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**THE KAMPALA CAPITAL CITY AMENDMENT BILL:  
INSTITUTIONAL MECHANICS OR BLEEDING THE WILL OF THE  
PEOPLE**

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The views expressed in this publication are neither for the Centre for Policy Analysis nor its partners

## **Abstract:**

In light of the power struggle at City Hall, Kampala and in the wake of an increase of bureaucratic attempts to usurp the power of the Lord Mayor, the bill seeks to pronounce itself clearly on how to manage the crisis through altering the mode of mayoral elections providing that they should be by council voting and not by adult suffrage. The bill also highlights new areas of focus all steered towards the efficient administration and development of the city.

This analysis will seek to examine the practicality of the bill with due regard to 'realpolitik' in Kampala city. This paper will rely on case law from other jurisdictions read with due regard to the political culture of residents of Kampala.

## **Introduction**

In the aftermath of the Lukwago tribunal<sup>1</sup> where allegations of abuse of office, misconduct or misbehaviour and incompetence were levelled against the Lord Mayor Erias Lukwago, a bill was engineered whose object was to streamline and strengthen governance of the capital city in accordance with Article 5(4) of the constitution which states that Kampala located in Buganda shall be the capital city of Uganda and shall be administered by the Central Government, provide for the Lord Mayor to be elected by council, to clarify on the roles of the Lord Mayor and the deputy Lord Mayor and to rationalise provisions relating to metropolitan physical planning authority. This Bill was presented to Parliament for consideration by Minister of State for Kampala Benna Namugwanya on 15<sup>th</sup> May 2017.

The Lukwago tribunal was convened between the months of June and November 2013 chaired by Lady Justice Catherine Bamugemereire and its mandate was to investigate allegations against the Lord Mayor pursuant to a petition by councillors of Kampala Capital City Authority. One of the tribunal's findings was that the Kampala Capital City Authority Act was not clear on who the heads the Authority<sup>2</sup>. This article analyses the proposed the proposed bill against the backdrop of this in-house political struggle at the Authority through the spectrum of constitutional provisions, international instruments and decided cases.

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<sup>1</sup> A tribunal that was constituted and proved that a prima facie case was established for the removal of the lord Mayor Erias Lukwago

<sup>2</sup> Report on the KCCA Tribunal 2013

## **The issue:**

The focus of this article will be the proposed amendment to the form of mayoral elections and the roles of the Lord Mayor and deputy Lord Mayor. It is worth noting however, that a number of salient features are addressed in the Bill and these include: creating the Authority as an agency of the government which washes away any form of involvement through elected representatives and function on a purely appointment basis, the establishment of the office of the speaker and deputy speaker to the council who will preside over the meetings of council thereby usurping the powers of the Lord Mayor making him/her a mere symbol with no power to influence the nature of affairs in the Authority. The Bill also seeks to make the Minister the political head of Kampala which in effect disenfranchises the people of Kampala.

**Clause 7** of the proposed law seeks to change the voting of the lord mayor from universal adult suffrage to council through the councillors. It is thus necessary to investigate what this will mean with regard to citizens' rights to participate in the formation and running of government as established by the Ugandan Constitution and international instruments.

Objective II of the National Objectives and Directive Principles of State Policy in the Ugandan Constitution provides for active participation of all citizens at all levels in their own governance, relying on decentralisation as a guiding principle so that people at appropriate levels have powers where they can best manage and direct their own affairs. This is further supported by Article 1 of the constitution that provides for sovereignty of the people and vests all power in the people of Uganda. It further reiterates the consensual nature in which the people must be governed. The prior provisions of the law should be read together with Article 59 of the constitution which articulates the right to vote for Ugandan citizens. It can be inferred from the above Constitutional provisions that the election of the lord mayor by adult suffrage is proper fulfilment of this right and assigning this right to the councillors would be to limit this right and narrow the spectrum of political participation for the residents of Kampala.

International instruments are very clear on the securing of voting rights as it is a mechanism of voicing the will of the people. The right to self-determination is pronounced in article I of the International Covenant on Civil and Political Rights which provides for the free determination of the political status of the people. Article 25 of the International Covenant on Civil and Political Rights as well as article 21 of the Universal Declaration of Human Rights provide for voting rights as an expression of the will of the electors and that this will be made manifest through elections by universal and equal suffrage. Article 13 of the African Charter on Human and

Peoples' Rights bears semblance to the already cited articles pronouncing the citizens' rights to participate freely in the government of his/her country. Uganda is signatory to all the above conventions and therefore bears an obligation to fulfil the afore mentioned provisions.

All the above instruments emphasize the importance of maintaining a balance between the intentions of the voters and the politics within institutions. Article 25 of the International Covenant on Civil and Political Rights lies at the core of democratic government based on the consent of the people and in conformity with the principles of the covenant<sup>3</sup>. The African Commission on Human and Peoples' Rights held that "to participate freely in government entails, among other things, the right to vote for the representative of one's choice. An inevitable corollary of this right that the results of free expression of the will of the voters are respected; otherwise, the right to vote freely is meaningless. Therefore the annulment of the election results, which reflected the free choice of the voters, was in violation of Article 13(1) of the charter."<sup>4</sup> The proposed election of the Lord Mayor through council will therefore usurp the power of the people as it will create an imbalance since their representative will not be one that they trust to advocate for their rights but one who is caught up in political whims of the institution.

Reference can be made to the case of Professor Peter Anyang'Nyong'o and others v Attorney General of Kenya and others<sup>5</sup> where the principle that was couched in the case was one of democracy through election. The election of the Lord Mayor through council will not be inconsistent if the proposed law is passed but it will be inconsistent with the true reflections and aspirations of the people. This can be supported by Article 13 of African Convention on Human and Peoples Rights that provides for freely chosen representatives as a method of participation in government.

The assertion as was made by then Minister for Presidency Frank Tumwebaze that the continued administration of the city under a decentralized system yet it was classified as an authority created contradictions and a clash of roles. He argued that the proposed amendment has its merits as it seeks to remove duplication of roles<sup>6</sup>. It is worth noting however that this in effect goes contrary to the decentralisation principle in Objective II of the National Objectives and Directive Principles of State Policy.

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<sup>3</sup> General Comments under article 40, paragraph 4 of the International Covenant on Civil and Political Rights

<sup>4</sup> Constitutional Rights Project/ Nigeria 102/93

<sup>5</sup> Reference number 1 of 2006 in East African Court of Justice

<sup>6</sup> Frank Tumwebaze, Amending KCCA Act for a good cause New Vision Newspaper 16<sup>th</sup> November 2015

It must also be noted however that the political character of Kampala city makes it impossible to actualize the development goals set up if the executive branch is not in harmony with the political head. It could be argued that the Lord Mayor is a tool of populism which is good for politics but dangerous for execution at a development level. On the other hand it would be important to consider that the amendment is not a path to harmony but rather a mechanism to frustrate the will of the people since it has been birthed in bad faith.

The amendment to roles of the mayor are meant to make him more of a ceremonial figure head as opposed to one with the necessary political might to advance causes that benefit residents of Kampala. If the law is amended the Lord Mayor will no longer be the political head of the capital city and will no longer preside over all meetings of the Authority as spelt out in Section 11 of the current Kampala Capital City Authority Act. This means he/she will not be in position to front the intentions and aspirations of the people since he/she will not be empowered to do so.

It is my opinion that the redefining of mayoral elections and amending the law with regard to the highlighted provisions, will take away the freedom of choice of the people of Kampala. The will of the people will thus have succumbed to the pillars of institutional politics which means that important decisions for the people will be made by administrators and technocrats that have no proper understanding of the needs of the people of Kampala. As Kwame Nkrumah said when he was demanding for political freedom and independence of African States: *'It is far better to be free to govern, or misgovern yourself than to be governed by anybody else'*<sup>7</sup>

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<sup>7</sup> Kwame Nkrumah : The Fallen And Forgotten Hero Of African Nationalism by Dr. Etim. E. Okon