

The Potential of Public-Private Partnerships (PPPs) in the Pursuit of Sustainable Development Goal 11 in Zimbabwe

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Abstract

The international community has recognised cities as important drivers of development and poverty reduction by including SDG 11 in the United Nations 2030 Sustainable Development Agenda. Even though the Sustainable Development Goals (SDGs) do not have any legal force, SDG 11 seeks to make cities and human settlements across the world "inclusive", "safe", "resilient" and "sustainable" by 2030. While cognisant of the interdependence of these qualifiers, this article focusses on the issue of "sustainability" in the light of the view that a city cannot be said to be sustainable unless it is inclusive, safe and resilient. Cities on the path to a sustainable future are expected in terms of SDG 11 to invest in public infrastructure to provide services to local communities in a sustainable manner. Due to limited fiscal space, urban local authorities in Zimbabwe, as elsewhere, would have to harness private sector participation in infrastructure investment through Public-Private Partnerships (PPPs) to transition to a sustainable future.

This article interrogates the extent to which the constitutional, legislative and policy frameworks in Zimbabwe enable urban local authorities to adopt and implement PPPs in order to achieve their mandate and by extension to realise local sustainability as envisaged in terms of SDG 11. The analysis reveals varied results about the potential of PPPs to contribute towards local sustainability in Zimbabwe. It is further argued that the legal framework underpinning PPPs has some generic features that could enhance their relevance and potential in the pursuit of sustainable cities in Zimbabwe.

Keywords

Sustainable Development Goals; SDG 11; sustainable cities; urbanisation; urban local authorities; Zimbabwe; Public-Private Partnerships; Constitution of Zimbabwe.

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1 Introduction

Human settlements are now overwhelmingly urban, and urbanisation is projected to increase. More than half of the world's population currently live in cities, and this estimation is projected to increase to 60 percent by 2030 and 70 percent by 2050.¹ Against this background, rapid urbanisation poses sustainability challenges to cities, including the growing number of slum dwellers, inadequate and overburdened infrastructure and services (such as waste collection and water and sanitation systems, roads and transport), worsening air pollution and unplanned urban sprawl.² Despite these challenges, the international community still recognises cities as essential drivers of development and poverty reduction, as is shown by the inclusion of Sustainable Development Goal (SDG) 11 in the United Nations 2030 Sustainable Development Agenda.³ Even though SDG 11 does not have any legal force, it seeks to make cities and human settlements across the world "inclusive",⁴ "safe",⁵ "resilient"⁶ and "sustainable"⁷ by 2030. While cognisant of the interdependence of these qualifiers, this article focuses on the sustainability of cities. An assumption is made that a city cannot be sustainable unless it is inclusive, safe and resilient. In other words, strategies that may be employed to ensure the sustainability of cities must simultaneously address issues of their resilience, safety and inclusiveness. While sustainability is a broad term, it is understood in terms of SDG 11 as

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¹ UN *SDG Progress Report 44*. Also see UN *World Population Prospects 1* and UN *World's Cities in 2016 2*.

² See the UN *SDG Progress Report 44-45*.

³ UN *Transforming Our World: The 2030 Agenda for Sustainable Development* (hereinafter referred to as the *Agenda 2030*).

⁴ Inclusion pertains to ensuring that all residents of the city, including the most marginalised, have a representative voice in governance, and fair and equitable access to urban opportunities, infrastructure and resources that cultivate social integration and enable residents to enjoy and fully partake in urban life. For details, see UN HABITAT *Habitat III Issue Paper 1* 1-10.

⁵ Safety in the urban setting relates to residents living free from the threat or the fear of violence and crime. It may also be broadly understood as involving protecting residents from the risk and occurrence of human-induced or natural disasters and climate change. For details, see UN HABITAT *Habitat III Issue Paper 3* 1-10.

⁶ Resilience can broadly be defined as the capacity of a system, including a city, potentially exposed to natural disasters and human-induced crises, to resist or change in order to reach and maintain an acceptable level of functioning and structure. Gardner 2019 *Biophilic Cities Journal* 10; Beatley and Newman "Biophilic Cities" 7; Chan, Seow and Chang "Resiliency" 58, 59.

⁷ See part 2 of this paper.

constituted of ten targets⁸ as fleshed out in the New Urban Agenda (NUA) – the United Nations document that lays out principles for the optimal planning of cities to promote sustainable urbanisation for the coming two decades effectively.⁹

It is acknowledged that trillions of US dollars will need to be spent by local governments across the world to realise SDG 11.¹⁰ In addition to self-generated revenue, urban local authorities worldwide would have to explore other sources of funding such as Public-Private Partnerships (PPPs) to transition to a sustainable future as envisaged in terms of SDG 11.¹¹ Even though there is no unanimity among scholars as to its definition, a PPP can generally be defined as a medium-to-long-term contractual relationship between the public and private sectors, to share risks, rewards and a diversity of skills, expertise and financial resources to deliver desired policy outcomes that are in the public interest.¹² Due to the private sector's financial muscle, PPP arrangements potentially free up funding for other urban infrastructure projects and enable urban local authorities to accelerate investments in infrastructure, which would not otherwise have been possible or would have been deferred.¹³

Zimbabwe is committed to realising the SDGs, and the government has made several pronouncements to this effect.¹⁴ This commitment applies to national, provincial and local authorities. It is important to note that, following the adoption of the new Constitution,¹⁵ local authorities in Zimbabwe are recognised as a level of government with powers to govern local communities.¹⁶ Apart from the general constitutional objective of pursuing

⁸ Targets under this goal address a wide range of urban challenges such as: the upgrading of slums and the provision of affordable housing, public transit systems, planning and governance, cultural heritage, disaster management, air quality, waste management and public green spaces. See part 2 of this paper for details.

⁹ *Habitat III New Urban Agenda* UN Doc A/RES/71/256 (2016).

¹⁰ UN HABITAT *Habitat III Issue Paper* 18 3.

¹¹ UN HABITAT *Habitat III Issue Paper* 7 2.

¹² African Union *Agenda 2063: First Ten-year Implementation Plan 2014-2023* (2015) 6. For different definitions see Voituriez *et al* "Financing the 2030 Agenda for Sustainable Development" 264-267; Nel, Du Plessis and Du Plessis "Instrumentation for Local Environmental Governance" 153; Chigwata and Ziswa 2018 *HJRL* 310; Melville 2017 *Review of Market Integration* 154; Meidute and Paliulis 2011 *International Journal of Strategic Property Management* 260; Grimsey and Lewis 2005 *Accounting Forum* 346.

¹³ Yescombe *Public-Private Partnerships* 17.

¹⁴ See for example, Republic of Zimbabwe *Transitional Stabilisation Programme and Reforms Agenda* paras 13, 1726 and Annexure 2. See also Republic of Zimbabwe *Sustainable Development Goals Progress Report*.

¹⁵ *Constitution of Zimbabwe, Amendment (No 20) Act, 2013* (the Constitution).

¹⁶ See ss 3(2)(l), 5 and ch 14 of the Constitution.

sustainable development, which is a mandate of all three tiers of government,¹⁷ local authorities have a shared responsibility in terms of the Constitution for the realisation of a variety of rights,¹⁸ some of which speak directly to the areas of focus and the envisaged outcomes of SDG 11.¹⁹ However, it is noted that the most pressing urban challenges confronting local authorities in Zimbabwe include inadequate housing, limited access to basic services for the growing urban population, and the dilapidation of existing public infrastructure.²⁰ The situation is exacerbated by the government's inability and sometimes unwillingness to allocate a significant portion of the national budget to capital projects due to the severely constrained fiscal space.²¹ According to the 2017-2018 World Economic Forum Global Competitiveness Report, Zimbabwe was ranked number 127 out of 138 countries in the Infrastructure Index.²² The African Development Bank estimates that about USD 14.2 billion is needed to close Zimbabwe's infrastructure gap.²³ Thus, fiscal constraints continue to challenge the ability of central government and local governments in Zimbabwe to realise the vision of Agenda 2030 in the country.²⁴

In view of the above, the purpose of this article is to explore the extent to which the legal and policy frameworks in Zimbabwe empower urban local authorities to utilise PPPs to realise the targets associated with SDG 11. To achieve this objective, the remainder of this article is set out as follows: the first part begins by unpacking the meaning and vision of SDG 11 to understand what is expected of urban local authorities on the path to a sustainable future. The second part explores how PPPs should be used by urban local authorities to contribute to the transition of cities to a sustainable future. The overall intention is to distil generic benchmarks that could guide urban local authorities on utilising PPPs to pursue local sustainability as envisioned in terms of SDG 11. The third part critically interrogates the extent to which the constitutional, legislative and policy frameworks in Zimbabwe empower urban local authorities. The fourth part examines the

¹⁷ See s 13 of the Constitution.

¹⁸ See ch 4 of the Constitution.

¹⁹ See parts 2 and 4 of this paper.

²⁰ Republic of Zimbabwe 2015 https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf 41; Republic of Zimbabwe *SDG Progress Report* 8, 54.

²⁰ Republic of Zimbabwe *SDG Progress Report* 8, 54.

²¹ Zinyama and Nhema 2015 *Public Policy and Administration Research* 39; Republic of Zimbabwe *SDG Progress Report* 44.

²² Republic of Zimbabwe 2020 http://www.veritaszim.net/sites/veritas_d/files/NDS.pdf para 443.

²³ Republic of Zimbabwe *SDG Progress Report* 44.

²⁴ Republic of Zimbabwe *SDG Progress Report* 52.

extent to which the applicable law and policy frameworks enable urban local authorities in Zimbabwe to use PPPs to contribute towards the transition of cities to a sustainable future as envisaged in terms of SDG 11. The conclusion follows this.

2 The vision and implications of SDG 11

The dedication of SDG 11 to cities confirms the view that city governments are gradually being recognised as global co-governors in the light of the fact that they contribute directly and indirectly to matters of global governance, such as sustainable development.²⁵ Despite this recognition, there is no unanimity in literature as to the definition of a sustainable city. Many typologies exist as to the characteristics a city should present before it is considered sustainable.²⁶ However, what one gets from the typology underpinned in SDG 11 (inclusive of those gleaned from scholarly literature)²⁷ is that a city on the path towards sustainability should pursue outcome-oriented targets²⁸ and process-oriented targets.²⁹ These targets are to be accompanied by indicators - communication tools that help interpret the complexity and uncertainty of sustainable development, and inform the different role-players involved in sustainable development processes on the current progress.³⁰ Concerning outcome-oriented targets, in the next decade cities on the path to sustainability are expected to ensure access for all to adequate, safe and affordable housing, and to upgrade slums;³¹ to ensure access for all to basic services;³² to provide access to safe, affordable, accessible and sustainable transport systems and to improve road safety by expanding public transport;³³ to protect and safeguard the world's cultural and natural heritage;³⁴ to promote climate change mitigation and adaptation;³⁵ to reduce their adverse per capita

²⁵ Du Plessis 2017 *LDD* 244; Kanuri *et al* *Getting Started with the SDGs in Cities* 1.

²⁶ See, for example, Du Plessis 2017 *LDD* 245-246; Doust 2014 *Journal of Traffic and Transport Engineering* 151-182; Eiraibe, AL-Malki and Furlan 2015 *American Journal of Sociological Research* 101; Jabareen 2006 *JPER* 38; Kasioumi 2011 *Berkeley Planning Journal* 91-94.

²⁷ See, for example, Doust 2014 *Journal of Traffic and Transport Engineering* 151-182; Eiraibe, AL-Malki and Furlan 2015 *American Journal of Sociological Research* 101; Jabareen 2006 *JPER* 38; Kasioumi 2011 *Berkeley Planning Journal* 91-94.

²⁸ See UN-HABITAT *SDG Goal 11* 14-49.

²⁹ See UN-HABITAT *SDG Goal 11* 50-55.

³⁰ Koch and Krellenberg 2018 *International Journal of Geo-Information* 464-468.

³¹ See SDG 11.1 (contained in *Agenda 2030*).

³² See SDG 11.1.

³³ See SDG 11.2.

³⁴ See SDG 11.4.

³⁵ See SDG 11.b.

environmental impact;³⁶ and to provide universal access to safe, inclusive and accessible, green and public spaces.³⁷

For process-oriented targets, cities in pursuance of local sustainability are required in the next ten years to promote development (spatial and strategic) planning³⁸ and to facilitate public participation in decision-making processes.³⁹ They are further required to adopt and implement disaster risk reduction (DRR) and disaster risk management (DRM) strategies.⁴⁰ To this end, urban sustainability can be conceptualised as an evolving, experimental process rather than a fixed entity or specific outcome.⁴¹ This process is understood as being geared towards transitioning from the current form of urbanisation to goal-oriented future urban sustainable development.⁴²

As mentioned above, at the core of the targets is the need for urban local authorities to invest in public infrastructure if they are to meet SDG 11 by 2030. Public infrastructure refers to the basic equipment, utilities, productive enterprises and installations essential for the development, operation and growth of a city.⁴³ Public infrastructure can be broadly divided into two categories. Firstly, there is "economic" infrastructure, which contributes "to human dignity, quality of life, sustainable livelihoods and the enjoyment of human sustenance".⁴⁴ Economic infrastructure facilitates the provision of essential services such as safe drinking water and sanitation services, shelter, waste management, electricity and public transport.⁴⁵ Secondly, there is "social" infrastructure, which is essential for the structure of society and includes facilities such as schools, hospitals and libraries.⁴⁶ Social infrastructure facilitates the provision of social services such as education,

³⁶ See SDG 11.6

³⁷ See SDG 11.7

³⁸ See SDG 11.3 and 11.a.

³⁹ See SDG 11.3 and 11.a.

⁴⁰ See SDG 11.5 and 11.b.

⁴¹ For details on the sustainable city as a process, see Joss *Sustainable Cities* 3, 44-70; Childers *et al* 2014 *Landscape and Urban Planning* 323.

⁴² Joss *Sustainable Cities* 47.

⁴³ Intergovernmental Panel on Climate Change *Climate Change* 877; Sahely, Kennedy and Adams 2005 *Canadian Journal of Civil Engineering* 73-74; Yescombe *Public-Private Partnerships* 1.

⁴⁴ *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) 26; Yescombe *Public-Private Partnerships* 1.

⁴⁵ Yescombe *Public-Private Partnerships* 1; Satterthwaite "Introduction" 13; UN-HABITAT *Habitat III Issue Paper* 18 1-2; UN-HABITAT *Habitat III Issue Paper* 19 1-2.

⁴⁶ Yescombe *Public-Private Partnerships* 1.

health and housing, for example.⁴⁷ Against this backdrop, a local authority's ability to ensure equitable access for all to public infrastructure and the related services by way of promoting equal rights and opportunities, promoting socio-economic and cultural diversity, eliminating discrimination and promoting public participation contributes a great deal to the fulfilment of its social functions that are directed *inter alia* to improving people's quality of life and well-being.⁴⁸

To the extent that the above-mentioned categories of infrastructure are *inter alia* coal-based or chemical-based (that is, grey infrastructure),⁴⁹ cities on the path to sustainability are expected to move towards "green infrastructure" - a term which denotes infrastructure systems powered by non-fossil fuel sources of energy and non-chemical-based or oil-based products.⁵⁰ The use of green infrastructure at the local level can reduce the risks related to disasters and climate change, improve biodiversity protection, and provide a high-quality environment in which to live and work.⁵¹

Even though SDG 11 emphasises a subnational scale of intervention, it recognises that local authorities do not exist in isolation. This goal highlights the significance of a multilevel governance approach since "national and regional development planning" is supposed to strengthen links between urban, peri-urban and rural areas.⁵² Even though SDG 11 does not expressly stress fiscal space as necessary to the pursuit of each target, it underlines the need to harness financial resources from the international community and the private sector to complement those obtained from higher tiers of government.⁵³ To the extent that SDG 11 acknowledges the need to engage role players outside government such as civil society organisations (CSOs)⁵⁴ and the private sector,⁵⁵ it impliedly underscores the need to promote good urban governance in the pursuance of local sustainability.

⁴⁷ Yescombe *Public-Private Partnerships* 1; United Cities and Local Governments *Basic Services for All* 13.

⁴⁸ UN-HABITAT *World Cities Report* 87.

⁴⁹ Moteff and Parofmak *Critical Infrastructure and Key Assets* 1-4; Steele, Hussey and Dovers 2017 *Urban Policy and Research* 76.

⁵⁰ See generally Benedict and McMahon *Green Infrastructure* 6; Pizarro "North American and European Sustainable Urbanism " 102-108.

⁵¹ European Commission *Building a Green Infrastructure for Europe* 7.

⁵² SDG 11.a. Also see 11.3 and 11.b.

⁵³ See SDG 11.3, 11.4 and 11.a.

⁵⁴ See SDG 11.3.

⁵⁵ See SDG 11.4.

It is important to emphasise that the typology proffered in this article should not be considered an inflexible template for local sustainability because development contexts and urban realities across the world differ significantly. What is important to note here is that the broad range of development activities encapsulated in this typology gives space to local governments to prioritise their development needs in a local context.

3 PPPs as a local governance instrument for realising SDG 11

Since the public infrastructure needed in pursuance of SDG 11 is capital-intensive and urban local authorities, especially in developing countries, have limited fiscal space,⁵⁶ there is a need to harness private sector participation in infrastructure investment through PPPs in pursuance of local sustainability.⁵⁷ To this end, many scholars also share the view that if certain conditions are met, PPPs can significantly help local governments leverage the resources needed to promote sustainable development. Firstly, the national government needs to supervise urban local authorities by establishing an explicitly sound regulatory framework within which PPPs can be arranged locally.⁵⁸ Secondly, to determine the suitability and viability of PPPs (or either),⁵⁹ urban local authorities need to conduct a feasibility study that systematically covers all stages of PPP projects.⁶⁰ Thirdly, urban local authorities need to facilitate public participation⁶¹ by engaging CSOs as they potentially ensure the ongoing public scrutiny of PPPs,⁶² which involves denouncing corrupt practices, assisting victims of corruption and human rights violations via courts, and promoting vigilance in the service

⁵⁶ See part 1 for details.

⁵⁷ UN HABITAT *Habitat III Issue Paper 7 2*; ch 30 of UN *Agenda 21* (hereinafter referred to as *Agenda 21*); *Istanbul Declaration on Human Settlements* UN Doc A/CONF165/14 (1996) 20 (hereinafter referred to as the *Istanbul Declaration*); and paras 41, 45 and 67 of the *Agenda 2030*. Also see SDG 17.

⁵⁸ Zerunyan "Well-Designed Public Private Partnerships" 21; Heymans and Plummer "Understanding the Operating Context of Municipal Partnerships" 245; Yescombe *Public-Private Partnerships* 31-33; Meidute and Paliulis 2011 *International Journal of Strategic Property Management* 265.

⁵⁹ Meidute and Paliulis 2011 *International Journal of Strategic Property Management* 265.

⁶⁰ Meidute and Paliulis 2011 *International Journal of Strategic Property Management* 265; Paik "Public-Private Partnerships for the Development of Port IT Infrastructure" 203-204.

⁶¹ Osei-Kyei and Chan 2015 *International Journal of Project Management* 8; Paik "Public-Private Partnerships for the Development of Port IT Infrastructure" 204.

⁶² Heymans "Establishing Sound Partnership Principles" 215.

delivery process.⁶³ Fourthly, there is a need for a clear assignment of responsibilities and areas of competence between the public and private partners in the pursuit of a common endeavour.⁶⁴ Fifthly, PPP contracts should be crafted so that risk is transferred between the public and private sectors, allocating particular project risk to the partner best able to manage that risk cost-effectively.⁶⁵ Sixthly, PPPs should be based on output specifications.⁶⁶ It therefore, follows that a PPP contract should include clearly defined goals, targets and indicators against which to measure the performance of the PPPs.⁶⁷ Seventhly, once a PPP agreement has been concluded, urban local authorities must use oversight/monitoring mechanisms to continuously check the extent to which a project responds to the needs of the targeted groups in their areas of jurisdiction.⁶⁸ Based on the above, it appears that there are about seven requirements which should be met to ensure that the benefits of PPPs become a reality for urban local authorities and communities.

However, some scholars have reservations about the use of PPPs.⁶⁹ Firstly, some contend that PPPs are less likely to deliver efficiency gains in areas of the social sector such as schools and hospitals, where service quality is determined mainly by human capital investment, and demand evolves quickly over time.⁷⁰ Secondly, if the private sector fails to deliver as expected in terms of a PPP arrangement, the public sector would likely take back responsibility for risks that had initially been transferred to the private sector, thus negating the intended risk-transfer benefit of the PPP.⁷¹ Thirdly, some argue that, when compared to traditional procurement, the complete

⁶³ *International Guidelines on Decentralisation and Access to Basic Services for All* (2009) 19.

⁶⁴ Paik "Public-Private Partnerships for the Development of Port IT Infrastructure" 204; Jamali 2004 *IJPSM* 416.

⁶⁵ Zerunyan "Well-Designed Public Private Partnerships" 22-23; Paik "Public-Private Partnerships for the Development of Port IT Infrastructure" 204; Cheng "Public-Private Partnerships for Critical Infrastructure Development" 213; Osei-Kyei and Chan 2015 *International Journal of Project Management* 8; Melville 2017 *Review of Market Integration* 154.

⁶⁶ Yescombe *Public-Private Partnerships* 23; Heymans "Establishing Sound Partnership Principles" 217.

⁶⁷ Gentry and Plummer "Focusing the Scope and Content of Partnership Arrangements" 137; Paik "Public-Private Partnerships for the Development of Port IT Infrastructure" 203; Zerunyan "Well-Designed Public Private Partnerships" 21.

⁶⁸ Heymans "Establishing Sound Partnership Principles" 219; Carley 2006 *IJPSM* 252.

⁶⁹ For details on different case studies speaking to some of the PPP pitfalls, see Lobina, Kishimoto and Petitjean *Here to Stay* 7-10; Lobina and Hall *Water Privatisation and Remunicipalisation*. Also see Hall, Lobina and Terhorst 2013 *International Review of Applied Economics*; Azpiazu and Castro "Aguas Públicas".

⁷⁰ Jomo *et al Public-Private Partnerships* 16.

⁷¹ Yescombe *Public-Private Partnerships* 20.

PPP process results in additional costs that, if not appropriately managed, can erode some of the potential economic benefits of this model.⁷² Fourthly, since PPP arrangements frequently involve long-term commitment and substantial capital sums on the part of the public sector, they are effectively binding successive administrations into arrangements they may not wish to be part of.⁷³ In any case, companies will demand compensation for the termination of a contract as much as they would for an unfavourable revision. Fifthly, even though the existence of unequal power in a PPP arrangement does not necessarily imply that all partners should have equal power, it is argued that such a condition can quickly become an instrument of oppression wherein a strong partner gains at the expense of the weaker ones.⁷⁴ However, by addressing the factors for success mentioned earlier, local authorities may circumvent or at least ameliorate the effect of these shortfalls.

4 Law and policy basis for sustainable cities in Zimbabwe

SDG 11 seems to reflect in many ways the trajectory that Zimbabwe had set out to pursue before Agenda 2030 came into effect in 2016. Firstly, the National Objectives set out in the Constitution could be seen as one of the sources of the mandate of urban local authorities to pursue sustainable development at the local level.⁷⁵ The relevant National Objectives are generally modelled on social, economic, cultural and environmental interests such as housing,⁷⁶ development planning (spatial and strategic);⁷⁷ cultural practices;⁷⁸ public spaces;⁷⁹ and public participation⁸⁰ that local sustainability should seek to advance. Even though they are merely formulated as policy guidelines and are generally not justiciable, the National Objectives can be employed as one of the mechanisms to flesh out the human rights duties of urban local authorities.⁸¹

⁷² Yescombe *Public-Private Partnerships* 26; Cheng "Public-Private Partnerships for Critical Infrastructure Development" 50; UN-HABITAT *Public-Private Partnerships in Housing and Urban Development* 4.

⁷³ Hood and Mcgarvey 2002 *Policy Studies* 23.

⁷⁴ Coulson 2005 *IJPSM* 156.

⁷⁵ Chapter 2 of the Constitution. For further discussion on the National Objectives see Moyo "Zimbabwe's Constitutional Values" 41-46.

⁷⁶ Section 28 of the Constitution.

⁷⁷ Section 13 of the Constitution.

⁷⁸ Sections 16, 33 of the Constitution.

⁷⁹ Sections 20(1)(d), 21 and 32 of the Constitution.

⁸⁰ Sections 13(2), 17-22 of the Constitution.

⁸¹ Sections 8(2) and 46(1)(d) of the Constitution.

Secondly, urban local authorities' combined responsibility to realise fundamental human rights as enunciated in the Declaration of Rights could also be considered another source in which they can pursue sustainable development at the local level.⁸² The potential of socio-economic and environmental rights, especially to the pursuit of local sustainability, is further enhanced by the fact that they specifically require all tiers of government to take reasonable legislative and other measures to realise them.⁸³ For the present purposes, urban local authorities have a joint responsibility to respect, protect, promote and fulfil the right to shelter,⁸⁴ the right to food and water,⁸⁵ the right to a clean and healthy environment,⁸⁶ and the right to language and culture⁸⁷ by adopting and implementing a wide range of legal, administrative, financial, educational and social measures, for example.⁸⁸ These measures must be balanced, flexible and time-bound, prioritising grave situations or situations of risk.⁸⁹ However, in cases where a local authority fails to adopt legislative and other measures that seek to ensure the realisation of social, economic, cultural, and environmental rights, there are also procedural rights that could assist aggrieved and interested persons (or either) to compel the local authority to comply with its human rights obligations. These rights include the right to public participation,⁹⁰ access to information,⁹¹ the right to administrative justice,⁹² and the right to access to justice.⁹³

Thirdly, even though the Constitution does not dedicate specific sections to local authorities' mandates, it envisages that local authorities' legislative and executive functions will be assigned by the national government through the

⁸² Chapter 4 of the Constitution.

⁸³ See sections 73(2), 75(4), 76(4) and 77(b) of the Constitution. For details on this obligation, see Moyo "Socio-Economic Rights under the 2013 Zimbabwean Constitution"; Currie and De Waal *Bill of Rights Handbook* 574-580; Liebenberg *Socio-Economic Rights* 131-227; CESCR *General Comment No 3: The Nature of State Parties Obligations* (1990).

⁸⁴ Section 81(1)(e) of the Constitution.

⁸⁵ Section 77 of the Constitution.

⁸⁶ Section 73 of the Constitution.

⁸⁷ Section 63 of the Constitution.

⁸⁸ See paras 3-5 and 7 of CESCR *General Comment No 3: The Nature of State Parties Obligations* (1990). Also see ACHPR *Principles and Guidelines* 10, 13.

⁸⁹ CESCR *Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant* UN Doc E/C.12/2007/1 (2007) para 8.

⁹⁰ Section 67(1) of the Constitution.

⁹¹ Section 62 of the Constitution. This right is governed in terms of the *Access to Information and Protection of Privacy Act* [Chapter 10:27] 2002 (AIPPA).

⁹² Section 68 of the Constitution. This right is governed in terms of the *Administrative Justice Act* [Chapter 10:28] of 2004 (AJA).

⁹³ Sections 69(3) and 85 of the Constitution.

Parliament.⁹⁴ Although the existing local government framework legislation,⁹⁵ sector-specific legislation, and policies are yet to be aligned with the current Constitution, they create responsibilities for and afford authority to urban local authorities to address socio-environmental issues. These include housing,⁹⁶ water,⁹⁷ environmental management,⁹⁸ public transport systems,⁹⁹ cultural diversity,¹⁰⁰ development planning,¹⁰¹ public spaces, DRR and DRM,¹⁰² and climate-change mitigation and adaptation.¹⁰³ Therefore, inter-sectoral efforts are critical to addressing such complex, inter-related, cross-cutting issues, whose determinants or solutions often lie outside the direct control of one sector. The potential of the frameworks and sector-specific legislation and policies to boost the pursuance of local sustainability is reinforced by the fact that they also flesh out the socio-economic, environmental and cultural rights entrenched in chapter 4 of the Constitution. Since the ability of urban local authorities to realise their mandate depends on the utilisation of different instruments, the following section focuses on the theoretical perspectives on PPPs to establish the normative basis against which to measure the potential of this instrument in the pursuit of urban sustainability in Zimbabwe.

⁹⁴ Sections 276(1) and 276(2)(b) of the Constitution.

⁹⁵ *Urban Councils Act* [Chapter 29:15] 1996 (UCA); *Regional Town and Country Planning Act* [Chapter 29:12] 1976. See also *Environmental Management Act* [Chapter 20:27] 2002 (EMA).

⁹⁶ See ss 16, 23, 36, 43, 63, 88 as well as the First and Second Schedules to the *Housing Standards Control Act* [Chapter 29:08] 1972. Also see Principles 33 and 63 of the *National Housing Policy* (2012) (NHP).

⁹⁷ See ss 12(1), 64(1), 67 and 183 of the *Water Act* [Chapter 20:24] 1998. Also see *Zimbabwe National Water Policy* (2012) 16, 17.

⁹⁸ *Waste and Solid Waste Disposal Regulations*, SI 6 of 2007; *Environmental Management (Environmental Impact Assessments and Ecosystems Protection) Regulations*, SI 7 of 2007; *National Environmental Policy and Strategies* (2009).

⁹⁹ See ss 4 and 39-52 of the *Roads Act* [Chapter 13:18] 2001; *National Transport Policy* (2012).

¹⁰⁰ Section 8 of the *Environmental Management Prohibition Access to Genetic Resources and Indigenous Genetic Resource-Based Knowledge Regulations*, SI 61 of 2009 (hereinafter referred to as SI 61 of 2009). Also see the *National Museums and Monuments Act* [Chapter 25:11] 1972.

¹⁰¹ Section 9(1) of the *Civil Protection Act* [Chapter 10:06] 1989; s 4(a) of the *Roads Act* [Chapter 13:18] 2001; s 12(1) of the *Water Act* [Chapter 20:24] 1998; *National Climate Change Response Strategy* (2014) (NCCRS) 145; *National Climate Policy* (2016) (NCP) 24; NHP para 62.

¹⁰² See, for example, ss 11(1), 11(5), 18(2)(c) of the *Civil Protection Act* [Chapter 10:06] 1989; also see the NCP 9-20.

¹⁰³ See the NCCRS 100-130. Also see the NCP 9-20.

5 Public and private partnerships in Zimbabwe

This part of the article begins by tracing the development of Zimbabwe's legal and policy framework on PPPs. This is followed by an assessment of the potential of PPPs to contribute to the realisation of the mandate of urban local authorities in Zimbabwe and the SDG 11 targets. The last part focuses on the legal status and implications of PPPs in Zimbabwe.

5.1 Legal and policy framework for PPPs in Zimbabwe

A sound regulatory framework is one of the variables upon which the success of a PPP depends.¹⁰⁴ Following the trend of various international law instruments¹⁰⁵ and the need to address the continued dilapidation in existing public infrastructure, Zimbabwe recently established a legal framework for PPPs. In this context the Constitution underscores the need to adopt a sound regulatory environment upon which the success of a PPP (also known as "joint ventures" in the Zimbabwean context) depends. Section 315(1) of the Constitution envisages the adoption of an Act of Parliament to "prescribe procedures for the procurement of goods and services by the State and all institutions and agencies of government at every level, so that procurement is effected in a manner that is transparent, fair, honest, cost-effective and competitive".¹⁰⁶ The envisaged piece of legislation is expected to provide for the negotiation and performance, among other things, of joint-venture contracts and contracts for the construction and operation of infrastructure and facilities.¹⁰⁷ *The Joint Ventures Act*¹⁰⁸ (JVA) was enacted to give effect to these constitutional provisions. This piece of legislation seeks to regulate the agreement between the public and private sectors in so far as it relates to "the design, construction, development, operation or delivery of a new infrastructure, asset, facility or service or the rehabilitation, modernisation, expansion, operation, delivery or management of an existing infrastructure, asset, facility or service".¹⁰⁹ JVA defines a joint venture as:

an agreement between a contracting authority and a counterparty, approved under this Act, in terms of which-

¹⁰⁴ See part 3 for further details on this requirement.

¹⁰⁵ See for example ch 30 of *Agenda 21*; *Istanbul Declaration 20*; and paras 41, 45 and 67 of *Agenda 2030*. Also see SDG 17.

¹⁰⁶ Section 315(1) of the Constitution.

¹⁰⁷ Section 315(2) of the Constitution.

¹⁰⁸ *Joint Ventures Act* [Chapter 22:22] 2015 (JVA) came into force in 2016 following the passage of Statutory Instrument (SI) 53 of 2016 to operationalise it.

¹⁰⁹ Section 2 of JVA.

- (a) the counterparty undertakes to perform a contracting authority's function on behalf of the contracting authority for a specified period; and
- (b) the counterparty receives a benefit for performing the function by way of-
 - (i) compensation from funds appropriated by Parliament; or
 - (ii) funds obtained by way of loan by the contracting authority; or
 - (iii) user levies; or
 - (iv) revenue generated from the project; or
 - (v) any combination of the foregoing; and
- (c) the counterparty is liable for the risks arising from the performance of its function; and
- (d) public resources may be transferred or made available to the counterparty; and includes any of the types of agreement specified in Part II of the Schedule.

In addition to this definition, whose meaning and implications will become clear below, section 10 of the JVA prescribes in detail the requirements that PPP agreements should meet. These include identifying the responsibilities of the contracting public and private sectors; specifying the relevant financial terms; ensuring the management of the performance of the private sector; providing for the return of the assets, if any, to the public sector (the local authority), at the termination or expiry of the agreement, in such a manner as may be provided for in the agreement. The JVA also provides for the sharing of risks between the public sector and the private sector, providing for its duration, providing for the respective shareholdings of the public sector and the private sector, and providing payment to the private sector performing the contracted function or services.¹¹⁰ A joint venture agreement may also contain such other provisions as may be necessary or expedient or as may be prescribed.¹¹¹ As noted above, these prescriptions must be understood against the backdrop that the JVA acknowledges the various forms that PPP agreements may take.¹¹²

¹¹⁰ See s 10(2) of JVA.

¹¹¹ See s 10(2) of JVA.

¹¹² Part II of JVA acknowledges the following models: Build and Transfer (BT); Build, Lease and Transfer (BLT); Build-and-Transfer Scheme (BT); Build-Operate-and-Transfer Scheme (BOT); Build, Own and Operate (BOO); Build-own-operate-and-transfer (BOOT); Contract, Add and Operate (CAO); Develop, Operate and Transfer (DOT); Rehabilitate-operate and transfer (ROT); Rehabilitate, Own and Operate; Lease, develop and operate (LDO); Build, Own, Operate and Maintain Contract; Lease Management Contract; Management Contract; Service Contract; Supply,

In addition to the above, section 8 of the JVA further prescribes steps that should be adhered to by a local authority intending to enter into a PPP. Firstly, the local authority is obliged to identify, appraise and develop a project to be implemented. Secondly, the local authority is mandated to invite expressions of interest in a project where appropriate utilising a public advertisement in the print, electronic or broadcast media or in any other transparent manner (not necessary if a counterpart/private sector partner has already been identified). Thirdly, the local authority is required to undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under an agreement.¹¹³ Fourthly, the local authority must submit the feasibility study to the Joint Venture Unit¹¹⁴ for its approval. Fifthly, where the Unit approves the feasibility study, the local authority is required to prepare a request for the project proposal and a model agreement based on the approved feasibility study.¹¹⁵ The Unit then refers the project proposal to the Joint Venture Committee,¹¹⁶ which is expected to make recommendations to the Cabinet for a determination.¹¹⁷ Finally, the Cabinet can approve or reject the proposal entirely or provisionally.¹¹⁸ The supervisory powers of the Joint Venture Unit, Joint Venture Committee, and the Cabinet concerning the approval or otherwise of PPPs need to be exercised with restraint so as not to compromise the self-governing powers of urban local authorities entrenched in section 276(1) of the Constitution.

Even though the JVA acknowledges the various forms that PPP agreements may take, it is regrettable to note that this Act treats local authorities, an elected tier of government, just like agencies of the national government.¹¹⁹ It is submitted that a blanket approach to PPPs cannot be prescribed to all public entities, including local authorities,¹²⁰ due to the diversity of their legal status, objects, and developmental duties. However, it may be argued that

Operate and Transfer; and Contract for Services. See Part II of JVA. For details on these different acronyms, see Grimsey and Lewis 2005 *Accounting Forum* 349-351; Savas *Privatisation and Public-Private Partnerships* 246; Grimsey and Lewis 2002 *International Journal of Project Management* 109.

¹¹³ For details on feasibility studies in this context, see s 9 of JVA.

¹¹⁴ According to s 3 of JVA, this Unit shall be a department of the Ministry of Finance and Economic Development and shall be under the control and supervision of the Secretary.

¹¹⁵ Section 8(1) of JVA.

¹¹⁶ See ss 4 and 6 of JVA.

¹¹⁷ Section 8(2) of JVA.

¹¹⁸ Sections 8(3) and 13 of JVA.

¹¹⁹ In terms of s 1 of JVA a "contracting authority" means any ministry, government department or public entity which has entered into or is considering entering into a joint venture agreement.

¹²⁰ Section 1 of JVA.

compliance with the rules and procedures set out in the JVA potentially constrains the ability of other public entities to take initiatives that may adversely affect local authorities that have limited capacity to comply with the Act. When the steps prescribed in section 8 of the JVA are considered in the light of the compulsory requirements of PPP agreements delineated in section 10 of the same piece of legislation, it becomes evident that this Act is consistent with the generic benchmarks of PPPs as distilled from the available literature.¹²¹

5.1.1 Feasibility studies

The scholarly literature reviewed suggests that PPPs need to be preceded by a rigorous study to demonstrate their suitability and viability (or either).¹²² This requirement is at the core of Zimbabwe's legal and policy framework. In the initial planning stages of a project, the JVA¹²³ underscores the need for an urban local authority council to identify and appraise a project to be secured through PPP arrangements. Where the council considers that a project may be implemented through a PPP arrangement, it is expected to undertake or cause to be undertaken a feasibility study.¹²⁴ In terms of section 9(2)(a) of the JVA, a feasibility study should demonstrate the advantages of implementing the project through a PPP arrangement. Apart from this, a feasibility study should describe in specific terms the nature of the local authority's functions, the specific functions to be considered in relation to the project, and the expected inputs and deliverables;¹²⁵ the extent to which a private sector partner can lawfully and effectively perform those functions in terms of an agreement;¹²⁶ and the most appropriate form in which the local authority may implement the project under an agreement.¹²⁷ In addition, the feasibility study should demonstrate that the project will be affordable to the local authority, provide value for money (VFM), and optimally transfer technical, operational or financial risk to the counterparty.¹²⁸ It is further expected that a feasibility study should explain the capacity of the local authority to effectively enforce the agreement, including its ability to monitor and regulate the implementation of the project

¹²¹ See part 3 above for details.

¹²² Meidute and Paliulis 2011 *International Journal of Strategic Property Management* 265.

¹²³ Section 8(1)(a) of JVA.

¹²⁴ Sections 8(1)(c), 9 of JVA.

¹²⁵ Section 9(2)(b)(i) of JVA.

¹²⁶ Section 9(2)(b)(ii) of JVA.

¹²⁷ Section 9(2)(b)(iii) of JVA.

¹²⁸ Section 9(2)(c)(iii) of JVA.

and the performance of the private sector partner in terms of the agreement.¹²⁹

It is through a feasibility study that the council of an urban local authority can realise that there cannot be a one-size-fits-all approach to building PPPs, because the sectors generally considered by the JVA as the most appropriate for PPP arrangements such as housing, water supply, treatment and distribution systems, solid waste management works, urban transport systems, roads and bridges, renewable energy works, and information and communication technologies (ICT)¹³⁰ have peculiar characteristics and requirements for success. The JVA, in line with the available literature, clearly outlines different models of PPPs through which different projects can be procured.¹³¹ Each model is associated with different responsibilities and benefits. In the light of the fact that the SDG 11 targets seek to address multi-dimensional and cross-cutting issues affecting urban local authorities, it should not be assumed that all the targets can be realised through PPP arrangements. It goes without saying that where project viability or suitability is appropriately measured and implemented, PPP arrangements could potentially offer greater VFM public infrastructure or services, especially over long periods, than traditional procurement.¹³²

5.1.2 Procurement process

Once the scope of a PPP project has been clearly outlined and most of the decisions about the vision of the local authority have been agreed upon with the participation of the relevant stakeholders, the council of an urban local authority is obliged to invite interested private sector entities to a transparent and competitive procurement process utilising a public advertisement in the print, electronic or broadcast media or in any other transparent manner.¹³³ This obligation makes it possible for citizens to access information¹³⁴ held by urban local authorities, which can be used by CSOs, for example, to check corruption and other bad administrative practices that could undermine the potential of PPPs in delivering the infrastructure and services essential for the realisation of the SDG 11 targets.

¹²⁹ Section 9(2)(d) of JVA.

¹³⁰ See Part I of JVA.

¹³¹ For details on different PPP models in the context of Zimbabwe, see Part II of JVA.

¹³² Chigwata and Ziswa 2018 *HJRL* 310; Grimsey and Lewis 2005 *Accounting Forum* 346.

¹³³ Section 8(1)(b) of JVA.

¹³⁴ Section 62 read with s 194(1)(h) of the Constitution.

Conversely, section 12 of the JVA provides for "unsolicited bids or expressions of interest" when the private sector sees an investment opportunity and wishes to engage a local authority. Any unsolicited bid or expression of interest in a joint venture by the private sector must be referred by the local authority concerned to the Joint Ventures Unit before final consideration by the Joint Venture Committee.¹³⁵ The significance of this section lies in the fact that, in some cases, a local authority might not be ready even to contemplate embarking on certain projects due to constrained fiscal space to conduct feasibility studies as envisaged in terms of section 8 of the JVA. For this reason, one could say that the mantra of the New Dispensation that "Zimbabwe is Open for Business"¹³⁶ is aligned to the JVA.

5.1.3 Output specifications

As noted above,¹³⁷ a PPP contract should be based on clearly delineated goals, targets and indicators against which to measure its performance.¹³⁸ In line with this requirement, the JVA requires a PPP agreement to specify the expected deliverables¹³⁹ (the goals and targets) in sectors such as housing; water supply, treatment and distribution systems; solid waste management works; urban transport systems; roads and bridges; renewable energy works; and ICT projects.¹⁴⁰ In addition, population size, infrastructure, services offered, economic status and social development, which are considered as the variables in terms of which Zimbabwean urban local authorities are hierarchically classified,¹⁴¹ must influence the focus and content of each PPP's goals and targets. Equally important, the precise contour and scope of what is expected of urban local authorities in this regard is dictated by several items of framework legislation¹⁴² and sectoral legislation applicable to all tiers of government,¹⁴³ which enables urban local authorities to address the multi-dimensional and cross-cutting urban challenges encapsulated in the SDG 11 targets.

¹³⁵ Section 12 of JVA.

¹³⁶ Republic of Zimbabwe *Transitional Stabilisation Programme and Reforms Agenda* para 3.

¹³⁷ See part 3 above.

¹³⁸ Gentry and Plummer "Focusing the Scope and Content of Partnership Arrangements" 137.

¹³⁹ Section 9(2)(b)(i) of JVA.

¹⁴⁰ See Part I of JVA.

¹⁴¹ See s 4 read together with s 14 and the First Schedule of the UCA.

¹⁴² Such as UCA and EMA.

¹⁴³ See for example the *Roads Act* [Chapter 13:18] 2001; the *Water Act* [Chapter 20:24] 1998; and the *Civil Protection Act* [Chapter 10:06] 1989.

Furthermore, by integrating sector-specific needs that speak to the socio-economic, environmental and cultural rights entitlements in the PPP agreements, urban local authorities potentially improve the relevance of PPPs to the SDG 11 targets in their areas of jurisdiction. In the light of the fact that the national government has not explicitly set minimum standards in specific sectors (such as the quantity of water a person is entitled to access per day for domestic use), progressive urban local authorities may, at their initiative, draw from international standards to address different urban challenges in pursuit of the ideals of SDG 11. This is permitted in terms of section 46 of the Constitution, which requires the consideration of international law when interpreting rights in the Declaration of Rights, including the right to water, for example.

5.1.4 Risk-sharing

There is a general agreement that PPPs' contracts should be crafted in such a way that risk is shared between a local authority and the private sector partner, allocating particular project risk to the partner best able to manage that risk cost-effectively.¹⁴⁴ In line with this requirement, the JVA underlines the need to transfer risks to achieve VFM.¹⁴⁵ It requires that technical, operational or financial risk be optimally transferred to the private sector.¹⁴⁶ On the other hand, urban local authorities in Zimbabwe need to deal, as far as possible, with the factors that have been affecting the potential of PPPs, such as corruption and lack of expertise and capacity within the local government, among others.¹⁴⁷ In addition, a local authority may undertake a PPP agreement to ensure that there is a regulatory system that, among other things, provides for the arbitration of commercial disputes, that respects contracts, and that facilitates the legitimate recovery of costs and profit proportional to the risks undertaken.

Furthermore, a local authority may also undertake to enforce administrative and judicial sanctions against non-compliant third parties, such as landlords or potentially pollutant industries, and must provide means of redress for the abuse of victims by third parties. Moreover, both elected and appointed local leaders need to commit to taking a public stance in support of partnership initiatives through making a strong policy statement to all stakeholders and

¹⁴⁴ See part 3 above for details.

¹⁴⁵ Section 9(2)(c)(ii) of JVA.

¹⁴⁶ Section 8(1)(b) of JVA.

¹⁴⁷ Zinyama and Nhema 2015 *Public Policy and Administration Research* 43; City of Harare *Results-Based Strategic Plan* 22; Norton Town Council 2019 http://nortontowncouncil.co.zw/norton/assets/images/documents/Norton_Town_Council_strategic_plan_2019.pdf 6, 7.

expressing a clear will that the necessary parts of their procurement system can support a PPP arrangement.¹⁴⁸ Finally, as urban local authorities take on these risks in the local environment, they need to co-operate with other tiers of government, CSOs and other relevant stakeholders to ensure that they have sufficient long-term stability to attract investors and enable the flourishing of PPPs.

5.1.5 *Supervision of local authorities*

The national government supervision of urban local authorities was identified above as another strategy through which the success of a PPP can be enhanced.¹⁴⁹ In Zimbabwe's multilevel system of government,¹⁵⁰ the Constitution envisions that supervision is guided by the objectives of devolution¹⁵¹ and the principle of cooperation.¹⁵² Nonetheless, the *Urban Councils Act* (UCA), which is the framework local government legislation, was enacted under the Lancaster House Constitution and it enables excessive central government interference in local affairs. For example, the national government, through the Minister of Local Government, Public Works and National Housing (hereinafter referred to as the Minister), can intervene in local affairs by suspending, reversing, altering or rescinding resolutions, decisions or actions of a local authority if it is of the view that they are not in the public interest or in the interest of the inhabitants of the council area.¹⁵³ If, for example, a PPP arrangement unreasonably constrains the ability of other neighbouring local authorities to pursue sustainable development in their areas of jurisdiction, indeed, the Minister should have the power to reverse such action. However, the fact that the Minister's discretion can be exercised based merely on his views and not on the existence of verifiable facts makes it difficult for any local authority to challenge their discretion. In this context, section 314 of the UCA adversely affects a local authority's "right to govern" conferred in terms of section 276 of the Constitution and it needs to be reformed in line with the new Constitution. Apart from the UCA, the JVA specifically makes provision for the supervision of PPP arrangements, as it prohibits implementing any PPP arrangement unless approved by the Cabinet¹⁵⁴ - according to the recommendations of the Joint Venture Committee established in terms of

¹⁴⁸ Heymans and Plummer "Understanding the Operating Context of Municipal Partnerships" 235; Yescombe *Public-Private Partnerships* 27.

¹⁴⁹ See part 3 above.

¹⁵⁰ See ss 3(2)(i), 5 and ch 14 of the Constitution.

¹⁵¹ Section 264(2) of Constitution.

¹⁵² Section 265(d) of Constitution.

¹⁵³ Section 314 of UCA.

¹⁵⁴ Sections 8(2), 8(3) and 13(1) of JVA.

section 4 of the same Act.¹⁵⁵ The process of getting PPP arrangements approved can be highly bureaucratic and potentially causes delays in the procurement of critical goods and services envisaged in terms of SDG 11. It is submitted that to remedy the uncertainty posed by bureaucratic processes, the role of the Cabinet in approving all PPPs initiatives, including those initiated by local government, needs to be reformed and assigned to the Minister of Local Government, Public Works and National Housing.

In addition, supervision in terms of the JVA entails urban local authorities' adhering to policy guidelines formulated by the Minister of Finance with the assistance of the Joint Venture Committee.¹⁵⁶ This obligation is reinforced by the requirement that the Joint Venture Committee must ensure that all PPP projects are consistent with the national priorities specified in the relevant policy on PPPs.¹⁵⁷ The supervisory powers given to the Cabinet to approve or disapprove of PPPs need to be exercised with restraint so as not to compromise the self-governing powers of urban local authorities enshrined in section 276(1) of the Constitution.

5.1.6 Implementation and monitoring

Once a PPP agreement has been concluded, the council of an urban local authority must place oversight and monitoring (or either) mechanisms to continuously check the extent to which a project responds to the needs of the targeted groups in their areas of jurisdiction.¹⁵⁸ In the context of Zimbabwe, once a PPP agreement has been approved by the Cabinet,¹⁵⁹ it will be ready for implementation. The law requires a roadmap for implementation to be put in place at the planning stage. This is because the JVA requires a feasibility study to explain the capacity of a local authority to enforce a PPP arrangement effectively; this extends to the ability to monitor and regulate project implementation and the performance of the private sector in terms of such an arrangement.¹⁶⁰ To effectively monitor projects implemented through PPP arrangements,¹⁶¹ the council of an urban local authority may seek the assistance of the Joint Ventures Unit, which is also empowered in terms of the JVA to undertake the monitoring and evaluation

¹⁵⁵ Section 6 of JVA enlists the functions of the Joint Venture Committee which is constituted of different Ministers and other stakeholders.

¹⁵⁶ Section 6(a) of JVA.

¹⁵⁷ Section 6(b) of JVA.

¹⁵⁸ See part 3 above. Also see Heymans "Establishing Sound Partnership Principles" 219.

¹⁵⁹ Sections 8(3) and 13 of JVA.

¹⁶⁰ Sections 91(2)(b)(ii), 9(2)(d) of JVA.

¹⁶¹ Sections 8(1)(a) and 9(2)(d) of JVA.

of PPPs.¹⁶² In addition, the council may also engage CSOs¹⁶³ on behalf of the public, as they offer a valuable instrument to help with the monitoring of procurement, tariff-setting and implementation processes.¹⁶⁴ To this extent, a feedback system needs to be established to enable local communities to provide the necessary information to the authorities to take action.¹⁶⁵ Where the implementation of the PPP is not contributing towards achieving defined goals, it should be revised accordingly to cater to the changing circumstances.

5.2 Legal status of PPPs

Once the council of an urban local authority concludes a PPP contract according to the JVA, it becomes a local governance instrument in terms of which a local authority procures goods and services in its area of jurisdiction for the realisation of SDG 11. Such a contract is governed by and construed in accordance with the laws of Zimbabwe¹⁶⁶ and is legally binding on both the contracting parties. The JVA underscores the need for the unambiguous assignment of responsibilities and competence areas between the public and private partners to pursue a common endeavour.¹⁶⁷ This means that both the local authority and the private entity must consistently conduct their affairs within the guidelines of their PPP agreement. For example, when a local authority has specified project outputs or deliverables in a PPP agreement,¹⁶⁸ it needs to put in place practical ways to monitor¹⁶⁹ project implementation and the performance of the private sector in terms of the agreement.¹⁷⁰ Concerning PPP arrangements in the water sector, for example, the private sector partner involved in water supply and sanitation is accountable to consumers and the local authority for the services it provides to water users and may be subject to prosecution resulting in penalties and restitution in instances of malpractice.¹⁷¹ Action can also be

¹⁶² Section 3(2)(h) of JVA.

¹⁶³ Section 7 (c) of the Constitution; Republic of Zimbabwe *SDG Progress Report* 14.

¹⁶⁴ Heymans "Establishing Sound Partnership Principles" 215.

¹⁶⁵ Carley 2006 *IJPSM* 252; Heymans "Establishing Sound Partnership Principles" 221.

¹⁶⁶ See s 10(3) of JVA.

¹⁶⁷ See ss 2(2) and 10(2)(a) of JVA. Also see Jamali 2004 *IJPSM* 416.

¹⁶⁸ See s 9(2)(b)(i) of JVA; Yescombe *Public-Private Partnerships* 23; Plummer, Slater and Heymans "Supporting Organisational Development" 292.

¹⁶⁹ Sections 9(2)(b)(ii); 9(2)(d) of JVA.

¹⁷⁰ Sections 9(2)(b)(ii); 9(2)(d) of JVA; Heymans "Establishing Sound Partnership Principles" 219.

¹⁷¹ *Zimbabwe National Water Policy* (2012) 19.

taken to enforce legal requirements in the PPP contract through arbitration in terms of the *Arbitration Act*¹⁷² or rules defined in the agreement.¹⁷³

Since PPP arrangements frequently involve long-term commitment,¹⁷⁴ they are effectively binding on successive administrations.¹⁷⁵ What this means to Zimbabwe in the light of its 5-year election cycle is that a newly elected municipal council would still be a party to a PPP agreement concluded by its predecessor. As such, there is a need for a smooth transition to avoid disruptions in the provision of goods and services and ensure that local communities have sustainable access to local basic services as envisaged in terms of SDG 11.

5.3 Potential of PPPs in the realisation of SDG 11 in Zimbabwe

To transition cities to a sustainable future, urban local authorities in Zimbabwe, as elsewhere, are expected to pursue the targets encapsulated in SDG 11. Therefore, it seems some synergies can be drawn between the rights-based constitutional duties of local authorities in Zimbabwe and their express mandate in national legislation and policies on the one hand and the SDG 11 targets on the other hand. To this end, it can be observed that SDG 11.1, which seeks to ensure access for all to adequate housing by 2030, resonates with the constitutional rights-based duties¹⁷⁶ and the concrete duties emanating from the legislation and policies of local authorities in Zimbabwe to provide access to shelter.¹⁷⁷ In addition, the provision of basic services, which is one of the ideals of a sustainable city,¹⁷⁸ speaks to the rights-based duties¹⁷⁹ and the specific legislative and policy duties of local authorities in Zimbabwe to ensure access to safe and clean potable water.¹⁸⁰ Moreover, the provision of sustainable transport systems by 2030,¹⁸¹ which is one of the benchmarks of local sustainability, is stressed as one of the legislative duties of local authorities in Zimbabwe to establish, acquire, construct, maintain and carry on a public transport

¹⁷² Arbitration Act [Chapter 7:15] 1996.

¹⁷³ See s 10(4) of JVA.

¹⁷⁴ Greve *Contracting for Public Services* 102.

¹⁷⁵ See part 5.2 for details. Also see Hood and Mcgarvey 2002 *Policy Studies* 23.

¹⁷⁶ Section 81(1)(f) read together with ss 28 and 74 of the Constitution.

¹⁷⁷ See ss 16, 23, 36, 43, 63, 88 as well as the First and Second Schedules to the *Housing Standards Control Act* [Chapter 29:08] 1972. Also see Principles 33 and 63 of the NHP.

¹⁷⁸ See part 2 for details on SDG 11.1.

¹⁷⁹ See s 77 of the Constitution.

¹⁸⁰ See ss 12(1), 64(1), 67 and 183 of the *Water Act* [Chapter 20:24] 1998. Also see *Zimbabwe National Water Policy* (2012) 16, 17.

¹⁸¹ See part 2 for details on SDG 11.2.

system.¹⁸² Besides the above, the preservation and safeguarding of natural and cultural heritage by 2030 as envisioned in terms of SDG 11.4 relates to the rights-based duty of local authorities in Zimbabwe to ensure the realisation of everyone's right to participate in the cultural life of their choice.¹⁸³ This relationship is reinforced by obligations emanating from national legislation such as the UCA¹⁸⁴ and the *National Museums and Monuments Act*.

Furthermore, greening public spaces by 2030 as envisaged in terms of SDG 11.7 is pronounced as one of the constitutional responsibilities of local authorities in Zimbabwe to provide sporting and recreational facilities for all people.¹⁸⁵ This link is cemented by the UCA, which compels local authorities to provide, operate, and regulate public spaces such as youth centres, sidewalks, public libraries, museums, theatres, public halls, and facilities for recreation.¹⁸⁶ Apart from the above, the ideal of SDG 11.3 to ensure "inclusive" and "participatory" human settlement planning is in harmony with the rights-based duties¹⁸⁷ as well as the explicit legislative obligations of local authorities in Zimbabwe to promote public participation in decision-making processes.¹⁸⁸

Moreover, it can be observed that SDG 11.6, which seeks to reduce cities' adverse per capita environmental impact by 2030, is clearly in line with the constitutional rights-based duties of local authorities in Zimbabwe to realise peoples' environmental rights.¹⁸⁹ The precise contours and content of what is expected of local authorities in this regard is dictated by several legislative and policy documents.¹⁹⁰ The obligations of local authorities concerning environmental management principles,¹⁹¹ environmental impact assessments,¹⁹² environmental quality standards for water pollution, air quality, waste management, noise, and littering have positive implications for climate change mitigation at the local level in Zimbabwe envisaged in

¹⁸² See s 4 of the *Roads Act* [Chapter 13:18] 2001. Other relevant sections include ss 39-42, 48, 50-52, 57 of the *Roads Act*.

¹⁸³ Section 63(b) of the Constitution.

¹⁸⁴ Paragraphs 38 and 53 of the Second Schedule to the UCA.

¹⁸⁵ Sections 20(1)(d); 21 and 32 of the Constitution.

¹⁸⁶ Paragraph 3(1) of the Second Schedule to UCA.

¹⁸⁷ Sections 62 and 67(1) of the Constitution.

¹⁸⁸ The right to administrative justice is governed in terms of the AJA. The right to access to information is governed in terms of the AIPPA.

¹⁸⁹ See s 73 of the Constitution.

¹⁹⁰ *Waste and Solid Waste Disposal Regulations*, SI 6 of 2007; *Environmental Management (Environmental Impact Assessments and Ecosystems Protection) Regulations*, SI 7 of 2007; *National Environmental Policy and Strategies* (2009).

¹⁹¹ See s 4 of EMA.

¹⁹² Sections 97-99 of EMA.

terms of SDG 11.b.¹⁹³ Compliance with the said obligations contributes to the resilience of cities as envisaged in terms of SDG 11.5 and 11.b.¹⁹⁴ Ultimately, by doing what they are expected to do in terms of existing law and policy framework, local authorities would be contributing to the transition of cities to a sustainable future as expected in terms of SDG 11.

PPPs constitute one of the instruments by which urban local authorities can realise their obligations emanating from the law and policy framework discussed above. Some urban local authorities in Zimbabwe were using this instrument even before the adoption of the JVA.¹⁹⁵ However, even after adopting the JVA, urban local authorities in Zimbabwe are generally afflicted by several plagues despite the potential of PPPs to address a wide range of urban problems and ensure that urban dwellers have sustainable access to infrastructure and basic services. For example, current estimates put the housing backlog at 1.25 million units, indicating that the supply of adequate housing has fallen short of demand.¹⁹⁶ Furthermore, most urban sewer reticulation systems can no longer sustain the rapid expansion in urban settlements, and population, resulting in persistent sewer system overflows, aggravated by recurrent water shortages.

¹⁹³ For further details on local authorities' obligations related to climate change mitigation and adaptation, see the NCP 4-20; NCCRS 100-130. Other policies include *National Energy Policy* (2012).

¹⁹⁴ For further obligations of local authorities to promote the resilience of cities, see, for example, ss 11(1), 11(5), 18(2)(c) of the *Civil Protection Act* [Chapter 10:06] 1989. Also see the NCP 9-20.

¹⁹⁵ For example, in dealing with its housing backlog, which was estimated at 9297 housing units, the Masvingo City Council through a PPP arrangement managed to deliver about 2000 units in 2017. The same PPP arrangement also saw the development of road networks and the infrastructure for water and sanitation services. See Chitongo 2017 *European Journal of Social Sciences*. Apart from this, Ruwa Town Council has over the years brought about significant development through PPPs. While Wards 1, 2 and 3 in Ruwa Town Council are public sector housing schemes, Wards 5, 6, 7, 8 and 9 are private sector initiatives. Although water remains a major problem in Ruwa Town Council, PPP arrangement have enabled the town to exploit the water resources of the dam in its immediate vicinity, supplementing the City of Harare water supplies. See Chirisa *Housing and Stewardship in Peri-Urban Settlements* 136-137. In the same vein, the City of Harare has been partnering with private companies in delivering housing. These include the Central African Building Society in Budiriro, which constructed 5000 houses, the Infrastructure Development Bank of Zimbabwe, which constructed 72 housing units, Shelter Zimbabwe, which serviced between 6000 and 7000 stands, Pearl Properties, which completed a flat block with 132 units, and Glaudina, which serviced 1351 stands. City of Harare *Department of Housing and Community Services Annual Report* 8-10.

¹⁹⁶ Republic of Zimbabwe *Transitional Stabilisation Programme and Reforms Agenda* para 1461; Republic of Zimbabwe 2015 https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf 41.

Moreover, the absence of a reliable water supply has often forced communities to rely on drawing water from boreholes and wells under environments of high dependence on pit latrines and septic tanks which contaminate such water supplies.¹⁹⁷ In addition, city streets are characterised by traffic congestion and air pollution emitted from second-hand vehicles imported from abroad.¹⁹⁸ Marginal progress towards addressing a wide range of urban challenges through PPPs can be attributed *inter alia* to inbuilt gaps in relevant pieces of legislation, corruption, political interference, and a lack of expertise and capacity at the local government level.¹⁹⁹

First, while the significance of supervision cannot be overemphasised, it should be reiterated that excessive national government interference in local government affairs as permitted in terms of section 314 of the UCA may compromise the ability of councils of urban local authorities to make resolutions and decisions directed towards the formulation and implementation of PPPs to address local problems. As such, the provisions of this section need to be reformed in ways that strike a balance between the need to enhance national supervision and local autonomy because the extent to which urban local authorities have a certain level of independence in their areas of jurisdiction has consequences for the utility of PPPs for the pursuance of the SDG 11 targets. It was noted above that to promote swift decision-making in the procurement processes; there is a need to assign the role of the Cabinet in approving all PPP arrangements initiated by local government to the Minister of Local Government, Public Works and National Housing.

Second, regarding corruption, Zimbabwe is ranked 158 out of 180 according to the 2020 Corruption Perception Index.²⁰⁰ Research shows that corruption continues to hinder PPP uptake through underhand deals and the inflation of prices at the local level.²⁰¹ Concerning land, which is critical to the

¹⁹⁷ Republic of Zimbabwe *Transitional Stabilisation Programme and Reforms Agenda* para 1703; Republic of Zimbabwe 2015 https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf 41.

¹⁹⁸ Republic of Zimbabwe 2015 https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf 10.

¹⁹⁹ See for example, paras 444 of (Republic of Zimbabwe 2020 http://www.veritaszim.net/sites/veritas_d/files/NDS.pdf) (the *National Development Strategy*); Zinyama and Nhema 2015 *Public Policy and Administration Research* 43; City of Harare *Results Based Strategic Plan* 22; Norton Town Council 2019 http://nortontowncouncil.co.zw/norton/assets/images/documents/Norton_Town_Council_strategic_plan_2019.pdf 6, 7.

²⁰⁰ Paragraph 863 of the *National Development Strategy*.

²⁰¹ Mutandwa and Zinyama 2015 *Journal of Public Administration and Governance* 127.

pursuance of most of the SDG 11 targets, it is reported that Gweru City Council was unable to provide layout plans for the stands sold during the 2018 financial year.²⁰² However, there is hope that things could get better if the principles in section 265 of the Constitution are implemented. In terms of this section, read together with section 9 of the Constitution, local authorities and other tiers of government are expected to ensure good governance by being effective, transparent, accountable, and institutionally coherent.²⁰³

Third, a volatile political environment resulting from intra- and inter-political factors has also negatively affected the uptake of PPPs in Zimbabwe.²⁰⁴ In this context, political contestation between the Zimbabwe African National Unity-Patriotic Front (ZANU-PF, the ruling party) and the Movement for Democratic Change - Alliance (MDC-A, the biggest opposition party) is said to have severely undermined the implementation of different local governance instruments such as PPPs in urban local authorities.²⁰⁵ In addition, stakeholders at the local level often succumb to the politics of patronage at the expense of urban development.²⁰⁶

Fourth, there is an acute shortage of well-structured investment-ready infrastructure rehabilitation and improvement opportunities because of capacity constraints.²⁰⁷ In the same vein, capacity limitations in managing the whole PPP project cycle, including weak implementation capacity, restrain some local governments' ability to use PPPs optimally.²⁰⁸ As part of their supervisory duties, senior tiers of government should support urban local authorities through capacity development workshops, which seek to ensure that municipalities periodically get training for the effective discharge of their mandates.²⁰⁹ Where necessary, local governments should be "provided with the required human resources and Information and

Office of the Auditor-General 2019 https://www.veritaszim.net/sites/veritas_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf v.

²⁰³ Section 265(1)(a) of the Constitution.

²⁰⁴ Mutandwa and Zinyama 2015 *Journal of Public Administration and Governance* 132.

²⁰⁵ See generally Muchadenyika and Williams 2017 *Cities* 33-40.

²⁰⁶ See generally Muchadenyika and Williams 2017 *Cities* 33-40.

²⁰⁷ Mugano 2020 <http://www.aeds-africa.com/media/blog/unpacking-why-ppps-failed-zimbabwe>.

²⁰⁸ Paragraph 444 of the *National Development Strategy*.

²⁰⁹ Article 16(3) of the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014) (hereinafter referred to as the *African Charter on Decentralisation*).

Communications Technology (ICT) to effectively and efficiently discharge their responsibilities".²¹⁰

Despite the challenges that urban local authorities in Zimbabwe are faced with, the generic features discussed in 5.1 promote the relevance and potential of PPPs as a local governance instrument in the transition of urban local authorities to a sustainable future. This potential can be attributed to the fact that the JVA lays down rules and procedures for feasibility studies on projects that can be implemented under a PPP agreement.²¹¹ In the same vein, emphasis should be put on the rules and procedures emanating from the JVA to develop goals, objectives, and strategies.²¹² In addition, the potential of PPPs can also be ascribed to the fact that the JVA underscores the need to ensure risk-sharing between the public sector and the private sector²¹³ and lays down rules and procedures for the distribution of responsibilities between a local authority and the private sector.²¹⁴ Furthermore, the significance of the rules and procedures directed towards promoting public participation,²¹⁵ promoting access to justice,²¹⁶ promoting local government supervision and monitoring and evaluation²¹⁷ cannot be overemphasised.

If conducted in terms of the said rules and procedures, PPPs in Zimbabwe could potentially facilitate access to private financing, enabling urban local authorities to spread the cost of significant investments over a more extended period, rather than requiring it to be charged immediately against the public budget.²¹⁸ In addition, PPPs might free up funding for some urban infrastructure projects.²¹⁹ Moreover, PPPs potentially offer greater VFM than traditional procurement²²⁰ and might facilitate the transfer of risks between the local authority and the private sectors partners, allocating particular project risk to the partner best able to manage that risk cost-

²¹⁰ Article 16(2) of the *African Charter on Decentralisation*.

²¹¹ Sections 8(1)(c), 9 of JVA.

²¹² Section 9(2)(b)(i) of JVA.

²¹³ Section 9(2)(c)(ii) of JVA.

²¹⁴ See sections 2(2) and 10(2)(a) of JVA.

²¹⁵ Section 67(1) of the Constitution. Also see the right to administrative justice entrenched in s 68 of the Constitution and governed in terms of the AJA.

²¹⁶ Sections 69(3) and 85 of the Constitution.

²¹⁷ Sections 3(2)(h), 9(2)(b)(ii), 9(2)(d) of JVA.

²¹⁸ Yescombe *Public-Private Partnerships* 17, 68; Zinyama and Nhema 2015 *Public Policy and Administration Research* 39; UN-HABITAT *Public-Private Partnerships in Housing and Urban Development* 4; also see Part II of JVA.

²¹⁹ Yescombe *Public-Private Partnerships* 17.

²²⁰ Grimsey and Lewis 2005 *Accounting Forum* 346, UN-HABITAT *Public-Private Partnerships in Housing and Urban Development* 3; also see ss 3(2)(a)(ii), 9(2)(c)(ii) of JVA.

effectively.²²¹ Furthermore, PPPs might potentially enhance public management since the private sector has more significant expertise in managing complex projects and delivering them on time and on budget and maintaining the related services after that.²²²

6 Conclusion

To deal with the sustainability challenges continuously posed by rapid urbanisation, the international community fortified the role of urban local authorities as co-global actors in pursuance of the global sustainable development agenda by dedicating SDG 11 of Agenda 2030 to cities. However, even though sustainable infrastructure investment is indispensable for the realisation of the targets of SDG 11, there is a widening gap between the need for the said investment and urban local authorities' fiscal space in Zimbabwe. Due to the private sector's perceived financial muscle, this article questioned the extent to which the legal and policy frameworks in Zimbabwe empower urban local authorities to utilise PPPs to realise SDG 11.

Urban local authorities in Zimbabwe are expected in terms of SDG 11 to pursue a set of ten outcome-oriented targets and process-oriented targets. As they transcend the social, economic, environmental, and cultural dimensions of a sustainable city, these targets should not be considered an inflexible template for local sustainability because development contexts and urban realities across the world differ significantly. Even though their mandate is at best scattered, it has been established that urban local authorities in Zimbabwe have, for the most part, an enabling law and policy framework for the pursuance of SDG 11. This is because Zimbabwe's constitutional, legislative and policy frameworks already impose duties on urban local authorities to implement various constitutional rights, National Objectives and concrete duties in legislation that largely reflect the vision and areas of focus in SDG 11. The bulk of relevant legislation and policies was adopted under the old Constitution and is yet to be aligned with the new Constitution.

Although the rules and procedures laid down in the JVA increase the relevance and potential of PPPs, it has been established that PPP initiatives

²²¹ Plummer and Slater "Enhancing Human Resources" 264; Yescombe *Public-Private Partnerships* 18; Sarmiento 2010 *OECD Journal on Budgeting* 4; Hodge 2004 *Australian Journal of Public Administration* 39; UN-HABITAT *Public-Private Partnerships in Housing and Urban Development* 3; also see ss 3(2)(a)(iii), 9(2)(c)(iii) and 10(2)(e) of JVA.

²²² Yescombe *Public-Private Partnerships* 22.

have seen urban local authorities in Zimbabwe making only marginal progress towards addressing urban problems and ensuring that urban dwellers have access to the infrastructure and basic services critical for the realisation of SDG 11. Such marginal progress can be attributed partly to corruption, political interference and a lack of expertise and capacity on the local government level. Apart from this, the ability of local governments to optimally use PPPs is further constrained by the inbuilt gaps in the JVA. These gaps have allowed a blanket approach to PPPs to be prescribed to all public entities, including local authorities, despite the diversity of their legal status, objects, and developmental duties. Therefore, there is a need to reform this legislation and dedicate a certain portion to local authorities considering their legal status and their constitutional and legislative mandate. Besides this, it has also been observed that while the supervision of urban local authorities is critical, the excessive central government interference in local affairs permitted in terms of the UCA needs to be reformed as it compromises the self-governing powers of urban local authorities enshrined in the Constitution. In the same vein, it has been submitted that the supervisory powers given to the Cabinet concerning PPP approval need to be reformed and assigned to the Minister of Local Government, Public Works and National Housing to remedy potential delays in the procurement of critical goods and services as envisaged in terms of SDG 11.

Apart from the above, by integrating sector-specific needs that speak to the socio-economic, environmental and cultural rights entitlements in PPPs, this article has established that urban local authorities may improve the relevance of PPPs to the transition of cities to a sustainable future as envisaged in SDG 11. It is agreed that the crafting of PPP goals and targets needs to be informed *inter alia* by national minimum standards in various sectors. However, it has been established that where such standards are non-existent or are inadequate to meet the actual needs of impoverished urban dwellers, progressive urban local authorities need to take the initiative to go beyond these prescriptions to address the different urban challenges in pursuit of local sustainability as envisioned in terms of SDG 11.

Bibliography

Literature

ACHPR *Principles and Guidelines*

African Commission on Human and People's Rights *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights*

in the African Charter on Human and People's Rights (The Commission Banjul 2010)

Azpiazu and Castro "Aguas Públicas"

Azpiazu D and Castro JE "Aguas Públicas: Buenos Aires in Muddled Waters" in Pigeon M *et al* (eds) *Remunicipalisation: Putting Water Back into Public Hands* (Transnational Institute Amsterdam 2012) 58-73

Beatley and Newman "Biophilic Cities"

Beatley T and Newman P "Biophilic Cities are Sustainable, Resilient Cities" in Etingoff K (ed) *Sustainable Cities: Urban Planning Challenges and Policy* (Apple Academic Press Oakville 2017) 3-28

Benedict and McMahon *Green Infrastructure*

Benedict M and McMahon T *Green Infrastructure: Smart Conservation for the 21st Century* (Sprawl Watch Clearinghouse Washington DC 2000)

Carley 2006 *IJPSM*

Carley M "Partnership and Statutory Local Governance in a Devolved Scotland" 2006 *IJPSM* 250-260

Chan, Seow and Chang "Resiliency"

Chan NW, Seow TW and Chang CK "Resiliency" in Chan NW *et al* (eds) *Sustainable Urban Development Textbook* (Water Watch Penang 2016) 58-62

Cheng "Public-Private Partnerships for Critical Infrastructure Development"

Cheng EWL "Public-Private Partnerships for Critical Infrastructure Development: The Hong Kong Experience" in Clark RM and Hakim S (eds) *Competitive Government: Public Private Partnerships* (Springer Nature Cham 2019) 207-232

Chigwata and Ziswa 2018 *HJRL*

Chigwata TC and Ziswa M "Entrenching Decentralisation in Africa: A Review of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development" 2018 *HJRL* 295-316

Childers *et al* 2014 *Landscape and Urban Planning*

Childers DL *et al* "Advancing Urban Sustainability Theory and Action: Challenges and Opportunities" 2014 *Landscape and Urban Planning* 320-328

Chirisa *Housing and Stewardship in Peri-Urban Settlements*
Chirisa I *Housing and Stewardship in Peri-Urban Settlements in Zimbabwe: A Case Study of Ruwa and Epworth* (DPhil-thesis University of Zimbabwe 2013)

Chitongo 2017 *European Journal of Social Sciences*
Chitongo L "Public Private Partnerships and Housing Provision in Zimbabwe: The Case of Runyararo South West Housing Scheme (Mbudzi Masvingo)" 2017 *European Journal of Social Sciences* 17-29

City of Harare *Department of Housing and Community Services Annual Report*
City of Harare *Department of Housing and Community Services Annual Report* (The City Harare 2011)

City of Harare *Results Based Strategic Plan*
City of Harare *Results Based Strategic Plan 2017 – 2020* (The City Harare 2017)

Coulson 2005 *IJPSM*
Coulson A "A Plague on All Your Partnerships: Theory and Practice in Regeneration" 2005 *IJPSM* 151-163

Currie and De Waal *Bill of Rights Handbook*
Currie I and De Waal J *The Bill of Rights Handbook* 6th ed (Juta Cape Town 2013)

Doust 2014 *Journal of Traffic and Transport Engineering*
Doust K "Toward a Typology of Sustainability for Cities" 2014 *Journal of Traffic and Transport Engineering* 151-182

Du Plessis 2017 *LDD*
Du Plessis A "The Readiness of South African Law and Policy for the Global Pursuit of the Sustainable City" 2017 *LDD* 239-262

Eiraibe, AL-Malki and Furlan 2015 *American Journal of Sociological Research*
Eiraibe N, AL-Malki AA and Furlan R "Exploration of Sustainable Urban Qualities of Al Sadd Area in Doha" 2015 *American Journal of Sociological Research* 101-118

European Commission *Building a Green Infrastructure for Europe*
European Commission *Building a Green Infrastructure for Europe*
(Publications Office of the European Union Luxembourg 2013)

Gardner 2019 *Biophilic Cities Journal*

Gardner J "The Inclusive Healthy Places Framework: A New Tool for Social Resilience and Public Infrastructure" 2019 *Biophilic Cities Journal* 10-15

Gentry and Plummer "Focusing the Scope and Content of Partnership Arrangements"

Gentry B and Plummer J "Focusing the Scope and Content of Partnership Arrangements" in Plummer J (ed) *Focusing Partnerships: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (Earthscan London 2002) 125-177

Greve *Contracting for Public Services*

Greve C *Contracting for Public Services* (Routledge London 2008)

Grimsey and Lewis 2002 *International Journal of Project Management*

Grimsey D and Lewis MK "Evaluating the Risks of Public Private Partnerships for Infrastructure Projects" 2002 *International Journal of Project Management* 107-118

Grimsey and Lewis 2005 *Accounting Forum*

Grimsey D and Lewis MK "Are Public Private Partnerships Value for Money? Evaluating Alternative Approaches and Comparing Academic and Practitioner Views" 2005 *Accounting Forum* 345-378

Hall, Lobina and Terhorst 2013 *International Review of Applied Economics*

Hall D, Lobina E and Terhorst P "Re-Municipalisation in the Early 21st Century: Water in France and Energy in Germany" 2013 *International Review of Applied Economics* 193-214

Heymans "Establishing Sound Partnership Principles"

Heymans C "Establishing Sound Partnership Principles" in Plummer J (ed) *Focusing Partnerships: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (Earthscan London 2002) 213-230

Heymans and Plummer "Understanding the Operating Context of Municipal Partnerships"

Heymans C and Plummer J "Understanding the Operating Context of Municipal Partnerships" in Plummer J (ed) *Focusing Partnerships: A*

Sourcebook for Municipal Capacity Building in Public-Private Partnerships (Earthscan London 2002) 233-257

Hodge 2004 *Australian Journal of Public Administration*

Hodge GA "The Risky Business of Public-Private Partnerships" 2004 *Australian Journal of Public Administration* 37-49

Hood and McGarvey 2002 *Policy Studies*

Hood J and McGarvey N "Managing the Risks of Public-Private Partnerships in Scottish Local Government" 2002 *Policy Studies* 21-35

Intergovernmental Panel on Climate Change *Climate Change*

Intergovernmental Panel on Climate Change *Climate Change: Impacts, Adaptation and Vulnerability - Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press Cambridge 2007)

Jabareen 2006 *JPER*

Jabareen JR "Sustainable Urban Forms: Their Typologies, Models and Concepts" 2006 *JPER* 38-52

Jamali 2004 *IJPSM*

Jamali D "Success and Failure Mechanisms of Public Private Partnerships (PPPs) in Developing Countries: Insights from the Lebanese Context" 2004 *IJPSM* 414-430

Jomo *et al Public-Private Partnerships*

Jomo KS *et al Public-Private Partnerships and the 2030 Agenda* (UNDESA New York 2016)

Joss *Sustainable Cities*

Joss S *Sustainable Cities: Governing for Urban Innovation* (Palgrave Macmillian New York 2015)

Kanuri *et al Getting Started with the SDGs in Cities*

Kanuri C *et al Getting Started with the SDGs in Cities: A Guide for Stakeholders* (Sustainable Development Solutions Network New York 2016)

Kasioumi 2011 *Berkeley Planning Journal*

Kasioumi E "Sustainable Urbanism: Vision and Planning Process Through an Examination of Two Model Neighborhood Developments" 2011 *Berkeley Planning Journal* 91-94

Koch and Krellenberg 2018 *International Journal of Geo-Information*
Koch F and Krellenberg K "How to Contextualize SDG 11? Looking at Indicators for Sustainable Urban Development in Germany" 2018 *International Journal of Geo-Information* 464-480

Liebenberg *Socio-Economic Rights*
Liebenberg S *Socio-Economic Rights: Adjudicating Under a Transformative Constitution* (Juta Cape Town 2010)

Lobina and Hall *Water Privatisation and Remunicipalisation*
Lobina E and Hall D *Water Privatisation and Remunicipalisation: International Lessons for Jakarta* (Public Service International Research Unit London 2013)

Lobina, Kishimoto and Petitjean *Here to Stay*
Lobina E, Kishimoto S and Petitjean O *Here to Stay: Water Remunicipalisation as a Global Trend* (Public Service International Research Unit London 2014)

Meidute and Paliulis 2011 *International Journal of Strategic Property Management*
Meidute I and Paliulis NK "Feasibility Study of Public-Private Partnership" 2011 *International Journal of Strategic Property Management* 257-274

Melville 2017 *Review of Market Integration*
Melville D "Public-Private Partnerships in Developing Countries: Shifting Focus to Domestic-Foreign Partnerships" 2017 *Review of Market Integration* 152-169

Moteff and Parofmak *Critical Infrastructure and Key Assets*
Moteff J and Parofmak P *Critical Infrastructure and Key Assets: Definition and Identification* (Library of Congress Washington DC 2004)

Moyo "Zimbabwe's Constitutional Values"
Moyo A "Zimbabwe's Constitutional Values, National Objectives and the Declaration of Rights" in Moyo A (eds) *Selected Aspects of the 2013 Zimbabwean Constitution and the Declaration of Rights* (Raoul Wallenberg Institute of Human Rights and Humanitarian Law Lund 2019) 32-70

Moyo "Socio-Economic Rights under the 2013 Zimbabwean Constitution"
Moyo K "Socio-Economic Rights under the 2013 Zimbabwean Constitution" in Moyo A (eds) *Selected Aspects of the 2013 Zimbabwean Constitution*

and the Declaration of Rights (Raoul Wallenberg Institute of Human Rights and Humanitarian Law Lund 2019) 163-207

Muchadenyika and Williams 2017 *Cities*

Muchadenyika D and Williams JJ "Politics and the Practice of Planning: The Case of Zimbabwean Cities" 2017 *Cities* 33-40

Mutandwa and Zinyama 2015 *Journal of Public Administration and Governance*

Mutandwa H and Zinyama T "An Analysis of the Potential Use of Public-Private Partnerships in Water Infrastructural Development in Zimbabwe: The Case of Harare City Council" 2015 *Journal of Public Administration and Governance* 110-136

Nel, Du Plessis and Du Plessis "Instrumentation for Local Environmental Governance"

Nel J, Du Plessis W and Du Plessis A "Instrumentation for Local Environmental Governance" in Du Plessis A (ed) *Environmental Law and Local Government in South Africa* (Juta Cape Town 2015) 91-166

Osei-Kyei and Chan 2015 *International Journal of Project Management*

Osei-Kyei R and Chan APC "Review of Studies on the Critical Success Factors for Public-Private Partnership (PPP) Projects from 1990 to 2013" 2015 *International Journal of Project Management* 1-12

Paik "Public-Private Partnerships for the Development of Port IT Infrastructure"

Paik S "Public-Private Partnerships for the Development of Port IT Infrastructure" in Clark RM and Hakim S (eds) *Competitive Government: Public Private Partnerships* (Springer Nature Cham 2019) 193-206

Pizarro "North American and European Sustainable Urbanism"

Pizarro RE "North American and European Sustainable Urbanism: Toward a Theoretical Model for Sustainable Urban Design" in Archer K and Bezdecy K (eds) *Handbook of Cities and the Environment* (Edward Elgar Cheltenham 2016) 87-118

Plummer and Slater "Enhancing Human Resources"

Plummer J and Slater R "Enhancing Human Resources" in Plummer J (ed) *Focusing Partnerships: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (Earthscan London 2002) 259-279

Plummer, Slater and Heymans "Supporting Organisational Development"
Plummer J, Slater R and Heymans C "Supporting Organisational Development" in Plummer J (ed) *Focusing Partnerships: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (Earthscan London 2002) 281-307

Republic of Zimbabwe *SDG Progress Report*
Republic of Zimbabwe *Sustainable Development Goals Progress Report* (The Government Harare 2017)

Republic of Zimbabwe *Transitional Stabilisation Programme and Reforms Agenda*

Republic of Zimbabwe Ministry of Finance and Economic Development *Transitional Stabilisation Programme and Reforms Agenda, October 2018-December 2020: Towards a Prosperous and Empowered Upper Middle-Income Society by 2030* (Ministry of Finance and Economic Development Harare 2018)

Sahely, Kennedy and Adams 2005 *Canadian Journal of Civil Engineering*
Sahely H, Kennedy A and Adams B "Developing Sustainability Criteria for Urban Infrastructure Systems" 2005 *Canadian Journal of Civil Engineering* 72-85

Sarmiento 2010 *OECD Journal on Budgeting*

Sarmiento JM "Do Public-Private Partnerships Create Value for Money for the Public Sector? The Portuguese Experience" 2010 *OECD Journal on Budgeting* 1-27

Satterthwaite "Introduction"

Satterthwaite D "Introduction" in Bartlett S (ed) *Basic Services for All in an Urbanising World: Third Global Report of United Cities and Local Governments on Local Democracy and Decentralization Gold III* (UCLG Spain 2007) 13-22

Savas *Privatisation and Public-Private Partnerships*

Savas ES *Privatisation and Public-Private Partnerships* (Chatham House New York 2000)

Steele, Hussey and Dovers 2017 *Urban Policy and Research*

Steele W, Hussey K and Dovers S "What's Critical about Critical Infrastructure?" 2017 *Urban Policy and Research* 74-86

United Cities and Local Governments *Basic Services for All*
United Cities and Local Governments *Basic Services for All in an Urbanizing World: Third Global Report on Local Democracy and Decentralization* (Routledge London 2013)

UN *Agenda 21*
United Nations *Agenda 21* (United Nations New York 1992)

UN *SDG Progress Report*
United Nations *SDG Progress Report* (UN New York 2019)

UN *Transforming Our World*
United Nations *Transforming Our World: The 2030 Agenda for Sustainable Development* (United Nations New York 2015)

UN *World Population Prospects*
United Nations *The World Population Prospects* (UN New York 2019)

UN *World's Cities in 2016*
United Nations *The World's Cities in 2016* (UN New York 2016)

UN-HABITAT *Habitat III Issue Paper 1*
UN-HABITAT *Habitat III Issue Paper 1: Inclusive Cities* (UN-Habitat Quito 2015)

UN-HABITAT *Habitat III Issue Paper 3*
UN-HABITAT *Habitat III Issue Paper 3: Safer Cities* (UN-Habitat Quito 2015)

UN-HABITAT *Habitat III Issue Paper 7*
UN-HABITAT *Habitat III Issue Paper 7: Municipal Finance* (UN-Habitat Quito 2015)

UN-HABITAT *Habitat III Issue Paper 18*
UN-HABITAT *Habitat III Issue Paper 18: Urban Infrastructure and Basic Services, Including Energy* (UN-Habitat Quito 2015)

UN-HABITAT *Habitat III Issue Paper 19*
UN-HABITAT *Habitat III Issue Paper 19: Transport and Mobility* (UN-Habitat Quito 2015)

UN-HABITAT *Public-Private Partnerships in Housing and Urban Development*

UN-Habitat *Public-Private Partnerships in Housing and Urban Development* (UN-Habitat Nairobi 2011)

UN-HABITAT *SDG Goal 11*

UN-HABITAT *SDG Goal 11: Monitoring Framework, a Guide to Assist National and Local Governments* (UN-HABITAT Nairobi 2016)

UN-HABITAT *World Cities Report 2016*

UN-HABITAT *World Cities Report 2016: Urbanization and Development - Emerging Futures* (UN-HABITAT Nairobi 2016)

Voituriez *et al* "Financing the 2030 Agenda for Sustainable Development"

Voituriez T *et al* "Financing the 2030 Agenda for Sustainable Development" in Kanie N and Biermann F (eds) *Governing through Goals: Sustainable Development Goals as Governance Innovation* (Massachusetts Institute of Technology London 2017) 259-273

Yescombe *Public-Private Partnerships*

Yescombe ER *Public-Private Partnerships: Principles of Policy and Finance* (Elsevier London 2007)

Zerunyan "Well-Designed Public Private Partnerships"

Zerunyan FV "Well-Designed Public Private Partnerships" in Clark RM and Hakim S (eds) *Competitive Government: Public Private Partnerships* (Springer Nature Cham 2019) 17-35

Zinyama and Nhema 2015 *Public Policy and Administration Research*

Zinyama T and Nhema AG "Public-Private Partnerships: Critical Review and Lessons for Zimbabwe" 2015 *Public Policy and Administration Research* 39-44

Legislation

Access to Information and Protection of Privacy Act [Chapter 10:27] 2002

Administrative Justice Act [Chapter 10:28] 2004

Arbitration Act [Chapter 7:15] 1996

Civil Protection Act [Chapter 10:06] 1989

Constitution of the Republic of Zimbabwe, Amendment (No 19) 1979 (Lancaster House Constitution)

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

Environmental Management Act [Chapter 20:27] 2002

Environmental Management (Environmental Impact Assessments and Ecosystems Protection) Regulations, SI 7 of 2007

Environmental Management Prohibition Access to Genetic Resources and Indigenous Genetic Resource-Based Knowledge Regulations, SI 61 of 2009

Housing Standards Control Act [Chapter 29:08] 1972

Joint Ventures Act [Chapter 22:22] 2015

National Museums and Monuments Act [Chapter 25:11] 1972

Regional Town and Country Planning Act [Chapter 29:12] 1976

Roads Act [Chapter 13:18] 2001

Urban Councils Act [Chapter 29:15] 1996

Waste and Solid Waste Disposal Regulations, SI 6 of 2007

Water Act [Chapter 20:24] 1998

International instruments

African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (2014)

African Union Agenda 2063: First Ten-Year Implementation Plan 2014-2023 (2015)

CESCR General Comment No 3: The Nature of State Parties Obligations (1990)

CESCR Statement: An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant UN Doc E/C.12/2007/1 (2007)

Habitat III New Urban Agenda UN Doc A/RES/71/256 (2016)

International Guidelines on Decentralisation and Access to Basic Services for All (2009)

Istanbul Declaration on Human Settlements UN Doc A/CONF165/14 (1996)

Government publications

National Climate Change Response Strategy (2014)

National Climate Policy (2016)

National Energy Policy (2012)

National Environmental Policy and Strategies (2009)

National Housing Policy (2012)

National Transport Policy (2012)

Zimbabwe National Water Policy (2012)

Internet sources

Mugano 2020 <http://www.aeds-africa.com/media/blog/unpacking-why-ppps-failed-zimbabwe>

Mugano G 2020 *Unpacking Why PPPs Failed Zimbabwe* <http://www.aeds-africa.com/media/blog/unpacking-why-ppps-failed-zimbabwe> accessed 7 April 2021

Norton Town Council 2019 http://nortontowncouncil.co.zw/norton/assets/images/documents/Norton_Town_Council_strategic_plan_2019.pdf

Norton Town Council 2019 *Strategic Plan 2019-2023* http://nortontowncouncil.co.zw/norton/assets/images/documents/Norton_Town_Council_strategic_plan_2019.pdf accessed 23 July 2021

Office of the Auditor-General 2019 https://www.veritaszim.net/sites/veritas_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf

Office of the Auditor-General 2019 *Report for the Financial Year Ended December 31, 2018 on Local Authorities* https://www.veritaszim.net/sites/veritas_d/files/AGs%20Report%20on%20Local%20Authorities%202018.pdf accessed 23 July 2021

Republic of Zimbabwe 2015 https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf
 Republic of Zimbabwe 2015 *National Report for Habitat III*
https://habitat3.org/wp-content/uploads/Republic-of-Zimbabwe-Country-Report-Habitat_2.pdf accessed 23 July 2021

Republic of Zimbabwe 2020 http://www.veritaszim.net/sites/veritas_d/files/NDS.pdf

Republic of Zimbabwe 2020 *National Development Strategy 1, January 2021 – December 2025* http://www.veritaszim.net/sites/veritas_d/files/NDS.pdf 23 July 2021

List of Abbreviations

ACHPR	African Commission on Human and People's Rights
AIPPA	Access to Information and Protection of Privacy Act [Chapter 10:27] 2002
AJA	Administrative Justice Act [Chapter 10:28] 2004
CSOs	civil society organisations
DRM	disaster risk management
DRR	disaster risk reduction
EMA	Environmental Management Act [Chapter 20:27] 2002
HJRL	Hague Journal on the Rule of Law
ICT	information and communication technologies
IJPSM	International Journal of Public Sector Management
JPER	Journal of Planning Education and Research
JVA	Joint Ventures Act [Chapter 22:22] 2015
LDD	Law, Democracy and Development
MDC-A	Movement for Democratic Change - Alliance
NCP	National Climate Policy (2016)
NCCRS	National Climate Change Response Strategy (2014)
NHP	National Housing Policy (2012)
NUA	New Urban Agenda
OECD	Organisation for Economic Co-operation and Development
PPP	Public-Private Partnership
SDG	Sustainable Development Goal
SI	Statutory Instrument
TSP	Transitional Stabilisation Programme and Reforms Agenda
UCA	Urban Councils Act [Chapter 29.15] 1996

UN	United Nations
VFM	Value for Money
ZANU-PF	Zimbabwe African National Unity-Patriotic Front