



**MEMORANDUM OF ISSUES ON THE AMENDMENT
TO THE LOCAL GOVERNMENTS ACT, CAP 243
AND THE STANDARD RULES OF PROCEDURE
FOR LOCAL GOVERNMENT COUNCILS**

January 2024

INTRODUCTION

This memorandum is developed based on the work and experience of the Advocates Coalition for Development and Environment (ACODE). The memorandum seeks to contribute to discussions and processes targeting the amendment of the Local Governments Act, Cap. 243 (LGA). The memorandum is informed by research, capacity building, and outreach interventions that ACODE and partners have implemented in Local Governments over the years.

BACKGROUND

Since 2009, the Advocates Coalition for Development and Environment (ACODE) in partnership with the Ministry of Local Government (MoLG), the Uganda Local Governments Association (ULGA) and the Uganda Urban Authorities Association (UAAU) has been implementing the Local Government Council Scorecard Initiative (LGCSCI). LGCSCI is a social accountability initiative that seeks to deepen local governance by strengthening the political accountability of elected local leaders¹ and citizens' demand for excellence in the provision of service delivery by their local governments. Through a spectrum of interventions including annual assessment of the performance of elected local leaders and other studies including; analysis of the proposed budget for FY 2019/2020², social determinants of performance of councillors³, and assessment of performance of statutory boards and commissions⁴ and capacity building training for councils and statutory bodies conducted in 35 districts⁵, ACODE has identified several issues that undermine effectiveness of local governments and require reforms through the amendment of some sections of the Local Governments Act and revision of the Standard Rules of Procedure for Local Government Councils in Uganda. These issues are related to; the management of council, the performance of councillors, local government financing, and functionality of the boards and commission. It is upon this background that ACODE is submitting this policy memorandum to contribute to the ongoing process of review of the Local Governments Act.

KEY ISSUES AND RECOMMENDATIONS

1. Rules of Procedure and Management of Council

1.1 Lack of Rules, Discipline and Privileges Committee in Local Government Councils

Local Government Councils are provided for under Section 9 of the Local Governments Act, Cap. 243 to be the highest political authority within the area of jurisdiction of a local government⁶. The Standard Rules of Procedure for Local Government Councils in Uganda and Part III of the Third Schedule to the Local Governments Act, provide for how business of local government councils shall be conducted. In the conduct of the business of council, there are bound to arise several disciplinary and welfare issues that may affect how council business is conducted. However, there is no provision both in the Local Governments Act and the Rules of Procedure on how issues of discipline, welfare and privileges should be handled. Sections 20 and 22 of the Local Governments Act, Cap 243 (as amended) provides for the Executive and Standing

Committees of Council respectively. This notwithstanding, there are welfare issues in Council that have no home in any of these committees. Rules 44-56 of the Standard Rules of Procedure (July 2019)^z regulate the conduct of meetings and prescribe for measures of preservation of order while the council is sitting.

Notably, there is no clear provision for measures for handling disciplinary issues outside of the council since the rules of procedure are confined to when the council is in operation. The absence of clear guidelines in both the Local Governments Act and the Standard Rules of Procedure encumbers the management of disciplinary issues that go beyond council sittings. Under section 11 (9)(b) of the Local Governments Act, the Speaker is charged with the overall authority for the preservation of order in the Council and the enforcement of the Rules Of Procedure yet there are certain issues in which the Speaker may have a conflict of interest and cannot be objective in making a judgement. Entrusting the Speaker with absolute power and responsibility to handle disciplinary matters, therefore, erodes the Council's trust and confidence in the Office of the Speaker. The composition of the business and welfare constitute a formidable leadership of the Council and in our opinion, is the most appropriate and suitable to handle matters of welfare and discipline.

Recommendation

- Revise Rule 89(1) of the Standard Rules of Procedure with regards to the Business Committee to include handling of issues of rules, discipline and privileges amongst the functions of this committee. This revision should target changing the name of the business committee to Business, Welfare, Rules and Discipline Committee to broaden its mandate to;
 - a) Determining the business of the Council
 - b) Being responsible for the welfare of members of the Council
 - c) Handling issues of rules and discipline in council
- Revise Rule 89 of the Standard Rules of Procedure to provide for recuse by members of the committee who may have a conflict of interest by providing for sub-rule (3) to read – “A member of the Committee who may have a conflict of interest when the committee is sitting to consider any disciplinary matter may recuse”.

1.2 Office of the Clerk to Council

Section 62 of the Local Governments Act, Cap. 243 (amended)⁸ establishes the Office of the Clerk to Council. It states that “The Chief Administrative Officer shall assign a senior public officer at the rank of or above Senior Assistant Secretary in the employment of the local government to perform the duties of Clerk to the District Council”. This provision makes the position of a Clerk to Council an assigned additional role. In some districts, Clerks have been assigned responsibilities such as Secretary to more than one statutory body, and standing committees. This is coupled with the fact that the Office of the Clerk to Council has overwhelming responsibilities such as taking minutes of Council and Standing Committees and taking records and minutes of the Local Government Public Accounts Committees.

Recommendation

- In line with Section 62 of the Local Governments Act, Cap. 243, there is a need for an administrative review of the structure of the office of the Clerk to Council

to provide for additional manpower. In this case, provide for an Assistant Clerk to council in the current structure.

2. Performance of Council

2.1 Qualification for councillors

Currently, to be elected as a councillor in a local government in Uganda, one does not require any academic qualification. Yet, as members of the Council, they play a critical role in the planning and budgeting process. These processes entail scrutiny and approval of district planning documents such as the Local Government Development Plan, Capacity Building Plan, Revenue Mobilisation Plan, District Annual Work plan, and Budget among others. Furthermore, the planning documents in Local Governments are prepared by technocrats and written in the English language, where most of the members of the council have limited proficiency. Being the highest decision-making organ in a district or city, the council makes fundamental decisions on the provision of public services. A recent study by ACODE in 2022 "[*Social Determinants And How They Influence Councillor Performance In District Local Government Councils In Uganda*](#)"⁹ established a strong relationship between education and the performance of elected leaders. Cumulative statistics from a series of the local government councils' scorecard assessment reports revealed evidence of the strong relationship between education qualification and the performance of district councillors¹⁰. Given their oversight roles and supervisory functions, education qualification does not only enhance their ability to internalise the council's planning and budgetary tools, work plans, and implementation reports but also boosts their confidence in fulfilling their supervisory roles over the usually highly qualified technical teams in the local governments.

Recommendation

- Section 116 (1) of the Local Governments Act, Cap. 243 should be amended to provide for requirements for minimum qualification of at least an Ordinary Level Certificate or its equivalent for persons aspiring to become a district or city councillor.

3. Absence of a law that makes it mandatory for District Councillors to attend meetings at LLGs

District councillors provide a critical link between their sub-county councils and the district council and therefore ought to attend meetings of the lower local government to understand the issues in their constituencies and effectively deliver them to the district. Although it is provided for under Rule 63 (2) of the Standard Rules of Procedure that a District Councillor is an Ex-officio member of a lower local government council, there is no provision for this in the Local Governments Act Cap.243. When they don't attend meetings of the lower local councils, that link is disrupted.

Recommendation

- Amend Section 23 (1); provide for (f) to read – A member of a District Council may attend meetings of a Sub County Council within his or her district or in his or her Sub County as an ex-officio member of the Sub County Council.

- Amend Section 23 (2); provide for (f) to read – A member of a City Council may attend meetings of a City Division Council within his or her City or in his or her City Division as an ex officio member of the City Division.
- Amend Section 23 (3); provide for (f) to read – A member of a District Council may attend meetings of a Municipal Council within his or her District or Municipal Council as an ex officio member of the Municipal Council.
- Amend Section 23 (4); provide for (f) to read – A member of a Municipal Council may attend meetings of a Municipal Division Council within his or her District or Municipal Division Council as an ex officio member of the Municipal Division Council.
- Amend Section 23 (5); provide for (f) to read – A member of a District Council may attend meetings of a Town Council within his or her District or in his or her Town Council as an ex officio member of the Municipal Division Council.
- Part II, Regulation 8 of the Third Schedule to the Local Governments Act, Cap. 243 should be amended to include among the duties of a councillor, attending meetings of lower local government councils or city division council.

4. Functionality of Statutory Boards and Commissions

Sections 54 (1) and 88(1) of the Local Governments Act Cap. 243 provides for the establishment of the District Service Commission and Local Government Public Accounts Committee, respectively. Bainomugisha et al 2023 highlight the leadership capacity of statutory bodies as a major determinant of performance. They deduced that ‘it is conceptualized that the calibre of the members of the Statutory Bodies determines their ability to perform their duties. This is largely dependent on the technical abilities and experience they possess. In addition, when scrutinizing leadership capacity, the ability of the Statutory Bodies to make strategic and independent decisions was examined¹¹. We observe that the calibre of members of members of the statutory bodies determines their ability to perform their duties.

4.1 District Service Commission

Section 54 provides for the establishment of a District Service Commission for each district. The key issues for District Service Commission includes;

4.2 Qualification for members of the DSC

The chief function of DSCs is the appointment and confirmation thereof of persons to hold or act in any office in the service of a district or urban council. This by extension means that the DSC recruits personnel in cross-cutting sectors including education and health.

To execute this function, Section 56 (1) (e) specifies that members of a DSC require among other things; a minimum qualification of an advanced level certificate or its equivalent and a diploma from a recognised institution for a member of the District Service Commission. We observe that this academic qualification is not commensurate to the task to be discharged; to recruit and manage specialised personnel at the sub-national level. The DSCs therefore continue to heavily depend on the guidelines issued by the PSC and specifically the Health Service Commission and Education Service Commission; also depend on inductions which are insufficient. Interestingly, the DSC is expected to perform recruitment of professional personnel Needless to say the

guidelines and inductions have a cost implication for the centre. When compared to the more specialised commissions of the Education and Health Service Commission, the induction may not be sufficient given that the District Service Commission performs a highly specialised function with regards to cross-sectoral human resource management. There is a need to have persons with qualifications in specialised human resource management to serve on the service commission.

Recommendation

- Section 56(1)(d) should be amended to provide for the qualification of a diploma in human resource management by at least one member of the District Service Commission.
- A clear interpretation of section 56(1) (b) which requires a “working experience of not less than ten years in a responsible position.” There is a need for an elaborate construction of the phrase “responsible position” to read someone who has served in a supervisory function in public service.

5. Lack of clarity in the interpretation of Section 54(2c) of the Local Governments Act, Cap. 243 with regards to the representation of urban authorities on the District Service Commission.

Section 54(2) of the Local Governments Act, Cap. 243 provides for the composition of the District Service Commission to include a representative of the urban authorities. Furthermore, sub-section 2b of the same section specifies that a representative of the urban authority shall be appointed on the recommendation of the urban council. However, there is a lacuna in the provision for representation of urban authorities in cases where there is more than one urban authority. The provision under sub-section (2c) that; “in the case of a district with more than one urban authority, executive committee members in that district shall recommend a member to be appointed to the district service commission by the district council” is vague and ambiguous as it does not specify whether it is the district executive committee members or the executive committee members of the urban council(s). This ambiguity causes disharmony in the interpretation of this sub-section and creates a fertile ground for abuse and delay of the processes.

Recommendation

- A circular should be issued to local governments on the standard interpretation of Section 54 (2c) of the Local Governments Act, Cap. 243.

6. Local Governments Public Accounts Committee

Section 88 provides for the establishment of a local government Public Accounts Committee for each district. The key issues here include;

6.1 Insufficient qualification for members of LGPAC

The qualification for members of LGPAC as provided for under Sub-section 1A (b) of the Local Governments Act of a minimum of Advanced Level Certificate or its equivalent

is not sufficient. Lack of requirements for specific qualifications such as in accounting and other financial-related matters implies that members of local governments' Public Accounts Committee may lack the required competence to interpret audit reports and provide the required robust recommendations to address the negative audit findings.

6.2 Lack of a provision in the LG Act that compels DEC to submit a treasury memorandum to the council

The LGPAC chiefly examines the reports submitted to it by the auditor general, chief internal auditor, head of the internal audit and any reports of the commissions of inquiry and by extension summon. The attendant duty of the LGPAC after examining these reports is to submit a report to the council and to the minister responsible for local governments who shall lay the report before parliament. However, we observe that whereas section 88 (9) LGA charges the chairperson and chief accounting officer/town clerk with the duty to implement the recommendations of the LGPAC report, the LGA is silent on how the council receives updates on the status of implementation of the recommendations in the reports. This lacuna has provided a fertile ground for abuse of processes in local governments. Experience from the training of statutory boards and commissions in 35 local governments conducted by ACODE revealed that many councils had not received and or discussed the treasury memorandums because DEC's were non-committal on submitting these reports to the council. Furthermore, an assessment of the performance of the statutory boards and commissions conducted by ACODE in 2023¹², revealed no council in the 26 districts assessed had received and or discussed a Treasury Memorandum.

6.3 Lack of specific timeline for renewing the term of office of LGPAC

Section 88 (11) of the Local Governments Act Cap. 243 (As amended) stipulates that members of LGPAC should hold office for five years renewable once. However, the laws do not specify the period within which the tenures of LGPAC should be renewed upon expiry. The absence of clear guidelines or deadlines for renewing the membership or appointing new members of LGPAC creates a gap that could lead to the abuse of the process.

Recommendation

- Section 88(1B) b of the Local Governments Act should be amended to provide for requirements for specific qualification for members of the local government public accounts committee to include qualification in accounting or financial-related matters.
- Section 88(9) of the Local Governments Act should be amended to include provisions for submission of the Treasury Memorandum to the Council by DEC and penalties for failure to submit the same to the Council.
- Section 88(11) should be amended to provide for a specific timeframe within which terms of office for members of LGPAC should be renewed or new members appointed upon expiry.

7. Financing for Boards and Commissions

Under Sections 57A and 88(10) of the Local Governments Act, Cap. 243, the expenses of the District Service Commission and Local Government Public Accounts Committees

are charged to the Consolidated Fund. However, the boards and commissions have suffered from endemic underfunding, and the grants allocated to the boards and commissions for their operations are not sufficient.

Recommendation.

- Section 78 and the fifth schedule of the Local Governments Act, about revenue sharing among districts and lower local councils should be amended. This amendment should make it mandatory for urban councils to make a certain percentage of financial contributions to districts to support the work of statutory bodies. Such contributions could be based on a formula that takes into account the size of the urban council, its revenue base, and the needs of the statutory bodies.

8. Local Government Financing

8.1 Mainstreaming royalties in local revenue

Section 80 (1) of the Local Governments Act Cap. 243, Local Governments Act provides that local governments may levy, charge, and collect fees and taxes including rates, royalties, stamp duties, and registration and licensing fees and fees and taxes that are specified in the fifth schedule of the Act. We observe that the local governments have with some difficulty collecting and heavily depend on the taxes provided in Section 80 (1a) (hotel and local service tax) and "other revenue" under paragraph 13 of the Fifth Schedule such as; (loading fees, ground rent, property rates, building and occupational permit fees, advertising fees, trade license fees, park user fees, street parking fees, market dues, advertising fees, waste collection, etc.

However, royalties from revenue sources shared with the central government have the potential to significantly contribute to local revenue. We observe that local governments are faced with the challenge of lack of transparency by the Central government which affects the optimal collection of royalties from sources shared with the central government. This has been the case with royalties from natural resources and wildlife which are regulated under other laws such as; the Public Finance Management Act, the Mining and Minerals Act, the Electricity the National Forestry and Tree Planting Act, the Uganda Wildlife Authority, National Forestry and Tree Planting Act. As such, the Local Governments Act and specifically the local government's Revenue Regulations remain largely silent on royalties local governments are entitled to under other laws for instance; the definition of "royalties" local governments are entitled to; local governments entitled to specific royalties; measures for transparency from central government; measures for enforcement; quantum of royalties payable at current commercial rates; royalty sharing between higher and lower local governments etc.

Recommendations:

- Amendment of Section 80 (1d) to read that "The fifth Schedule shall apply to taxes and royalties imposed under subsection (1a) and other laws".
- Amendment of the Fifth Schedule to insert immediately after Part III, Part IV providing for "General provisions relating to Local Government Royalties under other Laws."
- For the collection of revenues shared with the central government, operationalise the provisions of Section 80 (3) of the local government which in effect provides

for agency agreements between the Government and local government where a local government may collect taxes on behalf of the Government and retain a portion of the funds collected.

CONCLUSION

This memorandum of issues for proposed amendment of the Local Governments Act, Cap 243 raises critical issues which bears substantial impacts in the implementation of the decentralisation policy. These issues require to be addressed to consolidate the gains of decentralisation so far achieved. It is on this premise, that it is prudent for the Ministry of Local Government to consider these proposals to inform the processes of review of decentralisation policy and the Local Governments Act. These proposals are critical building blocks in strengthening decentralisation policy and the quality of service delivery in local governments.

Endnotes

- 1 Bainomugisha. A., etal (2020).
- 2 Ggoobi, R., & Lukwago, D. (2020). Local Government Financing: An Analysis of the Draft National Budget Estimates for FY2019/2020 and Proposals for Re-allocation. Kampala: ACODE.
- 3 Kasalirwe, F., Mbabazi, J., Phoebe, A., Oscord, O. M., Rebecca, N. M., & Walter, A. (2022).
- 4 Bainomugisha, A., et al (2023)
- 5 These districts include: Amuru, Amuria, Apac, Arua, Bududa, Buliisa, Gulu, Agago, Amuria, Amuru, Bududa, Buliisa, Hoima, Gulu, Jinja, Kanungu, Kabale, Kabarole, Kaliro, Kamuli, Lira, Lwengo, Luwero, Masindi, Mbale, Mbarara, Moroto, Moyo, Mpigi, Mukono, Nakapiripirit, Nebbi, Ntungamo, Nwoya, Rukungiri, Sheema, Soroti, Tororo and Wakiso.
- 6 GoU (1997). The Local Governments Act, CAP 423.(As amended). Uganda Law reform Commission, Kampala.
- 7 MoLG (2019). Standard Rules of Procedure for Local Government Councils in Uganda. Revised July 2019. Ministry of Local Government. Kampala.
- 8 See The Local Governments Act, CAP 423.(As amended).
- 9 Kasalirwe, F., Mbabazi, M., J., Atukunda, P., Oscord M., O., Ssemakula, E., G., Nalwoga, M., R., & Akena, W. (2022). Social Determinants and how they influence councillor performance in district local governments in Uganda. ACODE Policy Research Paper Series No.107.
- 10 Bainomugisha, A., Muhwezi, W. M., Mbabazi, J., Bogere, G., Ssemakula, E., Otile, M., Atukunda, P., Mukwaya, R., Akena, W., Kasalirwe, & Ayesigwa, R. (2020). The Local Government Councils Scorecard FY 2018/19: The Next Big steps: Consolidating Gains of Decentralisation and Repositioning the Local Government Sector in Uganda. ACODE Policy Research Paper Series No. 96.
- 11 Bainomugisha, A., Muhwezi, W. W., Akena, W., Mbabazi, J., Mukwaya, N. R., Ssemakula, E. G., Atukunda, P.K., Otile, O. M., Ayesigwa, R.,. (2023). Beyond Compliance: A Performance Assessment of Statutory Boards and Commissions in Uganda's Local Governments FY 2021/2022, Kampala, ACODE Policy Research Paper Series No.112.
- 12 Bainomugisha, A., Muhwezi, W. W., Akena, W., Mbabazi, J., Mukwaya, N. R., Ssemakula, E. G., Atukunda, P.K., Otile, O. M., Ayesigwa, R.,. (2023). Beyond Compliance: A Performance Assessment of Statutory Boards and Commissions in Uganda's Local Governments FY 2021/2022, Kampala, ACODE Policy Research Paper Series No.112.

ABOUT ACODE

The Advocates Coalition for Development and Environment (ACODE) is an independent public policy research and advocacy think tank based in Uganda. ACODE's work focuses on four programme areas: Economic Governance; Environment and Natural Resources Governance; Democracy, Peace and Security; Science, Technology and Innovation. For the last eight consecutive years, ACODE has been ranked as the best think tank in Uganda and one of the top 100 think tanks in Sub-Saharan Africa and globally in the Global Think Tanks Index Report published by the University of Pennsylvania Think Tanks and Civil Societies Program (TTCSP).

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