

An Analysis of the Governance and Accountability Issues in the Local Governments (Amendment) Bill, 2014

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1. Introduction

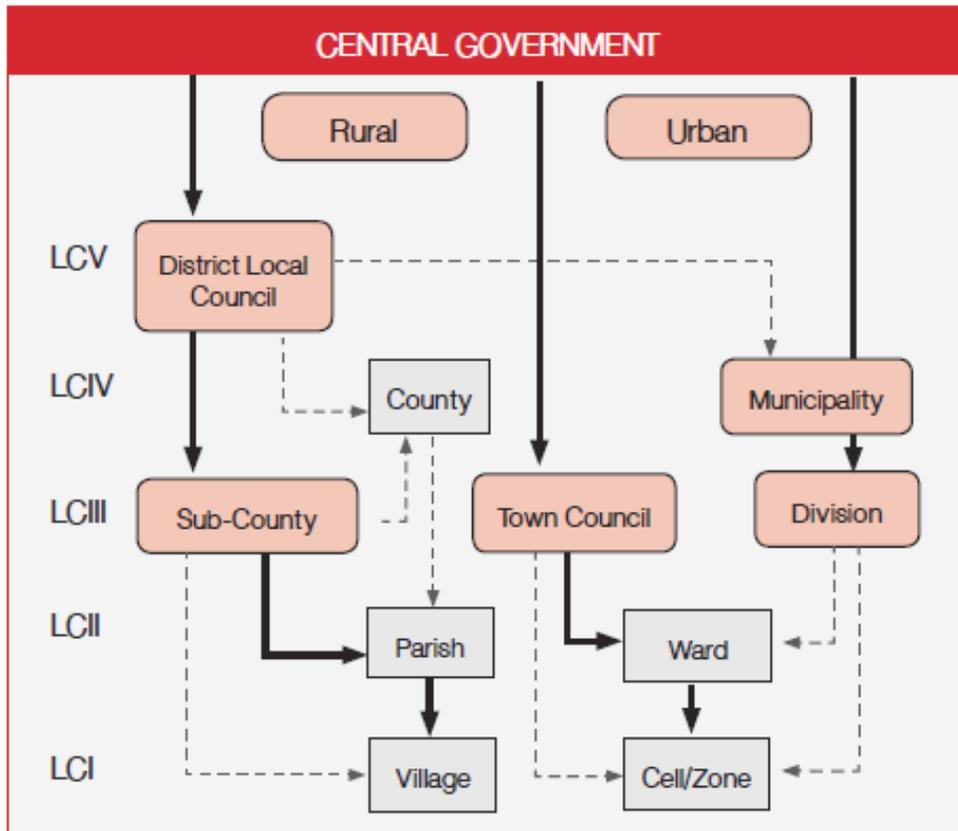
In June 2015, Parliament of Uganda approved the Local Governments (Amendment) Bill 2014 that specifically provides for a revised election procedure for administrative unit councils and committees and likewise harmonizes the Local Government processes to the recently enacted Public Finance Management Act. This paper highlights and examines the proposed amendments by undertaking a logical exposition of the ramifications of the proposals to the extent to which they guarantee improvements in both downward and upward accountability through representative democracy. The analysis of the proposals is contextualized within the decentralized framework and in particular delivery of services and local citizens' participation in their own governance. The paper finally highlights the gaps in the amendments and sets out some recommendations for further improvement of the local government system as a whole.

2. The Local Government System in Uganda

Local governance in Uganda is traced to the country's colonial legacy and post-independence era with the first clearly laid down citizen centered policy framework emerging in the late 1980s in the format of Resistance Councils as 'part of a process of national reform and reconstruction'(Devas & Grant, 2003, p. 307). The current Local Government legal form and institutional structure is fully provided for under the 1995 Constitution and made operational by the Local Government Act (1997). The Local Government System was adopted to ensure 'good governance'(Government of Uganda, 1997, p. 3) and 'create opportunities for participatory decision-making at all levels'(Devas & Grant, 2003, p. 312).

The 1995 Constitution together with the Local Government Act 1997 'converted the existing system of Resistance Councils (RCs) with their origins in the civil war period, to a hierarchical structure of Local Councils' (Francis & James, 2003, p. 327) from village to the district level.

Figure 1: Current structure of local governments in Uganda



Source: ACODE Local Government Score Card 2013

The proposed amendments under the new laws have wide-ranging implications regarding the interrelationships between the different tiers and this will be explored in detail in section 3 below.

2.1. Service Delivery under the Local Government System

The Local Government system highlighted in figure 1 above operationalizes the decentralization policy through devolution, which is gradually being aligned to delegation of central administrative and political power. The core thrust of the local governance system in Uganda is to improve efficiency of services delivered at the local levels and increase the quantity and quality of citizen participation in public affairs at the community levels.

Through the Local Government legal and institutional framework, the central government has transferred 6 distinct powers as shown in Table 1 below;

Power	Elements
Planning	Formulating Local Government Development Plans
Financial	Revenue Collection, Budgeting, Accounting and Reporting
Administrative	Recruitment and Management of Staffs
Political	Electing Local Leaders
Legislative	Making bye-laws and Ordinances

Local Governance in Uganda has been ‘held to be one of the most far-reaching local government reform programs in the developing world’ (Francis & James, 2003, p. 325). The system ‘provides for strong local governments with both downward and upward accountability mechanisms. The system espouses local governments where decisions are taken at the lowest possible level and provides for citizen engagement in their own governance’ (Tamale L and Kitamirike E, 2015, p. 1). The LG system operates through distinct autonomous administrative units with the village or cell as the lowest unit and the district as the highest hierarchical apex center.

Over the last 3 decades, the number of local government units has exponentially grown with 111 fully operational districts as of 2015 from a mere 36 in 1986. Many of these districts have emerged as citizens’ requests—intended for self-political aggrandizement to elect their leaders at the local level as well as enhance their collective participation in national planning and budgeting processes. Despite the positivity of having many administrative units, public discourses have continued on the viability of resultant local governments and in particular the implications to public administration financing and sustainability.

A review of the Local Governments legal and institutional framework reveals a series of gaps that indeed impede the full realization of decentralized governance. While Local Governments (Tiers I, III and V) are bodies corporate with powers to plan, raise local revenues and utilize accordingly, these powers are actually limiting due to conditioned funding, limited local revenues and progressive recentralization which is shifting the structure from devolution to delegation contrary to the original aspirations of the Decentralisation Statute of 1993. The current major gap in local governance is the absence of duly elected lower administrative councils due to failure by government to allocate resources to the electoral exercise and the implication of the Constitutional judgement that illegalized section 160 of the Local Government Act (Government of Uganda, 2007, p. 32). ‘Uganda last conducted LCI and LC II elections in 2001, which means that the mandate of these leaders expired in 2006; since then, the country has not held any elections for these positions’ (Kaheru, 2013).

Since 2001, the failure by Government to conduct elections and fill up the positions at the Local Government level I continue to undermine the very essence of local citizen participation and security. Without updated lower council administrations, decentralisation and indeed local governance is propagating a government in which representatives elected at higher levels are making decisions on behalf of citizens which squarely defeats the notion of local governance and downward accountability.

In the underlying sections, I explore in detail the implications of the 2014 Local Government Amendment legislation on the downward and upward accountability, the practicality and

implications of the amendments in light of the country's electoral politics and electoral law regime.

3. The Local Government Amendment Bill 2014

In 2014, Government tabled the Local Government Amendment Bill 2014, bringing to total, 10 pieces of amendments to the original LGA (1997). This paper undertakes to comprehensively analyse the amendment of Article 68 (6) of the Constitution, to exempt the elections at lower administrative councils (village, cell, parish and ward) from the provisions of Article 68 (1) that requires the Electoral Commission to conduct elections by secret ballot. The analysis equally examines the new legislations regarding local governments budget planning and accountability to ascertain the extent to which they address recent accountability queries by the Auditor General.

3.1. Amendment of Electoral Procedures for Lower Administrative Units

Through this 10th amendment and in particular Section 111 of the principal Act Sub section 2 government has modified the electoral procedures of lower administrative unit councils and committees mandating the EC to conduct these elections by voters lining up behind the candidates, their representatives, portraits or symbols (Government of Uganda, 2015, p. 2). In the subsequent subsections, I explore the rationale and implications of the amendments to good governance and electoral democracy.

With a total of 57,792 local councils I and 7,409 local councils II, the provision in the amended Local Government legislation and the rationale by Government to opt for lining up behind a candidate as opposed to secret ballot is a financial cost saving measure intended to save up to UGX: 470 billion from the initially estimated UGX: 505 billion according to Ministry of Local Government (Wesonga & Mugerwa, 2015). While this proposition seems to make sense at the first instance, the reality is that Government may have erred in making the financial cost assessment. Elections by lining up behind a candidate of choice will at most save you costs related to printing of ballot papers and transport costs for ballot boxes and related logistics but will reversely increase the costs for security and human resources to man the process. Lining up is associated with long lines in populated centers with high possibility of violence and election malpractices especially in counting of voters behind highly competing candidates.

In Uganda, 'vote buying and vote bargaining are common features of local electoral practices' (Devas & Grant, 2003, p. 310) and 'material reward is a major component in attempts to bring informal groups or associations to one particular side of the political spectrum' (Titeca, 2014, p. 201). In lieu of the new provisions, incidences of voter bribery and intimidation are expected to worsen. The Leader of the Opposition in Parliament noted during the debate that "voter bribery is now going to be more pronounced because those who would have paid off people will sit somewhere to confirm that the people are voting according to how they have been paid," (Wesonga & Mugerwa, 2015). With a relatively young multiparty democracy and concentrated power of incumbency, the provision to have voters line up behind a candidate is

likely to increase voter intimidation especially for those against the ruling party as it has been seen and recorded in previous elections. The aspirations to build an electoral culture based on the values of freeness and fairness, transparency and issue-based will be greatly challenged under the new provision.

Finally, voting by lining up is likely to disfranchise the voters especially the disabled partly because it requires the presence of all voters at the designated center, an aspect that misrecognizes the contexts of local elections. The ultimate price is absence of a free, fair and transparent electoral system for lower administrative councils and this will greatly affect representative democracy and downward accountability between the leaders at the different tiers of local governments.

3.2. Local Governments' Accountability under the Amendments

“Government institutions are widely understood to be more effective purveyors of public services when they are accountable to citizens”(Grossman, 2014, p. 1). In Uganda, a detailed framework to enable both downward and upward accountability is in place. Upward accountability is implemented through the numerous institutions that offer oversight of local governance operations including the Parliament through the Committee on Local Governments Accounts, the Office of the Auditor General and recently the District Resident Commissioners among others. ‘This upward accountability has been effective in improving the operations of local government in an administrative sense’ according to (Kiyaga & Olum, 2009, p. 26). On the other hand, downward accountability involves the leader-citizen interfaces on the quality of services being delivered based on well-developed frameworks usually district plans and budgets for local governments in Uganda. Unfortunately, downward accountability continues to face critical challenges because of the low civic capacities of citizens as well as lack of clearly agreed on development plans and district budgets. The underlying sections explore how the recently amended LGA attempts to improve downward accountability and enhancement of service delivery at the local levels.

The amendment of section 77 of the LGA (1997) now requires ‘local governments to take into account the approved development plan of the local government, the charter of fiscal responsibility and the national budget framework paper for that year’. The new legislation (Section 82 sub-section 5) further mandates the council to consider and approve the budget and work plan of the local government by 31st day of May just 2 months to the start of the financial year. The implications of these amendments are as follows;

- i. These amendments do not take into account the varying low academic levels of political leaders at local governments considering the fact that with the exception of Local Council 5, political positions don’t require any educational training. This makes local leaders ill equipped to read, internalize and appreciate the provisions of the charter of fiscal responsibility and national budget framework paper. This is likely to render the budget

development process at the local government level a preserve of the technical staffs, an aspect that greatly affects downward accountability by the political leaders.

- ii. The national budget process is designed as a bottom-up consultative framework intended to ensure popular participation of citizens and citizen groups. The current provision to have local governments debate and approve budgets by the 31st of May just 2 months to the national budget day and at the same time when Parliament is scrutinizing ministerial statements is countermeasure to the principal of a citizen centered and participatory budget policy. In essence the requirement to align the local government budgets to the charter of fiscal responsibility and national budget framework paper squarely defeats the decentralisation policy and stands to recentralize planning and budgeting at the local government levels.

In summary, downward accountability has been grossly undermined under the amended LGA as local governments are now more inclined to align their budgets to central government's fiscal objectives, principles and priorities under the national budget framework paper and less to local service delivery priorities.

4. Recommendations towards an Efficient Local Government System

- 4.1. Government as a matter of urgency must review the viability of the current local government system with the intention of putting a moratorium on creation of new local governments and exploring mergers of unviable administrative units. This will reduce the number of electoral units, reduce the costs associated with elections and enhance the delivery of services.
- 4.2. Lining up behind candidates will infringe on the rights of the disabled to engage in the elections, as the process is physically demanding and more suited for the body abled. In this regard, there should be special considerations by the Electoral Commission to both mobilize as well as ensure convenience of the center to the physically handicapped.
- 4.3. Government should consider returning to secret balloting with a resource allocation strategy based on regional elections in each year over a four year period. This will spread the financial burden and ensure sustainability of the process.
- 4.4. Government should consider a minimum qualification of A-level for all political positions at the local government levels to enable a political class that understands and appreciates national level budget and accountability frameworks including the charter of fiscal responsibility and national budget framework paper which are now embedded in the new legislations as essential to a local government budget development process.
- 4.5. Government should consider funding civil society groups that monitor service delivery especially at the local government level as a measure to close the downward accountability gap.

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