

# LOCAL GOVERNANCE IN UGANDA

By Rose Nakayi\*

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## I. INTRODUCTION

The essence of local governance in Uganda as read into the constitution of Uganda and the Local Government Act of Uganda is to among others; "... give effect to decentralization and devolution of functions, powers and services; to provide for decentralization at all levels of local governments to ensure good governance and democratic participation in, and control of, decision making by the people; ..."<sup>1</sup>

The system of local governance in Uganda can be categorized as two tier; with the Capital City (Kampala) system differing from the general systems and structures applied elsewhere. Generally, the district is the basic unit below which are lower local governments as stipulated in the Local Government Act.<sup>2</sup> In the district are district councils and sub-county councils and in the city are the city council and city division councils (the city has the same status as a district)<sup>3</sup>; in the municipality are municipal councils and municipal division councils and in towns are town councils.<sup>4</sup> The presumption here is that these units in the decentralized structures are closer to the people; than the central government.

It is a valid argument therefore that local governments are the decentralized centers of power in Uganda, intended to promote local governance and ensure people participation in democratic processes and service delivery.<sup>5</sup> A talk about local governance for Uganda flags high the notion of decentralized governance and transfer of power from the central government to those centers for purposes of promoting good local governance.

It is argued that there is a linkage between "good local governance" and democracy and at the same time a symbiotic relationship between the two.<sup>6</sup> Establishment of decentralized structures of governance brings into place institutions/structures of governance which have to be run by persons sieved through democratic processes which allow for participation, and also calls for accountability in leadership.<sup>7</sup> Where these outcomes are achieved they in turn produce "good local governance."<sup>8</sup>

Local governance can therefore best be defined loosely by what it is made up of. It meets the standards of "good local governance" if it meets the requirements that include: participatory

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<sup>1</sup> Local Government Act Cap. 243(Laws of Uganda), long title; Constitution of Uganda 1995, articles 176(1), (2) and 177.

<sup>2</sup> Local Government Act, *Ibid.* Section 3, Constitution of Uganda, Art. 176 (1)

<sup>3</sup> *Ibid.* Section 4.

<sup>4</sup> *Ibid* section 3 (2) - (5).

<sup>5</sup> John Kiyaga- Nsubuga and Yasin Olum, *Local governance and Local democracy in Uganda*, Common wealth Journal of Local Governance Issue 2, January 2009 at 26-27.

<sup>6</sup> John Kiyaga *et al.*, *Ibid*, at 28.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

democracy, rule of law respect for human rights and fundamental freedoms, transparency and accountability and service delivery in an efficient manner.<sup>9</sup>

It should be noted that the levels of participation of affected communities in government processes is indicative of the levels of legitimacy of outcomes from such processes.<sup>10</sup> Outcomes of processes in which the people participate are legitimate and reflect the will of the community.

At the same time, issues of local governance and good governance should not be seen as isolated from general aspirations of governments and goals which are considered pertinent for development and wellbeing the world over. Indeed, it has been argued that there is a relationship among good governance, respect for human rights and sustainable development.<sup>11</sup> A paucity of good governance at various levels including the local level, heed to local voices or even give people a chance to participate and make their leaders accountable has been identified as among the reasons for failure to achieve global aspirations such as those in the MDGs and also good rankings in the rule of law index.<sup>12</sup> It goes without saying that accountability in local governance practices is not only pertinent for Uganda, but the development and human rights imperatives of the greater world.

That notwithstanding, it is important to underscore the historical and political-economic trajectory of Uganda in order to put local governance in perspective in this paper.

Uganda's history of long periods of dictatorship, civil war, division and exclusion along tribal/ethnic lines is among the factors leading to the decentralization of governance to promote equal participation by ethnic and marginalized groups.<sup>13</sup> The system existed in a relatively different form during the colonial days where power was devolved from the colonial government to its local representatives.<sup>14</sup> The relatively more elaborate structure of decentralization in recent times was an architectural design of the NRA/M government.<sup>15</sup> The system was promoted by Yoweri Museveni

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<sup>9</sup> Kauzya, J-M, *Local Governance Capacity Building for Full Range Participation: Concepts, Frameworks, and Experiences in African Countries*, 4th Global Forum on Re-Inventing Government, New York, United Nations, 2002, at. 361-362.

<sup>10</sup> Global Thematic Consultation on Governance and the post -2015 Development Framework- Just Governance for the world we need: A critical cornerstone for an equitable and human rights –centered sustainable development agenda in post 2015, February 2013, at 4.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* Also see, World Justice Project, Rule of law around the world, available at - <http://worldjusticeproject.org/rule-law-around-world> (accessed June6, 2016). Uganda is ranked in position 95 of 102, indicating that it has low levels of respect for the rule of law on various indicators such as respect for fundamental rights, open government, regulatory enforcement, civil justice, absence of corruption, etc.

<sup>13</sup> See, Justine Bagenda, *The Challenges of Community Participation in Decentralisation Processes in Uganda: A case Study of Kibaale District*, Kimmage Development Studies Centre (2007) available at [http://kimmagedsc.ie/wp-content/uploads/2013/10/justine\\_bagendasmallpdf.com\\_.pdf](http://kimmagedsc.ie/wp-content/uploads/2013/10/justine_bagendasmallpdf.com_.pdf) (accessed May7, 2016); Treisman, D. *The Architecture of Government: Rethinking Political Decentralization*. Cambridge: Cambridge University Press.

<sup>14</sup> See, *The African Native Authority Ordinance* of 1919 (Entebbe, Government Printer 1919.)

<sup>15</sup> Henry Ojambo, *Decentralisation in Africa: A critical Review of Uganda's Experience*, Potchefstroom Electronic Law Journal, Vol. 15. No.2, 2012.

at the start of his rule in 1986 in an effort to streamline local politics to promote popular participation in processes.<sup>16</sup> This current form of decentralization was introduced within a “no party system”, by the National Resistance Movement (NRM); partly with an aim of garnering political support.<sup>17</sup> Despite the good agenda of the system which includes to promote accountable leadership, the fruits of decentralization are still obscure as has been observed by Tumushabe et al.<sup>18</sup> Service delivery within the system has been hampered by resource constraints; the district local governments have no capacity and bases to raise their finances.<sup>19</sup> There is instead over reliance on the center (and more recentralization) and this has led to reduced space for participation, accountability leadership and service delivery.<sup>20</sup> As a result, some scholars consider the whole decentralization programme “more of a political gimmick than a genuine effort to promote democracy and good governance”.<sup>21</sup>

There is increasing agitation for district (sic *-districtization*) to reward political cronies with political positions in those districts thereby promoting patronage or reward a given ethnic group/community.<sup>22</sup> The *ethnicization* of the demands for districts in geographical areas of Uganda may not consolidate the little gains of unity in the country but undo them. Yet, local government units created around ethnicity may promote participation for tribes that would have been excluded by dominant ones- only if there was alignment of needs and expected outcomes.

The conduct of local governance in the post 2006 multiparty dispensation unlike the pre 2006 no-party environment greatly shapes outcomes. The multiparty dispensation has brought about dominance of the elites in the local governance politics since they are conversant with the language of party manifestos and power play within the system.<sup>23</sup>—Consequently, the framework may not necessarily support the local people who were the intended beneficiaries-of resources, political and administrative power transfer to the local governments through a framework in the Local Government Act of 1997. <sup>24</sup> The practice of decentralization to some extent eludes the intention to

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<sup>16</sup> Azfar O., Livingston, J., and Meagher, P. “Decentralization in Uganda”. In P. Bardhan and D. Mukherjee (Eds.), *Decentralization and Local Governance in Developing Countries: A Comparative Perspective*. (2007) New Delhi: Oxford University Press.

<sup>17</sup> Francis, P. and James, R. *Balancing Rural Poverty Reduction and Citizen Participation: The contradictions of Uganda's Decentralization Program*, World Development, (2003) 31 (2), 325-337.

<sup>18</sup> Tumushabe G. W et al, *Monitoring and Assessing the Performance of Local Government Councils in Uganda: Background, Methodology and Score Card*, ACODE, Kampala, 2010.

<sup>19</sup> Josephine Ahikire, *Decentralization in Uganda Today: Institutions and Possible Outcomes in the Context of Human Rights*, International Council for Human Rights Policy 2002 at 7.

<sup>20</sup> I bid.

<sup>21</sup> Joe Oloka-Onyango, *Decentralization without Human Rights? Local Governance and Access to Justice in Post-Movement Uganda*, HURIPPEC, Kampala, 2007.

<sup>22</sup> Elliot Green, *District Creation and Decentralization in Uganda*, London School of Economics, March 2008, available at <http://www.csae.ox.ac.uk/conferences/2008-edia/papers/253-green.pdf>, accessed March 7, 2016.

<sup>23</sup> John Kiyaga et al, *supra* note 5 at 33.

<sup>24</sup> Ahikire, *supra* note 19 at 7.

provide space for people participation in various aspects that affect them, including: decision making, rulemaking (etc.).<sup>25</sup>

With all the above, local governance in Uganda presents an arena - within which roles and rights are asserted, negotiated and reproduced in a way that is shaped by political imperatives of the powerful and less the poor. The pertinent question remains whether principles of administrative law in any way condition actions, processes and outcomes within the local governance context.

This chapter will among others attempt to answer that question. It focuses on Uganda, and using findings from the districts of Iganga, Gulu, Masaka and Kampala Capital city, it delves into what roles administrative law principles play in the day to day local governance practices of officers at these local governments, and whether they shape outcomes. It interrogates the levels of people participation in processes of the local governments that include rule making and decision making. Lastly, it delves into the extent if at all, judicial review as a tool of good local governance has successfully been resorted to achieve outcomes of good governance. The chapter shows the peculiar situation of Kampala capital city as compared to the other areas studied. The chapter is divided into six parts; part I carries the introduction, part II traces decentralization in the historical perspective and hints on rulemaking in that era, part III discusses decentralization and rule making under the 1995 constitution and other laws stemming from it, part IV delves into dispute resolution and the impact of judicial review, part V contains the findings and Part VI the general conclusion to the chapter.

## II. LOCAL GOVERNANCE IN THE HISTORICAL CONTEXT

### A. Local Governance in the Pre-Independence Period

Uganda attained independence in 1962. Although the nomenclature ‘decentralized governance is not common in the pre independence era, there was something akin to it. Powers were devolved from the British colonial government downwards through channels of indirect rule.<sup>26</sup> What is peculiar about this period is the fact that local governance was more a tool for strengthening colonial government’s grip on power than anything else.<sup>27</sup> The existence of well organised structures in Buganda and a hereditary ruler that had authority made it easy to introduce indirect rule in Buganda, and then use Buganda as an agent to reach the other parts of the country; or regions of the north, west and east without such centralised leadership.<sup>28</sup> Buganda had a King, and a superior / senior chief – the *Katikiro*; structures that evolved within the historical and social context

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<sup>25</sup> Rose Nakayi, *Decentralization and the situation of selected ethnic and racial minorities: A human Rights Audit*, Human Rights and Peace Center Working Paper No. 15, 2007 at 1.

<sup>26</sup> Ojambo, *supra* note 15.

<sup>27</sup> Henry Francis Morris and James S. Read: *The Development of Uganda’s Laws and its Constitution, The British Common Wealth: The Development of its Laws and Constitution*, Vol. 13)xvi, 448 , London: Stevens and Sons, 1966). at 34.

<sup>28</sup> Morris and Read, *Ibid*.

of Buganda, in which they had acquired high levels of legitimacy. The *Lukiiko* was the Parliament of Buganda with law making powers, in addition to the Buganda native courts.

This period is characterised by the *Bugandanisation* of structures of governance in other parts of the country through say; introduction of senior chief and *Katikiro* becoming the senior executive officers in Ankole, converting pre-existing “petty rulers in Busoga” into county chiefs,<sup>29</sup> introduction of councils to make laws and courts such as the Kabaka’s courts.<sup>30</sup> These were superimposed in those areas without necessarily the structural, historical and social foundations that would uphold them, to make them legitimate in those areas just like they were in Buganda. Besides that, they were a mere mimic of Buganda and not necessarily granting equivalent powers to those granted in Buganda. For example the Councils did not get legislative powers equivalent to those of the *Lukiiko* and neither did the courts have similar powers to those of courts in Buganda.<sup>31</sup> Doing this in some places such as Busoga has had long term implications for governance there. In Busoga, the position of Kyabazinga was filled by one of the old rulers. To the Basoga, any person who held that position was their paramount chief (not king), and there had been no consensus that Busoga should be a kingdom with similar status as Buganda.<sup>32</sup> Busoga had district status with “autonomous hereditary rulers of the various counties”; none of them would claim to be the king of the Basoga.<sup>33</sup> Establishment of the *Kyabazingaship* in Busoga could partly be a result of the Buganda influence on Busoga, through processes of transferring structures in Buganda elsewhere with such consequences.<sup>34</sup> Nsibambi opines that at some point, the Basoga started viewing the *Kyabazingaship* in the same lens as the Baganda viewed the Kabakaship. Evidence of this as given by Nsibambi is an incident when the British District Commissioner wearing shorts and short sleeves sat on the Kyabazing’s chair to the annoyance of the Basoga who saw this as disrespect to their ‘king’.<sup>35</sup> This could never have happened in Buganda Kingdom where there is entrenched and historical respect and high regard for the kabaka’s seat/throne. It was insisted in many circles that the Kyabazinga was not a king.<sup>36</sup> The British monarchised Busoga and the *Kyabazingaship* on Buganda model and Kyabazinga William Nadiope who took it up in 1962 personalised it and made it hereditary- infuriating his rivals for putting it in line of his children.<sup>37</sup> The result of the above may be interpreted as imposition of governance structures on the people, something that could have implications for participation in activities of such structures and legitimacy of the institution.

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<sup>29</sup> Morris and Read, *supra* note 27, at 35

<sup>30</sup> Morris and Read, *supra* note 27, at 35.

<sup>31</sup> G.W. Kanyeihamba, *Constitutional Law and Government in Uganda*, East Africa Literature Bureau 1975, at 302.

<sup>32</sup> Morris and Read, *supra* note 27, at 35.

<sup>33</sup> Apollo Nsibambi, The restoration of traditional rulers, in “*From Chaos to Order: The Politics Of Constitution Making in Uganda*” (Eds. Holger Bernt Hansen and Michael Twaddle), Fountain Publishers Kampala 41-60) at 4.

<sup>34</sup> Nsibambi, *Ibid*, at 41.

<sup>35</sup> Nsibambi, *Ibid*, at 42.

<sup>36</sup> Nsibambi, *Ibid*, 42.

<sup>37</sup> Nsibambi, *Ibid*, at 42.

Besides the above, Buganda was seen as superior and more knowledgeable on how the system of administration run; their chiefs were sent to other places to help out - until the late 20s and 30s, when they were replaced with other local people from those regions.<sup>38</sup> Morris and Read note that the Baganda chiefs had acted with unprecedented superiority in the areas where they were sent.<sup>39</sup> This is clearly imposition of Buganda local rule over other people who are denied a chance to participate in choosing their leaders and also in their everyday decision making processes.

It is important to note further that at the time meritocracy was not necessarily the guiding principle on who should take office, but more about who would be in position to stand as a stooge for the colonial government. For example, Morris noted that in Busoga Kakungulu helped in the subjugation of some tribes for the benefit of the colonialists in 1906, and in 1914 and by virtue of that, he was appointed the president of the Council of the senior chiefs.<sup>40</sup>

From all the above, it is clear that the introduction of the Buganda model in the rest of Uganda meant that persons that already held office as clan leaders became chief; clan leaders/heads were hereditary.<sup>41</sup> The Buganda chiefs initiated these other chiefs into their new roles.

There were a number of laws that regulated some aspects within the structure of decentralisation at the time, as seen below.

**The African Native Authority Ordinance of 1919<sup>42</sup>** provided for the powers and duties of African chiefs in the colonial indirect system of administration. Under the Native law, the Governor could constitute or recognise native councils and determine their powers. The council with the approval of the governor could change native law, and by resolution set penalties for breaches of the law.<sup>43</sup>

The detail about the appointment and role of the chiefs was stipulated in the above law.<sup>44</sup> Chiefs were appointed at the village, sub-county and county levels and were accountable to the District Commissioner who was the executive head of the district and principal representative of the central government.<sup>45</sup> The chiefs had powers to collect taxes, preside over native courts, and maintain law and order.<sup>46</sup>

The structure was composed of District Councils, of senior chiefs. These had authority to change native law and custom and at the same time exercise judicial functions.<sup>47</sup> In addition to this, their

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<sup>38</sup> Kanyeihamba, *supra* note 31, at 302.

<sup>39</sup> *Ibid*, at 302.

<sup>40</sup> Morris and Read, *supra* note 27, at 35.

<sup>41</sup> Nsibambi, *supra* note 33, at 35.

<sup>42</sup> Entebbe, Government Printer 1919.

<sup>43</sup> Nsibambi, *supra* note 33, at 35.

<sup>44</sup> See, The Native Authority Ordinance of 1919.

<sup>45</sup> Morris and Read, *supra* note 27.

<sup>46</sup> Morris and Read, *supra* note 27, at 36.

<sup>47</sup> Morris and Read, *supra* note 27, at 36.

role was “purely deliverative and advisory.”<sup>48</sup> They were supervised by the District Commissioner but appointed by and could only be fired by the central government.<sup>49</sup> In the preceding structure, the local people do not have powers to appoint or even remove from office any chief that they thought did not serve to their expectation.

It is reported that in 1947 Secretary of State Creech, promoted a system that would ensure that “... these institutions were efficient, democratic and local,” and in 1949, an African Local Governments Ordinance (revised laws of Uganda, 1951, Cap. 74) was enacted.<sup>50</sup>

**The African Local Government Ordinance and District Council Proclamations and Regulations of 1949** relatively changed the structure. It established the district as a local government unit with a fairly autonomous administration with the District Councils as its organs.<sup>51</sup> The district councils were comprised of elected members who were responsible for administration of the district. Nonetheless, the central government still retained overriding powers over the District Council decisions.

In this structure, the kingdoms (Buganda, Toro, Ankole) were administrative units which less operated as federal states within the system.

Regulations were made under the African Local Governments Ordinance.<sup>52</sup> According to these, the districts outside of Buganda were to have local government’s jurisdiction over Africans only; the local governments were to be composed of chiefs, district council and lower councils.<sup>53</sup>

Persons to serve on the local governance units were elected to the councils and it is from these councils that those that served on higher councils in the hierarchy were elected.<sup>54</sup> The ordinance provided that chiefs were to be appointed by the Governor. In the structure, the chief, executive officers of the local government had law making powers, among others; they also remained purely deliverative bodies.<sup>55</sup> They were Accountable to the central government and not to their councils.<sup>56</sup> The locals still considered the chiefs their tribal leaders; despite the fact that they were more connected to the Central government than to the local community.<sup>57</sup>

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<sup>48</sup> Morris and Read, *supra* note 27, at 36.

<sup>49</sup> Ibid.

<sup>50</sup> Morris and Read, *supra* note 27, at 37.

<sup>51</sup> See, The African Local Government Ordinance and District Council Proclamations and Regulations of 1949

<sup>52</sup> Revised laws of Uganda, 1951, Cap. 74.

<sup>53</sup> Morris and Read, *supra* note 27, at 37.

<sup>54</sup> Morris and read, *supra* note 27, at 37.

<sup>55</sup> Morris and read, *supra* note 27,38

<sup>56</sup> Morris and read, *supra* note 27,at 38

<sup>57</sup> Morris and read, *supra* note 27, at 38.

In this structure, the District Council resolutions on any matter touching the district had to be approved by the District Commissioner.<sup>58</sup> District council had powers to make by laws subject to the Governor's approval.

Under the same law, a system of governance was crafted for the urban areas or the townships. Urban areas or Townships were mainly occupied by Asians. The location of these townships in the middle of geographical areas occupied by Africans meant that there would be overlaps in the local governance systems of the Africans and those in the Urban Local governments.<sup>59</sup>

On the whole, local governance structures for most part during the above phase are not necessarily for the benefit of the people; but mostly facilitation of indirect rule and ensuring a tight grip on the colonised. Identities of the people were at the time ethnicised; with Europeans seen at the top, followed by Asians, and Africans at the bottom of the hierarchy. This ethnicisation of identities was also seen as a tool for class differentiation. The structures of local governance to some extent promoted a similar trend, where local Africans were governed through a system that was distinct from that used in areas occupied by the Asians.

#### B. Rule Making, Public Participation and Accountability in Pre independence Uganda

The structure as described above is indicative of a situation where the locals did not necessarily participate in public matters. There were no clearly stipulated procedures on how the locals would participate in law making processes within the local governance structures which allowed for chiefs and District Councils to make rules/law.

Greater accountability was to the central government than to the locals that were served by the local governments. The situation was not different at the national level.

According to the Order in Council 1920, the country was to have a legislative and executive council. The Governor was the chair the legislative Council (Leg-co), whose membership did not have African representatives. It was composed of two European non officials, one person (non-official) from the Indian community, the majority were 4 executive council members; Europeans. The Indian Community pushed for having more representation on the Council; they had clout to do this, more than the Africans. Their dominant position in the business sector in Uganda made them indispensable on the Leg-c, which body was resisted by many including the Buganda kingdom.<sup>60</sup> Resistance against the Leg-co in places such as Buganda could have been on the basis of its composition, and also it being a parallel institution that would match the internal structures in Buganda such as the Lukiiko.

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<sup>58</sup> Morris and read, *supra* note 27, at 37

<sup>59</sup> Morris and Reed, *supra* note 27, at 38.

<sup>60</sup> Morris and Reed, *supra* note 27, at 38.

### C. The Post-Independence Period<sup>61</sup>

At independence in 1962, Uganda had 11 districts and four kingdoms.<sup>62</sup> The independence constitution of 1962 established a decentralized system with elements of both federalism and decentralization in the governance system. The kingdom of Buganda enjoyed a unique federal status compared to others. The kingdoms of Ankole, Bunyoro, Toro and the territory Busoga were accorded semi-federal status.<sup>63</sup> The other parts of the rest of the country, comprised of the districts of: Acholi, Bugisu, Bukedi, Karamoja, Kigezi, Lango, Madi, Sebei and West Nile, all administered through Councils.<sup>64</sup>

After the nullification of the independence Constitution in 1966, the 1967 Constitution replaced it and this centralised power. Milton Obote was among the key players at changing the pre 1966 status quo. This with the implication of reducing space for people participation in decision making about how and who should govern.

Through a military *coup*, Obote was over thrown by Idi Amin who establishment a military regime between 1971 and 1979.<sup>65</sup> During the military regime, districts were dissolved and the regional/provincial administrations led by Governors (high-ranking military officers) were established.<sup>66</sup> Local governance at this time is not considered a conduit for local participation and accountability, but a tool to tighten grip on power for the dictatorship. The local governance structures were also seen as a tool to unleash terror on the masses to make them conform to the desires Idi Amin.

In resistance to the above, Obote recaptured power from Amin in 1980, he did not, in the five year period, make any significant efforts to change the system; instead, he used it to entrench his style of rule that continued to exclude people participation in governance at all levels.

The haggles for power continued, thereby limiting the possibility of any leader to stay long enough in power, and maybe concentrate on building structures of government. The little time available was spent on tightening the grip on power. Obote did not stay long in power; 1985-86 Tito Okello took over and on 26 January of 1986 he was overthrown by Yoweri Museveni. Okello's reign was less than one year, and no efforts had been spent at substantial governance issues but efforts geared towards keeping the presidency.

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<sup>61</sup> *Ibid* & Ojambo, *supra* note 15.

<sup>62</sup> See, The Constitution of Uganda 1962, Section 4.

<sup>63</sup> *Ibid.*, and Schedules 3 containing special provisions relating to the Kingdom of Ankole, Schedule 3, special provisions relating to the Kingdom of Bunyoro, Schedule 4 special provisions relating to relating to the kingdom of Toro and Schedule 5 Special provisions relating to the territory of Busoga

<sup>64</sup> *Ibid.*

<sup>65</sup> World History, Uganda: Amin Dada, Idi: Cop and Regime, 1971-1979, available at <http://www.worldhistory.biz/sundries/41128-uganda-amin-dada-idi-coup-and-regime-1971-1979.html>, accessed Feb 7, 2015

<sup>66</sup> gg

## D. Post 1986 Period

The system started off with the creation of small units at the village level called Resistance committees. These were later regulated through the Resistance Council/Committee's (RC's) Statute 9 of 1987 which dealt with details of their mandate and operation.<sup>67</sup> These formed the initial structures and over the years, a robust structure including local councils at the district level, municipal level, and Sub County / division / town council levels evolved and were regulated by the Local Government Act of 1997.<sup>68</sup> It has gone through a series of amendments to make the system adapt to contemporary issues.<sup>69</sup> A most recent development in Uganda's decentralization system is the enactment of the Kampala Capital City Authority Act, 2010 which changed the status of Kampala from being a local government to a central government corporate entity. Nonetheless, there is still provision in the KCCA for elected politicians such as the Lord Mayor and the councillors whose current relationship with the appointees of the central government in terms of who has which power to do what is proving to be a biter one.<sup>70</sup>

### III. LOCAL GOVERNANCE IN THE POST 1995 CONSTITUTIONAL AND LEGAL REGIME

#### A. Local Governance Under the 1995 Constitution and the Local Governments Act

##### *i. Setting the Foundation: local governance under the 1995 Constitution*

The foundational structure of the Local governance system is laid down in Chapter eleven of the Constitution of Uganda 1995. The Constitution provides that the district is the basic unit under which lower local governments are run in such a way as Parliament may stipulate.<sup>71</sup> This does not affect the possibility of a merger of more districts to come up with a regional government.<sup>72</sup> The Constitution goes ahead to set out the principles that apply to local government systems which include: local governments are to ensure that "functions, powers and responsibilities are devolved and transferred..." systematically from the government to the lower local government levels;<sup>73</sup> it is meant to ensure "...peoples' participation and democratic control in decision making";<sup>74</sup> ensure "... democratic governance at all local government levels..."<sup>75</sup> put in place mechanisms to ensure a

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<sup>67</sup> See, Resistance Council/Committee's (RC's) Statute 9 of 1987; Bernard Bashaasha, Margaret Najjingo Mangheni and Ephraim Nkonya, 'Decentralization and Rural service Delivery in Uganda,' IFPRI Discussion Paper 01063, February 2011, at 3-5.

<sup>68</sup> Bashaasha, et al, *supra* note 67, at 3, also see Ahikire, *supra* note 19.

<sup>69</sup> Bashaasha, et al, *Ibid*, 3-5.

<sup>70</sup> Gerald Rulekere, *Lukwago- Musisi Row Threatens to Derail Development of Kampala*, UG. Pulse, October 12, 2011. <http://www.ugpulse.com/government/lukwago-musisi-row-threatens-to-derail-development-of-kampala/1283/ug.aspx> (accessed June 12, 2016).

<sup>71</sup> Constitution of Uganda 1995, Art. 176.

<sup>72</sup> *Ibid*, Art. 178.

<sup>73</sup> *Ibid*, Art. 176 (2) (a).

<sup>74</sup> *Ibid* Art. 176 (2) (b).

<sup>75</sup> *Ibid* Art. 176 (2) (c).

stable financial base;<sup>76</sup> through plan and policy implementation, deal with matters affecting their people;<sup>77</sup> persons serving in the system and the lower local governments have to democratically elected.<sup>78</sup>

The constitution envisaged a system which would run on the basis of districts; parcelled out into smaller units.<sup>79</sup> A clearer picture on the preceding is given earlier in the constitution setting out the administrative unit of the country as regional governments, districts and Kampala.<sup>80</sup> Kampala cut out as a unit that is administered by the central government for it is the capital city of the country.<sup>81</sup> The first schedule to the Constitution lists 75 districts in clarification of article 5 (2) (c) on the districts of Uganda.<sup>82</sup> Since the promulgation of the constitution in 1995, Uganda has gone through a process of “district-ization”, resulting from agitation for and creation of new districts.. The constitution allows Parliament to adjust the boundaries of existing district or even demarcate new ones as long as majority members of parliament agree to this.<sup>83</sup> The constitution further stipulates what should guide a decision to create new districts –

...the necessity for effective administration and the need to bring services closer to the people, and it may take into account the means of communication, geographical features, and density of population, economic viability and the wishes of the people concerned.<sup>84</sup>

Since the above grounds are wide, there have been cases in which political imperatives have been the driving force behind creation of new districts, but still justified on the basis of one or more of the grounds in the above provision such as people agitation for new districts.<sup>85</sup>

The law provides for officers who take charge of various activities within the decentralisation structures of governance. At the district level is a political head (District Chairperson) who is chosen through universal adult suffrage and by secret ballot<sup>86</sup> and his/her duties include: presiding over executive committee meetings, oversee administration of the district, coordination of lower local council activities with those of councils in the urban areas and district units, etc.<sup>87</sup> The same constitution makes provision for the Speaker of the District Council from district council members, whose functions are similar to those of the speaker of parliament.<sup>88</sup> Besides

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<sup>76</sup> Id Art 176 (2) (d).

<sup>77</sup> Ibid Art. 176 (2) (e).

<sup>78</sup> Ibid Art. 176 (3)

<sup>79</sup> Ibid Art. 177 (1) and (2).

<sup>80</sup> Ibid Art. 5 (1) and (2).

<sup>81</sup> Ibid Art. 5(4).

<sup>82</sup> Also see The Constitution (Amendment) (NO.2) Act, 2005, replacing section article 5 (2) and the first schedule to the constitution.

<sup>83</sup> *Ibid*, Art. 179 (1) & (2).

<sup>84</sup> *Ibid*, Art. 179 (4).

<sup>85</sup> Yasin Mugerwa, Drama as MP tries to ‘strangle’ self over district, *The Monitor*, August 20, 2015.

<sup>86</sup> The Constitution of Uganda 1995, Article 183 (1).

<sup>87</sup> Ibid Art. 183 (3).

<sup>88</sup> Ibid Art. 184.

that, there is an Executive Committee in each district composed of: the district chairperson, chairperson and a given number of secretaries as decided by the Council.<sup>89</sup>

The constitution does not expressly lay out the functions that the district councils have to perform. Rather, it stipulates the functions of government in its sixth schedule which include dealing with arms, defence land, etc.<sup>90</sup> The District councils are then left to perform any functions which are not listed in the schedule or specifically set out as functions of government.<sup>91</sup>

***ii. The Local Governments Act- Mapping out local governance on the ground***

In line with the constitution, the Local Government Act lays down the framework of local governance in Uganda beginning with the District as the basic unit under which are lower local governments.<sup>92</sup> There are established District Councils and District executive Committees whose composition and qualifications of the office bearers are stipulated in the Local Government Act; sections 10-15 and sections 16 to 22 respectively. The functions of the district executive committee include; oversee implementation of council and government policies, and resolve disputes forwarded from lower local governments evaluate performance of councils in light of the plans.

Also fully described under the Local Government Act are lower local councils, in sections 23 to 34. Local government councils are established to carry out political and executive functions in their area, provide services as delimited under the Act,<sup>93</sup> and ensure protection of the constitution and laws of Uganda.<sup>94</sup> On the other hand, the lower local governments' executive committees generally ensure the implementation of the decisions of the council and also: initiate and formulate policy, maintain law and order, and monitor supervision of projects.<sup>95</sup>

**B. Kampala Capital City: A Unique Position**

Kampala has a unique position in the general local/governance structure of Uganda, as read into the Constitution (Amendment) (No. 2) Act, 2005. This Amendment Act is operationalized by the Kampala Capital City Authority Act 2010,<sup>96</sup> which is the enabling legislation through which parliament gives details about creation of a governing and administrative body for Kampala Capital City.

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<sup>89</sup> Ibid Art. 186 (1).

<sup>90</sup> Ibid Art. 189 (1) & (2)

<sup>91</sup> Ibid Art. 189 (4).

<sup>92</sup> Local Governments' Act Cap. 243 section 3 (1).

<sup>93</sup> They are not supposed to offer services listed in in Part I of the second schedule to the Local Government Act that include, dealing with arms, security, maintenance of law and order citizenship, etc.

<sup>94</sup> Local Government Act section 30(1).

<sup>95</sup> *Ibid*, Sec. 26.

<sup>96</sup> Here in after referred to as "KCCA, 2010"

By virtue of the KCCA Act 2010 the status of Kampala City Council changed from a Local Government to corporate entity run by Kampala Capital City Authority on behalf of the Central government.<sup>97</sup> That notwithstanding, KCCA 2010 provides for elected politicians to provide oversight and also generate and pass policies to govern the operations of the management and technical wing of the Authority. These politicians are elected under the Local Government Act. At the intersection of central government authority and local governance structures in Kampala capital city are interesting dynamics about rule making, participation and judicial review of administrative decisions, characterized by competition for space among the key players. The discussion below will endeavor to highlight some of the above.

**(i) *The governance structure in Kampala City***

This is unique structure laid out in the KCCA 2010; containing the Kampala Capital City Authority, the Minster for Kampala, City resident Commissioner, etc. Despite the fact that Kampala is not necessarily a district in the sense of the local governance structures of other parts of the country, enactments that apply to a district apply to it to the extent that they are not changed by the KCC Act.<sup>98</sup>

The composition of the Kampala Capital City Authority is provided for in the KCCA 2010 and include: the Lord Mayor, deputy Lord Mayor, a Councilor from each electoral area directly elected by secret ballot through universal adult suffrage, a male and female councilor representing the youth, two councilors male and female councilors representing persons with disability, women councilors forming one third of the authority, one councilor from each of the following bodies: Uganda Institute of Professional Engineers, Uganda Society of Architects, Uganda Medical Association, Uganda Law Society.<sup>99</sup> The law only stipulates citizenship of Uganda as the prerequisite for one to be appointed a councilor.<sup>100</sup>

The functions of the Authority include: initiation and formulation of policy, service delivery, pass legislation to facilitate management of the city, to maintain law and order and security of the city, mobilize people to pay taxes, etc.<sup>101</sup>

**(ii) *Lord Mayor and the Executive Director: structural or personal friction?***

Among the key features that have since inception characterized Kampala Capital City Authority of late has been the friction between the Lord Mayor and the Executive Director, with far reaching implications for governance of the city. The question remains whether this is a friction of the individuals holding office today, or one that is brought about by structural deficiencies in the system and duplication of roles for these officers embedded in the KCCA 2010.

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<sup>97</sup> See also KCC Act 2010, Section 5 (3).

<sup>98</sup> *Ibid*, Sec. 5 (4).

<sup>99</sup> *Ibid*, Sec. 6

<sup>100</sup> *Ibid*, Sec. 6.

<sup>101</sup> *Ibid*, Sec. 7 (1).

The Lord Mayor is elected by universal adult suffrage in a secret ballot election that is run by the national Electoral Commission, to serve full time.<sup>102</sup> S/he has to be someone qualified to be elected as a Member of Parliament.<sup>103</sup> The Lord Mayor is deputized by the Deputy Lord Mayor, whom s/he appoints from members of the Kampala City Authority.<sup>104</sup> The functions of the Lord Mayor include: being the political head of the Authority, presiding over its meetings, taking charge of ceremonial and civic functions and monitoring administration of the Authority.<sup>105</sup> The Lord Mayor is answerable to the Authority and the Minister.<sup>106</sup>

The Chief Executive Officer of the Authority is the Executive Director, who is appointed by the president on the advice of the Public Service Commission and s/he is accountable to parliament.<sup>107</sup> The functions of the Executive Director are stipulated and include to be: the head of public service, accounting officer, advise the Mayor on Authority and Government policy, implement lawful decisions of the Authority, advise the Authority on technical and legal matters, promote trade order, etc.<sup>108</sup> The functions of the Mayor in section 11 are only 8, (a) through to (h) and those for the Executive Director are 23 (a) - (w). This is a clear indication of an intention to leave the Mayor with a few political and ceremonial functions, and the actual administration of the Authority to the presidential appointee; the Executive Director. The structure could also present points of friction, due to the overlapping functions that is likely to arise. For example, the Mayor's functions include monitoring administration of the capital city and provide guidance of division administrations, yet the Executive Director is designated as the one to head administration of the Authority and lower units such as divisions and wards.<sup>109</sup> Considering that the Lord Mayor is accountable to the Authority and Minister and not the Executive Director, the above situation can most likely lead to structural and personal friction between the Lord Mayor and the Executive Director, especially if they do not agree on pertinent governance issues.

The above among others is the cause for the governance challenges in Kampala capital city, leading to impeachment of the Mayor in 2013. The KCCA 2010 sets out the procedure and grounds for removal of the Lord Mayor and Deputy Lord Mayor. The Lord Mayor may be removed from office on various grounds including abuse of office, incompetence, misconduct or misbehavior, failure to convince two consecutive meetings of the Authority for unjustifiable cause, corruption etc.<sup>110</sup> The same law requires that a petition for the removal of the Lord Mayor has to be written, signed by not less than one third of the members of the Authority and submitted to the Minister.<sup>111</sup> The Minister is required to consult the Attorney General and if the grounds presented for impeachment are

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<sup>102</sup> *Ibid*, Sec. 9 (2) and 9(4).

<sup>103</sup> *Ibid*, Sec. 10.

<sup>104</sup> *Ibid*, Sec. 9 (3)

<sup>105</sup> *Ibid*, Sec. 11

<sup>106</sup> *Ibid*, Sec. 11 (2).

<sup>107</sup> *Ibid*, Sec. 17.

<sup>108</sup> *Ibid*, Sec. 19.

<sup>109</sup> *Ibid*, Sec.11 (f) and (g) and Sec. 19 (a).

<sup>110</sup> KCCA, 2010 Section 12 (1) (a)- (e).

<sup>111</sup> *Ibid*, Sec. 12 (3).

sufficient, the minister constitutes a Tribunal within 21 days after receiving the petition.<sup>112</sup> The Tribunal is chaired by a person fit to be a high court Judge and composed of two other persons appointed by the minister in consultation with the Chief Justice.<sup>113</sup> The law gives the Lord Mayor a right to appear during proceedings of the Tribunal, and also be represented by his duly appointed counsel.<sup>114</sup> The role of the Tribunal is to determine whether or not there is a *prima facie* case for the removal of the Lord Mayor; where upon the Authority passes a resolution which has to be supported by votes of not less than two thirds of all members of the Authority and the Lord Mayor is considered impeached.<sup>115</sup>

The Political standoff between the technical and political wing in the management of affairs in KCCA led to evocation of the above section to impeach the Lord Mayor. On complaints of alleged misconduct by some councilors belonging to the ruling NRM party. The minister of Kampala set up a Tribunal headed by Lady Justice Catherine Bamugemereire to investigate the allegations levied against the Lord Mayor.<sup>116</sup> The Report of the Tribunal findings in which the Mayor was found culpable of misconduct and incompetence was made public on November 14, 2013, and he filed proceedings for judicial review of the report in court the following day.<sup>117</sup> The Minister proceeded to hold a meeting to vote for the impeachment of the Mayor on November 25, 2013. Despite the fact that court had, that mourning issued an injunction against those proceedings, and an interim order staying implementation of the Tribunal recommendation until the main petition seeking judicial review of the Tribunal Report, the Minister went ahead to conduct the session.<sup>118</sup>

The application for the order was *ex parte* but counsel for both KCCA and the Attorney General was in court, but left before the order was signed. The Registrar in the Civil Division of the High Court issued an Interim Order halting the KCCA meeting on 25 November 2013. Later on Justice Nyanzi's ruling of 28 November 2013 upheld the temporary injunctive order of 25 November 2013.

When delivered to the Minister during the morning of the impeachment meeting, he said it was not authentic since it wasn't stamped and sealed.<sup>119</sup> Twenty nine councilors voted for the mayor's impeachment in proceedings where there was manhandling of the Mayor's lawyer who attempted to serve the court order on the Minister.<sup>120</sup> This is also against a background that the initial efforts at impeachment were by some National Resistance Movement councilors against Lukwago who is a member of the opposition.

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<sup>112</sup> *Ibid*, Sec. 12 (5).

<sup>113</sup> *Ibid*.

<sup>114</sup> *Ibid*, Sec.12 (7).

<sup>115</sup> *Ibid*, Sec.12 (8).

<sup>116</sup> Siraje Lubwama, How Lukwago was Impeached, *The Observer* November 26, 2013

<sup>117</sup> See., Misc. Cause 362 filed in the Civil Division of the High Court; Gloria Nakiyimba in Kampala; Court nullifies Kampala mayor impeachment as city operations shut down, <http://en.rfi.fr/africa/20131129-court-nullifies-kampala-mayor-impeachment-city-operations-shut-down>, Issued on 29-11-2013

<sup>118</sup> See, Misc. Application 445 fixed for hearing on Monday 25<sup>th</sup> November 2013 at 10:00am; Siraje Lubwama, *supra* note 116.

<sup>119</sup> Lukwago Elias v. The Attorney General and others, Miscellaneous Application No.94 of 2014.

<sup>120</sup> *Ibid*.

Also, KCCA Council was for long not fully constituted since representatives of professional bodies were not yet elected and were still not, at the time of constitution of the Tribunal. If the Tribunal proceeded in such circumstances, there would be no properly constituted council to which the Tribunal Report and findings would be presented.<sup>121</sup> These had to hurriedly be elected amidst allegations that they were only elected to constitute the Council for purposes of impeaching the Lord Mayor, and not necessarily service to the people.<sup>122</sup> This also amidst concerns of politicizing the process.<sup>123</sup>

These events are an indication that political difference in running affairs of local governments lead to undermining of the rule of law for political expedience.

**(iii) *The Councilors and Lower Urban Councils***

The councilors are directly elected, and the Local government Act “with modifications” applies to their election and removal from office.<sup>124</sup> Once elected, they councilors are members of the Authority.

The lower urban councils in the capital city are delineated as: division urban councils ward urban councils; and village urban councils and street committees.<sup>125</sup> All the detail about lower urban councils is provided for under part VI of the Kampala Capital City Act. The political head of the Division urban council is the mayor, who is elected in an election organized by the Electoral commission by universal adult suffrage.<sup>126</sup> The composition of the Division council is provided for under section 27, and includes: deputy mayor, one councilor representing each electoral area in the division, two councilors for the youth and two for the disabled- for both categories one of the two has to be a woman.<sup>127</sup> Still in the division urban council is a Town Clerk who head public offers and performs functions that include implementing the decisions of the Division urban council.<sup>128</sup>

Below the above are ward urban councils and village urban councils, whose composition and functions are stipulated in the Act.<sup>129</sup>

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<sup>121</sup> William G. Nagagga, Proposed impeachment of Lord Mayor Smacks of political intolerance, *The Monitor*, November 15, 2013.

<sup>122</sup> See., Farahani Mukisa, EC, Professionals Disagree on Councilor Elections, *The Monitor*, September 4, 2013; Election of KCCA Professional Representatives a sham, says opposition. *Uganda Radio Network* October 30, 2013.

<sup>123</sup> *Ibid.*

<sup>124</sup> Local government Act, sections 13 and 14.

<sup>125</sup> *Ibid*, Sec. 20.

<sup>126</sup> *Ibid*, Sec. 27 (a) and 29.

<sup>127</sup> *Ibid*, Sec. 27.

<sup>128</sup> *Ibid*, Sec. 31.

<sup>129</sup> *Ibid*, Sec. 38- 41.

(iv) *Resident City Commissioner and the Minister*

The resident city commissioner is appointed by the president to represent him and the government in the Authority.<sup>130</sup> S/he is meant to carry out a number of functions that are stipulated in the Act, including advising the Lord Mayor to instruct an auditor to audit accounts, be the chair to the security committee, etc.<sup>131</sup>

There is also the minister responsible for Kampala, whose functions include: modify or cancel a decision made by the Authority if it is inconsistent with government policy, receive reports from the mayor and take action, oversee the performance of the Authority.<sup>132</sup>

Kampala is predominantly occupied by persons in the opposition. Establishment of a structure with political control outside the Authority (with the minister) has clearly brought about friction in governance of the city, as seen from the conflict between the Lord Mayor on the one hand and the Minister and Executive Director of KCCA on the other as described in the impeachment proceedings above.

C. Public Participation in Rule Making in Local Governments and KCCA

Public participation in decision making of local governments is a very pertinent pillar of local governance, yet it has not sufficiently been analyzed in the literature. Abundant literature is awash with the use of; say, decentralization as a conflict management and mitigating mechanism, a service delivery mechanism among other hyped notions, but without any clear in-depth understandings of the laws and the extent to which they allow for people participation in rule making.<sup>133</sup> Yet, the process of decentralization has been described as one of the most far-reaching local government reforms in the developing world.<sup>134</sup> It remains a question how far reaching the process can be with unclear avenues of participation.

At the same time, Kayizzi Mugerwa makes an attempt to investigate the role of decentralization in increasing the capacity of the local people to participate.<sup>135</sup> This author has studied people's participation in decisions concerning service delivery and not the other pertinent issues such as judicial review or administration of justice within the decentralized structures.<sup>136</sup> The over focus and emphasis on service delivery in the literature almost tends to show that decentralization is synonymous to service delivery or by corollary; that service delivery is the main stem of decentralization.

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<sup>130</sup> *Ibid*, Sec. 71.

<sup>131</sup> *Ibid*, Sec. 72.

<sup>132</sup> *Ibid*, Sec. 79.

<sup>133</sup> See, for example., Roberts Kabeba Muriisa, *Decentralization in Uganda: Prospects for Improved Service Delivery*, Africa Development, Vol. XXXIII, No. 4, 2008, pp.83-95.

<sup>134</sup> Francis and James 2003, *World Development* 325 (re check)

<sup>135</sup> Kayizzi-Mugerwa, S, *Uganda Towards Result-oriented Economic Management*, Country Economic Report, Stockholm: Swedish International Development Agency (SIDA) at 36.

<sup>136</sup> *Ibid*.

In an almost similar manner, Golola discusses what in his view are the main objectives of decentralization, with an aim of establishing the extent to which they improve service delivery.<sup>137</sup> Among others, he avers that the devolution of power to the lower levels such as the district makes it possible for local leaders to plan, budget and also deliver services in a way that gives people room to make their leaders accountable.<sup>138</sup> From the above literature among others, there is a clear myopic sense of looking at service delivery as the most important aspect of decentralization in which people should participate, thereby reducing space for analysis of other pertinent matters in which people would have a right to participate in the decentralized system of governance.

Further, the available literature besides the express provisions of the law does little to enhance our understanding, at least in practice, of the workings of rulemaking, application and people participation in the whole process. Note however that there have been some studies to establish the position of rulemaking, rule application and the concept of participation in the process in the African Context (and Uganda), Ribot has observed that decentralization seems to have its thrust on 'creation of a domain of local autonomy.'<sup>139</sup> To him, 'Local representation without a domain of autonomy is not decentralization.'<sup>140</sup> He notes further the power to make rules and ability to enforce them and also to engage in adjudication is indispensable in the domain of decentralization, yet existing systems do not support engagement in those activities with the decentralization system. Ribot further argues that encouraging local participation can bring about change in the status quo.

Service delivery without paying attention to, participation in decision making, rulemaking, implementation, enforcement or adjudication may affect the ability to deliver services to the expectations of the people.<sup>141</sup> It is important to pursue all at the same time.

More concerns touching participation have been raised by other scholars. Such as Kiwanuka who argues that there are inconsistencies in the legal and administrative environment of decentralization in Uganda which has implications for people's ability to participate.<sup>142</sup> He believes that it is hard to achieve participation in an environment without systematic procedures/processes with emphasis on adhering to them.<sup>143</sup>

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<sup>137</sup> Golola, L.M. Decentralization: Local Bureaucracies and Service Delivery in Uganda, *in* Reforming Africa's Institutions, (Kayizzi- Mugerwa, S. ed.) 2003 New York: United Nations University Press at 259.

<sup>138</sup> *Ibid.*

<sup>139</sup> Jesse C. Ribot, *African Decentralization Local Actors, Powers and Accountability*, UNRISD Programme on Democracy, Governance and Human Rights, Paper Number 8, December 2002 at 48.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> Michael Kiwanuka, *Decentralization and Good Governance in Africa: Institutional Challenges to Uganda's Local Governments*, Management Consultant, Uganda Management Institute, Kampala, Uganda.

<sup>143</sup> Kiwanuka, *Ibid.*

On the other hand is a view that decentralization does not and was not intended to empower the people in all aspects of life.<sup>144</sup> Decentralization was intended to promote service delivery and also act as a vehicle for political control; a failure to intrinsically reconstruct it to cater for other issues such as enfranchising the populace is therefore not by default but design.<sup>145</sup> No wonder that service delivery takes center stage more than people's ability to participate and influence rules that are made at their local level. What makes its situation more irksome is the fact that majority of the people in Africa are unaware of their role as potential participants in decision making; they see selves more as recipients of services and have rarely demanded for participation in rulemaking about service delivery and more.<sup>146</sup>

The trend available in the foregoing literature highlights decentralization as offering an opportunity for improved service delivery and participation in Policy formulation at the district level. It is however silent on whether this much hyped participation also sips through to rule making processes and if so, how?

In general, there is a great deal of gaps in the literature on the detail of how administrative agencies in the areas to be studied make rules and how peoples should participate in the process, Below is a discussion of the rules on public participation:

*i. Local governments and Rule making*

The Local Governments Act provides for the legislative powers of local governments and the procedures. This section outlines those powers and procedures with a view to assessing the level of participation that is envisaged in the procedures.

A district Council has power to pass Bills into Ordinances which have to be signed by the chairperson.<sup>147</sup> The Bill is forwarded to the Attorney General through the Minister, such that the Attorney General can check to ensure that the Bill is consistence with the constitution and other laws<sup>148</sup>. A Bill that is found to be in contravention of the constitution or any other law is sent back for correction within ninety days.<sup>149</sup> Once a Bill is passed into an Ordinance, it is published in the Gazette and locally accessible media platforms.<sup>150</sup> The Local governments Act, Section 38 does not, however- spell out the detail on how the public can participate in processes of making such Ordances. The publication of the already made Ordinance in the Gazette or the media is not as pertinent as evidence of participation since it only for information purposes to the public about the already made law, Note however that section 38 provides that they have to abide by processes set out in the third schedule to the Act.<sup>151</sup> According to the procedures set out for making legislation,<sup>152</sup>

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<sup>144</sup> Stephen N. Ndegwa and Brian Levy, *The Politics of Decentralization in Africa: A Comparative Analysis*, the World Bank, Washington, DC, August 2003.

<sup>145</sup> Kayizzi, *supra* note 135.

<sup>146</sup> Ndegwa *et al supra* note 144.

<sup>147</sup> Local Government Act, Sec. 38 (1).

<sup>148</sup> *Ibid*, Sec. 38 (2)

<sup>149</sup> *Ibid* Sec. 38 (3).

<sup>150</sup> *Ibid*, Sec. 38 (4).

<sup>151</sup> *Ibid*, Sec. 38 (5).

the Bill has to be attached to a motion by a member that is introducing it.<sup>153</sup> Fourteen days before it is debated, the Bill is published by placing it in a conspicuous place at the district council offices, in a local publication, giving copies to the public or in a manner customarily acceptable to the given community.<sup>154</sup> Further, the published bill is given to the members of the council for to study and also to consult people in their respective constituencies on the bill.<sup>155</sup> The Act does not get into the detail on how the consultation has to be done, and mechanism for ensuring that it was actually done- although the use of “shall” is an indication of the mandatory nature of the requirement. The Bill is the debated within fourteen days from the date of its publication, <sup>156</sup>although the above requirement can be waived in cases of emergency.<sup>157</sup> After the requisite approvals, the ordinance is published in the Gazette and at the district as mentioned above.<sup>158</sup>

There are no clear procedures stipulated for people participation in the making of Ordinances, yet they are enforced on the people. The ordinances made by the District councils create offences and also stipulate penalties for breach.<sup>159</sup> The Ordinance may also stipulate fees or charges for an act that violates it, or performance of services.<sup>160</sup>

Lower local governments such as urban, Sub County, division or village councils have mandate to make bylaws, and these should not contravene national laws, the constitution, and any other ordinances made by the district or councils at a superior level.<sup>161</sup>The Local Government Act embeds a system of checks by upper bodies (councils) on the byelaws made by lower councils to ensure consistence. The Byelaws made by the municipality are forwarded to the Attorney general to ensure consistence with the constitution and other Acts of Parliament;<sup>162</sup>byelaws by other lower local councils are forwarded to the district council to ensure they are in line with laws of Uganda and Ordinances and other by laws;<sup>163</sup>byelaws by the village council are checked by municipal council to ensure consistence with laws and ordinance or bylaws passed by higher councils;<sup>164</sup>those by the village council go through the above processes of checking by the sub county council to ensure consistence.<sup>165</sup> In case the checking institution (Minister, other council) checking a law finds it in contravention of the constitution, any other law, ordinance or by law by a higher council, the minister or the council shall return it within 60 days for any changes or required modifications.<sup>166</sup>

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<sup>152</sup> *Ibid*, Third schedule sections 15-21.

<sup>153</sup> *Ibid*, Sec. 15 (3).

<sup>154</sup> *Ibid*, Sec. 16 (2).

<sup>155</sup> *Ibid*, Sec. 19.

<sup>156</sup> *Ibid*, Sec. 20 (1).

<sup>157</sup> *Ibid*, Sec. 20 (3).

<sup>158</sup> *Ibid*, Sec. 21 (3).

<sup>159</sup> *Ibid*, Sec. 40.

<sup>160</sup> *Ibid*, Sec. 41.

<sup>161</sup> *Ibid*, Sec. 39 (1).

<sup>162</sup> *Ibid*, Sec. 99 (2) (a).

<sup>163</sup> *Ibid*, Sec. 39 (2) (b).

<sup>164</sup> *Ibid*, Sec. 39 (2) ((d).

<sup>165</sup> *Ibid*, Sec. 39 (1) (d).

<sup>166</sup> *Ibid*, Sec. 39 (3).

The detailed procedure for passing bylaws at this level is further given in the third schedule to the Act. Pertinent among the procedures stipulated in the schedule, the chairperson publishes a notice of intention to make a by-law calling upon persons who object to its making to submit their objection in writing within three weeks of the notice.<sup>167</sup> The bylaw is published at the same time as the notice.<sup>168</sup> Once the bylaw is passed, it is published in the same manner as an ordinance.<sup>169</sup> Note that the procedure for making bylaws does not contain consultation of the constituency as it is for the Ordinance.

Considering the nature of people (low levels of education) it may not be possible for them to participate just on the basis of a published notice of intention to make a bylaw. Something more needs to be done to first of all educate them about the value in participation, and also encourage them to, beyond mere signposting of notices.

### *ii. Rulemaking in Kampala Capital City Authority*

Under section 8 of the KCCA 2010, the Authority, which is the governing body of the City and has legislative powers to introduce and pass Ordinances as long as they are not inconsistent with the Constitution or any other law made by Parliament. The process of rulemaking within the Authority seems to be a three-tier affair with the Lord Mayor among the key players.; (i) s/he signs the Bill into a binding Ordinance; (ii) it is forwarded for consultations to the Minister of Kampala and Attorney General, and if approved – (iii) it is published in the gazette.<sup>170</sup> The only gleam of participation described therein is the affirmation that every member of the Authority has a right to introduce a bill for an Ordinance in the Authority.<sup>171</sup> Even then, it is not clear how participatory this and the process through which the Councilors may introduce the Bill as an Ordinance. Similarly, it is not clear how the locals in KCCA participate in these processes.

Besides the Authority, Division Urban Councils are bestowed with law making powers; to make laws that are in line with the constitution of Uganda and other laws. The byelaws made by the division councils are signed by the Mayor and are also subjected to checks by the minister and the Attorney General.<sup>172</sup> Besides the above bodies, the Minister of Kampala is also given powers to make Regulations if s/he thinks they are needed to ensure implementation of the provisions of the KCCA.<sup>173</sup>

A part from the hierarchical checks by centers of authority such as the Mayor, Attorney general and Minister as shown above, it is not clear how the masses participate in processes leading up to the passing of bylaw or Ordinances.

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<sup>167</sup> LGA third schedule Sec. 22 (2) (b).

<sup>168</sup> *Ibid*, Sec. 22 (2) (c).

<sup>169</sup> *Ibid*, Sec. 16.

<sup>170</sup> KCCA 2010, section 8.

<sup>171</sup> *Ibid*, Sec. 8 (6).

<sup>172</sup> *Ibid*, Sec. 33.

<sup>173</sup> *Ibid*, Sec. 82.

The question that remains then is whether local governance in Kampala promotes participation. In general terms, other challenges to participation have been cited as lack of information, corruption and financial shortages.<sup>174</sup>

The absence of clear stipulations in the law in support of participation may be an indication that there is limited space for participation in the structures and systems of local governance. Whether participation has been brought about by local governance is a matter that will be concluded upon basing on the field findings.

#### IV. ADJUDICATION OF DISPUTES AND IMPACT OF JUDICIAL REVIEW

##### D. Adjudication of Disputes and Judicial Review in KCCA

The recent efforts at judicial review are embedded in environs of political contestations between the government and its allies such as the technical wing of KCCA and the political head of the Authority. An inquiry into whether these are based on principle rather than personal vendettas would be important to demystify the entrenched glaring evidence that they are only based on a desire to entrench the rule of the ruling party in the city which is predominantly an opposition stronghold.

Evidence of this is glaring in the standoff between the Lord Mayor and the executive director and Minister for Kampala during the Lord Mayor's last term, as discussed earlier in this paper. The Tribunal set up by the Minister made its own rules of procedure, and at the time of setting it up the Authority was not fully constituted since representatives of professional bodies were not yet elected. In the case of *Lukwago v Attorney General and Another*<sup>175</sup> the Lord Mayor sought judicial review orders of certiorari, prohibition and injunction against the set Tribunal to investigate the veracity of the petition for his removal from office. The order of prohibition was meant to restrain the tribunal from investigating petition for his removal and proceeding with investigations without regulations provided for by law; certiorari to quash the decision of the Tribunal to adopt rules of procedure not provided for by law and quashing its decision to appoint three non-members as lead counsel and secretary and an injunction restraining the respondent from abusing rules of natural justice.. The court disallowed the application for orders sought. It did not find any reason why the Tribunal could not proceed with investigation of the petition. The court noted that since there were no statutory instrument setting rules for the Tribunal, it had to abide by principles of natural justice. About the constitution of the Authority, court did not find that this affected the Tribunal. It however pointed out that the Authority had to be fully constituted under section 6 of the Act, if the resolution to remove the mayor was to be passed, following the findings of the Tribunal

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<sup>174</sup> Steiner, *Constraints on the Implementation of Decentralization and the Implications for Poverty Reduction* (2008)chc)

<sup>175</sup> Miscellaneous cause No. 281 of 2013.

Judicial review has to some extent been a tool to trump ultra vires actions taken on the basis of political expediency in KCCA. Following the unlawful impeachment of the Lord Mayor, there were efforts to organise a by-election to fill that position, despite the fact that miscellaneous application No.362 for judicial review of the Justice Catherine Bamugemereire Tribunal report was not concluded, and in disobedience of the court injunction earlier granted. In *Lukwago Elias v Attorney General and 3 others*<sup>176</sup> the embattled Lord Mayor sought a temporary injunction against the respondents restraining them from acting in contempt of a Court Order by, among others declaring the seat of the Lord Mayor, KCCA vacant and organizing a by-election for the position of Lord Mayor KCCA pending the final determination of Miscellaneous Cause 362 of 2013. The Court went ahead to review the circumstances surrounding the case in detail. It went into its history, and came to a conclusion that the respondents were in contempt of court when they disobeyed the court order of November 25, 2013 issued by the registrar and validated by Justice Nyanzi's ruling on November 28, 2013. That means that the declaration of the office of the lord Mayor Vacant and the planned by election are contrary to the law. The Court put a stop to all activities in that line including the nominations for the office of the Lord Mayor that had already taken place; and ordered maintenance of the status quo until Misc. Cause 362 of 2013 is disposed of.

The above outcomes of judicial review notwithstanding, the politics was played in contempt of the rulings/ orders of court, and the Lord Mayor remained closed out of his office until he was re-elected and sworn in in the election cycle of 2016.

#### E. Adjudication of Disputes and Judicial Review in Lower Local Governments

The Local Government Act Cap. 243 and the Local Council Court Act, 2006 provide a framework within which disputes should be resolved within the local government structures in Uganda.

##### *i. The Local Council Courts*

Local Council courts are established at every village, parish, town, division and sub-county level within the decentralisation structures.<sup>177</sup> At the village and parish level, the courts are composed of the members of the executive committee of the village or the parish.<sup>178</sup> The Local Council Court of the town, division or sub-county consists of five members appointed by the town council, division council or sub-county council, who are recommended by the respective executive committees at all those levels.<sup>179</sup> In the town, division, sub-county local council court, two of the court members must be women.<sup>180</sup> Section 5 of the Local Council Court Act stipulates the qualifications of the members of the local council courts at the town, division and sub-county level to include that: one must be a resident in the jurisdiction of the council for which the court is appointed, be of high moral

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<sup>176</sup> Miscellaneous Application No. 94 of 2014.

<sup>177</sup> Local Council Court Act 2006, Section 3.

<sup>178</sup> *Ibid*, Sec. 4 (1).

<sup>179</sup> *Ibid*, Sec. 4 (2).

<sup>180</sup> *Ibid*, Sec. 4 (3).

character and integrity, know the common language of the area, not be a member of a local council, parliament or a statutory body and not be a member of the local council court.<sup>181</sup> Note that there is no requirement that one should be knowledgeable in the law or have any experience in adjudication of disputes. All courts town, division, and sub county court must appoint a chairperson and a secretary from among themselves, to help them conduct business of the court.<sup>182</sup>

The Local Council Court Act regulates the details about operation of the local council courts. The quorum of the village or parish court is set at five members who include the person presiding over the court, but two of the members must be women.<sup>183</sup> The quorum of the town, division or Sub County is three members which include the person presiding over the court, and one of the three should be a woman.<sup>184</sup> Quorum has to be maintained from the beginning through to the end of hearing a matter.<sup>185</sup>

In terms of jurisdiction, the territorial jurisdiction of the local council courts extends to matters arising within the territorial areas of the council for which the court is set up. Also jurisdiction extends to matters that fall elsewhere, which are committed within the council jurisdiction or for which the defendant is ordinarily resident with a given council's area.<sup>186</sup> Legal jurisdiction of the Local Council Courts extends to civil matters that are stipulated in the second schedule to the Local Council Court Act (disputes over customary land, those concerning marriage, marital status, divorce and parentage, customary bailment, etc.).<sup>187</sup> Also included are matters governed by customary law and those arising from infringement of bye-laws and ordinances made under the Local Government Act.<sup>188</sup> The court sits as often as necessary, in order to expeditiously determine the matters before it.<sup>189</sup> The decisions of the court are reached by consensus, and where there is no consensus, by majority votes of the members.<sup>190</sup>

In cases of breach of bye-law, the Local Government Act section 18 (1) empowers any person who believes that an offense has been committed by breach of bye-laws to file a complaint orally or in writing. If presented orally, it is reduced in writing for the complainant to sign, where upon a charge sheet is drawn and the perpetrator summoned to appear to answer charges.<sup>191</sup>

On hearing a matter, the court has powers to make orders or reliefs that include: reconciliation, declaration, compensation, restitution, etc.<sup>192</sup> Where the matter before the court was about

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<sup>181</sup> *Ibid*, Sec. 5.

<sup>182</sup> *Ibid*, Sec. 6.

<sup>183</sup> *Ibid*, Sec. 8 (4) (a)

<sup>184</sup> *Ibid*, Sec. 8 (4) (b)

<sup>185</sup> *Ibid*, Sec. 8 (5).

<sup>186</sup> *Ibid*, Sec. 9.

<sup>187</sup> *Ibid*, Sec. 10 (1) (a).

<sup>188</sup> *Ibid*, Sec. 10 (1) (b) & (c).

<sup>189</sup> *Ibid*, Sec. 8 (3).

<sup>190</sup> *Ibid*, Sec. 8 (7)

<sup>191</sup> *Ibid*, Sec. 18 (2), 19 & 20.

<sup>192</sup> *Ibid*, Sec. 13 (a) - (f).

infringement of a bye-law, the court has power to impose a fine, community service, or any other punishment as may be stipulated in the bye-law for such an offence.<sup>193</sup>

The Local Council Court Act provides for appeals from decisions of the local council Court. According to section 32 (2) (a- d); any appeal from the decision of the village local council court goes to a parish local council court; appeals from parish local council courts go to the town, division or sub-county council court; and those from the town, division or sub-county council court are filed to the Chief Magistrate Court. With leave of the Chief Magistrate or the High Court, appeals from the decision of the Chief Magistrate are filed to the High Court.

### *ii. Operation of Local Council Courts; a legal dilemma*

The structure of Local Council Courts described above has been on the ground operating since their inception in 2006. Yet, the constitutional court declared their continued operation unconstitutional in the case of *Rubaramira Ruranga vs. Electoral Commission and another*.<sup>194</sup> The case among others sought orders that various provisions of the Local Government Act such as section 160, 161 (4) and 161 (2), all about nomination and voting of candidates for election to county parish or village council, and Regulation 14 (1), (3) of Statutory Instrument 319-1 contravened the constitution article 61 (1) (a), that required the Electoral Commission to conduct free and fair elections. The detail of the impugned provisions stipulated oral nomination of candidates who would be seconded by a member, the parish chief was designated as the presiding officer for elections taking place at the village or parish level.<sup>195</sup> The non-involvement of the Electoral Commission in the process was considered a breach of the constitution Article 61 (1) (a). On the whole, the court found those provisions in contravention of the Constitution and made a declaration to that effect. The implication of this decision is that officers who were appointed in accordance with the impugned provisions do not validly hold office. This decision was passed in 2007, but to date, Local Councils I and II have not had any elections; offices are occupied by the old guards who run the affairs of the councils and the courts at those levels. The last time elections at these levels were held was in 1996, and the office bearers were legally in office until the expiration of their term in 2001. Elections have not taken place to-date.

The case of *Ocitti v. Okello*<sup>196</sup> is evidence that despite the declarations in the *Rubaramira* case, Local Council Courts are still handling matters. This is a 2014 case brought against *ex parte* proceedings of the Local Council II court of Amar in Gulu District, which granted orders against the applicant. The court noted that the proceedings in the Local Council II court all took place on 1/5/2010, and there was no evidence that the applicant was summoned to appear in court; contrary to rules of natural justice. The court finds this to be a procedural impropriety. The Court echoed the

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<sup>193</sup> *Ibid*, Sec. 13 (h).

<sup>194</sup> Constitutional Petition No. 21 of 2006.

<sup>195</sup> Statutory Instrument 319-1, Regulation 11 (3).

<sup>196</sup> Civil Miscellaneous Application No. 054 of 2014, [2014]UGHCCD 164 (8 December 2014).

decision in the *Rubaramira Ruranga* case above and held that the Local Council I and II courts are not constitutionally and legally constituted since they were declared unconstitutional in the above case. Since 3/4/2007, elections have not been conducted at those two levels. By implication, before the Electoral Commission conducts elections at those levels, it is only the Local Council III Court that is validly constituted; this is an appellate court under the Local Council Court Act.<sup>197</sup> All in all, the proceedings before the Local Council II in this matter were a nullity.

Despite their unconstitutional existence, these courts are on foot running and passing judgements, which are enforced to the chagrin of those that lose cases before them. Yet, a sizeable number of people who access justice at the lower levels are not in position to challenge such decisions in higher courts, as was the case in the *Ocitti v. Okello* case above. Therefore, disputes at that level are resolved by illegal structures.

### *iii. Other dispute resolution arenas*

Under the Local Government Act, each district has a District Executive Committee.<sup>198</sup> The District Executive Committee performs a number of functions which include initiation of Policy, overseeing the implementation of government and council's policies, recommending persons for appointment to district service commission, District tender Board, District Land Board, Commission and Committees.<sup>199</sup> In addition, the District Executive Committee receives and resolves disputes that may be forwarded to it from lower local government councils.<sup>200</sup> In addition to the above are Lower Local government executive committees established under the Local Government Act sections 23-25. These perform various functions including receiving and resolving disputes forwarded to them from the lower local councils.<sup>201</sup> Also established at the village, parish and county level in rural areas, and the parish or ward and village level in urban areas are administrative unit councils.<sup>202</sup> Administrative unit councils of at the county and parish level have mandate to resolve disputes which are referred to it by the relevant sub-county or village council.<sup>203</sup> Also important is the Local Government Finance Commission which handles disputes related to financial matters between the local governments, advises them and the minister for finance in such cases.

## V. KEY FINDINGS

### A. About the Studied Districts

The findings in this section are from field investigations done in the Districts of Iganda, Gulu, Masaka and Kampala. They reveal a number of similarities in the practical application of the laws

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<sup>197</sup> See the Local Council Court Act, 2006, Sec. 32 (1) (2) (b).

<sup>198</sup> Local Government Act, Sec. 16.

<sup>199</sup> *Ibid*, Sec. 17 (a) - (e).

<sup>200</sup> *Ibid*, Sec. 17 (e).

<sup>201</sup> *Ibid*, Sec. 26 (e).

<sup>202</sup> *Ibid*, Sec. 45 (1) (a) and (b).

<sup>203</sup> *Ibid*, Sec. 48 (c).

on rule making, application, adjudication and the impact of judicial review on the operation of the local governments in all studied districts. Kampala presents some atypical issues mostly as a result of the political terrain in its administration.

Iganga is a district in the Eastern part of Uganda bordered by Kaliro District to the north, Namutumba District to the northeast, Bugiri District to the east, Mayuge District to the south, Jinja District to the southwest and Luuka District to the west with district headquarters at Iganga town. Iganga is one of the powerful districts in Busoga region and has existed for more than two decades. It is a district that boasts of strong structures upon which decentralization functions.

Gulu district is located in northern Uganda. Until recently, it was ravaged by armed conflict between the Uganda Peoples' Defense Forces (UPDF) and the Lord's Resistance Army for over two decades, with documented and devastating effects.<sup>204</sup> Displacement from home into internally displaced peoples' camps was a consequence of the Conflict.<sup>205</sup> Armed conflict led to widespread displacement of people, which affected the local governance system, and led to a relatively different structure with camp commandants and chief, as necessitated by the conflict situation. With armed conflict came an influx of humanitarian aid agencies, civil society organizations and business speculators; the foregoing dynamics and increased government and international community interest in the region which had a bearing on the running of local governance structures in the post conflict period in Gulu district.

Masaka District is in Central Uganda, laying approximately 37 Kilometers. It has a population of approximately 296,649 living in the Sub Counties and Masaka Municipality. It is bordered by the Districts of Bukomansimbi to the North West, Kalungu to the North, Kalangala to the East, Rakai to the South west and Lwengo in the west.<sup>206</sup> In terms of local government structures, the highest political authority is the district Council, with 18 members headed by a District Local Council Chairperson. The district is divided into one county, one Municipality, 6 rural sub-counties and 3 divisions in the Municipality, 39 parishes and 352 village councils.<sup>207</sup> Just like any other district in Uganda, Masaka has a technical team with nine directorates under the headship of the Chief Administrative Officer.

Kampala is run using a structure that is greatly unique to it as the capital city of Uganda, in accordance with the KCCA, 2010. Since it was turned into an Authority, the Hallmark of

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<sup>204</sup> This has been widely documented in the literature by a number of scholars: Adam Branch, *Displacing Human Rights: War And Intervention in Northern Uganda* (Oxford University Press, 2011); Chris Dolan, *Social Torture: The Case Of Northern Uganda, 1986-2006* (New York: Berghahn Books 2009), Sverker Finnström, *Living With Bad Surroundings: War, History, And Every Day Moments in Northern Uganda*, (Durham and London: Duke University Press, 2008).

<sup>205</sup> *Ibid.*

<sup>206</sup> See, [http://masaka.go.ug/index.php?option=com\\_content&view=article&id=48:overview-of-masaka-district&catid=34:general-information](http://masaka.go.ug/index.php?option=com_content&view=article&id=48:overview-of-masaka-district&catid=34:general-information), (accessed June 2, 2016).

<sup>207</sup> *Ibid.*

administration of the city has been political struggle and efforts aimed at excluding the political leader elected by people.<sup>208</sup>

### B. The Actors and How they Act

All the four districts visited had administrative agencies in place, composed of both males and females, as required under the law.

**Table 2: District of Respondent and Gender**

	Gender of Respondent		Total
	Male	Female	
District of Masaka Respondent	2 11.1%	1 5.6%	3 16.7%
Gulu	3 16.7%	4 22.2%	7 38.9%
Iganga	5 27.8%	3 16.7%	8 44.4%
Total	10 55.6%	8 44.4%	18 100.0%

On the whole, the male actors outnumber the females as seen in the above table.

The actors in the local governance structures need to understand the relevant laws and procedures in order to abide by the principle of legality.

By acting in accordance with the laws and set procedures.

Our findings reveal low levels of education of the actors in the local governance structures.

<sup>208</sup> See the discussion earlier in this chapter about Kampala. Below are the findings from the field; from all the three districts and discussion of the same.

		Gender of Respondent		Total
		Male	Female	
<b>Academic Qualification</b>	Certificate	5	5	10
		27.8%	27.8%	55.6%
	Ordinary Diploma	3	1	4
		16.7%	5.6%	22.2%
	First Degree	2	2	4
		11.1%	11.1%	22.2%
<b>Total</b>		10	8	18
		55.6%	44.4%	100.0%

A sizeable number only hold a certificate, putting them at a level where they find it difficult to engage in reasoning and analysis that is at times required of local government officers in the execution of their duties. The above is mainly applicable to the districts of Iganga, Masaka and not Kampala where the levels of education of the actors is generally higher. A number of the respondents reported that they garnered experience to deal with their mandate during their five year term that they serve. Note however 55.6 % of the respondents served for a period of 1-5 years. This means that if they did not get another term, the experience got in the first time is not used in service. Yet, this holds true for the 22.2% who served for over five years; the experience made them better in the second term.

Besides experience, there were a number of efforts in all the districts studied to provide training for the actors. Most local government officers talked to said that at the beginning of their tenure, trainings are usually organized by the ministry of local government and other actors such as civil society organizations. During these they are trained about the laws that apply to local governments, and what is expected of them. It is also a requirement that all actors acquire a certificate in administrative law. Makerere University's School of Law Administrative law project and the Law Development Center both run training centers in a number of Districts through which they equip the actors with knowledge on administrative law principles and the procedures. Majority of the actors (88.9%) in total said that they had undergone training that is relevant for their work, and a minority (11.1%) had not gone through such training. The level of engagement and from the interaction with the actors in Gulu District reveals a high sense of understanding of their mandate, and ability to express themselves compared to those in for example Iganga and Masaka district. Clearly, inability to read, write or speak English is hindrance learning for a number of councilors at various levels of local governance.

### C. Public Participation in Rulemaking and Adjudication

The Long title to the Local Government Act reiterates the rationale behind decentralization and these include to “ensure good governance and democratic participation, in and control of, decision making by the people...” People have a right to participate in all affairs of their governance, including rule making.

### *i. Rule making*

This chapter has shown clearly stipulated procedures of rulemaking both within the context of local governments in general and Kampala Capital City Authority. Indeed, a number of respondents indicated that they participated in various activities connected to rule making, application and adjudication. In terms of percentages, a total of 43.8% participated in rule formulation, 21.9% in application, 25 % in adjudication, 1% in none of the above and 2% others. In general, the percentage of females that actively got involved in all activities above is 43.8% compared to the 56.3% of the males.

The general stages include making the ordinance, subjecting it to a check by another authority to ensure that it does not contradict existing law, and publication in the gazette and the media. There are no clear stipulations pointing to the need for people to participate in rule making.

That notwithstanding 94.1% of the respondents confirmed that they operate on the basis of clear guidelines on how to make rules, as opposed to the 5.9% who did not think that the guidelines are clear. At the same time, 93.8% of the respondents believed that the Guidelines are usually followed in the processes of rulemaking as opposed to the 6.3 % holding a contrary view.

It should further be noted that some respondents intimated that there were instances where guidelines were not followed since it was convenient not to. The numbers of actors who believed that it was sometimes imperative not to follow guidelines is 66.7% as opposed to the 33.3% who asserted that guidelines are followed at all times. Political expedience was cited as one of the reasons why guidelines were not followed.

In the Districts of Gulu and Masaka, there were respondents who acknowledged that for them it did not matter what decision they took, as long as they followed instructions from their chair or the speaker. To some of these, their leaders were the ones to tell them what to support or how to vote in processes of rulemaking and at times application.

In essence, rationality in rule application was determined by a number of actors including low levels of education that render some actors incapable of exercising their freedom to choose a position, fear of political persecution if one acted contrary to the leader's or dominant view.

There were reported instances of corruption as a factor to influence what rules were given priority. It was reported that the actors in the local government system are not financially well facilitated. For example in Nawangingi Sub County in Iganga district, they are paid fifty thousand Uganda shillings per sitting and they sit four times a day.<sup>209</sup> Yet, many look at this role as a honorable one from which they should earn a living. The financial constraints they face make them susceptible to corruption in which case they receive money in return for supporting a position; which may not be in the people's interest.

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<sup>209</sup> Interview with woman councilor, in Nawangingi sub county in Iganga district, date

Similarly in Masaka, there were reported instances where rules were reportedly made in the interest of a give group through corruption. For example, that shop owners bribed the authorities to make rules through which the street vending would be outlawed. By doing this, the shop owners would increase sells but a sizeable number of other people would be negatively affected by such a rule.<sup>210</sup> In the same district, there were respondents who alleged that some rules were made from Kampala, and presented to them by the town clerk for purposes of explaining the rules to them and then passing them without input in the making process.<sup>211</sup>

Conflict of interest on the part of the actors at the district level is at times a stumbling block to making rules that would benefit the people. In Iganga District, among the key concerns raised was that the population engages more in sugar cane growing than food production leading to low levels of food production. At the same time, overloaded sugar cane tracks greatly contribute to wear and tear of the roads. One sub county had a proposition to pass a bye-law by which a road toll would be introduced for cane transporters; such that it can be used for road maintenance. This proposition failed to go through, since a number of officers at the district were involved in sugarcane growing and would therefore be affected.<sup>212</sup>

## *ii. Rule application*

In the entire studied district, insufficient funds for activities related to rule application was reported as a hindrance. Budgetary constraints affect a number of activities related to rule application. As a result, the districts collaborate with other institutions such as the Police, to, to facilitate rule application especially since it is at times a part of their core mandate of enforcing law and order. In Iganga, the Local Councilors were given the mandate to enforce/apply the rules since they are closer to the people.

That notwithstanding, a number of respondents noted that the Local Councils rarely follow procedure and many times act in a manner that was arbitrary. One respondent in Gulu gave an example of a local council chairman that was for long operating without an executive committee, but with his son acting as secretary. In such a case, there is no one to check the power of such a chairman, yet the people in his community consider him legitimate and respect his decisions.<sup>213</sup>

In addition to the above, peoples' limited knowledge about the rules makes it hard to enforce them. Lack of knowledge about rules leads to resistance against enforcement of the rules in some instances.<sup>214</sup>

Another hindrance noted by some of the councilors talked to was that applying some rules that may be unpopular among the citizens not a choice they can easily make. More so since it is detrimental

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<sup>210</sup> Interview with a journalist, Masaka district, date

<sup>211</sup> Interview with a council in Masaka District, date...

<sup>212</sup> Interview with a male Youth Councilor in Iganga District date...

<sup>213</sup> Interview with male respondent in Gulu District date:.....

<sup>214</sup> Interview with ale councilor, Iganga District, date.....

to their political career; they fear losing their positions in return.<sup>215</sup> Parish chief perform a number of functions, yet they are not facilitated. Considering that they are not subjected to elections, it was suggest they are better placed to be responsible for rule application.<sup>216</sup>

### *iii. People participation*

In all the districts studied, respondents agreed to participating in a number of decision making activities mainly regarding formulation of bye-laws for the management of their affairs such as; garbage collection, cleanliness, protection of children from abuse, etc. In total, 66.7% participated as opposed to the 33.3% that did not. In the process, a number of people acknowledged that they got feedback from their participation mostly through public rallies organized for that purpose (67.7%) or through local media houses.

It was noted that the numbers attending information sessions/rallies to get feedback often times depended on the issue that was being legislated upon. A number of people admitted that they would not go for any rallies for information unless it was a matter that directly affected them. For market vendors, issues to do with licenses, garbage collection were important and they would attend those more than rallies about say; regulation of alcohol drinking hours. There were also persons that felt that their participation did not matter, and they would rather go on and about their business instead of giving their view. For these, their participation is only a perfunctory activity since they believe that decisions are usually already made prior to consultation.

Some categories of people such as youths and persons with disability talked to asserted that their participation in general matters besides those touching youths and PWDs was limited. This is despite the fact that usually enforcement of rules is against all irrespective of categorization. This was a complaint across all districts studies.

It should be noted that Access to information is an important prerequisite for participation in local government activities such as rule making. The constitution of Uganda Article 41(1) guarantees the right to access to information that is in possession of the state or other organ or agency of the state, as long as giving that information does not prejudice state security or interfere in the privacy of another person. The detail of the right to access to information is provided for in the Access to Information Act, 2005. This Act applies to all records and information of government ministries, other departments and also local governments.<sup>217</sup> The rationale behind protection of the right to access to information is to promote “an efficient, effective, transparent and accountable government...”, and also promote transparency and accountability in governance and empower the public to check on how effective public affairs are conducted and also increase public participation.<sup>218</sup>

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<sup>215</sup> Interview with male councilor Iganga District, date...

<sup>216</sup> *Ibid.*

<sup>217</sup> Access to Information Act, 2005, Sec. 2 (1).

<sup>218</sup> Access to Information Act, 2005, Sec. 3.

Another hindrance to the enjoyment of the right to access to information is the limited knowledge about this right among the people. Also, poor record keeping in the sense that lower local governments are only beginning to entrench this culture, yet they are working within an environment of with financial constraints.

Our findings also reveal that a number of people did not know that after they have elected their local leaders, they remain with any role to play. They presume that the leaders are the ones to actively engage in such activities such as decision making and rule making. Surprisingly, some of the lower level leaders were not aware that they are supposed to regularly consult their constituencies and relay their views on rule making among others. They thought regular cordial relationship with the people is only important towards the end of a given term, close to another cycle of elections when they will need votes from the people.

At the same time, the fact that a sizeable number of people doesn't know that they have a right to participate weakens the demand side; they rarely demand to be consulted and also do not seek recourse in cases where they aren't.

Public participation is also said to be affected by insufficient funds. There is a culture of transport refund that has been inculcated among people. It therefore becomes difficult to encourage people to participate in activities where there is no budget for transport refunds.

Corruption was also cited as among the factors that may be pushing people away from participation. To one respondent:

“No. Because the people have a negative attitude towards most of these institutions which they don't want to associate with because of their corrupt tendencies. They should ensure that they work on changing their image and provide justice by following ethics. They should also try to sensitise the people to appreciate their role. They also need to fight corruption.”<sup>219</sup>

#### D. Judicial Review and Decision Making

This study found that there is a robust structure of institutions at various levels with decision making powers, although it is not so clear how equipped the actors at all levels are on pertinent issues such as the principles of fairness, and the need to make rational decisions.

There were also instances where political expediency was evoked to trump notions of legality and rationality. Yet, very few cases of judicial review have been filed. A number of the actors were neither aware of processes of judicial review, nor been informed about the need to heed to the principles as set in cases of judicial review. The situation was found to be different for Kampala, where in the recent past there have been a number of cases filed on key issues of contention between the Lord Mayor and the other actors such as the Minister for Kampala. The councilors in KCCA are more aware of the value of judicial review. Even then, it has not had a great impact in shaping action, since the politics of the day dictated that decisions in favor of the Lord Mayor are bypassed.

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<sup>219</sup> Interview with female resident of Kampala, on date:

## VI. CONCLUSION

Administrative law contains a robust framework of principles and rules which, if applied, would play an important role in stream lining processes and praxis of local governance in Uganda. Some of these principles are re-echoes in the legal framework for the decentralised system of governance in Uganda.<sup>220</sup> This study has revealed that service delivery is still the centre piece among the rationale for decentralisation; bringing services to the people. The ability of the people to participate in various activities within the decentralisation system is very important in order to promote accountability in governance. Just like it was in the historical context of Uganda, a there are a number of hindrances to participation in the districts studied. Limited awareness on the avenues for participation and the value in participation keeps a number of people away. There is also evidence that over the years, there have not been sufficient efforts to promote a situation within which people own the system and therefore work to promote it. Rather, a number of the local governance structures have been used as conduits for populist politics and entrenchment of patronage. This inhibits adherence to administrative law principles of say legality, in the performance of functions within the local governance system. Our findings in Kampala Capital City Authority herald this. Within the other districts studied, there have been efforts by local politicians and elites to capture local power by imposing positions on other relatively less educated political players and the masses. In both situations, political leverage by those strategically positioned clouds out the possibility for fair play which would create room for participation in activities such as rule making and decision making. Yet, all studied districts operate within a context of constrained financial resources. This makes them over reliant on the central government; creating a master –servant relationship with potential to oust people power and instead act in the interest of the central government. At the same time, the constrained financial environment has in all cases been presented as the justification for corruption/bribery in some instances whereby the leaders are not guided by the people’s will but the will of the one who pays for a wining view. With thee above environment, our findings show that judicial review has significantly fed into the practices and processes in the decentralisation system to inform the mode of operation. In fact, the limited knowledge about rights and roles of local governments has led to fewer cases (if at all) challenging decisions of local governments. In KCCA, some recent decisions have been made although adherence to them was at some point met with resistance for political reasons.<sup>221</sup> Administrative law principles are undoubtedly very important, but to a great extent, the practice and power play within the local governance structures in the districts studied eludes them more than they are embraced.

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<sup>220</sup> See the Constitution of Uganda 1995 and the Local Government Act, 1997 (as Amended).

<sup>221</sup> Lukwago v Attorney General and another, miscellaneous cause No. 281 of 2013.

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