



DEBATING THE IMPLICATIONS OF THE URBAN COUNCILS ACT CHAPTER 29.15 (1996) ON THE PRACTICE OF GOOD CORPORATE GOVERNANCE IN ZIMBABWE'S URBAN LOCAL AUTHORITIES

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ABSTRACT

This paper debates the implications of the Urban Councils Act (UCA) on the practice of good corporate governance in Zimbabwean urban local authorities. The study revealed that the act upholds corporate governance in urban councils through providing for: council meetings that are open to the public and the press, council minutes which are available for public inspection and a municipal procurement board that manages the tender system of urban councils just to mention a few. However the study also revealed that despite these positive implications the act is counterproductive to the practice of good corporate governance. The UCA is silent on the minimum academic qualifications for one to be a councilor. The act bestows excessive powers to the Minister of Local Government, Rural and Urban Development which creates an environment where central government dominates in the affairs of urban local authorities. The findings of this study have implications that assist in crafting an effective legal instrument critical in developing a sound corporate governance system for urban local authorities.

Key Words: Debating, Implications, Urban councils Act, Good corporate governance, Urban local authorities

INTRODUCTION

Corporate governance assumes centre stage when institutions private or public experience ethical crises or a down turn in performance. Print media houses in Zimbabwe are revealing an exponential rise of cases of corruption and unethical practices in urban local authorities. A down turn in performance is also evident in Zimbabwean urban local authorities. Potholed road networks, unlit streets, tall grass, blocked sewers, burst water pipes and streams of sewer flowing into residential areas have become a common sight in urban areas. Against such a background the academia, the

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media, and the public at large continuously question the soundness of corporate governance practices in urban local authorities. The Urban Councils Act (UCA) chapter 29:15 (1996) establishes and regulates the activities of the urban local authorities in Zimbabwe. The act also provides a legal framework which guides the practice of corporate governance in urban local authorities. The principal aim of this paper is to debate the implications of the UCA on the practice of good corporate governance in Zimbabwe's urban local authorities. Corporate governance embodies processes and systems by which corporate enterprises are directed, controlled and held to account (Department of Public Enterprise 2002:1). Corporate governance is anchored by the pillars or principles of independence, transparency, accountability, responsibility and fairness.

This paper seeks to provoke policy makers in the public sector in general and in the local governance sector in particular to realise the need to craft legislative instruments that promote and compliment good corporate governance practices .The paper will also provide insights on the provisions of the act that are incompatible with best practices in corporate governance with the ultimate aim of raising awareness of the need to amend or repeal the provisions of the act. Furthermore the paper is an awakening call to local authorities' managers that corporate governance is no longer a preserve of the private sector as before, it is now spreading its wings into the public sphere hence local authorities are now required to adopt it.

METHODS

This study benefits from a content analysis of some of the provisions of the UCA.This is complimented by data from secondary sources such as corporate governance texts, organisational reports and the internet.

The legislative Framework for urban local authorities

The juridical framework for urban local authorities in Zimbabwe is set out in the UCA chapter 29.15 (1996) and the Local Government Laws Amendment Act of 2008.Urban local authorities confine their operations to the principal act (UCA) and they cannot do anything beyond the powers sanctioned by the legal instrument. The UCA establishes cities, municipalities, towns and local boards. It also confers functions and powers and imposes duties upon municipal and town councils and local boards. Zimbabwe has 31 urban local authorities which are hierarchically organised, based mainly on size and functions (Chakaipa. 2010:36). The urban councils are hierarchically organised into four categories namely cities, municipalities, towns and local boards. The UCA empowers urban local authorities to make by-laws which regulate various activities, levy rates and service charges on ratepayers to raise revenue for service provision and infrastructure development. This legislation (UCA) confers urban local authorities with a wide range of responsibilities, which include: providing water for domestic, commercial or industrial areas, hospitals, clinics, ambulances, maternity and child welfare, libraries, provision of housing and transport facilities, construction and maintenance of drains, sewers and bridges, cleansing and refuse removal and

disposal ,prevention of air, land and water pollution, operation of fire brigades and municipal police, street lighting ,public places and provision of parks, recreation grounds and open spaces (Ministry of Local Government Rural and Urban Development document. 2011:2)

Corporate governance structure of urban local authorities

The Local Government Laws Amendment Act 2008 Section 12 states that every council area shall be governed by a council. Council is the focal point of the corporate governance system for urban local authorities in Zimbabwe. Council is composed of two units, the elected councillors who have policy and the legislative responsibilities on one hand and the administrative arm which is responsible for day to day running of council and implements decisions of council (Mushamba 2010:104). The executive or administrative arm for cities/ municipalities and town councils are headed by Town Clerks and Town Secretaries respectively. Town Clerks are assisted to manage day to day council operations by senior service directors like the Directors of Engineering services, financial services, health services, housing and community services and the Chamber secretary. The board of Councilors consists of elected officials and in some cases combined with Special Interest Councilors who are appointed in terms of section 4A (1) (b) of the Local Government Laws Amendment Act(2008). This board provides an oversight role to the executive/ management team. The roles of the management team and the board of councilors are clearly distinguished in the act; this reduces role conflict and also promotes the corporate governance value/principle of accountability. The management team is accountable to the board of councilors. The ceremonial mayors and council chairpersons for municipalities/cities and town councils/town boards respectively chair the governing boards of the local authorities. Mayors or chairpersons are also the councils' representatives on ceremonial issues.

NEGATIVE IMPLICATIONS OF THE UCA

The UCA has courted intense debate in Zimbabwe particularly in local governance circles. Critics argue that the act is draconian and retrogressive to good urban governance, hence the need to amend it. The UCA has been criticised for being silent on councillor qualifications and on the number of terms a councillor can serve before retiring and for giving the Minister of Local Government Rural and Urban Development excessive powers to interfere in the operations of urban councils.

The act is silent on councilor qualifications

Non Executive Directors are expected to add value to the board into which they are appointed. Malin (2007:134) argues that the value may come from a number of facets for example their appropriate professional backgrounds, work experience, their functional specialism, and ability to have insights into issues discussed in the board and to ask searching questions. This scenario applies to councilors who are the Non Executive Directors for local authorities. It is however unfortunate to note that the UCA is silent on the minimum academic and professional qualifications

expected from councilors. The act does not have set criteria which prevent those with mediocre qualifications to be elected as councilors. Councilors are chosen through the process of elections. It is also critical to note that elections for councilors are deeply partisan and that the current Zimbabwean political environment is highly polarized. The electorate votes for a political party rather than people with ability and appropriate skills and experience to make policies for urban councils. In particular the post 2000 era elections were characterized by tension and recorded cases of political violence. This has paved way for only the bold and courageous who can withstand the heat of political adversaries; the majority of these have low academic qualifications. Low qualifications stifle councilors' ability to have insight into issues discussed in council meetings and to ask searching questions. This results in ineffective councils, incapable of adjudicating complicated strategic issues to the detriment of good corporate governance.

The act is silent on the number of terms for councilors

The UCA does not limit the number of terms a councilor can serve before retiring; this is a bad corporate governance practice which compromises on councilor independence. The act however recognises and rewards councilors and mayors for serving council for ten and eight years respectively. Section 106 number 1 of the Urban Councils Act Chapter 29:15) prescribes that *a municipal council may appoint to the dignity of alderman any person who has held office as mayor or councilor on that council for a period of, or for periods of which in the aggregate amount to "eight or more years in the case of mayor, or ten years or more in the case of a councilor"* Councilors and mayors in urban councils are therefore honoured with alderman status on serving councils for periods prescribed by the act. The Zimbabwean urban councilors may therefore sit on council boards for more than ten years as long as the electorate votes for them. Urban councils of course benefit from the experience of long serving councilors but to the detriment of councilor independence which is compromised through familiarity. Coyle (2003:22) argues that the independence of Non Executive Directors is compromised when a director has been a board member for more than ten years in this case the director *"goes native"* through long term association with the company and through familiarity he/she ceases to be independent. If a councilor has known management for a long time; she /he may develop personal friendships that may blind him/her to management failings and short comings. The developed relationships cause councilors to be partial in voting and in taking decisions in the council chambers.

The Powers of the Minister of Local Government, Rural and Urban Development

Mushamba (2010:114) comments on the powers of the Minister of local government and observes that other stakeholders are of the view that the Minister wields excessive powers and that the legislation is written in a manner that makes it open to abuse. The system of local government therefore depends on the individual minister's power to exercise restraint. He further comments that there is too much of the *"minister shall"* concept in the legislation and in the practice of local government too. This is true especially if one takes into account that the Minister amongst other excessive powers can do the following; makes directives to councils (section 315 of the UCA),

rescinds the resolutions and decisions of council (section 314 of the UCA), appoint special interests councilors (section 4A of the UCA) and appoint the local government board (section 132 of amendment act 1 2008) (CCDZ.2010:3). These are just some of the powers vested in the minister. The continued dominance of central government in the affairs of urban local authorities has severely undermined the practice of good corporate governance. Urban councils have ceased to operate as autonomous and independent entities as central government has been accused of interfering negatively in the operations of urban councils.

To some extent, the power bestowed to the Minister is however beneficial as it creates accountability and transparency in the day to day management of urban councils. The ministerial powers create a system of checks and balances for councils. Discipline amongst council officials is enhanced as these officials know that they are being monitored. Section 114 of the UCA allows the Minister of Local Government Rural and Urban Development to suspend a councilor if he/she has reasonable grounds of suspecting that the councilor, has contravened any provision of the Prevention of Corruption Act (chapter 9:16) or has committed any offence involving dishonesty in connection with the funds or property of the council. This provision is positive in as far as promoting discipline and accountability in urban local authorities is concerned. Corrupt and errand councilors are called to account or answer for their actions. The suspension of seven councilors from Harare City Council as well as the Chitungwiza Municipality Mayor in 2010, serves as a good example where the Act was used positively for the benefit of good corporate governance

POSITIVE IMPLICATIONS OF THE UCA

Critics have observed that the UCA as a piece of legislation is draconian. This paper will also discuss the provisions of the Act that benefit the practise of good corporate governance in urban councils. The Act clearly separates the role of the Chief Executive Officer and the chairperson, provides for transaction of business through the committee system, promotes an enabling environment of transparency, provides for a system of managing conflict of interest and promotes accountability.

Clear separation of powers between the Chief Executive Officer and the board of councillors Chairperson

Councilors for Zimbabwean urban local authorities elect one person among themselves to be the chairperson of the council. The UCA provides for a clear demarcation of responsibilities and authority between the chairperson of council and the Town Clerk or Town Secretary, this is a good corporate governance practice. It is now being increasingly realised that the practice of combining the role of the chairperson with that of the Chief Executive Officer (CEO) as is done in countries like the United States of America and India leads to conflicts in decision making and concentration of power in one person resulting in unsavoury consequences (Fernando 2006:24). Fernando further submits that the separation of powers provides the appropriate counterbalance and check on the power of the Chief Executive Officer. Dominant Town Clerks whose powers go unchecked are

likely to abuse their powers subsequently leading to corrupt tendencies. Corporate governance is an effective mechanism for encouraging efficiency and combating corruption (King's report 2002:15). One mechanism of combating corruption in the urban councils is the separation of powers between the Town Clerk and the Ceremonial Mayor.

The Act provides for transaction of business through the committee system

Section 96 of the Act provides for the appointment of standing committees of council who conduct business on behalf of council. These committees are finance, health and housing, and environmental management. Good corporate governance practice demands a board of directors that conducts its business through a well organised committee structure that partitions the work of the board and allows directors to make maximum use of their expertise (Colley et al 2003:44). The Zimbabwean urban councils operate using a system of committees. The committees make decisions as delegated by council and the full council will have the obligation to ratify committee decisions and consider committee recommendations. A department composed of executives services a committee. Normally a committee would be responsible for the output of a department under its charge. The committee system lessens the burden of council enhancing its effectiveness. Committees diffuse centralisation of power by council as decision making is delegated to relevant committees. The committee system also promotes good governance values of democracy, inclusiveness and participation as the responsibility for operating the city/town council is divided among and shared by all members of council. All councilors in this case participate in decisions of their council, since all councilors are members of one or more committees of council (Chakaipa 2010:39).

Act promotes an enabling environment of transparency

Transparency is one of the pillars that anchor good corporate governance. King's report (2002:12) defines transparency as the ease with which an outsider is able to make a meaningful analysis of a company and its action. Transparency involves open governance where information concerning financial issues, the vision and mission statement, the strategic direction and the performance output of the organisation is not hidden from stakeholders. To promote transparency urban local authorities should disclose and communicate key issues about their operations to stakeholders. Minutes, reports and decisions of council should be made public and available. Stakeholders for urban councils include among others the residents/ratepayers, creditors and employees of council and the business community. The stakeholder's right to information is an indispensable principle underlying the thinking of good corporate governance. Transparency is beneficial to effective local governance; it creates a bond of trust between council which serves the community and its stakeholders. If this trust is eroded stakeholders will boycott payment of rates and service charges subsequently bringing in far reaching negative repercussions on service delivery. Transparency bounds corruption, which tends to flourish in clogged systems that are traversed with uncertainty and unrestricted behaviour. The Urban Councils Act chapter 29:15 (1996) promotes good corporate governance principle of transparency through some of its provisions that allow the

disclosure of what is happening in council to stakeholders. These include council meetings that are open to the public and press, published audited financial statements, council minutes which are open for public inspection and an open tender system which is managed by a municipal procurement board.

Meetings open to the public and press

Section 87 (1) of the UCA provides for council meetings which are open to the public and the press, it states that:

“Every meeting of a council should be open to the public and press”

Council is the supreme policy making board for local authorities. Issues from standing committees are presented, deliberated on and resolved in council. Allowing the public and the press to attend full council meetings presents them an opportunity to observe the mechanisms, processes and procedures of council and to make meaningful analysis of the local authority’s decisions and actions. Section 87(1) creates an environment of openness where operations are there for all to see and nothing is hidden. Section 88(5) of the UCA authorises any person from the public to inspect minutes for committees of council and the full council meetings provided that the minutes do not relate to staff matters or matters of internal or national security and any other matters which council may have resolved should not be open to inspection. Section 88(5) also permits any person to obtain a copy or an extract of the minutes upon paying a fee as prescribed by a resolution of a council. Allowing the public to inspect or to have a copy of council minutes is another way of promoting transparency in urban local authorities. Through these minutes, urban councils can communicate and disclose key organisational issues to its stakeholders. Section 88 (5) of the UCA promotes transparency in the sense that every stakeholder is permitted access to crucial information, the provision however has its own shortcomings, it leaves the conditions of such access to the urban council’s discretion. An urban council can conceal information to its stakeholders by considering the time one requests a document as unreasonable or can use a council resolution as an excuse for not handing over the document to whoever is interested in its contents.

It is however observed that though section 87(1) of the UCA provides for meetings which are open to the public, the public have failed to be part of the council meetings because of apathy. The public and press do not participate in decision making but are just there as observers. Furthermore, to the disadvantage of transparency section 87(2) affirms that:

... if at any meeting , a council considers that any matter to be discussed at that meeting can be conveniently and advantageously discussed in private council may resolve itself into committee and exclude the public and the press”

The provision falls short in specifying matters that should be discussed in private. This provision may be abused by councils to conceal unethical practices and under performance.

Fairness and transparency in procurement

Good corporate governance demands a procurement board which practices fairness and transparency in procurement. Section 210 (UCA 1996) make it mandatory for all urban local

authorities to establish a procurement board for handling tenders and procurement of goods, materials and service. To quote:

Every municipal council shall appoint a municipal procurement board consisting of not less than five and not more than seven members, which shall be responsible for arranging tenders in terms of section two hundred and eleven and for making recommendations to the council in regard to the acceptance of tenders and the procurement of goods, materials and services.

Municipal procurement boards are responsible for managing the tender process to ensure that council and stakeholders get optimum value for money and to promote fairness and transparency. Thus before entering into any contract, the procurement board is required to invite tenders by notice sent to public notice boards and advertised in two issues of a local or national newspaper (section 211(2), UCA, 1996). Section 211 (4) of the same act further specifies that tenders received shall be opened in public on the closing date, and any tender received thereafter shall not be considered. This section further specifies that the tender of any person who canvasses or solicits for support shall not be considered. The procurement procedure as provided for in the UCA 1996 promotes good corporate governance practice. The process of awarding public contracts through the open tender system ensures transparency, maximises economy and efficiency, promotes healthy competition among bidders and eliminates wrongdoings, meddling and shady deals by authorities concerned. Advertising of tenders to the public enhances openness and fairness. Those who want to participate in the tendering system get the information and are given a fair opportunity to do so.

Managing conflict of interest

The UCA provides for the management of conflict of interest. In urban local authorities officials both elected and appointed make decisions at work that may affect their private interests and when these officials are found in such a situation conflict of interest arises. Conflict of interests can arise when a council official elected or appointed chooses whether to advance her/his own interest or those of the urban council or when the interest or benefit of an official conflicts with the interest of the local authority. Conflict of interest may occur where a councilor or an appointed official may sell or let on hire any goods to council or decides to participate in competing for a tender advertised by council. In this case the councilor is likely to unfairly advance his /her personal or private interests at the expense of the residents. Conflict of interest cannot be completely eradicated. It is part of human relations hence need to be managed. The UCA caters for a provision which manages conflict of interest, section 107 specifies that a councilor, council employee or any stakeholder who has interest in a contract and is present at a meeting ,should at the beginning of the discussion of the contract disclose his/her interests and withdraw from that meeting. This subsequently enables independent and transparent discussions on the contract.

U CA promotes accountability

Accountability is one of the pillars that anchor good corporate governance, Laxmikanth (2006:10) defines accountability as the obligation of both appointed and elected officials to give a satisfactory account of their performance and the manner they have exercised powers conferred on them.

Accountability demands elected and appointed officials in urban local authorities to justify, explain or account for the exercise of their authority and their performance or actions. Accountability seeks to check on wrong and arbitrary administrative actions and to increase on efficiency and effectiveness of the administrative process. Caiden (1994:316) argues that accountability enables the community to assess whether or not state power has been used properly politically, legally, morally and professionally exercised. That state power has not been used solely for personal gain and self- promotion without advancing the collective benefit. Laxmikanth (2006:10) posits that accountability is enforced by means of various control mechanisms. Legislative control is one of the accountability mechanisms in any representative democratic government and in urban local authorities this is executed by a board of councilors who have an oversight role over the administration arm. Accountability mechanisms also include the organization's internal administrative procedures for example internal audits and whistle blowing procedures. The paper will explore whether some provisions of the UCA promote accountability.

The UCA provides for political accountability. Under-pinned by the UCA each local area must have a council, composed of elected councilors, elected on a ward basis. The councilors serve for a term of four years from which by- elections are conducted in terms of the Electoral Act (chapter 29:13). Elected Councilors are held to account for their actions at the end of their term of office, the electorate usually votes out non performing councilors. This is however a weak accountability mechanism .The UCA should be amended to provide for the recall of elected officials by either the sponsoring parties or the public. The law should be such that elected officials are held to account for their actions even before the end of their terms of office (Chakaipa 2010:41).

Financial reporting and the audit committee

Auditing and financial reporting are some of the cornerstones of good corporate governance. To enable council's stakeholders such as the government, ratepayers and the community to assess the actions of councilors and management, the UCA require urban councils to produce audited financial statements for the minister's information and to have operational audit committees.

Audit committees are composed of members selected to take an active role in overseeing the accounting and financial reporting policies and practices within an organisation. Section 97 of the UCA provides for the establishment of the audit committee whose function in terms of section 98 includes inquiring into and reporting upon the manner in which the finances of the council, assets and human resources are being used and whether funds and assets of council are applied to the purpose intended. The legal requirement to have audit committees in urban councils highlights the role of the UCA in enhancing good corporate governance. An Audit committee is an integral part of corporate governance. It seeks to promote accountability, transparency, integrity, credibility and objectivity of financial information that is presented in urban local authorities. The committee can call for information, explanations and evidence in respect of any matter the auditors may have observed (UCA section 98 (c)). Section 98 (c) of the act provides for a means to query and assess the actions and activities of council and its committees.

Though it is a legal requirement to have an audit committee in urban councils, this requirement is not without shortcomings. Audit committees should ideally include those who have knowledge of Generally Accepted Accounting Principles (GAAP). The members should also be able interpret and analyse financial statements and audit reports. In Zimbabwe's urban councils members who compose the audit committee are appointed in most cases from elected councilors. Councilors are chosen through the democratic process of elections and the UCA is silent on the minimum academic and professional qualifications expected from councilors. The act does not have set criteria which prevent those with mediocre qualifications to be elected as councilors and this has seen lowly qualified elected officials assuming duty as councilors in urban local authorities. Some of these lowly qualified councilors are subsequently appointed as members of the audit committee to the detriment of meaningful contribution to the committee's business. The business which is deliberated on in this committee is of complex and technical nature. Section 97 and 98 of the UCA should therefore be amended to provide for co-option of some members who have an accounting background. These members should come in as special interest councilors who are appointed by the Minister of Local Government, Rural and Urban Development in consultation with the local chapter of the institute of chartered accountants.

An annual audit is one of the cornerstones of good corporate governance. Fernando (2006:25) argues that auditing reassures stakeholder that resources in an organisation are used for what they are intended for. Auditing provides for management and councilors to account for their actions and activities and it is one of the critical components of good corporate governance. It also ensures compliance with applicable laws, regulations, principles and procedures. Section 304 of the UCA provides for the appointment of external auditors. Appointing External auditors on or before the commencement of each financial year accommodates an independent opinion on the state of council affairs. The appointed auditors as in section 305 require local authorities to produce to them all relevant books, papers writings and minutes in their possession. In the process of analysing the aforementioned documents the auditor may call upon any councilor or employee of council for any explanation and information he/she may require in order to enable him /her to discharge his/her duties. The auditor will transmit the audited balance sheet and accounts together with a report which approves that the balance sheet and accounts reflect a true and fair view of the financial position of the council and its transactions to the Town Clerk who will present it to the next council meeting. Council shall take note of the report and refer it to the audit and finance committee and then finally back to council. For transparency section 307 (7) of the UCA requires the Town Clerk to keep a record of the audited financial statement which is open to inspection by any member of the public. Availing audited financial statements to the public enhances transparency and accountability, as stakeholders are afforded the opportunity to see how the finances have been used. Such openness decreases the prevalence of corruption cases as officials remain accountable for any funds which are injected into council.

The UCA require urban councils to present audited financial statements to the minister not more than six months after the end of each financial year. This provision encourages disclosure, however most urban local authorities are behind in terms of presenting audited financial statement to the minister. Coutinho(2010:85-86) argues that this is so because there is no clear penalty imposed by the act for failure to present audited financial statements within the prescribed period and more often than not the responsible minister does not seem to be following up on those councils that fail to have their financials audited on time. The Act should therefore be amended to provide for a penalty on urban councils which fail to have finances audited within the prescribed time.

CONCLUSION

The UCA promotes good corporate governance in urban councils. The Act separates the role of the town clerk/town secretary and that of the mayor or council chairperson; this provides an appropriate counterbalance and a check on the powers of the Town Clerk. The Act also upholds transparency through providing for: council meetings which are open to the public and the press, council minutes which are available for public inspection and a municipal procurement board that manages the tender system of urban local authorities. The management of conflict of interest is clearly spelt in the UCA and this inhibits the prevalence of corruption cases if local authorities religiously follow the procedure. The Act sustains the corporate governance value of accountability through requiring urban councils to produce audited financial statements for the minister's information and to have operational audit committees. However to the detriment of good corporate governance the UCA is silent on the minimum qualifications of people who should qualify to be councilors and the minimum number of terms councilors should serve in office. The Act bestows excessive powers to the Minister of Local Government which creates an environment where central government dominates in the affairs of urban local authorities severely undermining the practice of good corporate governance. If the UCA is to fully benefit the practice of good corporate governance in urban councils the act should be amended to provide for: reasonable qualifications for councilors at least 5 "o" levels, a recall of councilors who execute their duties poorly and limited number of terms for councilors at most two terms. Finally the Zimbabwean local government system should be entrenched in the constitution so as to reduce the excessive powers of the Minister of Local Government Rural and Urban development.

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