wards.⁶⁷ However despite the official rationale for the appointment of special interest councillors, there are those who view such appointments as being done for political reasons.

POLITICAL REASONS

Apart from the official policy position which states that experienced former councillors should be appointed by the Minister as a way of inserting expertise and skills, there is also another position (herein the political position) which argues that in enacting section 4A and appointing special interest councillors, the MLGRUD has political motives as discussed below.

Capitalising on the inexperience of the MDC in local governance to enact the piece of legislation

One of the most puzzling issues is how the MDC could have allowed the enactment of Section 4 A when it was evident that it not only empowered the MLGRUD but that it would be used to frustrate the MDC elected councillors. There are possibilities that the euphoria of prospects of winning all electoral processes in the election which were to be held in 2008 overwhelmed the MDC legislators to the extent that they saw no need to delay the amendment of the Urban Councils Act. It could also be that the lack of local government experience and the meaning and impact of local government legislation could have contributed to this oversight on the part of the MDC. In 2006 when section 4A first became operational in urban local councils, ZANU PF had been in government for over 26 years while the MDC had never been in government as a sole party. As such it lacked government experience and tended to take things for granted, including the possible impact of section 4 A on the operations of urban local councils dominated by the MDC.

Using the appointed special interest councillors as spies for the MLGRUD

Given that most councillors in both urban and rural councils are from the MDC the Minister may have sought, through appointed special interest councillors, to gather information on what would be going on in urban councils. With different political parties in local councils as well as experts in different fields, these councillors would also check on each other's performances and such practice would most likely limit corrupt tendencies. It may be that the MLGRUD have used the appointment of special interest councillors to gather

⁵⁸ Shumba, P (2012) 3.

⁵⁹ Madhekeni G (2012) 23.

⁶⁰ Harare Residents Trust (2012) 2.

⁶¹ This is expressed in the following newspaper report: *Chombo has justified his meddling, insisting that he is protecting residents from the excesses of corrupt local authorities – most of which are run by the MDC-T.* ⁶⁷ Staff Reporter 'Mangwana raps 'undemocratic' Chombo'' *New Zimbabwe*, 25 August 2012.

intelligence on the proceedings in urban local councils.⁶² This argument has been expressed by the media as the major reason behind the suspension and dismissal of MDC councillors on the pretext that there are either corrupt or incompetent. It would only be through some of the councillors in councils that the Minister would be knowledgeable about deliberations in local councils. As a result appointed special interest councillors could be the most likely source of information for the Minister for him to be able to decide who to suspend and eventually dismiss for 'maladministration' or 'mismanagement' subjective terms which cannot be quantified.⁶³

Appointment of special interest councillors as a vindication of oppositional politics

The appointment of special interest councillors in terms of section 4A of the Urban Councils Act has encountered much opposition from residents in many urban areas.⁷⁰ The appointment has also attracted public attention, especially through the media which has highlighted the plight of urban councils most of which have failed to contend with additional unelected personnel on their payrolls. There has also been a claim that the process of appointing special interest councillors may be or that it is being abused.⁶⁴ What has further exacerbated this situation is the fact that there is no legal provision to check the powers of the Minister, leaving room for the manipulation of the powers to appoint.⁶⁵ Since the enactment of section 4A of the Urban Councils Act (UCA) in April 2008, numerous elected councillors and mayors belonging to the MDC have been dismissed, or summarily suspended pending dismissal to justify the appointment of special interest councillors over and above elected councillors. At the same time the Minister seeks to discredit the Movement for Democratic Change (MDC) councillors as incompetent to gain political mileage for the Zimbabwe African National Union Patriotic Front (ZANU PF).⁷³ The rampant dismissal and suspension of MDC-T (the MDC faction led by Mr Morgan Tsvangirai) councillors and mayors and dissolving urban councils has led to allegations that the Minister seeks to weaken MDC in urban local councils and to justify the existence of special interest councillors in urban councils. By highlighting and examining the implications of these appointments on urban governance and the general functioning of urban local councils, the author will be able to assess the practice of appointing special interest councillors against internationally accepted norms.

Using the appointment of special interest councillors as a way of discrediting the MDC

In addition to using special interest councillors to gather intelligence the paper has also noted that the appointment of special interest councillors could mostly be used to discredit the MDC which dominate most urban local councils. The dominance of the MLGRUD in local council decision-making processes and operations of all local authorities could have been used to frustrate the efforts of elected MDC councillors in their endeavours to execute projects in their constituencies and subsequently curry favour with residents and eventually put the name of their political party-ZANU PF in good public standing. As a result of rampant suspension and dismissal of elected MDC councillors, many projects have not been completed. The deterioration of services against the backdrop of the regular suspension of elected councillors has portrayed the MDC elected councillors as incompetent and accuses them of being unsuitable to hold public office. By such behaviour, the MLGRUD seeks to weaken the MDC as a political party and discredit elected MDC councillors.

The fact that the Minister does not appoint special interest councillors in some urban councils such as in Kwekwe and Chinhoyi could be that there is no provision that sets timeframes for such appointments to be made. This lack of a timeframe calling upon the Minister to make the appointment of special interest councillors could lead to hasty appointment of individuals with no expertise to offer.

TESTING THE PRACTICE OF APPOINTING COUNCILLORS AGAINST ACCEPTABLE DEMOCRATIC STANDARDS

Different international instruments and the COPAC draft have been explored to extrapolate critical features of representative governance. The exploration of different international instruments and the COPAC draft have

⁶² The Elected Councillors' Association of Zimbabwe(ECAZ) 'Chombo uses councilors as spies' *The Zimbabwean*, 7 August 2012.

⁶³ Media reports have highlighted that there has been regular suspension and subsequent dismissal of MDC elected councillors as mayors as cited by the Combined Harare Residents' Association (see Shumba 2012:2).

⁷⁰ Sibanda A 'Bulawayo residents and Chombo to clash over special interest councilors' *Bulawayo24*, 16 May 2012.

⁶⁴ Harare Residents Trust. 'Chitungwiza Residents raise concerns with Minister Chombo' *SW Africa Radio*, 13 February 2012.

⁶⁵ 'Bulawayo: Chombo Tries (again) to impose "Special Interest" Councillors' *Zimbabwe Metro* 24 April 2012. ⁷³ Ndlovu N 'Zimbabwe: Special Interest Councilors Dismissed' *The Standard*, 14 April 2012.

led to the extrapolation of critical values which will be used in this section to establish the extent to which section 4 A complies with the requirements of representative democratic governance. The analysis and comparison of section 4 A to critical elements of representative governance will be guided by values extrapolated from international instruments and the COPAC draft. The values are devolution and limits to central interference in which the discussion will be centred on the extent to which in the practice and implementation of section 4 A, there has been devolution. In addition the analysis will seek to establish whether there has been a restraint on limiting central interference. Other elements that will be used to compare section 4 A to international instruments and COPAC draft are the level of representative democracy, transparency, participation and accountability in the practice that have been achieved in the practice and implementation of section 4 A. In addition the paper seeks to establish whether the appointment of special interest councillors contributes to efficiency and effectiveness in local council operations and whether the practice is able to accommodate special interest and equity. In addition, the analysis will also seek to establish whether there is cooperation between levels of government.

Devolution and limited central government interference

This section seeks to establish the extent to which the practice and implementation of section 4 A exhibits devolution of functions to local authorities. Devolution and decentralisation featured because both concepts call for the transfer of powers to sub-national levels for communities to make autonomous decision in line with the needs of localities.⁶⁶ It has been argued that the major reason for devolution of governmental powers and responsibilities to lower levels of government is to empower them to make decisions that affect their communities and to enhance efficiency and effectiveness.⁷⁵ Devolution helps in limiting central government interference and at the same time transferring functions to local communities.

In terms of section of 4A of the Urban Councils Act central government does not transfer power to communities to make appointments. While it can be acknowledged that central government has decentralised government functions to sub-national levels the Minister continues to appoint special interest councillors. Through legislative powers, the Minister can make additional appointments to all urban councils. The COPAC draft, assumes that devolution and decentralisation form the basis for local government and are the central themes that inform provincial and local council governance.⁶⁷ While it can be acknowledged that section 4 A of the Urban Councils Act seeks to enhance capacity within local councils by incorporating expertise, it compromises devolution of power to sub-national level.

The reason why the Minister does not consult local councils or communities is that from the way section 4A was enacted and how it has been implemented, it is evident that it was never intended to devolve power to lower levels of government. The legislation focuses on the Ministerial powers to intervene in local council affairs. The legislation therefore compromises devolution as it does not seek to consider input from local councils or communities. This failure to devolve power within section 4A enhances central government role in local council affairs. As a result, central government exercises unlimited interference in local council affairs. The legal framework and practice do not provide a restraint on central government interference in line with the principle of devolution. From the manner in which section 4 A is being implemented, it does not suggest that this principle of devolution is being respected.

It has also been noted in the table of special interest councillors above that the Minister may even decide not to make any appointments as is the case with the Kwekwe City Council and Shurugwi Town Council. In the case of determining how many individuals should be appointed as special interest councillors, the Minister makes the final decision. In addition it has also been observed that there is inconsistencies the appointments because in some cities the appointments are more than the 25% threshold, (Karoi 30%), while in other areas the appointments are less than the threshold (Chinhoyi, Chitungwiza, Kariba and Victoria Falls). In other towns the appointments comply with the 25% threshold (Bindura, Harare and Marondera). It is evident that the Minister acts subjectively in the implementing section 4A appointments and thus as an instrument of control which translates to lack of devolution.

Local democracy

The elements drawn from the international instruments and the COPAC draft are representative, participation, transparency and accountability. In line with the requirements of different instruments and from practice, local democracy requires that communities elect or appoint leaders to represent their interests in government. At local government level, local communities should be involved in electing local leadership. The process of

⁶⁶ S14 (1), COPACdraft ⁷⁵S

14, (1) (1).

⁶⁷ S14.1, COPAC draft.

electing leadership should ensure that there is representivity, that the process enables participation of different people in the community, that there is transparency in the electoral process or the way the leaders are chosen or appointed and that the elected or appointed leaders are accountable to the community.

Representative democracy

In the case of section 4A of the Urban Councils Act the appointed special interest councillors are accountable to the MLGRUD and do not represent the interests of local communities. As such the practice of appointing special interest councillors falls short of representative democratic governance requirements which require public officials to be elected by their communities to represent the affairs of the communities. It can be argued that the fact that only 2 special interest councillors belong to the MDC, representing about 4% of appointed councillors indicates that the practice of appointing special interest councillors does not appear to promote political pluralism. In addition, there is no evidence to suggest that appointed councillors are democratically elected or that they represent different political parties or different constituencies. In addition out of the 57 special interest councillors appointed by the Minister, only 2 special interest councillors are from the MDC while the other 56 belong to ZANU PF as shown on the table above. Therefore the appointed councillors cannot be regarded as somehow representing democratic leadership. While it is acknowledged that special interest councillors are proportionally elected representatives, the fact that some of them have been rejected by residents (as shown by the case of Bulawayo), implies that the practice is unpopular with residents. This is further confirmed by negative media report which castigates the practice and implementation of section 4 by the Minister. In the case of section 4A the special interest councillors do not originate from people's choices and do not represent a confirmed constituency. In the appointment of special interest councillors in terms of section 4A residents are not consulted and the exclusion of residents in determining who should be appointed to administer their affairs does not comply with the requirements of representative democracy. The councillors are therefore not a representation of local interests but represent the interests of the Minister who appointed them.

Community Participation

The principle of participation emerged as a critical feature of democratic governance. Effective participation of citizens in democratic and development processes and in governance in public affairs helps to strengthen democratic institutions.⁶⁸ In representative democratic governance, citizens should be involved in all decision-making processes that affect citizens' lives. Evidence has shown that, the appointment of special interest councillors has been done by the Minister without and public consultation since the legislation instructing the appointment of special interest councillors does not provide for the transfer of powers to communities to participate in the appointment of such councillors.

However, in the practice and implementation of section 4 A, the MLGRUD is not required to seek their opinion in this regard. There is no provision calling on the MLGRUD to interact with residents. It would be argued that this piece of legislation does not conform to the requirements of participatory or representative democracy as it adopts a non-participatory approach to the appointment of special interest councillors in urban areas. It can be noted that this piece of legislation falls short of the principle of representative and participatory. The picture created by the table above suggests that the implementation of section 4 A does not suggest that residents should be part of the appointment process, especially given that residents rejected the very candidates who were eventually appointed by the Minister.

Transparency

Transparency has been identified as an important aspect of democratic decision making.

Transparency refers to clarity and fairness in the management of public affairs.⁶⁹ Transparency in the election of political leadership forms the basis for a representative democracy⁷⁰ as it enhances legitimacy of elected leadership. Without transparency, decisions risk being rejected by the citizens as is the case of the seven special interest councillors appointed in Bulawayo (see table above). In the case of appointing special interest councillors in terms of section 4A there is no transparency about how special interest councillors are appointed by the MLGRUD. The fact that there are no criteria to guide the Minister in making the appointments has led to lack of transparency. In stipulating the appointment of special interest councillors, the law assumes that the Minister will appoint people with the required skills, experience and/or expertise. The

⁶⁸ Article 3 (7), African Charter on Democracy, Elections and Governance (ACDEG) (2012).

⁶⁹ Article 3 (8), African Charter on Democracy, Elections and Governance (ACDEG).

⁷⁰ Article (1) (vi), African Charter on Democracy, Elections and Governance (ACDEG).⁸⁰ 14 (2) (ii), COPAC draft (July 2012).

lack of guidance may result in anybody being appointed as special interest councillor. As a result, the practice has become shrouded in mystery. These shortfalls make the procedure of appointing special interest councillors in terms of section 4A flawed since the practice lacks transparency. In addition the constituencies of the special interest councillors are subjective in the opinion of the Minister; hence some are not adequately represented while others like the business sectors are adequately represented. In addition, some special interest areas are not clearly defined such the education sector. Going by how section 4 A is currently being implemented, as well as by the results of the survey; it can be argued that the value of transparency is not being observed.

Accountability

Accountable governance demands that public officials should be answerable to the public in the management of public affairs. Accountability of public officials should be directed at those who elected them into public office. Accountability to local communities provides checks and balances on public officials. Local councillors are elected into office through the electoral process and in accordance with existing electoral laws.⁸⁰ As such the elected councillors strive to serve their local councils. Through the appointments of special interest councillors, the MLGRUD is able to monitor performance of public officials. As a result local leadership should be accountable to local communities.

Section 4A is precise as to whom the appointed special interest councillors are accountable to. The fact that the special interest councillors “hold office at the pleasure of the Minister”,⁷¹ implies that they operate at the behest of the Minister who may dismiss them at any time. Given that the appointed special interest councillors are accountable to the Minister, it suggests that they serve the interests of the Minister. The appointment of special interest councillors in terms of section 4A put the elected councillors in a position where they are accountable to the Minister despite holding public office. Given that special interest councillors are public officials, it is reasonable to assume that they should be accountable to the public. However this is not the case as they are accountable to the MLGRUD.

Following from the language of section 4 A, whoever is appointed is the Minister’s personal preference and as such should be accountable to the Minister. It is also worth noting that the tenure of those appointed as special interest councillors is decided by the Minister who may decide to renew their appointment, dismiss or suspend the incumbents. The Minister thus determines their working conditions. The legislation and practice of appointing special interest councillors compromises the accountability of special interest councillors to the public or their respective local councils. Therefore the law and practice of section 4 A does not suggest that the value of accountability is being respected.

Accommodating special interests/equity

Inclusiveness ensures the representation of all social groups in the community and contributes to local democracy. Inclusiveness also helps in mobilising different groups in the community. Equity has been used interchangeably with inclusiveness in most instruments. Equity enables the representation of different social groups on an equal basis irrespective of their social status and gender.⁷² Out of a cumulative total of 57 special interest councillors for 18 urban local councils, only 8 are women. This is a far cry from the provisions of major instruments which call for gender balance and equality in governance and development processes.⁷³ The appointment of special interest councillors is one way of achieving equity. In appointing special interest councillors in terms of section 4A there is no evidence that the Minister considers appointing individuals representing different political, economic and social sectors.

The incorporation of appointed special interest councillors, mostly from ZANU PF, does not really add to pluralism and renders the composition of local councils inadequate in terms of incorporation of other political parties or interests other than those presented on the table above. In principle the inclusion of special interest councillors could facilitate the accommodation of a variety of interests, particularly those of vulnerable groups such as the disabled, women, minority groups and political parties. However the fact that the Minister is not required to ascertain prospective appointees’ expertise leads to arbitrary appointments, which might not include those able to represent the interest of vulnerable groups. It can therefore be challenged that their presence in local councils as appointed councillors does not contribute to political pluralism. Political pluralism would entail the existence of individuals from different political backgrounds and elected into council to represent their constituencies. In the case of special interest councillors, they do not have the

⁷¹ S 4 A (2), Urban Councils Act (2008).

⁷² UN-Habitat-Good Governance.

⁷³ Article 2 (11), African Charter on Democracy, Elections and Governance (ACDEG) (2012).

mandate of the people and as such cannot be recognised as contributing to political pluralism. From the table of special interest councillors drawn from eighteen (18) urban councils (in two councils no appointments were made),⁷⁴ there is no or very little evidence to show representation of vulnerable groups. Of the 57 special interest councillors in different towns, only three represent the interest of the disabled (Harare, Gweru and Masvingo). The rest of the special interests councillors have been appointed on the basis of skills such as business, legal, medical and educational skills. All these are considered as exclusive interest of those pursuing affluent lifestyles. It can therefore be argued that while the notion of appointing special interest councillors is noble, the practice is fraught with inconsistencies which results in the representation of the well-to-do and not the vulnerable groups. It can therefore be acknowledged that while there is pluralism in the composition of local councils as a result of the incorporation of special interest councillors that does not benefit the target groups. The interests of marginalised groups such as the disabled, the homeless and orphans as well as organised groups such as residents have either been inadequately represented or have not been represented at all.

In terms of section 4A the appointment of special interest councillors is not based on any criteria, hence there is no provision for affirmative action. Although it is argued that special interest councillors could represent specific expertise, often marginalised groups such as women, the disabled and people living with HIV/AIDS, are not considered as a priority for representation. There is no evidence to suggest that these are equitably and sufficiently represented. As a result, section 4A falls short of the requirements of democratic and representative governance which prescribes equity as a vital condition and requirement.

Despite the existence of an opportunity presented by section 4 A to represent the interests of disadvantaged and marginalised groups such as orphans, the homeless and the disabled, the MLGRUD has not taken advantage of it. Instead it would seem the Minister has concentrated on political survival at the expense of the general populations' interests. It could therefore be argued that section 4 A has a noble intention of representing the interests of different sectors of society but the Minister has confined the terms of the legislation to those that he regards as vital for him.

The practice of having more special interest councillors from one political party and less from another party does not meet the requirement of political pluralism that helps to strengthen democracy. The fact that the Minister appoints individuals whose skills or expertise are known confirms the likelihood that appointed special councillors have a contribution to make towards enhancing effectiveness of local councils. In addition to the failure of the system to promote political pluralism as discussed above, it shows that the implementation of this legislation does not recognise other minority political parties or other people from marginalised groups in the community whose interest are not being represented or where there is no such evidence. As a result it can be noted that by appointing more special interest councillors from one political party and without being gender sensitive, the Minister has failed to achieve inclusiveness. It can therefore be noted that section 4A fails to meet the requirements of inclusiveness in representative democratic governance.

Effective and efficient decision making

Efficiency implies using minimum resources to get maximum output and making sound decisions. In the case of local government efficiency would mean using available resources economically. Although special interest councillors have no vote, their existence as advisors to the councils enables councils to make informed decisions on policy formulation and implementation. Taking cognisance of their experience in local government, it is assumed that they have some contribution that they can make to enhance the performance of local councillors.⁷⁵ In terms of section 4A there is no evidence that the inclusion of special interest councillors has enhanced the quality of decision making. However what is evident is that the additional special interest councillors are an additional financial burden on local councils which contribute to the depletion of council financial resources.

On the other hand the disagreements that are likely to erupt in local councils as a result of different political backgrounds between the elected and appointed councillors are likely to compromise of effectiveness. It can therefore be argued that the legislation and practice of appointing special interest councillors have not improved the efficiency and effectiveness of local councils. What is evident is that there has been increased inefficiency as local councils become increasingly bankrupt while effectiveness has decreased as evidenced by dilapidated infrastructure in most towns.⁸⁶

⁷⁴ In Chinhoyi and Kwekwe urban councils, no special interest councillors were appointed.

⁷⁵ UN-Habitat Urban Governance Index/ United Cities and Local Governments (UCLG); United Cities and Local Governments in Africa (UCLGA); The United Cities and Local Governments of Africa; All Africa

The practice and implementation of section 4 A could most likely have had an impact on sound decision making processes. Sound decision making involves incorporating the community in making decisions that affect the lives of the people in that community. Although from a policy point of view, the infusion of special interest councillors would facilitate sound decision making, the practice of appointing the councillors is fraught with inconsistencies. This eventually defeats the purpose of inserting skills in local councils. Despite the assumption that the presence of special interest councillors enhances the efficiency and effectiveness of local councils, but the differences in political ideologies of elected and appointed should not be taken lightly. There is evidence from media reports that the political rivalry between the elected MDC councillors and the appointed special interest councillors, have led to fraught relationships that would negatively impact on sound decision making. As a result it can be pointed out that the presence of experienced former ZANU PF councillors would likely not contribute to sound decision making or strengthen council debates.

Cooperation between levels of government

Cooperation between levels of government entails the cooperation, co-existence and interaction between different levels of government to implement policies. Cooperative governance enhances the efficient implementation of public policies as different levels of

Ministerial Conference on Decentralisation (AMCOD); Charter for Popular Participation in Development and Transformation (CPPDT). African Charter on Democracy, Elections and Governance (ACDEG); Kigali Declaration; Victoria Declaration; COPAC Draft.

⁸⁶Combnbed Harare Residents' Association (2010).

government complement each other in this regard. From the composition of special interest councillors provided above, there is no evidence of cooperation between the Minister who represents central government, and local authorities, in the appointment of special interest councillors. Section 4A does not recognise or facilitate for cooperation between different levels of government. Also, in implementing section 4A the Minister does not act in the spirit of cooperation. In making the appointments, the Minister does not consult local councils. The way section 4A has been implemented leaves local councils with no role to play in the appointment of these councillors despite the fact that the councillors will serve together in local councils. This is a recipe for failure as it creates a rift between central and local governments. It also shows that the interaction between central and local government is not in the spirit of cooperation but one in which local councils receive and implement policies handed down from central government. It can therefore be argued that section 4 A does not comply with the requirements of cooperative governance because there is no evidence of consultation between central government (represented by the Minister) and local government (represented by local councils).

OBSERVATIONS

The discussions about the practice and implementation of section 4 A of the Urban Councils Act concluded that in appointing special interest councillors in urban local councils, the Minister is not required to consult residents or local councils. The Minister eventually makes the appointments of special interest councillors at his discretion. This was further shown by the composition of special interest councillors appointed in different urban councils in which the Minister did not comply with legislation. While in some cases the Minister appointed less than the required quota, in other cases the Minister did not appoint any special councillors at all. There is evidence to show that the practice and law of section 4 A compromises the accountability of the appointed special interest councillors who should be answerable to the Minister. Therefore the author makes recommendations that would strengthen the practice and implementation of appointing councillors in urban local councils. In addition the author may also seek to provide ways in which local the operation of councils can be strengthened.

The author has also observed that the tenure of the appointees rests with the Minister who can either renew or terminate it. It has also been shown that most appointed councillors belong to ZANU PF which practice does not translate to political pluralism because there should be other factors that may be considered in appointing special interest councillors other than putting emphasis on political affiliation.

CONCLUSION

It has been noted that the practice and implementation of section 4 A of the Urban Councils Act has not complied with the critical features of representative governance extrapolated from international instruments and the COPAC draft. It was noted that the COPAC draft contains crucial elements most relevant to Zimbabwe that would provide democratic local governance. If political developments in Zimbabwe are anything to go by, there are chances that the COPAC draft will pass through the referendum stage and become the new

Constitution of Zimbabwe. In the event that the COPAC draft sails through the referendum and eventually become law, local government will be transformed. It also remains to be seen whether the practice of appointing special interest councillors as provided by section 4 A will survive under the new Constitution. However, given the acrimony between the two major political parties in the country, namely ZANU PF and the MDC-T, it remains to be seen whether the two political rivals would collaborate or stick to democratic principles of governance.

From the way section 4 has been implemented, there it is evident that the current system of local government is untenable and need to be transformed or overhauled. This means that either section 4 A be repealed or amended to modify or leave out section 4 A and replace it with legislation that promotes democratic governance. These remarks, if considered, would go a long way in transforming local governance in general and the operations of local councils in achieving their objectives.

REFERENCES

Books

- Curtin DM & Wessel A (eds) *Good governance and the European Union: reflections on concepts, institutions and substance* (2005) New York: Intersentia.
- Litvack J Ahmad J & Bird R *Rethinking decentralisation in developing countries* (1998) Washington DC: The World Bank.
- Mararike CG *Grassroots Leadership: The Process of Rural Development in Zimbabwe* (1995) Harare: University of Zimbabwe.
- Olowu D & Wunsch JS *Local Governance in Africa: The Challenges of Democratic Decentralisation* (2004) Lynne Rienner: Boulder.
- Yoshikuni T *African Urban Experiences in Colonial Zimbabwe: A Social History of Harare before 1925* (2006) Harare: Weaver Press.

Book Chapters

- Chakaipa S 'Local government institutions and elections' in De Visser J; Steytler N & Machingauta N 2 (eds) *Local Government Reform in Zimbabwe: A policy dialogue* (Community Law Centre: Cape Town) 2010.
- Chatiza K 'Can Local Government steer socio-economic transformation in Zimbabwe?' in De Visser J, Steytler N & Machingauta N 5 (eds) *Local government reform in Zimbabwe: a policy dialogue* (Community Law Centre: Cape Town) 2010.
- Hammar A 'The making and unmaking of local government in Zimbabwe' in Hammar A, Raftopoulos B and Jensen S (eds) *Zimbabwe's Unfinished Business: Rethinking Land, State and nation in the Context of Crisis* (Harare: Weaver Press) 2003.
- Mushamba S 'The powers and functions of local government authorities' in DeVisser J; Steytler N & Machingauta N 4 (eds) *Local Government Reform in Zimbabwe: A policy dialogue* (Community Law Centre: Cape Town) 2010.

Journal articles

- Agarwala A and Ribot J 'Accountability in decentralisation: A framework with South Asian and West African cases' (1999) 33 *Journal of Developing Areas* (4) 473 502.
- Bland G 'Overcoming a decade of crisis: Zimbabwe's Local Authorities in transition' (2011) 31 *Journal of Public Administration and Development* (4) 340 350.
- Frederickson H; Wood G C and Logan B 'How American City Governments Have Changed: The Evolution of the Model City Charter' (2001) 90 *National Civic Review* (1) 12 35.
- Grnchalla- Wesiershi T 'A Framework for Understanding "Soft Law"' (2001) 30 *McGill Law Journal* 37 88.
- Hoyos A & Uys F 'Theoretical Perspective to Fiscal Decentralisation in Developing Countries' (2008) 43 *Journal of Public Administration* (1) 26 43.
- Jonga W & Chirisa I 'Urban Local Governance in the Crucible: Empirical Overtones of Central Government Meddling in Local Urban Councils Affairs in Zimbabwe' (2009) 3 *Theoretical and Empirical Researches in Urban Management* (12) 166 182.
- Madhekeni A & Zhou G 'Legal and Institutional Framework: The "Achilles Heel" Of Local Authorities and Raison D'etre of Ministerial Intervention in Zimbabwe' (2012) 2 *Journal of Public Administration and Governance* (3) 19 32.
- Makumbe J 'Is there a civil society in Africa?' (1998) 74 *International Affairs* (2) 305 317.
- Mhlahlo SR 'Assessment of Urban Governance in Zimbabwe: Case of the City of Gweru' (2007) 23 *Eastern Africa Social Science Research Review* (1) 107 128.
- Orsello GP 'Governance in the European Union' (2003) RSC Harvard Law School 'Response to the European Commission's White Paper on Governance'.

RadioVOP 'Bulawayo Rejects Chombo's Imposed Councillors' Zimbabwe Inclusive Government (ZIG) Watch: Issue 15 - 27 April 2010 5.

Working papers

Afonso A; Schuknecht L & Tanzi V Public Sector Efficiency: Evidence for New EU Member States and Emerging Markets (2006) European Central Bank, Working Paper Series No. 581.

Jordan JD Local Government in Zimbabwe: An Overview (1984) Mambo Occasional Papers Socio-Economic Series No. 17 (Gweru: Mambo Press).

Matumbike CWE Local Government in Zimbabwe 1970-2009: Historical Perspectives and Reflections on the Last Four Decades Discussion document prepared for UNPD-Ministry of Local Government.

Conference Papers

All Africa Ministerial Conference on Decentralisation (AMCOD) 1999.

Mimicopoulos MG 'Department of Economic and Social Affairs' presentation to the United Nations World Tourism Organisation Knowledge Management International Seminar on Global Issues in Local Government: Tourism Policy Approaches, Madrid, 27-29 September 2006.

Government of Zimbabwe 'Local Governance for Poverty Reduction: The case of Zimbabwe' Paper prepared for presentation at the Africa Governance Forum, Maputo, May 23-25 2002.

Zimbabwe Institute 'Local Government: Policy Review' (Cape Town 2005). Strategic Reflection Workshop, Kadoma, 10-12 June 2009.

Policy Briefs

Graham J; Amos B & Plumtree T Principles for Good Governance in the 21st century (2003) Policy Brief No. 15, Institute on Governance.

Helmsing HH Transforming Rural Local Government: Zimbabwe Post independence Experience No.0104.02 (2004).

Reports

African Development Bank African Development Report 2001: Fostering Good Governance in Africa (2011) Oxford: Oxford University Press.

Shah & Shah (2006) Governance: The World Bank's Experience (2007) Washington D.C: World Bank.

Internet Sources

The Elected Councillors' Association of Zimbabwe (ECAZ) 'Chombo uses councillors as spies' The Zimbabwean 7 August 2012 2; Available at <http://www.thezimbabwean.co.uk/news/zimbabwe/60002/chombo-uses-councillors-as-spies.html> [Accessed 12 August 2012].

Grabmore G 'Ignorance Chombo's primary aim is to frustrate MDC councils' New Zimbabwe Forums, 18 May 2012 4. Available at <http://forum.newzimbabwe.com/index.php?/topic/57413-even-the-strongest-zanoids-will-beshocked/page-st-20> [Accessed 26 August 2012].

Madava T 'Anger over special interest councillors' The Financial Gazette 16 August 2012 2; Available at <http://www.financialgazette.co.zw/national-report/13793-anger-over-special-interest-councillors.html> [24 August 2012].

Municipal Reporter 'Chikumbirike named councillor' The Chronicle, 23 August 2011 4. Available at http://www.chronicle.co.zw/index.php?option=com_content&view=article&id=19177:chikumbirike-named-councillor&catid=38:local-news&Itemid=131 [Accessed 17 July 2012]

Rejoice Ngwenya 'Tsvangirai's 2013 electoral albatross' in Kubatana.net 20 April 2012 6. http://www.kubatana.net/html/archive/opin/120420m.asp?sector=LEGISL&year=2012&range_start=31 Accessed 26 August 2012].

Staff Reporter 'Mangwana raps 'undemocratic' Chombo' New Zimbabwe, 25 August 2012 3, Available at <http://www.newzimbabwe.com/news-8275>

Mangwana%20raps%20Chombo%20power/news.aspx

Chimhete C & Ndlovu N 'Chombo unsettles MDC-T run councils' The Standard Sunday, 22 April 2012 . Available at <http://www.thestandard.co.zw/local/34891-chombounsettles-mdc-t-run-councils.html> [Accessed 6 July 2012].

Ndlovu N 'Zimbabwe: Special Interest Councillors Dismissed' The Standard, 14 April 2012 5. Available at <http://allafrica.com/stories/201204160265.html> [Accessed 2 July 2012].

Sibanda A 'Bulawayo residents and Chombo to clash over special interest councillors'. Bulawayo24, 16 May 2012 6. Available at <http://bulawayo24.com/index-id-news-sc-localbyo-15273-article-Bulawayo+residents+and+Chombo+to+clash+over+special+interest+councillors.html>

HRT 'Chitungwiza Residents raise concerns with Minister Chombo' SWAfrica Radio, 13 February 2012 1.
Available at <http://www.swradioafrica.com/chitungwiza-residents-raiseconcerns-with-minister-chombo/> [Accessed 12 June 2012].

Staff Reporter 'Bulawayo: Chombo Tries (again) to impose "Special Interest" Councillors' Zimbabwe Metro.
Available at <http://www.zimbabwemetro.com/bulawayochombo-tries-again-to-impose-special-interest-councillors/>

'European Charter on development cooperation in support of Local Governance,' Available on <http://as03.cooltoad.com/go/desktop?o=item:290412737:1.2:CharterEULocal%20Governance.pdf> [Accessed on 20 July 2009]

Shane PA (ed) Building Democracy Through Online Citizen Deliberation. A Framework for Action (2009)
[http://moritzlaw.osu.edu/pldd/docs/building democracy.pdf](http://moritzlaw.osu.edu/pldd/docs/building%20democracy.pdf) 28.4

Theses

Madzivanyika L The impact of weaknesses in the Urban Councils Act on efficient and effective service delivery in urban local councils in Zimbabwe (unpublishedLLM Research paper, University of the Western Cape, 2011).

Machingauta N A legal analysis of the appointment of caretakers to act as council in terms of Zimbabwe's section 80 of the Urban Councils Act (unpublishedLLM Thesis, University of the Western Cape 2010).

Legislation

Urban Councils Act [Chapter 29:13] Act 6 of 2008.

Rural and District Councils Act [Chapter 29:15] Act 4 of 1996.

Legislative Instruments

African Charter on Human and People's Rights.

African Union Charter on Democracy, Elections and Governance (ACDEG) 2012.

Charter for Popular Participation in Development and Transformation (CPPDT) 1990.

European Charter of Self-Government 1996.

Kigali Declaration 2006.

United Cities and Local Governments of Africa (UCLGA) 1990.

UN-HABITAT. "Legal issues for city-to-city co-operation: a framework for local government international action" Seville, Spain in January 2007.

United Nations Millennium Development Goals (2000).

Universal Declaration on Human Rights (UDHR) 1948.

Victoria Falls Declaration 1999.

Zimbabwe Parliamentary Select Committee Draft Constitution (COPAC) July 2012

This academic article was published by The International Institute for Science, Technology and Education (IISTE). The IISTE is a pioneer in the Open Access Publishing service based in the U.S. and Europe. The aim of the institute is Accelerating Global Knowledge Sharing.

More information about the publisher can be found in the IISTE's homepage:

<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

The IISTE is currently hosting more than 30 peer-reviewed academic journals and collaborating with academic institutions around the world. There's no deadline for submission. **Prospective authors of IISTE journals can find the submission instruction on the following page:** <http://www.iiste.org/journals/> The IISTE editorial team promises to review and publish all the qualified submissions in a **fast** manner. All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Printed version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Recent conferences: <http://www.iiste.org/conference/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

