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Keywords: African Charter on Decentralisation, African Union, Intergovernmental Cooperation, Decentralisation, Framework, Local autonomy, Supervision

DECLARATION

I, Melissa Nyaradzo Sibongile Ziswa, do hereby declare that 'An analysis of the decentralisation framework provided for in the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development, 2014' is my original work and I have properly acknowledged all the sources which I have used by means of references. I further testify that it has not been submitted for another degree or to any other institution of higher learning.

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Date.....

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Date.....



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Dedication

This work is dedicated to my parents who have taught me to believe. I love you mum and dad!



Abbreviation and acronyms

AU	African Union
ICT	Information and Communication Technology
OAU	Organisation of African Unity
PPPs	Public-Private Partnerships
UN	United Nations



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Chapter 1: Introduction

1.1 Problem statement

The African Union (AU)¹ is a continental intergovernmental organization of countries on the African continent. The Organisation of African Unity (OAU), the forerunner to the AU came into existence in 1963 but was disbanded, and later replaced by the AU which has a membership of fifty four countries.² The AU operates through various institutions namely a permanent secretariat, various ministerial conferences, council of ministers and the Assembly of Heads of State and Government.³ The Assembly meets once a year and is the highest policy-making body of the AU. The goals of the AU include the need to 'promote and protect human rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law'.⁴

The Constitutive Act of the African Union (hereafter Constitutive Act)⁵ is the legal instrument that signalled the transition from the Organisation of African Unity (OAU) to the AU. This Act lists the promotion of democratic principles and institutions, popular participation and good governance⁶ and the promotion of co-operation in all fields of human activity to raise the living standards of African people⁷ among its objectives. Furthermore, it recognises the respect for democratic principles, human rights, the rule of law and good governance as being one of the principles that are to guide the AU.⁸ With the transition of the OAU to the AU in 2001,⁹ there was a great realisation that Africans themselves had to search for solutions to the region's problems, and that any assistance from outside would have to be so tailored as to uphold African ownership.¹⁰ Later this idea was vigorously supported by a succeeding crop of African leaders such as Thabo Mbeki of South Africa, Olusegun

¹ Brown M & Augustine E 'The African Charter of Human and Peoples' Rights: An Analysis' (2014) 1 *SCSR Journal of Development* 52.

² 'Member States of the African Union' available at http://www.au.int/en/AU_Member_States (accessed on 4 July 2016).

³ Brown & Augustine (2014) 52.

⁴ Preamble Constitutive Act of the African Union, 2000.

⁵ Constitutive Act.

⁶ Article 3 (g) Constitutive Act.

⁷ Article 3 (k) Constitutive Act.

⁸ Article 4 (m) Constitutive Act.

⁹ 'Transition from the OAU to the African Union' available at http://www.au2002.gov.za/docs/background/oau_to_au.htm (accessed on 8 July 2016).

¹⁰ Moolakkattu J S 'The Role of the African Union in Continental Peace and Security Governance' (2010) 66(2) *India Quarterly* 152.

Obasanjo of Nigeria, Abdelaziz Bouteflika of Algeria as well as Hosni Mubarak of Egypt through the project of an African Renaissance.¹¹ To realise the continental objectives highlighted above, the AU adopts Charters across a variety of areas such as trade, security and decentralisation.

With respect to decentralisation, which is the focus of this study, the AU has adopted the African Charter on Democracy, Elections and Governance¹² (hereafter referred to as the African Charter on Democracy) and the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development¹³ (hereafter African Charter on Decentralisation or just the Charter). Countries are to implement these legal instruments upon ratification. At the advent of the AU in 2001, most African countries were centralised and hence were prone to experience problems that come with centralised governance such as the unresponsive delivery of public services. To address such problems, the AU adopted the said two Charters so as to enhance the establishment of effective decentralised systems of government in respective countries, paying particular attention to the challenges that are experienced on the African continent.

The African Charter on Democracy was adopted in 2007 at the Eighth Ordinary Session held in Ethiopia and it came into force in February 2012.¹⁴ This Charter seeks to 'nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance'¹⁵; as well as to 'encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration'¹⁶. Decentralisation is only mentioned once in the African Charter on Democracy. The relevant provision notes that State Parties shall decentralize power to democratically elected local authorities

¹¹ Louw A. H 'The concept of African Renaissance as a force multiplier to enhance lasting peace and stability in Sub-Saharan Africa' available at http://www.africavenir.org/fileadmin/migrated/content/uploads/LouwAfricanRenaissanceForceMultiplier_03.pdf (accessed on 4 July 2016).

¹² African Charter on Democracy, Elections and Governance, 2007.

¹³ African Charter on the Values and Principles of Decentralisation, Local Governance and Local development, 2014.

¹⁴ 'African Charter on Democracy, Elections and Governance' available at <http://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed on 26 November 2016).

¹⁵ Article 2 (6) African Charter on Democracy.

¹⁶ Article 2 (7) African Charter on Democracy.

as provided for in national laws.¹⁷ Thus the African Charter on Democracy does not provide a framework for decentralisation; it merely recognises the existence of local government.

The African Charter on Decentralisation on the other hand was adopted in 2014 and it gives particular attention to decentralisation. This Charter seeks to 'promote the values and principles of decentralisation, local governance and local development in Africa as a means for improving the livelihood of all the people on the African continent'.¹⁸ International practice and literature suggests that if well designed and implemented, decentralisation has the potential to improve the lives of ordinary citizens among other ways, through improved and responsive delivery of services.¹⁹ The Charter seeks to achieve local governance, democracy and development by providing a decentralisation framework that member countries should adhere to when drafting and implementing laws and regulations that relate to decentralisation in their respective countries. The decentralisation framework covers a range of aspects, from powers and functions of local government to the fiscal aspects as well as supervision and cooperation measures. Like most international instruments, member states of the AU will only be legally bound by the Charter once they have ratified it.²⁰

The African Charter on Decentralisation is relatively new having been adopted two years ago, in 2014. To date, most member states of the AU have not ratified the Charter due to the ratification process in many countries being cumbersome among other reasons.²¹ There is not yet a clear understanding of the meaning and significance of the decentralisation framework it provides. Local government has often been ineffective as characterised by poor political accountability among local

¹⁷ Article 34 African Charter on Democracy.

¹⁸ Preamble African Charter on Decentralisation.

¹⁹ Litvack J & Seddon J 'Decentralization briefing notes' available at <http://siteresources.worldbank.org/WBI/Resources/wbi37142.pdf> (accessed 6 April 2016). See Afonso A & Fernandes S 'Assessing and explaining the relative efficiency of local government' (2008) 37 *The Journal of Socio-Economics* 1947.

²⁰ Article 24 African Charter on Decentralisation.

²¹ Ikubaje J & Bel-Aube N 'Civil Registration, Vital Statistics and Effective Public Sector Governance and Service Delivery in Africa' (2016) 6 *Open Journal of Political Science* 180. See 'The African Charter on Values and Principles of Decentralization, Local Governance and Local Development Workshop' available at <http://www.afriquelocale.org/en/component/k2/item/474-workshop-to-develop-an-advocacy-to-promote-the-signing-and-ratification-of-the-african-charter> (accessed on 26 November 16).

authorities, poor service delivery as well as unresponsiveness to local needs.²² Because of the current ineffective state of local government, the actual impact of the Charter on changing governance upon coming into operation is yet unknown. This problem is inflated by the fact that there is no scholarly commentary on the Charter yet. The question thus is 'Will the African Charter on Decentralisation materially change local governance on the African continent for the better?'

1.2 Significance of the problem

The impact of the Charter will be great since the content of the Charter and its eventual implementation will determine whether its objective of improving the well-being of the people on the African continent will be realised. If the decentralisation framework enshrined in the Charter is effective and its values and principles are fully implemented, then local governments in respective countries have greater potential to meet the service delivery and development expectations of their respective communities. Conversely, the ratification and implementation of a Charter that provides a weak decentralisation framework may lead to service delivery and developmental challenges currently being experienced on the continent being entrenched. Such challenges include the deepening of poverty, and the quantity and quality of public services that are below expected standards.

Experiences from other countries²³ reveal that if decentralised systems are improperly designed, it may fail to deliver on its promises. Instead decentralisation may undermine development, good governance and democracy. For instance in the 1980s and 1990s, the decentralisation programmes in Argentina and Brazil undermined macro-economic stability due to the fact that the decentralisation framework was not designed appropriately.²⁴ Likewise, in 2008, the service delivery failures in Zimbabwe witnessed by cholera outbreaks in high density suburbs, service delivery protests and depleted public infrastructure, were partially attributed

²² Bratton M 'Citizen Perceptions of Local Government Responsiveness in Sub-Saharan Africa' (2012) 40 *World Development* 516.

²³ Fjeldstad O 'Intergovernmental Relations in the developing world' in Levy N & Tapscott C (Eds) *Intergovernmental Relations in South Africa* ed (2001) 145.

²⁴ Fjeldstad (2001) 145.

to the absence of an effective framework for local government and ultimately the design of the decentralisation programme.²⁵

Therefore, the significance of the problem lies with the fact that the decentralisation framework provided for in the Charter determines the extent to which the objectives of the Charter will be realised in member countries. Thus, it is imperative to examine the strengths and weaknesses of the Charter to inform the ratification, policy debates and reform on the Charter by the AU and its member countries.

1.3 Research question

To achieve the desired outcome of improving the wellbeing of people on the African continent by enhancing the role and status of local government, the African Charter on Decentralisation should be designed appropriately and sufficiently. Its full implementation should also be underscored. The main research question which this study seeks to answer is: 'Can the specific provisions of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development actually deliver on its laudable goals?' In answering the main question, the study will also answer the following sub-question: 'What are the basic principles that facilitate effective local government to deliver services?'

1.4 Argument

This research paper argues that the Charter furnishes provisions that are capable of delivering on service delivery and developmental objectives. If ratified by member countries and subsequently fully implemented, people's lives in respective countries are likely to improve. The paper further argues that, the Charter is likely to contribute more towards creating effective systems of local government on the continent than the African Charter on Democracy²⁶ which does not entrench decentralisation and merely recognises the existence of local government. Nevertheless, despite providing a foundation for establishing an effective decentralisation framework, the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development has its own flaws. There are a couple of countries on the

²⁵ McGregor J 'Surveillance and the City: Patronage, Power- Sharing and the Politics of Urban Control in Zimbabwe' (2013) *Journal of Southern African Studies* 783.

²⁶ African Charter on Democracy.

continent with constitutions and legislation which provide for much stronger frameworks for decentralisation in many respects than that provided for by the Charter. It will be suggested that lessons should be borrowed from these countries if need for the reform of the Charter is identified. Lessons can also be drawn from countries outside the African continent for the same purposes.

1.5 Literature review

As highlighted above, the AU adopted the Charter on Decentralisation in 2014. Despite having been adopted more than two years ago, there is still no literature on the Charter particularly on the model for local government it provides. However, there is vast literature on decentralisation and the role of local government which focuses on Africa and beyond. Decentralisation is generally defined as the transfer of power, responsibilities, capacities and resources from national to sub-national entities of government with the aim of strengthening the ability of the latter to both foster people's participation and delivery of quality services.²⁷ An effective decentralised system of government is a system that is fine-tuned to satisfy local needs and is concerned with improving the well-being of the citizens that live in those communities.²⁸ Accordingly, local governments should be able to promote social and economic development, and deliver public services such as water and sewage, transport, housing and healthcare.²⁹ The assignment of powers and functions to local governments under a decentralised system of government however vary from country to country.

A good decentralisation framework is one in which there is neither ambiguity nor complexity which have been known to create openings for conflicting interpretation and confusion.³⁰ A single agreed upon interpretation is essential. Thus, there is dire need for a sincere and genuine clarification of the meaning and boundaries of decentralisation. As it stands, principles of decentralisation mean different things to different people.³¹ This might lead to member states adopting the Charter differently in their respective countries. Therefore, for the Charter to provide for effective local

²⁷ Article 1 African Charter on Decentralisation.

²⁸ Afonso & Fernandes (2008) 1948.

²⁹ Afonso & Fernandes (2008) 1948.

³⁰ Litvack & Seddon (1999) 14.

³¹ Nhede N 'Devolution of power and effective governance; The Zimbabwean constitutional debate' (2013) 6 *African Journal of Public Affairs* 40.

governments, it must be interpreted the same by all member states. Particular efforts to prepare and disseminate popularized versions of the legal and regulatory system must be a key part of the decentralization strategy.³² Shah and Shah³³ suggest that the closer a representative government is to the people, the better is its likelihood of working. Where it works effectively, decentralisation helps alleviate problems arising from central government planning in control of important economic and social activities.³⁴ Decisions made with greater participation are better informed and more relevant to diverse interests in society than those made only by central authorities.³⁵ Furthermore, the fact that resources are distributed to local communities makes it easier for communities to manage them in an accountable and transparent manner such that any form of abuse of resources can easily be traced and exposed.³⁶ With such prudent use of public resources, strong local institutions have the potential to accelerate economic growth which in turn promotes national economic development.³⁷

Nevertheless, poorly designed decentralisation frameworks can result in pitfalls such as: local governments prioritizing local development at the expense of national development;³⁸ lack of capacity of local governments to perform;³⁹ duplication of services as a result of poor communication between different levels of government⁴⁰ and exacerbation of corruption at the local level.⁴¹ These challenges can be addressed through supervision programmes⁴² as well as sound cooperative governance⁴³ systems between the different levels of government. However, De

³² Litvack & Seddon (1999) 14.

³³ Shah A & Shah S 'The New Vision of Local Governance and the Evolving Roles of Local Governments' in Shah A (Ed) *Local Governance in Developing Countries World Bank* (2006) 3.

³⁴ Litvack & Seddon (1999) 6.

³⁵ Litvack & Seddon (1999) 8.

³⁶ Litvack & Seddon (1999) 6.

³⁷ Nhede (2013) 37.

³⁸ Fjeldstad (2001) 145.

³⁹ Koelble T & Siddle A 'Institutional complexity and unanticipated consequences: the failure of decentralization in South Africa' (2014) 21 *Democratization* 1117.

⁴⁰ Steytler N & Fessha Y 'Defining Provincial and Local Government Powers and Functions' (2007) 124 *SALJ* 329.

⁴¹ Koelble & Siddle (2014) 129.

⁴² McGregor (2013) 785.

⁴³ Woolman S & Roux T 'Cooperative government and intergovernmental relations' in Woolman S & Bishop M (Eds) *Constitutional Law of South Africa* (2013) 14 (6).

Visser argues that the requirement for supervision should be balanced with the need for local autonomy.⁴⁴

As mentioned above, no scholars have interrogated the African Charter on Decentralisation. This paper seeks to fill this knowledge gap by contributing towards a better understanding of the Charter by identifying the strengths and weaknesses of the decentralisation framework it provides. Thus, the argument being put forward in this paper is original. The overall objective of this paper is to facilitate policy debates around decentralisation in Africa and the development of an effective regional instrument on decentralisation that enhances the role of local government on the continent.

1.6 Substantiating the argument

This study is divided into four chapters. Chapter 1 is the introductory chapter which provides the problem statement, significance of the problem, research question, argument, literature review and the methodology of the study. Chapter 2 is a theoretical discussion of the basic features of an effective decentralisation framework which is informed by international literature on decentralisation and international 'best' practice on the role of local government. The chapter also borrows from international and regional instruments (for example the European Union) which have provided model frameworks for decentralised government. The reason for such an enquiry is to understand the model provided by the Charter through developing a set of design features for an effective decentralisation framework on the basis of which this paper will evaluate the Charter's potential to reach its objectives. Chapter 3 examines whether the various provisions of the Charter propel local governments towards delivering better services, improving the wellbeing of communities as well as being more accountable and responsive to local needs. Chapter 4 will then provide major conclusions and recommendations.

1.7 Research methodology

This research is a desktop study. For chapter 2, the paper draws on secondary sources such as journal articles, chapters in books and books relating to

⁴⁴ De Visser J *Developmental Local Government: A Case Study of South Africa* (2005) 39.

decentralisation. In chapter 3, the focus is on the primary source- the African Charter on Decentralisation, Charters preceding it and legislation from different countries, member states and beyond. There will also be reference to case law discussing how the law of multilevel governance has been implemented in various countries. In drawing important lessons from various countries, the study will also make use of a thematic comparison research methodology where certain themes linked to decentralisation rather than jurisdictions are compared.



CHAPTER 2: Institutional design for a developmental system of local government

2.1 Introduction

As defined in chapter 1, decentralisation is the transfer of authority and responsibilities from national to sub-national entities such as local governments.⁴⁵ Local government is the lowest tier of government that is most in contact with communities than the other spheres, because it is usually responsible for the administration of basic services.⁴⁶ Decentralisation has been adopted for a number of objectives linked to service delivery, development, democracy, conflict resolution and peace.⁴⁷ International literature suggests that only appropriately designed decentralisation programmes have the potential to realise those goals.⁴⁸ The purpose of this chapter is to propose an institutional design for a decentralisation programme that is capable of realising benefits usually associated with decentralisation. This proposed institutional design will provide a yardstick for examining the model for local government provided for by the African Charter on Decentralisation. International literature also suggests that the design of a developmental system of local government should protect the existence of local government and provide democratic governance at the local level. Furthermore, local government should be assigned significant and relevant powers as well as revenue generating and expenditure powers. The design should also empower the national government to supervise the local government. Moreover, it should provide mechanisms that foster cooperation among governments. Last, when designing a decentralisation programme it is important to take into account different contexts and environments that exist within and beyond countries. These basic features of a developmental system of local government will now be discussed in detail.

⁴⁵ Litvack & Seddon (1999) 2.

⁴⁶ Dugger A 'Local Government' available at <http://study.com/academy/lesson/what-is-local-government-definition-responsibilities-challenges.html> (accessed 1 December 2016).

⁴⁷ Litvack & Seddon (1999) 4-5.

⁴⁸ De Visser 63. See Hatchard J, Ndulo M & Slinn P *Comparative Constitutionalism and Good Governance in the Commonwealth* (2004) 9. Litvack & Seddon (1999) 6.

2.2 Security of existence of local government

The security of existence of local governments is twofold. First, it pertains to the guarantee to exist which the institution of local government has, whether as a sphere or tier of government. It is important to guarantee the existence of the institution of local government since local governments are unlikely to perform effectively if the existence of the institution is in constant jeopardy from higher authorities, which may abolish the institution at any time.⁴⁹ For instance, the absence of security of existence deters local governments from having long-term developmental goals which are crucial for development.⁵⁰ Constitutional recognition of local government provides the highest level of security to the existence of the institution of local government given the cumbersome procedures involved when amending a constitution.⁵¹ This is partially the reason why the United Nations Guidelines on Local Authorities (UN Guidelines on Local Authorities) strongly recommend that the institution of local government be acknowledged in the constitution.⁵²

Second, security of existence also means that each local government unit should have a certain measure of protection. Local government units are also unlikely to perform effectively if they are in danger of being amalgamated and abolished or if their boundaries can be altered arbitrarily.⁵³ Thus, certain mechanisms of reducing this arbitrariness become important. International best practices suggest that the procedures to be followed when establishing, abolishing or altering the boundaries of a local unit should be clearly provided for in legislation.⁵⁴ These procedures should be complied with in practice. The role of independent bodies in the establishment, abolishment or demarcation of boundaries of local units is strongly encouraged to reduce the possibility of these governance processes from being entirely a political

⁴⁹ 'Early election cancels referendum on local government' available at <http://councilreferendum.com.au/> (accessed on 26 November 2016).

⁵⁰ Saunders C 'Constitutional recognition of local government in Australia' in Steytler N ed *The place and role of local government in federal systems* (2005) 57.

⁵¹ Hatchard, Ndulo & Slinn (2004) 197.

⁵² Article C 1 (1) United Nations International Guidelines on Decentralisation and the Strengthening of Local Authorities, 2007 (hereafter UN International Guidelines on Decentralisation).

⁵³ Saunders (2005) 58.

⁵⁴ S 4 (a) Municipal Demarcation (South Africa) Act 27 of 1998. See Local Government (Scotland) Act 1973. See S 55 Local Democracy, Economic Development and Construction (England) Act 2009. See Article 5 European Charter of Local Self-Government, 1985 (hereafter European Charter of Local Self-Government).

process.⁵⁵ The participation of concerned local authorities and communities is also paramount to allow them to influence these governance processes which have direct or indirect implications on their operations and lives, respectively.⁵⁶

2.3 Democratic local governance

The basis of a developmental local government is democratic local governance where communities are substantially involved in local governance processes. Democratic local governance means that there is representative democracy, participatory democracy and measures to enhance all forms of accountability.⁵⁷

2.3.1 Representative democracy

Political leaders at the local government level should be elected, among other objectives, to promote their accountability to local people.⁵⁸ Leaders appointed by officials at higher levels of government tend to be accountable to those who appointed them instead of being accountable to the local communities they deliver services to.⁵⁹ Elections should be conducted according to an electoral system that guarantees regular, free and fair elections.⁶⁰ However, elections alone do not necessarily guarantee democratic local governance. Thus, there is need for other mechanisms of promoting democracy at the local level.

2.3.2 Participatory democracy

Communities should also be afforded opportunities to participate in local governance matters between elections.⁶¹ Such participatory democracy is important in a number of ways. For instance, participatory democracy strengthens relations between the citizens and the state.⁶² It can also be an effective mechanism of checking on the

⁵⁵ 'The process' available at <http://www.demarcation.org.za/index.php/municipal-boundaries/the-process> (accessed 28 September 2016).

⁵⁶ *Doctors for Life v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC) at para 129. See *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 (1) BCLR 47 (CC) at para 54.

⁵⁷ Ndulo M & Lulo S 'Free and Fair Elections, Violence and Conflict' (2010) 51 *Harvard International Law Journal* 156. See Reddy P 'Democratic decentralisation and local democracy in South Africa re-examined: quo vadis?' (2010) 29 *Politeia* 71. See 'Entering the 21st Century World Development Report 1999/2000' 121 available at <http://openknowledge.worldbank.org/handle/10986/5982> (accessed 14 November 2016).

⁵⁸ Litvack & Seddon (1999) 97.

⁵⁹ World Bank (2000) 121.

⁶⁰ Ndulo & Lulo (2010) 155-169.

⁶¹ Litvack & Seddon (1999) 15.

⁶² Litvack & Seddon (1999) 97.

use of administrative authority.⁶³ Thus the UN guidelines on Local Authorities state that participation through inclusiveness and the empowerment of citizens should be an underlying principle in decision-making, implementation and follow-up at the local level.⁶⁴ Participatory democracy is on-going communication between local authorities and communities, as well as active involvement through associations, public consultation procedures, petitioning and complaints.⁶⁵ Where possible, communities should be afforded opportunities to directly address committee meetings of local governance institutions. For example in the Netherlands, citizens can speak at committee meetings of local councils.⁶⁶ In order to realise meaningful participation, communities should be provided with full, timely and easily accessible public disclosure of resource allocation decisions in budgets, procurements and expenditure programmes, among other areas.⁶⁷

2.3.3 Accountability

The degree to which local officials are accountable to their constituents determines whether decentralisation produces the intended benefits, that is, more efficient and responsive services.⁶⁸ Accountability generally means being answerable for one's actions or lack thereof.⁶⁹ At the local level, accountability refers to the expectation that municipalities are called on to justify their actions or lack thereof to their respective communities.⁷⁰ Physical proximity of local government makes it easier for citizens to hold local officials accountable for their performance.⁷¹ That is so because it is easier to go and demand services at local municipality offices instead of going to the provincial or national offices that might be hundreds of kilometres away. The administrative establishment of local units should be accountable to elected local structures to ensure that local policies and objectives are enforced by local units.⁷² Mechanisms that further enhance accountability include audits, reports, performance

⁶³ De Visser (2005) 36.

⁶⁴ Article A 1 (2) UN International Guidelines on Decentralisation.

⁶⁵ De Visser (2005) 36.

⁶⁶ 'Local Government in The Netherlands' available at http://www.vng-international.nl/wp-content/uploads/2015/06/Local_Government_in_the_Netherlands.pdf (accessed 11 August 2016).

⁶⁷ Litvack & Seddon (1999) 15-18.

⁶⁸ World Bank (2000) 121.

⁶⁹ 'Accountability' available at <http://www.merriam-webster.com/dictionary/accountable> (accessed 1 December 2016).

⁷⁰ 'Accountability in Governance' available at <https://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf> (accessed 1 December 2016).

⁷¹ World Bank (2000) 108.

⁷² Litvack & Seddon (1999) 39.

assessments as well as evaluations of both politicians and the administration.⁷³ There should also be transparency and easy access to information to enable communities to monitor the performance of local government effectively and to react appropriately to that performance.⁷⁴

2.4 Powers and functions

A decentralised system of government which upholds democratic local governance is likely to be ineffective if local governments are not equipped with certain powers and are not in charge of defined responsibilities.⁷⁵ This argument entails that what local governments can achieve depends on the powers and functions they have.⁷⁶ Thus, local governments should be equipped with a variety of powers including the powers to make and implement laws and policies that have an impact on the well-being of the citizens. The question is what nature and extent of powers should be assigned to local government in order to maximise the potential of decentralisation?

2.4.1 Assignment of relevant significant powers and functions

Municipalities should be assigned relevant significant powers and functions because without them they cannot be responsive to people's needs and the developmental potential of local governments is negated.⁷⁷ The principle of subsidiarity of the UN International Guidelines⁷⁸ may be useful when allocating powers and functions to local government. The principle state that public responsibilities should be exercised by those elected authorities, which are closest to the citizens.⁷⁹ If the principle is followed, among other considerations, local government is likely to be allocated powers and functions which are relevant to a developmental mandate including: land use planning, primary health, sanitation, water and electricity.⁸⁰ For example Portugal's municipalities are responsible for improving primary matters that deal with the well-being of populations residing in the municipality's jurisdiction.⁸¹ Similarly, in Uganda, elected representatives at the village level hold substantial responsibilities

⁷³ Ebrahim A 'Accountability in Practice: Mechanisms for NGOs' (2003) 31 *World Development* 813.

⁷⁴ Litvack & Seddon (1999) 80.

⁷⁵ De Visser (2005) 94.

⁷⁶ Hatchard, Ndulo & Slinn (2004) 194.

⁷⁷ De Visser (2005) 37.

⁷⁸ Article B 1 UN International Guidelines on Decentralisation.

⁷⁹ Article B 1 (1) UN International Guidelines on Decentralisation.

⁸⁰ Afonso & Fernandes (2008) 1948.

⁸¹ Goncalves Veiga L & Manuel Pinho M 'The political economy of intergovernmental grants: Evidence from a maturing democracy' (2007) *Public Choice* 462.

in education, health and local infrastructure.⁸² It is only when municipalities are afforded these relevant responsibilities that the notion of development, driven at a local level can really take root.⁸³ It is also important that these powers and functions be as clear as possible. These powers must not be ambiguous as that can result among other things in diminished accountability and resource wastage.⁸⁴

2.4.1.1 Constitutional protection of powers and functions

Decentralised powers and functions are often recentralised, especially by national governments of a substantial number of African countries.⁸⁵ The objectives for such recentralisation differ across the continent but in the majority of cases recentralisation seems to be driven by political considerations. For instance, the recentralisation of water and sanitation services in Zimbabwe was driven by the need to leave the opposition parties with less power and influence in urban areas.⁸⁶ Such recentralisation often cripples local government especially when it involves functions that are pertinent to local revenue mobilisation.⁸⁷ It is against this background that some scholars have argued that it may be necessary to constitutionally recognise the powers and functions of local government so as to safeguard them.⁸⁸ This secures local governments' existence as such powers and functions cannot be recentralised or modified without following procedural requirements for constitutional amendments.⁸⁹ Even though international literature is not conclusive on the constitutional protection of local government powers and functions,⁹⁰ modern African constitutions⁹¹ have recognised local powers and functions to a varying degree. In these constitutions the rights and responsibilities of all spheres of government, the description and the role of key institutions and the basis on which the powers and

⁸² Hatchard, Ndulo & Slinn (2004) 190.

⁸³ De Visser (2005) 33.

⁸⁴ De Visser (2005) 37.

⁸⁵ Lewis J 'When decentralisation leads to recentralisation: Subnational state transformation in Uganda' (2014) *Regional & Federal Studies* 581

⁸⁶ Mushamba S 'The powers and functions of local government authorities' in De Visser J, Steytler N & Machingauta N (Eds) *Local government reform in Zimbabwe A policy dialogue* 109.

⁸⁷ Coutinho B 'Sources of local government financing' in De Visser J, Steytler N & Machingauta N (eds) *Local government reform in Zimbabwe A policy dialogue* 74.

⁸⁸ Hatchard, Ndulo & Slinn (2004) 197.

⁸⁹ Hatchard, Ndulo & Slinn (2004) 197.

⁹⁰ Article 4 European Charter on Local Self-Governance.

⁹¹ Constitution of the Republic of Uganda, 1995. See Constitution of the Republic of South Africa, 1996.

functions of local government may be established or changed, are explicitly recognised,⁹² hence providing significant safeguards to local powers and functions.

2.4.1.2 Final decision making powers

While the protection of local government powers and functions is vital, equally important is the need to equip local government with final decision-making powers.⁹³ What is the purpose of having a variety of responsibilities if local government lacks the necessary final-decision making power over its competencies? It is difficult to imagine that local governments can be responsive to the particular needs and preferences of its respective communities without such powers.⁹⁴ Hence, local governments should have final decision-making powers.⁹⁵ Further, the powers of local government should not be undermined or limited by another sphere except as provided for by the law.⁹⁶ Moreover, such limitation must not negate or stifle the developmental potential of local government.⁹⁷ The objective as stated in the European Charter on Local Self-Government is to ensure that local government has full and exclusive powers.⁹⁸

2.4.2 Powers over personnel, administrative structures and procedures

Local governments should also have authority over their respective human resource establishments.⁹⁹ They should be empowered to hire and fire administrative personnel in order to engender the accountability of local administrative officials to the local political structures, among other objectives.¹⁰⁰ If these officials are appointed by higher officials, they are more inclined to further the interests of higher authorities at the expense of local priorities.¹⁰¹ Municipalities should also be flexible enough in its own internal administrative structures and procedures so as to adapt these to local needs and to ensure effective management.¹⁰²

⁹² Litvack & Seddon (1999) 11.

⁹³ De Visser (2005) 37.

⁹⁴ Chigwata T *The Law and Policy for Provincial and Local Government in Zimbabwe: The potential to realise development, build democracy and sustain peace* (unpublished PhD thesis, University of the Western Cape, 2014) 274.

⁹⁵ De Visser (2005) 37.

⁹⁶ De Visser (2005) 39.

⁹⁷ De Visser (2005) 94.

⁹⁸ Article 4(5) European Charter of Local Self Government.

⁹⁹ Litvack & Seddon (1999) 40.

¹⁰⁰ World Bank (2000) 120.

¹⁰¹ World Bank (2000) 121.

¹⁰² Article D 1 (2) UN International Guidelines on Decentralisation. See World Bank (2000) 120.

2.5 Revenue mobilising and expenditure powers

The assignment of relevant and significant powers and functions to municipalities is not enough for local governments to improve the wellbeing of local communities. Local governments require financial autonomy to execute those powers and functions without having to excessively depend financially on other spheres.¹⁰³ Financial autonomy encompasses both revenue mobilising and expenditure powers.

2.5.1 Revenue mobilising measures

2.5.1.1 Taxing powers

Local governments should be assigned taxing powers with significant revenue mobilisation potential to ensure financial sustainability as well as to engender local accountability.¹⁰⁴ Municipalities should be able to administer taxes on services rendered, for instance property tax, user charges, stadium taxes, business licence taxes and other local licences.¹⁰⁵ Furthermore, municipalities should have the power to determine the tax rates so as to give them flexibility to adjust the tax rates in line with economic developments.¹⁰⁶ Nevertheless, the national government should retain the power to set the framework within which the power to determine tax rates can be exercised.¹⁰⁷ Such regulatory powers are important to ensure that local fiscal autonomy does not adversely affect macro-economic stability and undermine equity, among other objectives.¹⁰⁸

It is also important to ensure that 'local tax bases are real as revenue powers without tax bases are hollow powers'.¹⁰⁹ The size of local governments is likely to enhance the quality of the tax base. For instance, the German municipal merger programmes in the 1960s and 1970s produced greater financial viability.¹¹⁰ Thus, when demarcating municipal boundaries it is important to ensure that the size of local jurisdictions promotes financial viability of each local government.

¹⁰³ Article D 2 (7) UN International Guidelines on Decentralisation.

¹⁰⁴ Prud'homme R 'Fiscal decentralisation in Africa: A framework for considering reform' (2003) 23 *Public Administration and Development* 22.

¹⁰⁵ 'The State of State (and Local) Tax policy' available at <http://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-local-governments> (accessed on 2 December 2016).

¹⁰⁶ Guevara M 'Real Property Taxation in the Philippines' in Bird R & Slack N (Eds) *International Handbook of Land & Property Taxation* (2004) 152.

¹⁰⁷ Litvack & Seddon (1999) 24.

¹⁰⁸ World Bank (2000) 109.

¹⁰⁹ De Visser (2005) 39.

¹¹⁰ De Visser (2005) 39.

2.5.1.2 Intergovernmental grants

Locally generated revenue should be complemented by intergovernmental grants to address vertical and horizontal fiscal imbalances which are common in any decentralised system of government.¹¹¹ Intergovernmental grants to address vertical imbalances are transfers that fund services that local governments provide on behalf of the central government.¹¹² Grants which address horizontal inequalities help to address the imbalances in fiscal capacity due to differences in the productiveness of tax bases in different local jurisdictions, among other reasons.¹¹³ The goal is also to ensure comparable levels of service provision across the country in line with equity goals.¹¹⁴ Litvack and Seddon note that an intergovernmental fiscal framework ought to be fair, equitable, transparent and participatory.¹¹⁵ To cater for those principles, some countries have established independent bodies to advise the division of revenue between spheres so as to improve fairness, equitability, transparency and participation.¹¹⁶ For example, the Financial and Fiscal Commission in South Africa is consulted before the division of revenue to make recommendations to government on the equitable division of revenue among spheres.¹¹⁷

Having the criteria for equitable sharing of revenue enumerated in the constitution also improves the objectiveness of the intergovernmental fiscal system and a predictable formula of sharing revenue, which is derived from the criteria, multilayer frameworks or projections of sharing revenue also help to ensure predictability.¹¹⁸ The constitutions of South Africa, Uganda and Zimbabwe have entrenched the criteria for equitable sharing to improve objectivity and predictability.¹¹⁹ Having platforms for local governments to participate in the determination of an intergovernmental grant is one way of making an intergovernmental fiscal framework participatory.¹²⁰

¹¹¹ World Bank (2000) 117.

¹¹² World Bank (2000) 117.

¹¹³ World Bank (2000) 110.

¹¹⁴ World Bank (2000) 110.

¹¹⁵ Litvack & Seddon (1999) 31.

¹¹⁶ Rao M 'Challenges of fiscal decentralization in developing and transitional economies- An Asian perspective' (2001) *The Institute for Social and Economic Change, Bangalore Working Paper 24*.

¹¹⁷ S 214 (1) & (2) Constitution of the Republic of South Africa, 1996.

¹¹⁸ World Bank (2000) 110.

¹¹⁹ S 214 (1) Constitution of the Republic of South Africa, 1996. Article 193 (4) Constitution of the Republic of Uganda. S 301 Constitution of Zimbabwe Amendment (No.20), 2013.

¹²⁰ Litvack & Seddon (1999) 17.

2.5.1.3 Borrowing powers

Borrowing is another way to generate revenue which should be available to local governments. Loans are an important instrument of mobilising revenue especially when municipalities intend to spread costs of investments over long periods of time.¹²¹ Borrowing powers encourage long-term investments in public infrastructure that are crucial to the realisation of developmental goals.¹²² However, only municipalities with the capacity to repay loans should be allowed to borrow money. Furthermore, borrowing powers should be exercised under firm budget constraints so that municipalities do not borrow excessively with the expectation that the central government would bail them out if they fail to repay the loans.¹²³ The bailing out of local governments endangers fiscal policies designed to ensure national financial stability.¹²⁴ Thus, there should be clear regulations stating that municipal loans are internal obligations of municipalities and not of any other sphere.¹²⁵ The mere possibility of a central government bailout can prompt excess spending and deficit financing at the local level. Brazil, where the central government had assumed over \$100 billion in state debt between 1989 and 1997, is a clear example.¹²⁶ The result was macro-economic instability which undermined national and local interests.

2.5.1.4 Other resource raising measures

Besides the sources of revenue discussed above, municipalities should be allowed to mobilise revenue through other measures such as Public-Private Partnerships (PPPs). PPPs are long-term contracts between private parties and government entities to provide public services or assets.¹²⁷ These partnerships can be used by local governments to accumulate resources especially over long periods of time. PPPs are recognised as effective ways of delivering value for money public infrastructure or services.¹²⁸ However, legislation should regulate profit motives usually associated with private bodies as that could result in high prices, fees or

¹²¹ Ashworth J, Geys B & Heyndels B 'Government Weakness and Local Public Debt Development in Flemish Municipalities' (2005) 12 *International Tax and Public Finance* 500.

¹²² Litvack & Seddon (1999) 32.

¹²³ World Bank (2000) 117.

¹²⁴ Article D 2 (19) UN International Guidelines on Decentralisation.

¹²⁵ Litvack & Seddon (1999) 13.

¹²⁶ World Bank (2000) 124.

¹²⁷ 'What are Public Private Partnerships?' available at <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships> (accessed 4 September 2016).

¹²⁸ Ke Y, Wang S, Chan A & Lam P 'Preferred risk allocation in China's public-private partnership (PPP) projects' (2010) 28 *International Journal of Project Management* 482.

charges relating to access to certain public goods and services.¹²⁹ This adversely affects communities, especially the poor; resulting in the growth of inequalities in as far as access to public service is concerned.

2.5.2 Expenditure powers

The ability of local government to adjust expenditure programmes to meet local needs and requirements significantly relies on the discretion it has to spend resources.¹³⁰ Local expenditure powers have an important bearing on the extent at which benefits associated with decentralisation can be realised. Hence, it is important to ensure that local government is assigned significant expenditure powers.¹³¹ Not all intergovernmental grants should be earmarked as that leaves local government with no discretion to spend transferred grants.¹³² While some can be earmarked, others should not, especially grants meant to address horizontal imbalances.¹³³ Furthermore, revenue mobilised locally should ideally cover local expenditures as determined by local authorities and not to finance priorities determined by higher levels of government.¹³⁴

2.6 Supervision

The design features discussed above emphasises the importance of local autonomy in a developmental system of local government. The unregulated exercise of local autonomy can lead to unintended results such as incapacity, corruption and nepotism.¹³⁵ Moreover, the protection and promotion of certain national and local goals requires that local autonomy be limited and checked by higher levels of government.¹³⁶ Therefore, a balance should be struck between the need for local autonomy and the requirement for supervision. Municipalities should be supervised by other spheres of government to ensure that there is compliance with regulations and to assess whether local governments are performing their functions. Central governments are also likely to afford greater autonomy to local government if they have the necessary mechanisms to correct problems that may arise at the local

¹²⁹ World Bank (2000) 108.

¹³⁰ De Visser (2005) 225.

¹³¹ De Visser (2005) 225.

¹³² Article 9 (7) European Charter on Local Self-Governance.

¹³³ World Bank (2000) 118.

¹³⁴ World Bank (2000) 117.

¹³⁵ De Visser (2005) 40.

¹³⁶ De Visser (2005) 226.

level.¹³⁷ Supervision serves two purposes: it should be designed to ensure that local governments comply with the constitutional, legal and policy framework; and it should be performance-focused, with the objective to ensure that local governments deliver on the performance targets set.¹³⁸ Supervision can generally be categorised into four forms; regulation, monitoring, support and intervention.¹³⁹

2.6.1 Regulation

The national government should retain the power to set the regulatory framework within which local governments exercise their functions.¹⁴⁰ For example, the central government should set regulatory frameworks for the establishment of governance structures and procedures, set the minimum requirements for key managerial positions and should comprise of national norms and standards relating to service provision, for instance, water quality.¹⁴¹ This framework should however not go to the core of the functions because it would violate local autonomy which is vital for a developmental local government.¹⁴² It should also be predictable as it is essential in the rule of law; it would be difficult for local governments to comply with regulations that are constantly changing.¹⁴³ Financial regulation is particularly important in order to address vices such as corruption and nepotism.¹⁴⁴

2.6.2 Monitoring

Monitoring pertains to the establishment of mechanisms to assess local government's performance and compliance within the regulatory framework. Higher levels of government should monitor municipalities. Monitoring can be achieved through various ways, namely through having municipalities submit periodical reports or reviews stating the progress in performance to the higher levels of governments.¹⁴⁵ Fiscal monitoring mechanisms can be in the forms of auditing financial books and systems of local government as well as periodical visits to municipalities.¹⁴⁶ It is also important that the monitoring mechanisms are not too

¹³⁷ Litvack & Seddon (1999) 41.

¹³⁸ De Visser (2005) 228.

¹³⁹ De Visser (2005) 140.

¹⁴⁰ De Visser (2005) 39.

¹⁴¹ Municipal Structures Act 117 of 1998 (South Africa). See World Bank (2000) 120.

¹⁴² De Visser (2005) 94.

¹⁴³ De la Harpe S, Rijken C and Roos R 'Good Governance' (2008) 11(2) *Potchefstroom Electronic Law Journal* 3.

¹⁴⁴ Litvack & Seddon (1999) 42.

¹⁴⁵ Litvack & Seddon (1996) 22,31.

¹⁴⁶ Harbich J 'State supervision of local government authorities' (2009) 4 *Uprava* 57.

intrusive,¹⁴⁷ for instance, a requirement for the local government to submit weekly performance reports to provinces might result in municipalities focusing more on compiling reports instead of delivering services to communities. Thus, monitoring must be reasonable and respect local autonomy.

2.6.3 Support

After setting the regulatory and performance framework in terms of paragraph 2.6.1, a developmental framework for local government then monitors how local government is complying or performing in terms of that framework. If the monitoring mechanisms reveal problems then support should be offered. Support should be provided to all local governments but it is particularly important to poorly-resourced local governments who usually lack the capacity to comply or/-and perform.¹⁴⁸ Support should be tailor-made for each local government depending on the particular area that the municipality needs to be supported in. To protect local autonomy, it is important that the support be given in a manner that reinforces the decision-making capabilities of local governments.¹⁴⁹ Support can be in the form of refresher training courses, capacity building as well as the deployment of staff and resources.¹⁵⁰ The intergovernmental grants discussed in paragraph 2.5.1.2 also act as financial support for local governments. Support with respect to financial management is also crucial in improving the capacity of local units to manage and report on the expenditure of its financial resources.¹⁵¹

2.6.4 Intervention

If the monitoring and support mechanisms suggest persistent problems at the local level that threaten the attainment of national and/or local goals, it may be necessary for the national government to intervene at the local level.¹⁵² Intervention is the most extreme form of supervision thus, intervention powers must be limited, the grounds for intervention must be explicitly provided for in law, and last, there is need for oversight on the use of intervention powers.¹⁵³ Intervention powers ought to be

¹⁴⁷ Harbich (2009) 63.

¹⁴⁸ World Bank (2000) 117-120.

¹⁴⁹ Harbich (2009) 55.

¹⁵⁰ Litvack & Seddon (1999) 5.

¹⁵¹ Litvack & Seddon (1999) 31.

¹⁵² Chigwata (2014) 74.

¹⁵³ Article B 2 (10) C 3 (10) UN International Guidelines on Decentralisation.

regulated in such a manner that local autonomy is protected as intervention can be abused for political reasons.¹⁵⁴

2.7 Intergovernmental cooperation

While autonomy and supervision are regarded as cardinal principles that should be infused in a system of decentralisation, De Visser notes that intergovernmental cooperation should be the third principle that strengthens the decentralisation framework.¹⁵⁵ Intergovernmental cooperation is important because the assignment of powers is unlikely to provide exclusive compartments of powers and functions of each tier of government. There will be overlaps in the assignment of powers and function among governments.¹⁵⁶ As such, different spheres of government should be able to cooperate with each other and address challenges such as resource wastage and lack of accountability that comes with overlapping of powers. Furthermore, there are instances where the different spheres of government need to deliver as one government, thus there is a need for intergovernmental cooperation.¹⁵⁷

In South Africa, intergovernmental cooperation refers to a relationship of equality where the different governmental spheres in intergovernmental relations operate as equal partners.¹⁵⁸ The South African Constitution provides that different spheres should cooperate with one another in mutual trust and good faith by coordinating their actions and legislation with one another.¹⁵⁹ Thus there is need for the establishment of an intergovernmental relations framework with the objective to enhance cooperation among governments. Such a framework should also provide for alternative dispute resolution mechanisms to be used to resolve disputes that may arise among governments.¹⁶⁰

Mechanisms such as consultations, joint-planning and joint-implementation of programmes and policies can be effective in promoting cooperation and reducing

¹⁵⁴ De Visser (2005) 111.

¹⁵⁵ De Visser (2005) 173.

¹⁵⁶ Fuglister K 'Where does learning take place? The role of intergovernmental cooperation in policy diffusion' (2012) 51 *European Journal of Political Research* 322.

¹⁵⁷ Fuglister (2012) 317.

¹⁵⁸ De Visser (2005) 174.

¹⁵⁹ S 41 (1) (h) (iii) Constitution of the Republic of South Africa, 1996.

¹⁶⁰ Steytler N 'The Settlement of Intergovernmental Disputes' in Levy N & Tapscott C (Eds) *Intergovernmental Relations in South Africa* (2001) 177.

disputes among governments, and unions must be used to promote cooperation.¹⁶¹ Furthermore, the realisation of certain development goals requires strategies that go beyond municipal boundaries.¹⁶² For that reason, the intergovernmental relations framework should facilitate horizontal cooperation and formation of partnerships among municipalities to stimulate cooperation and remove hurdles to the integration of policies.¹⁶³ Local government associations play a crucial role in presenting a unified voice of local government when engaging other spheres concerning matters that affect local government.¹⁶⁴ Lastly, in order to retain the elements of open communication, flexibility and creativity, it is suggested that intergovernmental cooperation structures should neither be too formal, nor should the procedures be too legalistic.¹⁶⁵

2.8 Defining decentralisation in context

A decentralisation programme should be tailored to meet the particular local environment given the differences in geography, demography, levels of disparities, local customs and disparities within and between countries, especially on the African continent. Thus, a one-size-fits-all approach is strongly discouraged given the acute rural-urban divide in most parts of Africa owing to aspects such as colonialism and apartheid. The result is that urban and rural areas have unequal resource raising potential due to the different levels of economic development. Subsistence agriculture is assumed to be the principal activity of most rural populations whereas urban dwellers engage in industrial production and services.¹⁶⁶ Rural areas continue to be largely impoverished with a weak state presence that is almost completely irrelevant as a provider of services.¹⁶⁷ The economic disparities are further exacerbated by skilled workers who shun rural areas. This gravely contributes to capacity constraints in rural areas.

¹⁶¹ Fuglister (2012) 349. See Gerber E & Gibson C 'Cooperative Municipal Service Provision: A Political-Economy Framework for Understanding Intergovernmental Cooperation' (2005) 11 *Working Group on Interlocal Services Cooperation* 10.

¹⁶² Fuglister (2012) 321.

¹⁶³ De Visser (2005) 175.

¹⁶⁴ Uganda Local Government Association available at <http://www.ulga.org> (accessed 18 November 2016).

¹⁶⁵ De Visser (2005) 176.

¹⁶⁶ Tacoli C 'Rural-urban interactions: a guide to the literature' (1998) 10 *Environment and Urbanization* 147.

¹⁶⁷ Hatchard, Ndulo & Slinn (2004) 192.

Hence, these different levels of capacity and financial disparities between urban and rural areas must be taken into account when designing a decentralisation programme. For instance, when assigning powers and functions to local governments as discussed in paragraph 2.4, the capacity of local government units to perform such functions should be a key consideration. High category urban municipalities should be assigned more powers and functions since they are more likely to have the capacity to perform them more effectively. Conversely, municipalities in rural areas should be assigned fewer powers and functions given that they generally tend to have limited capacity to perform. It is also important to have supervision measures specially tailored for the different levels of municipalities given the differences among them.

Traditional authorities are still relevant in a number of African countries where they form the immediate level of government.¹⁶⁸ Thus, when designing a decentralisation programme for areas that are under traditional leadership, it is important to recognise the role of traditional leadership. The institution has its drawbacks namely; the irrevocable corruption of the institution due to the involvement with oppressive colonial administrations,¹⁶⁹ undemocratic nature,¹⁷⁰ and their application of oppressive, exploitative and discriminatory customary laws.¹⁷¹ Nevertheless, despite these drawbacks, the role of traditional authorities remains crucial. Simply excluding traditional leadership in local government may come at a cost. For example, in Mozambique, the failure to recognise traditional authorities contributed partly to the sixteen-year civil war.¹⁷² In Zimbabwe when certain decision-making powers of traditional leaders were taken away and granted to democratically elected leaders, tensions arose and this inhibited development in rural communities between 1980 and the mid-1990s.¹⁷³ Traditional leaders are vital in enhancing the legitimacy of

¹⁶⁸ Bennet J 'Contested institutions? Traditional leaders and land access and control in communal areas of Eastern Cape Province, South Africa' (2013) 32 *Land Use Policy* 28. See Chigwata T 'Decentralization in Africa and the Resilience of Traditional Authorities: Evaluating Zimbabwe's Track Record' (2015) *Regional & Federal Studies* 444.

¹⁶⁹ West H & Kloeck-Jensen S 'Betwixt and between: Traditional authority and democratic decentralization in post-war Mozambique' (1999) *African Affairs* 455.

¹⁷⁰ Ntebeza L 'Democratic Decentralisation and Traditional Authority: Dilemmas of Land Administration in Rural South Africa' (2004) 16 *European Journal of Development Research* 81.

¹⁷¹ Hatchard, Ndulo & Slinn (2004) 199.

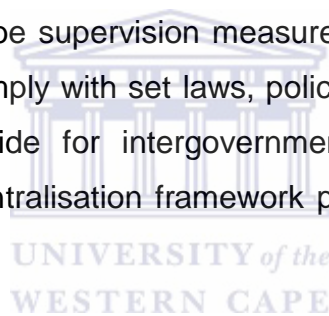
¹⁷² West & Kloeck-Jensen (1999) 456.

¹⁷³ Gaventa J & Valderrama C 'Participation, Citizenship and Local Governance' available at http://www.participatorymethods.org/sites/participatorymethods.org/files/participation%20citizenship%20and%20local%20governance_gaventa.pdf (accessed 12 August 2016).

rural local governments because they provide the link between the people and the government.¹⁷⁴ Therefore, a decentralisation programme has to be designed paying particular attention to the local environment taking into account issues such the rural and urban divide and the relevance of the institution of traditional leadership.

2.9 Conclusion

The potential of decentralisation to improve service delivery and realise other goals linked to development and democracy is determined amongst other things¹⁷⁵ by the design of the decentralisation programme. Basic features of a developmental system of local government were identified and discussed in this chapter. It was argued that there is need to guarantee the existence of local government. The importance of democratic local governance to such a system was underscored. The developmental programme should ensure that municipalities are assigned significant powers and functions. There should also be supervision measures in place to ensure that local governments perform and comply with set laws, policies, standards and norms. The framework should also provide for intergovernmental cooperation. Lastly, it is important to design the decentralisation framework paying attention to the different local environments.



¹⁷⁴ Hatchard, Ndulo & Slinn (2004) 190.

¹⁷⁵ Political will, dominant behaviour, attitudes and culture are also important factors See Hatchard, Ndulo & Slinn (2004) 194.

CHAPTER 3: Analysis of the decentralisation framework provided for in the African Charter on Decentralisation

3.1 Introduction

The African Charter on Decentralisation was inspired by the Yaounde Declaration which was adopted by the African ministers in charge of Decentralisation and Local Development in their respective countries.¹⁷⁶ The Yaounde Declaration stresses the importance of a participatory democracy where local communities, groups and organisations can deliberate about their own needs, develop their own programmes for change and influence policy processes to respond to those needs.¹⁷⁷ The Charter has two predecessors: the African Charter for Popular Participation in Development and Transformation¹⁷⁸ (hereafter African Charter for Popular Participation) and the African Charter on Democracy, Elections and Governance¹⁷⁹. What the African Charter on Decentralisation has in common with its predecessors is the objective to promote and strengthen good governance through the institutionalisation of transparency, accountability and participatory democracy.¹⁸⁰ It is however unique in that it is the first to entrench a decentralisation framework linked to the need to realise the values and principles of decentralisation as a means of improving the livelihood of all African people.¹⁸¹ The preceding charters only made reference to decentralisation without providing a model framework for local government.

The purpose of this chapter is to establish if the model for local government provided in the Charter is capable of realising the objectives of the Charter given that the potential of decentralisation partly depends on its design. The evaluation of the model for local government provided in the Charter is carried out against the background of design features for a developmental local government proposed in chapter 2. The structure of this chapter will follow more or less the same structure provided for in the preceding chapter.

¹⁷⁶ Preamble African Charter on Decentralisation.

¹⁷⁷ Preamble Yaounde Declaration of 29 October 2005.

¹⁷⁸ African Charter for Popular Participation in Development and Transformation, 1990.

¹⁷⁹ African Charter on Democracy.

¹⁸⁰ Article 3 The African Charter for Popular Participation. See Preamble African Charter on Democracy.

¹⁸¹ Preamble African Charter on Decentralisation.

3.2 Security of existence of local government under Article 5

3.2.1 The existence of the institution of local government

The decentralisation framework proposed in chapter 2 highlights the importance of protecting local government as an institution against recentralisation and removal of local government as a sphere. As proposed in chapter 2, constitutional recognition of local government provides the highest safeguard.¹⁸² Article 5 of the Charter provides that 'State parties shall enact domestic laws/regulations, recognising different levels of government'.¹⁸³ Thus, the Charter provides some degree of protection to the institution of local government. Nevertheless, that protection is not the highest safeguard of the institution of local government which is essential in ensuring that communities reap the benefits associated with decentralisation. For instance, in India before the passage of the 73rd and 74th amendments of the constitution that introduced the constitutional protection of local governments, states could dissolve local governments and take over their powers.¹⁸⁴ Some countries on the African continent have gone beyond the mere recognition of local governments in domestic laws. The constitutions of Namibia¹⁸⁵, Zimbabwe¹⁸⁶ and South Africa¹⁸⁷ recognise local governments as a separate sphere/tier of government. These respective constitutions offer higher protection to the existence of the institution of local government than what is prescribed by the Charter. Therefore, the Charter does not provide for adequate protection of the existence of the institution of local government.

3.2.2 The existence of individual local government units

The institutional design proposed in chapter 2 also stresses the importance of recognising the existence of individual municipalities besides that of local government as an institution. Article 5 (3) of the Charter provides that 'geographical boundaries of areas falling within the jurisdiction of local governments...shall be modified in accordance with the provisions of the law'.¹⁸⁸ Furthermore, Article 5 (4) of the Charter states that '...local authorities shall be consulted through clearly defined

¹⁸² Hatchard, Ndulo & Slinn (2004) 197.

¹⁸³ Article 5 (1) African Charter on Decentralisation.

¹⁸⁴ World Bank (2000) 110.

¹⁸⁵ Chapter 12 Constitution of the Republic of Namibia (amended 1998).

¹⁸⁶ Chapter 14 Constitution of Zimbabwe.

¹⁸⁷ Chapter 7 Constitution of the Republic of South Africa.

¹⁸⁸ Article 5 (3) African Charter on Decentralisation.

regulations on...legal instruments, sectoral policies, programmes, or projects that directly or indirectly affect their competencies...'¹⁸⁹ Hence, the Charter affords a certain measure of protection to individual local government units since the modification of boundaries would be modified only in terms of the law. Furthermore, local authorities would be consulted when there is the establishment, disestablishment, demarcation of boundaries and name changing of individual local government since such actions would most likely affect the competencies of municipalities. However, the protection is inadequate because the Charter does not take into account procedural safeguards such as the consultations and participation of communities, traditional leaders and the use of an independent body to protect the existence of local government units. The South African constitutional and legislative provisions provide more significant safeguards to the existence of each municipality. South Africa has put in place regulations detailing the participatory role of communities and traditional authorities in the establishment, disestablishment, demarcation of boundaries and name changing of local government.¹⁹⁰ Furthermore, there is provision of the role of an independent body in the above processes.¹⁹¹ The involvement of all interested parties ensures that there is no erratic abolishment or redefinition of municipalities thus providing an adequate measure of security of existence for each municipality. Therefore, the absence of provisions for mechanisms that protect the existence of individual local government units in the Charter leaves local government units vulnerable to being arbitrarily abolished or merged with other municipalities.

3.3 Democratic local governance under the African Charter

3.3.1 Democratically elected leaders

It was contended in chapter 2 that a developmental system of local government is one in which local leaders are elected regularly and under an electoral system which guarantees free and fair elections. The Charter upholds this notion of representative democracy. Article 5 (2) requires that local governments should be managed by

¹⁸⁹ Article 5 (4) African Charter on Decentralisation.

¹⁹⁰ Municipal Demarcation Act 27 of 1998. See 'The process' available at <http://www.demarcation.org.za/index.php/municipal-boundaries/the-process> (accessed 28 September 2016).

¹⁹¹ 'Background to Municipal Boundaries' available at http://www.demarcation.org.za/site/?page_id=1394 (accessed 8 September 2016).

democratically elected representatives.¹⁹² Furthermore, Article 12 (2) of the Charter upholds democracy as the foundation of local governance which should take place in a representative form.¹⁹³ Article 8 (3) of the Charter also provides that the role of elected authorities be at the centre of the decision-making process even after they have consulted non-elected parties such as cultural or religious groups.¹⁹⁴ Moreover, Article 13 (1) requires that the elections of local public officials are to be enshrined in legislation clearly defining the modalities and timeframes of the elections.¹⁹⁵ State parties are also mandated to promote regular, democratic, free, fair and transparent local government elections in Article 13 (2).¹⁹⁶ Therefore, from those provisions, it can be argued that the Charter sufficiently provides a foundation for democratic local governance.

3.3.2 Participatory democracy

As argued in chapter 2, communities should participate in local government matters in between elections. Participatory democracy includes consultations, discussions, lobbying, actual participation in municipal meetings,¹⁹⁷ as well as electronic participation¹⁹⁸. The Charter mandates local public officials to represent the interests of communities on an on-going and regular basis through clearly specified mechanisms and timeframes.¹⁹⁹ Furthermore, the Article 13 (3) of the Charter requires the communities' duty and right to participate to be guaranteed in national legislation.²⁰⁰ The Charter also extends community-based participation to include the private sector and civil society.²⁰¹ Article 12 (5) of the Charter also requires local authorities to facilitate meaningful participation.²⁰² The Charter does not go into the detail of how meaningful participation is to be facilitated but as proposed in chapter 2, local governments of member countries should ensure that meaningful participation is about informed participation that influences results. The participation

¹⁹² Article 5 (2) African Charter on Decentralisation.

¹⁹³ Article 12 (2) African Charter on Decentralisation.

¹⁹⁴ Article 8 (3) African Charter on Decentralisation.

¹⁹⁵ Article 13 (1) African Charter on Decentralisation.

¹⁹⁶ Article 13 (2) African Charter on Decentralisation.

¹⁹⁷ Timney M 'Models of Citizen Participation: Measuring Engagement and Collaboration' in King C (Ed) *Government Is Us 2* (2011) 87.

¹⁹⁸ Conglianese C 'Citizen Participation in Rulemaking: Past, Present and Future' (2006) 55 *Duke Law Journal* 943.

¹⁹⁹ Article 13 (3) African Charter on Decentralisation.

²⁰⁰ Article 12 (1) African Charter on Decentralisation.

²⁰¹ Article 11 (b) African Charter on Decentralisation.

²⁰² Article 12 (5) African Charter on Decentralisation.

of communities is imperative as it ensures that citizens have a continuous mechanism of influencing decision-making and the local officials are continuously reminded of the needs and preferences of their citizens.

Furthermore, the Charter encourages innovative and convenient ways of participation through the use of information and communication technology to encourage local residents and communities to provide feedback to their elected representatives.²⁰³ This is of importance especially in urban areas which is more likely to have infrastructure and easier access to the internet. However, this is a challenge in respect of rural areas in most African countries where there is still a need to develop infrastructure.²⁰⁴

The Charter also encourages those in the diaspora to participate in local government.²⁰⁵ Over the years, Africans in the diaspora have contributed in various ways towards the local economic development of Africa. In 2010, the remittances paid by Africans in the diaspora stood at \$51.8 billion compared to the roughly \$43 billion in overseas development assistance and other types of foreign aid funds.²⁰⁶ The fact that Africans in the diaspora contribute that much towards the economic development of Africa goes to show that they also have the capacity to contribute towards local governance and development. Beside the issues of finances, Africans in the diaspora also have the potential to provide technical expertise and innovative ideas. That said, the developmental framework provided for in the Charter promotes participatory democracy which should improve local governance in the continent.

3.3.3 Accountability

It was argued in chapter 2 that mechanisms should be put in place to ensure that politicians and administrators in local government are accountable to their electorate, higher levels of government as well as their fellow associates within local government. Mechanisms of promoting representation and participation, discussed above, contribute towards creating accountable governments at the local level. Accountability is crucial because it determines how efficient and responsive local

²⁰³ Article 16 (2) (b) African Charter on Decentralisation.

²⁰⁴ Tacoli (1998) 148.

²⁰⁵ Article 12 (6) African Charter on Decentralisation.

²⁰⁶ Bodomo A 'African Diaspora Remittances are Better than Foreign Aid Funds; Diaspora-driven development in the 21st century' (2013) 14 *World Economics* 6.

authorities will be in the delivery of services.²⁰⁷ The importance of accountability at local level is recognised in the Charter. Article 11 (f) provides that local authorities should be accountable to local communities when making and implementing local development decisions and policies as well as when they manage financial resources.²⁰⁸ Furthermore, Article 14 (2) of the Charter mandates local governments to publish and make accessible to communities, annual local government performance reports and disclose financial statements in full.²⁰⁹ The performance reports and financial statements enable communities to assess the conduct of public officials and hold them accountable. Therefore, it can be observed from the discussion above that the Charter provides a sufficient foundation for democratic local governance. Thus the Charter will improve local governance for the better in this regard.

3.4 Powers and functions

3.4.1 Assignment of significant and relevant powers and functions

It was contended in Chapter 2 that decentralised powers and functions should be protected with the highest level of protection being offered by the constitution. It also stressed the importance of the principle of subsidiarity in ensuring that local government have relevant powers as the principle of subsidiarity informs the assignment of powers and functions between governments at different levels. Furthermore, municipalities should have final decision making powers. Lastly, chapter 2 proposed for the clear demarcation of local government powers to reduce among other things ambiguity, overlapping and resource wastage.

Article 5 (2) states that ‘...local authorities shall in accordance with national law, have the powers to...’.²¹⁰ Hence the Charter protects to a certain degree the decentralised powers and functions of local governments. Nevertheless, this protection is inadequate for the provision of better services by local governments. Constitutional protection provides a better safeguard because constitutional protection ensures that the powers and functions of local governments are not

²⁰⁷ World Bank (2000) 121.

²⁰⁸ Article 11 (f) African Charter on Decentralisation.

²⁰⁹ Article 14 (2) African Charter on Decentralisation.

²¹⁰ Article 5 (2) African Charter on Decentralisation.

dependent on the politics of the day, as parliaments that enact domestic laws are political bodies.²¹¹ Therefore, the Charter does not adequately protect local government powers and functions from dangers such as recentralisation.

Article 6 of the Charter recognises the principle of subsidiarity as it states that 'central governments are to create enabling conditions for the decision-making...and implementation to take place at lower levels of government where local authorities offer a better guarantee of pertinence and efficacy'.²¹² The fact that the Charter recognises the principle of subsidiarity is commendable. The principle of subsidiarity enhances economic efficiency since it enables local governments to provide goods more efficiently to the public as compared to central governments.²¹³ Thus with regard to the principle of subsidiarity, the Charter makes provision for a framework that informs the assignment of powers and functions to improve efficiency in the delivery of services.

Article 5 (1) of the Charter provides that 'state parties shall enact domestic laws/regulations, recognising different levels of government with the mandate to exercise their competencies...'.²¹⁴ The Charter provides for the assignment of local government powers to exercise their mandates but there is no explicit provision of relevant significant powers which are essential in improving the well-being of communities as discussed in chapter 2. That said the Charter does not sufficiently provide for a developmental framework for local government that improves the well-being of citizens in as far as the assignment of relevant significant powers is concerned.

The Charter does not provide for final decision making powers either because Article 5 (1) of the Charter requires municipalities to exercise their competencies within the clearly regulated mechanisms. The Charter does not provide whether the exercise of this power comprises of final decision-making powers. A developmental design without final decision-making powers is inadequate as has been experienced in Zimbabwe. Despite municipalities in Zimbabwe having significant and relevant

²¹¹ Muchadenyika D 'The Inevitable : Devolution in Zimbabwe – From Constitution – Making to the Future' in de Visser J, Steytler N, Powell D & Durojaye (Eds) *Constitution-Building in Africa* (2015) 126.

²¹² Article 6 (1) African Charter on Decentralisation.

²¹³ Portuese A 'The principle of subsidiarity as a principle of economic efficiency' (2010) 17 *Columbia Journal of European Law* 235.

²¹⁴ Article 5 (1) African Charter on Decentralisation.

powers and functions, they have been unable to be responsive to the needs of local communities because some of the policies and decisions they make on behalf of their communities are not approved by the central government which has final decision-making powers.²¹⁵ Thus, it can be noted from the above discussion that the Charter does not provide an adequate foundation for the assignment of powers and functions. Therefore, local governance is unlikely to be improved with regard to the assignment of powers and functions.

3.4.2 Powers over personnel, administrative structures and procedures

As argued in chapter 2, a developmental system of local government is also one that affords municipalities the authority over the human resources as well as the administrative structures and procedures. Having authority over personnel ensures that the personnel are accountable to local authorities and enables local governments to mould or adjust its respective administrative structures and procedures to meet local needs and environments. The importance of administrative authority at local level is recognised in the Charter. Article 16 (1) (b) states that national legislation should empower municipalities to determine and manage local public administration such as personnel and administrative procedures.²¹⁶ Thus the Charter acknowledges that the assignment of powers to local governments over human resources ensures effective and enhanced delivery of quality and affordable services to local communities.²¹⁷ Therefore, the Charter makes provision for the improvement of local governance on the continent through its provision of administrative powers.

3.5 Revenue generating and expenditure powers

It was argued in chapter 2 that what local governments can achieve partially depend on the resources they have and the freedom they have to spend mobilised revenue. Thus, it is important that local governments are assigned revenue mobilisation measures as well as expenditure powers. Revenue mobilisation mechanisms are crucial for municipalities to effectively deliver on service delivery obligations and developmental mandates, whilst expenditure powers are vital, if local governments

²¹⁵ Chigwata (2014) 274.

²¹⁶ Article 16 (1) (b) African Charter on Decentralisation.

²¹⁷ Article 16 (1) (b) African Charter on Decentralisation.

are to be responsive. In this section, the paper will examine the Charter with an objective of establishing if it will improve local government in as far as revenue mobilisation and expenditure of revenue is concerned.

3.5.1 Revenue mobilisation measures

Revenue can be mobilised through taxes, intergovernmental transfers, borrowing loans and public-private partnerships.

3.5.1.1 *Taxing powers*

It was contended in chapter 2 that municipalities can generate revenue through taxes, and hence should be assigned taxing powers among other matters, on the services they provide as well as immobile taxes such as property tax, user charges and local licences. Local governments should also be empowered to determine the taxes rates so as to sufficiently provide revenue for municipalities. Moreover, central governments should also ensure that the tax bases are viable by merging poor and wealthy regions together into more viable municipalities as discussed in chapter 2.

The Charter acknowledges the importance of taxing powers in mobilising revenue. Article 7 (1) of the Charter provides that 'central governments should adopt legislation, measures and establish relevant mechanisms that empower local governments to mobilise...resources at the local level'.²¹⁸ Furthermore, Article 7 (5) requires local authorities to encourage and ensure that civil society, private sector, communities; national and sub-national entities pay local taxes.²¹⁹ The Charter also provides that the administration of taxes is supposed to be conducted in a transparent manner as central government should be consulted.²²⁰ However, the Charter does not explicitly state the need to assign the power over tax rates to local government. The implication of this is that the potential of local governments to sufficiently raise revenue is hindered as they cannot effectively determine how much revenue they want to mobilise from the taxes. Furthermore, the Charter does not explicitly provide for the need to have viable tax bases. The challenge with this is that local governments will not be able to mobilise sufficient revenue if they have the tax powers without the tax bases to mobilise the revenue from. Therefore, the

²¹⁸ Article 7 (1) African Charter on Decentralisation.

²¹⁹ Article 7 (5) African Charter on Decentralisation.

²²⁰ Article 7 (4) African Charter on Decentralisation.

provision of the assignment of taxing powers in the Charter is unlikely to fully realise the potential of local governments to mobilise revenue through taxes.

3.5.1.2 Intergovernmental transfers

As argued in chapter 2, intergovernmental grants are crucial in addressing vertical and horizontal imbalances that are found in any decentralised system of government. To effectively serve this purpose it is important that the intergovernmental fiscal system be transparent, objective, predictable, equitable and participatory. The crucial role of intergovernmental grants has been recognised by the Charter. Article 7 (2) provides that 'central governments are charged with creating the necessary oversight and evaluation mechanisms that ensure that the percentage of revenue collected at the national and local levels are effectively transferred to local governments for local economic development'.²²¹ The Charter also upholds the principle of transparency and predictability as it states that both conditional and unconditional transfers from the central government to local governments ought to be transparent and predictable.²²² The Charter in Article 16 (4) (c) also provides for the equitable redistribution of resources since it states that 'Central governments shall be responsible to equitably redistribute natural resource benefits acquired from natural resource exploitation in given localities and communities to all sub-national governments and local communities'.²²³ An element of objectiveness can also be deduced from Article 16 (4) (c) because all communities (despite them being negatively affected by the rural-urban divide as discussed in chapter 2) are to benefit from wealth accumulated in other regions or communities. Furthermore, local governments also get to participate in the division of revenue among the different spheres of government since Article 5 (4) of the Charter provides that local authorities should be consulted on policies that affect them.²²⁴ The division of revenue clearly affects local governments because intergovernmental grants compliment locally mobilised revenue. Therefore, the intergovernmental fiscal framework provided in the Charter provides an adequate foundation for the transfer of intergovernmental grants that seeks to improve the state of local governments in Africa.

²²¹ Article 7 (2) African Charter on Decentralisation.

²²² Article 16 (5) (e) African Charter Decentralisation.

²²³ Article 16 (4) (c) African Charter on Decentralisation.

²²⁴ Article 5 (4) African Charter on Decentralisation.

3.5.1.3 Borrowing powers

It was proposed in chapter 2 that municipalities with the capacity to repay loans should be allowed to borrow so that they are in a position to mobilise additional resources required for development programmes. The exercise of borrowing powers should be regulated and hard-budget constraints should be implemented to prevent any negative consequences on the macro-economic environment. The Charter recognises the need for local government to be allowed to borrow funds to finance their development priorities. Article 16 (5) (f) of the Charter requires the regulation of local government borrowing powers.²²⁵ The Charter leaves it to state parties to determine the form of regulation, including the implementation of hard budget constraints. The Charter however stresses the importance of ensuring financial sustainability of local governments.²²⁶ The implementation of a hard-budget constraint is one of the mechanisms required to ensure financial sustainability of municipalities. Thus the Charter provides the bedrock of local government borrowing powers that ensures that local government can generate revenue without negatively affecting the macro-economic stability of African countries.

3.5.1.4 Other resource raising measures

Chapter 2 proposed that municipalities should explore other revenue-raising avenues such as public-private partnerships (PPPs). It is important that PPPs be regulated by central governments to avoid among other reasons inequity in service delivery because the involvement of the private sector might result in some citizens not being able to afford basic services. Article 7 (3) of the Charter provides that central governments are to promote private sector and community development investments.²²⁷ Thus the Charter should be commended for having recognised the need to allow local government to explore other revenue sources other than the traditional sources of taxes and grants. It will go a long way in infrastructural development and other long-term investments by municipalities.

3.5.2 Expenditure powers

Expenditure powers entail that local governments have the final decision with regard to how they spend their revenues. For example, there is no need for local

²²⁵ Article 16 (5) (f) African Charter on Decentralisation.

²²⁶ Article 16 (5) (c) & Article 10 (5) African Charter on Decentralisation.

²²⁷ Article 7 (3) African Charter on Decentralisation.

government to seek the approval of the central government before implementing a budget. Expenditure discretion may be promoted by limiting the number of grants which are earmarked for certain purposes. However, some grants should be earmarked to promote certain national and local objectives such as equity. The Charter gives local governments significant expenditure powers. Article 16 (5) (h) states that local authorities shall identify and establish mechanisms and processes for the efficient or optimal use of financial resources in the delivery of quality services.²²⁸ Furthermore, the Charter entrusts local governments with discretionary powers to manage financial resources at the local level.²²⁹ Therefore, the Charter guarantees sufficient expenditure powers, a development which is likely to improve local governance on the continent.

3.6 Supervision

The ability of local government to deliver on developmental goals, public services and good governance does not only rely on the protection of local governments, the enhancement of local democratic governance, and the assignment of significant and relevant powers and functions. It also relies on effective supervision by higher spheres of government. Supervision is essential in assessing whether municipalities are complying with the constitutional legislation and policy framework as well as if they are performing according to the standards set. Thus it was argued in chapter 2 that higher levels of government must supervise these lower governments to protect certain local and national goals. Four forms of supervision: regulation, monitoring, support and intervention; were identified. It was however argued that supervision powers should be regulated, limited and exercised subject to oversight in order to protect local autonomy. The question is whether the Charter provides the necessary supervision measures and the relevant limitations thereof?

3.6.1 Regulation

Supervision means that higher level governments regulate local government by setting a framework that does not go to the core of the powers and functions of municipalities. Furthermore, the regulatory framework should provide a predictable regulatory environment for local governments to exercise local government

²²⁸ Article 16 (5) (h) African Charter on Decentralisation.

²²⁹ Article 16 (5) (a) African Charter on Decentralisation.

functions. The Charter provides for the establishment of such a regulatory framework. Article 5 mandates member states to enact regulations that clearly define the regulatory mechanisms that should guide local governments.²³⁰ However, the Charter fails to provide that the regulatory framework should not only be clear but it should also be appropriate, that is, limited to frame setting and not going to the core of local government powers and functions. Otherwise the minimum level of local autonomy required for local government to deliver on development, among other goals, will be compromised. The regulatory framework that goes beyond framework setting may lead to central governments micromanaging local functions with only a limited knowledge of local conditions.²³¹

3.6.2 Monitoring

As contended in the previous chapter, higher levels of government should monitor local government to assess the performance and compliance of local governments. This monitoring role is recognised by the Charter. Article 16 (5) (b) provides that central governments shall ensure, through oversight, that allocated financial resources are managed effectively and efficiently without undermining the principle of local financial autonomy.²³² Moreover, there is also central government oversight for locally generated revenue.²³³ Article 14 of the Charter also provides for monitoring mechanisms in respect of the publication of annual performance reports²³⁴ as well as monitoring mechanisms to combat corruption²³⁵ and monitor different standards of ethical behaviour.²³⁶ Therefore, the Charter adequately assesses the performance and compliance of local governments to improve the functioning of municipalities by making provision for the monitoring of various aspects such as; the expenditure of revenue, performance of local authorities and monitoring against unethical and corrupt behaviours.

3.6.3 Support

Higher levels of government should provide support to local government. Support is particularly necessary to nascent and poorly-resourced local governments who often

²³⁰ Article 5 (1) African Charter on Decentralisation.

²³¹ World Bank (2000) 120.

²³² Article 16 (5) (b) African Charter on Decentralisation.

²³³ Article 7 (4) African Charter on Decentralisation.

²³⁴ Article 14 (2) African Charter on Decentralisation.

²³⁵ Article 14 (3) African Charter on Decentralisation.

²³⁶ Article 14 (6) African Charter on Decentralisation.

struggle with both financial resources and capacity to perform effectively. The need for support to local government is recognised in the Charter. Article 16 (3) of the Charter provides that municipalities should be supported through capacity development workshops which ensure that local governments periodically get training which is essential for the sphere to deliver their mandates.²³⁷ The Charter also provides for technological, software and administrative support. Article 16 (2) provides that 'local governments shall be provided with the required human resources and Information and Communication Technology (ICT) to effectively and efficiently discharge their responsibilities'.²³⁸ The Charter stipulates that local governments should also receive financial support through the intergovernmental grants discussed above. It is submitted that the Charter makes provision for adequate support to improve African local governments.

3.6.4 Intervention

When monitoring mechanisms discussed above reveal problems at local levels, higher levels of government should be able to intervene to address those problems. Given that intervention is the most intrusive form of supervision as argued in chapter 2, there is need to regulate and limit the exercise of intervention by having oversight mechanisms over intervention powers. The Charter is silent with regards to mechanisms that regulate the use of intervention powers. This is detrimental as interventions can undermine local autonomy unjustifiably, expose municipalities to politically motivated interventions, and there can be arbitrary interventions given that the grounds for interventions are not explicitly limited. The Charter does not also provide for oversight mechanisms on the use of such intervention powers. Well-designed oversight mechanisms provide safeguards to local autonomy by limiting and regulating the use of intervention powers. Oversight mechanisms are crucial if municipalities are to perform effectively. For instance, local governments in Nigeria have not been able to perform optimally because of the overbearing nature of the central government in interventions.²³⁹ Furthermore, without oversight mechanisms, local governments are deprived of judicial review which local governments can resort to if they are of the opinion that a particular intervention is unlawful.

²³⁷ Article 16 (3) African Charter on Decentralisation.

²³⁸ Article 16 (2) African Charter on Decentralisation.

²³⁹ Oladimeji A, Kehinde O & Toyin O 'Challenges of Local Government Administration in Nigeria: Lessons from Comparative Analysis' (2015) 3 *International Journal of Development and Economic Sustainability* 70.

Hence, the supervision provisions in the Charter (or lack thereof), fail to adequately guarantee the autonomy of local government. This has implications such as politically motivated interventions that can weaken democratic local governance since the electorate can end up being unjustifiably governed by local authorities they did not elect. While the Charter's provisions for regulatory mechanisms are lukewarm, the Charter is silent on the regulation and limitation of intervention powers with regard to oversight and protection of local autonomy. Nevertheless, the Charter has a sound decentralisation framework in respect of monitoring and support mechanisms.

3.7 Intergovernmental cooperation

Intergovernmental cooperation complements the principles of autonomy and supervision. Intergovernmental cooperation mechanisms enable local governments to engage with other levels of government to among other reasons clarify roles when there is overlapping of powers and functions and there is need for different spheres of government to deliver as one government. Cooperation may be enhanced among other things by creating an intergovernmental relation framework. As argued in chapter 2, it may be necessary to provide for the role of organised local government to facilitate effective engagement between local government and higher levels of government.

The Charter provides for intergovernmental cooperation that creates a viable and effective local government system. The Charter requires that the developmental design ought to provide environments that encourage cooperation between different levels of government.²⁴⁰ Furthermore, the Charter provides that local governments should be consulted on national or sub-national legal instruments, sectoral policies, programmes, or projects that directly or indirectly affect their competencies.²⁴¹ The communication is not one-way since local authorities should also involve all relevant spheres in the development and implementation of local development plans and programmes.²⁴² Horizontal cooperation among local governments is also recognised in the Charter through the provision of a legislative policy and institutional framework

²⁴⁰ Article 6 (2), (3) & Article 11 (d) African Charter on Decentralisation.

²⁴¹ Article 5 (4) African Charter on Decentralisation.

²⁴² Article 11 (b) African Charter on Decentralisation.

that is conducive for municipal cooperation. The Charter provides that legislation should recognize the right of municipalities to form a national association.²⁴³ Article 17 (7) requires central governments to encourage and support local government associations.²⁴⁴ Associations facilitate the cooperation of local government with other spheres of government. For instance, the Association of Municipalities of Burkina Faso and the Uganda Local Government Association are examples of associations that facilitate intergovernmental cooperation through playing an intermediary role between municipalities and the central government as well as through advocating for the interests of local government and lobbying for their inclusion in decision-making processes at the national level.²⁴⁵ Therefore, the Charter sufficiently provides for an intergovernmental relations framework that helps improve the effectiveness of local government.

3.8 Defining decentralisation in context

It was argued in chapter 2 that when designing a decentralisation system, it is imperative to define decentralisation in context given the differences in local environments, capacity levels, and the role and relevance of customs and traditions. The Charter recognises that environments differ from one place to another within and beyond countries. Article 8 (1) states that municipalities are to exercise their powers having regard to local realities, values, and customs as well as national principles, norms and standards.²⁴⁶ The fact that local governments are mandated to exercise their authority with regard to local realities and values entails that the design of local government systems in respective countries should consider factors such as the rural-urban divide as this is a local reality that cannot be ignored in most parts of Africa.²⁴⁷ The Charter also provides that historically marginalised groups and poor communities in both rural and urban areas should be included and given

²⁴³ Article 17 (3) African Charter on Decentralisation.

²⁴⁴ Article 17 (7) African Charter on Decentralisation.

²⁴⁵ Kaboré, Siboné, Abari & Issa (2014) 7. See Uganda Local Government Association available at <http://www.ulga.org> (accessed 18 November 2016).

²⁴⁶ Article 8 (1) African Charter on Decentralisation.

²⁴⁷ Hale T, Cotten S, Drentea P & Goldner M 'Rural–Urban Differences in General and Health-Related Internet Use' (2010) *American Behavioral Scientist* 17.

priority in service delivery.²⁴⁸ Thus the Charter should be commended for requiring the consideration of disparities in the delivery of services, among other things.

The Charter does not however expressly give recognition to the role of traditional leaders given their role and relevance in a number of countries in Africa. There are a number of provisions of the Charter in which their role in local governance can nonetheless be inferred. This inference can be drawn from Article 8 which mandates local governments to implement projects or initiatives after having recognised the cultural, religious and gender diversity of the people within its territory in urban and rural areas.²⁴⁹ The fact that local authorities have to recognise cultural diversity can be inferred to mean that traditional leaders would need to be consulted in the decision-making processes of the projects or initiatives since traditional leaders form part of the culture of most rural settlements.²⁵⁰ The challenge is that traditional leaders are key governance structures in Africa whose role in local government should be explicitly recognised.²⁵¹ The African Charter on Democracy which is the African Charter on Decentralisation's predecessor expressly recognised the role of traditional leaders.²⁵² Given this recognition of traditional institutions in the earlier instrument, the express role of traditional authorities should have not just been recognised in the African Charter on Decentralisation, but developed further in particular their relationship with modern-day state structures.

3.9 Conclusion

The AU should be commended for putting forward the Charter on Decentralisation in a bid to improve local governance on the continent. This Charter requires democratic local governance, the assignment of relevant powers to local government, the decentralisation of resources raising powers to the local level and the transfer of intergovernmental grants to local governments. It further requires that municipalities be afforded the authority to determine their personnel and administrative structures and procedures. The Charter also requires that there be supervision of local governments as well as cooperation between the different spheres of government.

²⁴⁸ Article 10 (2) African Charter on Decentralisation.

²⁴⁹ Article 8 (2) African Charter on Decentralisation.

²⁵⁰ Chigwata (2015) 444.

²⁵¹ Chigwata (2015) 440.

²⁵² Article 27 (9) & 35 African Charter on Democracy.

All these requirements will undoubtedly improve local government on the continent. The biggest weaknesses of the Charter are that it does not offer the highest safeguard to the institution of local government, individual local government units or the assignment of significant and relevant powers and function. The Charter does not also provide for the assignment of final-decision making powers. Furthermore, the Charter does not provide supervision forms of regulation and intervention. The role of traditional leaders in local government is also not provided for in the Charter despite its significance.



Chapter 4: Conclusion

4.1 Introduction

Over the years, the AU has adopted a number of charters to address problems being experienced on the African continent. The African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development was adopted to help curb problems such as poor service delivery, underdevelopment and poor representation of communities that usually come with centralised systems of government. The Charter seeks to act as a catalyst for decentralisation towards improving the livelihood of all the people on the African continent.²⁵³

The primary objective of this research paper was to assess the model for local government provided by the Charter. In particular, the paper sought to establish if this model is capable of realising the objective of improving the lives of the people on the African continent through improved delivery of public services, among other ways. In chapter 2, the paper proposed an institutional design for a developmental system of local government which has the potential to realise benefits associated with decentralisation. This proposed institutional design was informed by international best practice, instruments and literature on decentralisation and the role of local government. Chapter 3 then assessed whether the Charter will improve local government on the continent. In particular, the chapter sought to establish if the Charter provides the basic features of a developmental system of local government proposed in chapter 2. The manner in which such features have been recognised, or not, is equally significant.

The purpose of this chapter is to provide the major findings of this study and to proffer some proposals towards improving the potential to realise the objectives of the Charter which is to strengthen the role of local government. It will begin with a discussion of the major findings before discussing the proposals.

²⁵³ Preamble African Charter on Decentralisation.

4.2 Major findings of the study

It was argued in chapter 2 that the potential of a system of local government to realise benefits usually associated with decentralisation partly depends on its design. The basic features of the design of a developmental system of local government were identified in chapter 2 as: the security of existence; democratic governance at the local level; assignment of relevant and significant powers and functions to local government; the decentralisation of revenue generating and expenditure powers; supervision; intergovernmental cooperation as well as the definition of decentralisation in context. It was contended throughout this paper that without these basic features the potential of a local government system to realise benefits associated with decentralisation is minimal. Thus the question of whether the Charter provides these features and the nature of recognition is significant, as stated above. The major findings of this study with regards to these features will be presented in this section.

4.2.1 Security of existence of local governments

Chapter 2 proposed that the existence of local government as an institution should be guaranteed preferably by a constitutional provision. As observed in the previous chapter, the Charter only provided for the recognition of local government in ordinary legislation. The implication of this is that ordinary legislation provides a lesser safeguard since national legislation is easier to amend than constitutions. Chapter 2 also highlighted the importance of providing a certain measure of security of existence to each local unit. A certain level of protection to each municipal unit can be assured by empowering affected communities, local authorities, traditional institutions and an independent body to participate in decision-making processes relating to matters such as the redefinition of municipal boundaries, establishment and disestablishment of local units. There is an element of protection afforded to individual municipal units under the Charter since the geographical boundaries of municipalities can only be amended in terms of what is provided for in law and there is a need to consult local authorities before such decisions can be made. However, this does not amount to adequate protection since there is no explicit role for concerned communities, traditional authorities or the involvement of an independent body in the decision-making processes affecting the existence of local units.

Therefore, with regard to this latter aspect of security of existence, the Charter falls short.

4.2.2 Democratic local governance

One of the key arguments of this paper has been that a developmental system of local government is one that guarantees democratic local governance. Thus, it was argued in chapter 2 that a decentralisation programme should provide for directly elected local representatives, the direct participation of communities in local governance processes and measures to promote all forms of accountability. The Charter requires the direct election of local leaders under an electoral system which guarantees regular, free and fair elections. Member states are also mandated by the Charter to have legislation that provides meaningful participation mechanisms which communities may use to participate in local government. The Charter also requires the establishment of other accountability mechanisms besides democratic elections. Thus, in as far as democratic local governance is concerned; the Charter should be commended for providing the foundation for democratic local governance on the continent.

4.2.3 Powers and functions

International literature suggests that what local government can achieve partially depends on the powers and functions which they have. Thus it was contended in chapter 2 that local governments should be assigned significant and relevant powers and functions which are afforded the highest level of protection against recentralisation. The Charter recognises the need for the principle of subsidiarity to inform the assignment of powers and functions between sphere/tiers in particular by ensuring that decision-making should generally take place at the lowest level of government, unless there is justified cause for it to take place at higher levels. Nevertheless, the Charter provides that the assignment of powers and functions to local government should take place through national legislation. The disadvantage of protection in the national legislation is that it can be easily amended, therefore exposing local government powers to easy recentralisation.²⁵⁴ The Charter also fails to expressly highlight that the powers and functions should not just be relevant and significant, but also clearly demarcated to promote the effective use of resources and

²⁵⁴ Lewis (2014) 581.

ensure that accountability lines are not blurred. In respect of administrative powers, the Charter provides that municipalities should have the authority to hire and fire its personnel as well as powers to mould or adjust their respective administrative structures and procedures to meet their local needs and environments. This should be applauded since administrative authority is also crucial to what local government can achieve.

4.2.4 Revenue mobilising and expenditure powers

The importance of fiscal autonomy in the execution of local government's powers and functions was effectively underscored in this paper. The Charter recognises this importance as it provides for the need to decentralise taxing powers, allocate intergovernmental grants, assign borrowing powers as well as other resource revenue initiatives such as public-private partnerships to local government. However, the Charter does not adequately guarantee the fiscal autonomy of local government since it does not explicitly require the assignment of powers to determine tax rates to the local level, neither is there provision for ensuring that municipalities have viable tax bases demarcating local boundaries, as discussed in Chapter 2. In overall, the fiscal system provided for in the Charter has great potential to fulfil among other objectives, the Charter's objective of local governments mobilising resources to effectively perform their functions.

4.2.5 Supervision

Unsupervised exercise of local autonomy is likely to have adverse consequences on the realisation of national and local goals. It was therefore contended in Chapter 2 that higher levels of government should supervise local governments to protect and promote these goals. Such supervisory powers should however be limited and regulated to protect local autonomy. Four forms of supervision namely; regulation, monitoring, support and intervention were identified in this paper. The Charter recognises these forms to a varying degree. While the Charter provides the need to establish a regulatory framework for local governments it nonetheless fails to highlight the principle that the framework should not go to the core of the powers and functions of local government. A regulatory framework that goes to the core of local government powers and functions constrains the flexibility of local government to adjust policies to be in line with local needs and preferences. The Charter also provides the need to establish monitoring mechanisms. The Charter adequately

provides for monitoring mechanisms in respect of finances, performance, ethical behaviour and participation amongst others. The Charter also requires central governments to provide various kinds of support to local government. This is commendable as support assists municipalities to exercise their powers and perform their functions effectively. Perhaps one of the biggest weaknesses of the Charter is that it fails to regulate central government intervention in local affairs even though intervention is the most intrusive form of supervision. Unchecked intervention powers might result in this form of supervision being used for political reasons and not to address the genuine or justifiable interests. In light of the supervisory feature, the Charter fails to balance the need for local autonomy and the requirement of supervision.

4.2.6 Intergovernmental cooperation

Intergovernmental cooperation was identified in this paper as a cardinal principle in the institutional design of any developmental system of local government. It is important because among other things for the development of intergovernmental policies, to help facilitate different levels of government to engage when there is a need for different spheres to deliver as one government and if there is need to navigate around overlapping areas of powers and functions. Intergovernmental cooperation is a central feature of the Charter. The Charter requires the establishment of mechanisms that facilitate cooperation between the different levels of government as well as horizontal cooperation among the municipalities themselves. Thus, the Charter is going to have a positive impact on local government in Africa in this regard.

4.2.7 Defining decentralisation in context

Countries all over the African continent are characterised by different political, social and economic environments. These differences also exist within these countries. It is against this background that it was argued in chapter 2 that decentralisation should be defined and designed in context to take into account these differences. The Charter recognises the importance of defining decentralisation within a context. For instance, the Charter acknowledges the existence of rural-urban disparities within countries. It provides that historically marginalised groups in rural areas should be given priority in service delivery and pro-poor initiatives. Nevertheless, the Charter fails to explicitly recognise the role of traditional leaders in local government despite

their relevance in most parts of Africa. The absence of such recognition might endanger the success of decentralisation as traditional leaders can resist and destabilise local governance as was the case in Mozambique in the 1990s and Zimbabwe, soon after independence.²⁵⁵ Similarly, relegating the institution of traditional leaders may be counterproductive given that it is the immediate form of local government in certain parts of Africa where the modern state has a limited presence.²⁵⁶ The role of traditional leaders in local government on the African continent therefore requires urgent attention.

4.3 Answering the research question

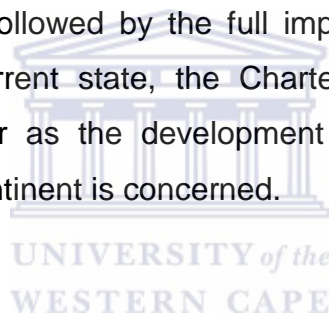
The main research question which this study sought to answer is 'Can the specific provisions of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development actually deliver on its laudable goals?' In answering the main question, the study also sought to answer the following sub-question; 'What are the basic principles that facilitate effective local government to deliver services?' The initial hypothesis given in chapter 1 was that the Charter provides to a great extent an effective legal and institutional framework for decentralisation that enables local governments to deliver on service delivery and the development mandate. The basic principles of a developmental system of local government were proposed in chapter 2. It is clear from the above findings that the Charter provides to a great extent an effective developmental system of local government that fulfils the objectives of the Charter. However, its main weakness is that the Charter does not sufficiently guarantee for local autonomy. This is reflected by, among other ways, the inadequate protection of local powers and functions, and the non-regulation and limitation of supervisory powers. The Charter also fails to explicitly recognise the role of traditional authorities despite their relevance in most parts of Africa. Thus the impact of the Charter on local governance on the continent may be constrained by these weaknesses. The question then is what is the way forward?

²⁵⁵ West & Kloeck-Jensen (1999) 456. See Gaventa & Valderrama (1999).

²⁵⁶ Chigwata (2015) 440.

4.4 Recommendation

The weaknesses of the Charter have been identified above. If member countries of the AU ratify and subsequently implement the African Charter on Decentralisation in its current form, the role of local government may be enhanced although not fully. The service delivery and developmental challenges currently being experienced on the continent can be tackled more effectively if the weaknesses of the Charter are addressed. It is suggested that the Charter should be amended to address the weaknesses identified in this research paper. Particular attention should be given to the protection of the institution of local government by the constitution; recognition of significant, clear and relevant local powers and functions in the constitutions; recognition of the role of traditional authorities where they are applicable; and limiting and regulating the use of supervisory powers especially the power to intervene in local affairs. Such reform process, which is likely to encounter political challenges at continental level, should be followed by the full implementation of the Charter by member countries. In its current state, the Charter nevertheless represents an important milestone in as far as the development of effective systems of local government on the African continent is concerned.



Bibliography

BOOKS

De Visser J *Developmental Local Government: A Case Study of South Africa* (2005) Antwerp: Intersentia.

Hatchard J, Ndulo M & Slinn P *Comparative Constitutionalism and Good Governance in the Commonwealth* (2004) New York: Cambridge City Press.

Kaboré A, Siboné E, Abari M & Issa B *Governance at the grassroots: An analysis of Local Government Structures in the Sahel regions of Niger, Burkina Faso and Mali* ed Baltimore: Catholic Relief Services.

CHAPTERS IN BOOKS

Coutinho B 'Sources of local government financing' in De Visser J, Steytler N & Machingauta N (Eds) *Local government reform in Zimbabwe A policy dialogue* Cape Town.

Fjeldstad O 'Intergovernmental Relations in the developing world' in Levy N & Tapscott C (Eds) *Intergovernmental Relations in South Africa* (2001) IDASA Bellville Cape Town.

Guevara M 'Real Property Taxation in the Philippines' in Bird R & Slack N (Eds) *International Handbook of Land & Property Taxation* (2004) Oxford University Press Canada.

Mushamba S 'The powers and functions of local government authorities' in De Visser J, Steytler N & Machingauta N (Eds) *Local government reform in Zimbabwe A policy dialogue* (2010) Cape Town.

Muchadenyika D 'The Inevitable: Devolution in Zimbabwe – From Constitution – Making to the Future' in de Visser J, Steytler N, Powell D & Durojaye (Eds) *Constitution-Building in Africa* (2015) Die Deutsche Nationalbibliothek Germany.

Saunders C 'Constitutional recognition of local government in Australia' in Steytler N Ed *The place and role of local government in federal systems* ed (2005) Konrad-Adenauer-Stiftung Johannesburg.

Shah A & Shah S 'The New Vision of Local Governance and the Evolving Roles of Local Governments' in Shah A (Ed) *Local Governance in Developing Countries World Bank* (2006).

Steytler N 'The Settlement of Intergovernmental Disputes' in Levy N & Tapscott C (Eds) *Intergovernmental Relations in South Africa* (2001) IDASA Bellville Cape Town.

Timney M 'Models of Citizen Participation: Measuring Engagement and Collaboration' in King C (Ed) *Government Is Us 2* (2011) New York Routledge.

Woolman S & Roux T 'Cooperative government and intergovernmental relations' in Woolman S & Bishop M (Eds) *Constitutional Law of South Africa* (2013) Juta Cape Town.

JOURNAL ARTICLES

Afonso A & Fernandes S 'Assessing and explaining the relative efficiency of local government' (2008) 37 *The Journal of Socio-Economics* 1946 - 1979.

Ashworth J, Geys B & Heyndels B 'Government Weakness and Local Public Debt Development in Flemish Municipalities' (2005) 12 *International Tax and Public Finance* 395–422.

Bennet J 'Contested institutions? Traditional leaders and land access and control in communal areas of Eastern Cape Province, South Africa' (2013) 32 *Land Use Policy* 27– 38.

Bodomo A 'African Diaspora Remittances are Better than Foreign Aid Funds; Diaspora-driven development in the 21st century' (2013) 14 *World Economics* 21-28.

Bratton M 'Citizen Perceptions of Local Government Responsiveness in Sub-Saharan Africa' (2012) 40 *World Development* 516-527.

Brown M & Augustine E 'The African Charter of Human and Peoples' Rights: An Analysis' (2014) 1 *SCSR Journal of Development* 52 - 60.

Chigwata T 'Decentralization in Africa and the Resilience of Traditional Authorities: Evaluating Zimbabwe's Track Record' (2015) *Regional & Federal Studies* 439-453.

Conglianese C 'Citizen Participation in Rulemaking: Past, Present and Future' (2006) 55 *Duke Law Journal* 943-968.

De la Harpe S, Rijken C and Roos R 'Good Governance' (2008) 11(2) *Potchefstroom Electronic Law Journal* 1-14.

Ebrahim A 'Accountability in Practice: Mechanisms for NGOs' (2003) 31 *World Development* 813 - 829.

Fuglister K 'Where does learning take place? The role of intergovernmental cooperation in policy diffusion' (2012) 51 *European Journal of Political Research* 316–349.

Gerber E & Gibson C 'Cooperative Municipal Service Provision: A Political-Economy Framework for Understanding Intergovernmental Cooperation' (2005) 11 *Working Group on Interlocal Services Cooperation* 1-25.

Goncalves Veiga L & Manuel Pinho M 'The political economy of intergovernmental grants: Evidence from a maturing democracy' (2007) *Public Choice* 457–477.

Hale T, Cotten S, Drentea P & Goldner M 'Rural–Urban Differences in General and Health- Related Internet Use' (2010) *American Behavioral Scientist* 1-22.

Harbich J 'State supervision of local government authorities' (2009) 4 *Uprava* 53-71.

Ikubaje J & Bel-Aube N 'Civil Registration, Vital Statistics and Effective Public Sector Governance and Service Delivery in Africa' (2016) 6 *Open Journal of Political Science* 179 - 185.

Ke Y, Wang S, Chan A & Lam P 'Preferred risk allocation in China's public–private partnership (PPP) projects' (2010) 28 *International Journal of Project Management* 482–492.

Koelble T & Siddle A 'Institutional complexity and unanticipated consequences: the failure of decentralization in South Africa' (2014) 21 *Democratization* 1117 - 1133.

Lewis J 'When decentralisation leads to recentralisation: Subnational state transformation in Uganda' (2014) *Regional & Federal Studies* 571-588.

McGregor J 'Surveillance and the City: Patronage, Power- Sharing and the Politics of Urban Control in Zimbabwe' (2013) *Journal of Southern African Studies* 783 - 805.

Moolakkattu J S 'The Role of the African Union in Continental Peace and Security Governance' (2010) 66(2) *India Quarterly* 151 - 165.

Ndulo M & Lulo S 'Free and Fair Elections, Violence and Conflict' (2010) 51 *Harvard International Law Journal* 155-171.

Nhede N T 'Devolution of power and effective governance; The Zimbabwean constitutional debate' (2013) 6 *African Journal of Public Affairs* 32 - 42.

Ntebeza L 'Democratic Decentralisation and Traditional Authority: Dilemmas of Land Administration in Rural South Africa' (2004) 16 *European Journal of Development Research* 71–89.

Oladimeji A, Kehinde O & Toyin O 'Challenges of Local Government Administration in Nigeria: Lessons from Comparative Analysis' (2015) 3 *International Journal of Development and Economic Sustainability* 61-79.

Portuese A 'The principle of subsidiarity as a principle of economic efficiency' (2010) 17 *Columbia Journal of European Law* 231-262.

Prud'homme R 'Fiscal decentralisation in Africa: A framework for considering reform' (2003) 23 *Public Administration and Development* 17–27.

Rao M 'Challenges of fiscal decentralization in developing and transitional economies – An Asian perspective' (2001) *The Institute for Social and Economic Change, Bangalore Working Paper* 1-30.

Reddy P 'Democratic decentralisation and local democracy in South Africa re-examined: quo vadis?' (2010) 29 *Politeia* 67-87.

Simeon R & Murray C 'Reforming Multi-level in South Africa (2009) 43 *Canadian Journal of African Studies* 1-45.

Steytler N & Fessha Y 'Defining Provincial and Local Government Powers and Functions' (2007) 124 *SALJ* 320 - 338.

Tacoli C 'Rural-urban interactions: a guide to the literature' (1998) 10 *Environment and Urbanization* 147-166.

West H & Kloeck-Jensen S 'Betwixt and between: Traditional authority and democratic decentralization in post-war Mozambique' (1999) *African Affairs* 455-484.

THESES

Chigwata T *The Law and Policy for Provincial and Local Government in Zimbabwe: The potential to realise development, build democracy and sustain peace* (unpublished PhD thesis, University of the Western Cape, 2014).

CASES

SOUTH AFRICA

Doctors for Life v Speaker of the National Assembly and Others 2006 (12) BCLR 1399 (CC).

Matatiele Municipality and Others v President of the Republic of South Africa and Others 2007 (1) BCLR 47 (CC).

LEGISLATION

ENGLAND

Local Democracy, Economic Development and Construction Act 2009.

NAMIBIA

Constitution of the Republic of Namibia (amended 1998).

SCOTLAND

Local Government Act 1973.

SOUTH AFRICA

Constitution of the Republic of South Africa, 1996.

Municipal Demarcation Act 27 of 1998.

Municipal Structures Act 117 of 1998.

UGANDA

Constitution of the Republic of Uganda, 1995.

ZIMBABWE

Constitution of Zimbabwe Amendment (No.20), 2013.

TREATIES AND CONVENTIONS

African Charter on Democracy, Elections and Governance, 2007.

African Charter on the Values and Principles of Decentralisation, Local Governance and Local development, 2014.

African Charter for Popular Participation in Development and Transformation, 1990.

Constitutive Act of the African Union, 2000.

European Charter on Local Self-Governance, 1985 ETS 122.

United Nations International Guidelines on Decentralisation and the Strengthening of Local Authorities, 2007.

Yaounde Declaration of 29 October 2005.

INTERNET SOURCES

'Accountability' available at <http://www.merriam-webster.com/dictionary/accountable> (accessed 1 December 2016).

'Accountability in Governance' available at <https://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resource/s/AccountabilityGovernance.pdf> (accessed 1 December 2016).

'African Charter on Democracy, Elections and Governance' available at <http://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed on 26 November 2016).

'Background to Municipal Boundaries' available at http://www.demarcation.org.za/site/?page_id=1394 (accessed 8 September 2016).

Dugger A 'Local Government' available at <http://study.com/academy/lesson/what-is-local-government-definition-responsibilities-challenges.html> (accessed 1 December 2016).

'Early election cancels referendum on local government' available at <http://councilreferendum.com.au/> (accessed on 26 November 2016).

'Entering the 21st Century World Development Report 1999/2000' available at <http://openknowledge.worldbank.org/handle/10986/5982> (accessed 14 November 2016).

Gaventa J & Valderrama C 'Participation, Citizenship and Local Governance' available at http://www.participatorymethods.org/sites/participatorymethods.org/files/participation%20citizenship%20and%20local%20governance_gaventa.pdf (accessed 12 August 2016).

Litvack J & Seddon J 'Decentralization / briefing notes' available at <http://siteresources.worldbank.org/WBI/Resources/wbi37142.pdf> (accessed 6 April 2016).

'Local governments and service delivery' available at http://www.uncdf.org/gfid/docs/session_2.pdf (accessed on 8 July 2016).

'Local Government in The Netherlands' available at http://www.vng-international.nl/wpcontent/uploads/2015/06/Local_Government_in_the_Netherlands.pdf (accessed 11 August 2016).

Louw A. H 'The concept of African Renaissance as a force multiplier to enhance lasting peace and stability in Sub-Saharan Africa' available at http://www.africavenir.org/fileadmin/migrated/content_uploads/LouwAfricanRenaissanceForceMultiplier_03.pdf (accessed on 4 July 2016).

'Member States of the African Union' available at http://www.au.int/en/AU_Member_States (accessed on 4 July 2016).

'The African Charter on Values and Principles of Decentralization, Local Governance and Local Development Workshop' available at <http://www.afriquelocale.org/en/component/k2/item/474-workshop-to-develop-an-advocacy-to-promote-the-signing-and-ratification-of-the-african-charter> (accessed on 26 November 16).

'The process' available at <http://www.demarcation.org.za/index.php/municipal-boundaries/the-process> (accessed 28 September 2016).

See 'The State of State (and Local) Tax policy' available at <http://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-local-governments> (accessed on 2 December 2016).

'Transition from the OAU to the African Union' available at http://www.au2002.gov.za/docs/background/oau_to_au.htm (accessed on 8 July 2016).

'Understanding Local Government' available at <http://www.etu.org.za/toolbox/docs/localgov/webundrstdlocgov.html> (accessed on 26 November 2016).

'What are Public Private Partnerships?' available at <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships> (accessed 4 September 2016).

