

## THE UGANDA LAW SOCIETY POSITION ON THE KAMPALA CAPITAL CITY AUTHORITY (AMENDMENT) BILL, NO. 28/ 2015

TO BE PRESENTED TO THE PRESIDENTIAL AFFAIRS COMMITTEE OF PARLIAMENT  
6<sup>TH</sup> MARCH 2017

### 1.0 Introduction

The Uganda Law Society (ULS) is a professional body established by the Uganda Law Society Act Cap 276 -- with a statutory mandate *inter alia* to protect and assist the public in Uganda in all matters touching, ancillary or incidental to the law; and to assist the Government and the Courts in all matters affecting legislation and the administration and practice of law in Uganda. This assistance among other things entails analysis and review of Bills before Parliament and providing a professional opinion; to ensure that laws enacted promote of the Rule of Law and social justice.

It is on this premise therefore that the ULS presents the following views on the Kampala Capital City Authority (Amendment) Bill of 2015.

### 2.0 Background

On the 8<sup>th</sup>-October, 2015 government gazzetted the Kampala Capital City Authority (Amendment) Bill, 2015. The Bill seeks to amend the Kampala Capital City Authority Act, 2010 and to ostensibly streamline and strengthen *inter alia* the governance of Kampala as the Capital City of Uganda, pursuant to Article 5(4) of the Constitution of Uganda.

As a result, stakeholders were elicited to make views and/or proposals to the Bill. The Minister for Kampala has made further proposals to the Bill.

The amendment of the Kampala Capital City Act, 2010 is impelled by the object to streamline and strengthen the governance of the capital city in accordance with Article 5(4) of the Constitution of Uganda; to provide for the election of the Lord Mayor by the Council from the Councilors; to clarify the roles of the Lord Mayor and the deputy Lord Mayor; to rationalize the provisions relating to the Metropolitan Physical Planning Authority with the structure and provisions relating to the Capital City Authority and for related matters.

The amendment is also meant to address defects in the existing law relating to decentralized local governments within the capital city, the Lord Mayor's roles and the establishment of a Metropolitan Physical Planning Authority.

### **3.0 Preliminary crucial observations**

The longstanding leadership crisis at the KCCA has been a major constraint to the effective operation of the Authority. The Authority is presided over by the Minister responsible for Kampala, an Executive Director and the Resident City Commissioner; all of whom are appointed by and report directly to the President. KCCA also has a Lord Mayor who is elected by the people and represents the people's interests. For the institution to work, there is need for political and leadership maturity. If we are to realise the aspirations of Article 5 (4) of the Constitution.

The above statement of the Bill notwithstanding, we opine that the current legal framework is sufficient enough in operationalising the spirit of Article 5(4) of the Constitution. Other than legislating against and for individuals the Bill does not highlight any mischief in the law that it seeks to remedy. There seems to be an apparent misapprehension of the roles of the different organs and offices in KCCA which does not necessarily call for amendment of the law.

Additionally the proposed amendments to the Bill constitute an affront to the existing constitutional framework. The law does not meet the test of Article 79 (1) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda.

Additionally, it is apparent that the ordinary people of Kampala have not been effectively consulted concerning the amendments proposed by this Bill. It is prudent to seek their views so as to obtain a general consensus on the proposed changes and to ensure endurance of this law.

## 4.0 Comments on the Proposals in the Bill

### 4.1 Role ambiguity

The Bill seeks to eliminate role ambiguity by streamlining the roles of the Kampala Capital City Council, the Lord Mayor, Executive Director and other organs. Clause 2: repeals Section 5(3) of the Act which made the K.C.C.A the governing Council. Clause 3 (1) amends Section 6 of the Act to make the Council the governing body of the Capital City. Clause 4 clearly defines the functions of the Council.

**Analysis:** For a long time now, role ambiguity has been at the center of K.C.C.A governance conflict. Clause 2 highlights defects in the existing legislation that the Bill seeks to address. It is to the effect that Kampala continues to enjoy a decentralised setup which has led to contradictions. However Article 5(4) did not seek to obliterate decentralisation from Kampala, and if that were the case, there would be no need for elected leaders. Besides decentralisation is a core principle in our constitutional framework.

However before we attempt to resolve this matter we need to understand and draw the line between administration and governance of Kampala under the current constitutional and legal framework.

#### A: Administration of Kampala

Article 5(4) is to the effect that Kampala shall be administered by the central government. This provision is fortified under the current Kampala Capital City Authority (KCCA) Act, 2010 through the creation of the offices of the Executive Director (ED) and Authority Staff, the Minister for Kampala and the Resident City Commissioner (RCC) who are all appointed by the President to administer Kampala on his behalf and the central government.

The Executive Director is the head of the public service and administration. He/she is responsible to the authority, subject to the general directions of the Minister (Sec.19). The Resident City Commissioner represents the President and government in the authority, and *interalia* coordinates the administration of government services.(Sec.71).

Section 79 of the Act gives broad and extensive powers to the Minister for Kampala which include *interalia*,to vary/rescind or veto any authority decision, oversee the performance of the authority and to institute a Commission of Inquiry to inquire into



any matter. The Minister equally enjoys legislative powers under section 82 and is mandated to make regulations by way of statutory instruments.

The aforementioned provisions of the existing legislation buttress the fact the through the offices of the Minister, the Resident City Commissioner, the Executive Director and Authority Staff who are directly appointed by the President and their extensive roles as enunciated therein, the city is effectively being administered by the central government. This is in tandem with article 5(4) of the Constitution.

### **B: Governance of Kampala**

In the spirit of construing the Constitution as a whole document and recognising the entrenched position of Article 1 of the Constitution, the framers of the existing legislation created a dichotomy between administration and governance of KCCA. As indicated above, administration was placed in the technical and appointed personnel with an elaborate structure comprised of the Minister, the Resident City Commissioner, the Executive Director and authority staff.

Governance of KCCA was placed in the elected leadership consisting of the Lord Mayor, councillors and representatives of professional bodies (Sec 6 of the Act). This follows the constitutional command in Article 1(4) which is to the effect that the people shall express their will and consent on who and how they shall be governed through election of their representatives. Sections 7 and 11 of the Act give the Authority and the Lord mayor respectively political and executive functions to enhance their governance roles of the city.

The existing legal framework does not in any way create a contradiction or overlap of roles between the administrative and governance structures of Kampala. The roles are clearly defined. As submitted above, the Bill does not in any way seek to remedy any mischief to this regard because none exists.

### **Flaws in the proposals Relating to Governance and Administration In the Proposed Amendments?**

1. The Bill seeks to make the Minister the political head of Kampala. This is a misnomer that an institution comprised of leaders elected by universal adult suffrage is headed by an appointed officer. See Clause 35( b).
2. The Bill seeks to divest political and executive powers from the elected leadership of Kampala to the appointed leaders which is against the letter and

spirit of Article 1 of the Constitution. Initiation and formulation of policies, setting service delivery standards as outlined in section 7 of the Act are core functions of elected leaders because they constitute the social contract between them and the electorate. In the Bill, such roles have been placed under the Minister as indicated in clause 4 (h).

3. The Bill seeks to amend section 5 of the principal Act to make KCCA an agency of government under the general supervision of the Minister. It is erroneous for a government agency to be comprised of elected leaders who are answerable to the electorate. The proposed arrangement would imply that the elected leaders would be answerable to government and the Minister as principals.
4. The Bill seeks to divest the political headship of the Authority from the Lord mayor to the Minister and to exclude the Lord Mayor from being a member of any decision making organ of the Authority and reduce him/her to opening the Council. (See proposed amendments to sections 3,12). This is against article 1 of the Constitution which gives people the mandate on who and how they should be governed. The ultimate political authority should be vested in the elected leader of the people and he/she should be responsible and accountable to the people. Political leaders campaign on a platform of promises and at the end of their tenures, they report to the electorate. Excluding the Lord mayor from decision making organs of Kampala is tantamount to extinguishing his role as a popularly elected leader, and rendering the office redundant.

**Additionally the proposed bill under clause 4 seeks to remove policy formulation and setting of delivery standards from Councilors**

Whereas Section 7 (1) of the Kampala Capital City Authority Act 2010 stipulates that the first two functions of the Authority shall be to (a) to initiate and formulate policy, and (b) to set service delivery standards; the Bill under Clause 4 excludes these functions.

The people are indispensable stakeholders in public policy and decision making processes. This function can only be executed through their political representatives at grassroots level all the way up to national level. This is the essence of civic engagement. Exclusion of councilors from the policy formulation and delivery standards setting process therefore only serves to keep the masses

out of the process of identifying and addressing issues of public concern as well as determining matters of their welfare.

**Recommendation:** Section 7(1) should be maintained as is.

5. The Bill seeks to arrogate supervisory, legislative and executive powers into the Minister (See proposed amendments to sections 7 and 72). Firstly its unconstitutional for a Minister to allocate themselves roles through legislation. Ministers execute delegated functions accorded to them by the President, unless and until the appointing authority has allocated functions to a Minister, it is preposterous to use a legislation to allocate themselves powers and functions. Secondly under the current legislation, the Minister exercises supervisory roles and can even rescind/veto authority decisions. It would be contradictory for the Minister who is bestowed with supervisory roles to have executive powers. What then will he/she be supervising?

#### **4.2 Clause 3: Omission of Professional Bodies on the Council**

Section 6 (1) (g) of the Kampala Capital City Act 2010 provides for representation of the professional bodies including the Uganda Law Society in the composition of the Authority. The Bill however, initially excludes the Councilors representing Professional Bodies from the KCCA Council under Clause 3

**Analysis:** The exclusion of the Councilors representing professional bodies from the composition of the Council would be a major omission as these representatives are stakeholders in the city and are critical to the providing professional input on matters of a technical nature that the Authority may encounter in its operations.

**Recommendation:** Councilors representing Professional Bodies should be maintained given their invaluable contribution to the Council. The attempt to unjustifiably and inexplicably exclude representatives of professional bodies such as the ULS from the KCCA (Clause 6) is not in the interest of KCCA and it will deny KCCA from benefitting from professionals for guidance in the execution of its roles.

#### **4.3 Clause 16: The Metropolitan Authority Physical Planning function**

Whereas the Bill seeks to rationalise provisions relating to the Metropolitan Physical Planning Authority under Clause 16, it is creating a potential overlap

and clash over the roles of this Planning Authority and the Ministry of Lands, Housing and Urban Development as urban planning is mainly the purview of the latter Ministry.

**Recommendation:** We propose that this role should remain with the National Planning Authority

#### 4.4 Provision for the Speaker and the Deputy Speaker of the Council

It has been proposed by the Minister that the principal Act be amended to make provision for the Speaker and the Deputy Speaker of the Council by inserting a new section directly after Section 12 of the principal Act. (See page 3 of the Minister's proposed amendments to the Bill).

**Analysis:** This proposal if adopted has the inevitable effect of rendering the Office of the Lord Mayor redundant as most of the functions that the Speaker and Deputy Speaker shall undertake mirror those of the Lord Mayor. There is a risk of duplication of roles and thereby adding to the roles crisis. In fact the Minister's justification for including the Office of the Speaker and the Deputy Speaker (on page 4 of the Minister's proposed amendments to the Bill) is that with the introduction of this office, the Office of the Deputy Lord Mayor shall be abolished

#### 4.5 Clause 35: Amendment of Section 79 of the principal Act

Clause 35(b) proposes to recognize the Minister as the political head of the Capital City as well as give the Minister power with the approval of cabinet to assume the executive and legislative powers of the Authority or Council.

**Analysis:** The Constitutional Court in *Alex Oryang Odonga vs AG, 2016* ruled that KCCA is a district. Bearing that in mind and considering Article 183 (1) (a) of the Constitution which provides that the District Chairperson is the political head of the district as well as Article 202 which provides for district take over by the President. It is our view that there is a potential risk of contradicting the Constitution if this clause is enacted as it is.



**Recommendation:** This clause should not be adopted; thereby leaving the Lord Mayor as the political head as the authority and the Minister of Kampala as the line Minister of the Authority.

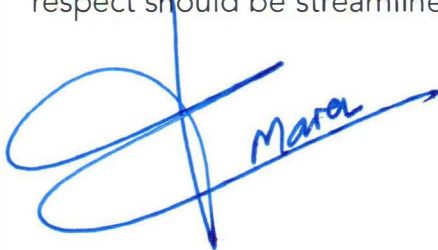
## Conclusion

All power belongs to the people as stipulated by Article 1 of the 1995 Constitution of the Republic of Uganda. The proposal by the Bill therefore to limit or reduce the powers of the Lord Mayor and to expand the powers of the Minister as implied by Clause 9, is an attempt to shift the power from the people who shall exercise their sovereignty in accordance with the Constitution.

We have had the benefit of reviewing the Minister's proposal to amend Clause 3 by deleting the positions of Lord Mayor and Deputy Lord Mayor and the proposal to amend Section 5 of the principal Act to give absolute control to the Central Government over the capital city.

We note that the local government structures in place are sufficient to meet the requirement under Article 5(4) of the 1995 Constitution and advise that this Article be read together with Article 1 of the Constitution; keeping in mind that all power belongs to the people who shall exercise their will and consent on who shall govern them.

The ULS therefore recommends that the provisions of the Bill and all views in this respect should be streamlined and harmonized with Article 1 of the Constitution.



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**Francis Gimara**  
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