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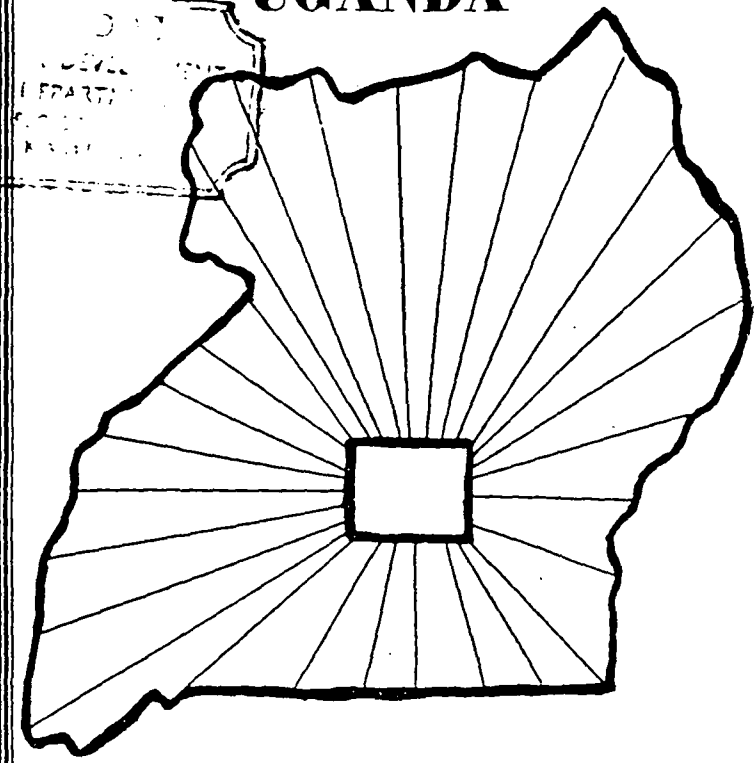
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DECENTRALIZATION IN UGANDA



CENTRE - LOCAL RELATIONS



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PREFACE

Every decentralization programme faces the dilemma of establishing appropriate centre - local relations. On one hand, decentralization provides for the transfer of power to Local Governments. To be meaningful, the transfer of powers has to create adequate local powers allowing Local Governments to assume greater responsibilities and to be accountable to the citizens for their actions. On the other hand, Central Government is held responsible by citizens for a decentralization that has transferred power from it.

This publication addresses the issue of centre - local relations. In the publication we first devote ourselves to enumerating the tasks of Central Government and Local Governments. Later we discuss forms of Central Government influence over Local Governments by analysing the provisions of the Constitution and the Local Governments Act, 1997 and their implications for centre-local relations.

Needless to say, intergovernmental cooperation is a desirable feature of valid decentralization that should be promoted. We do hope that this publication will serve as a useful guide to determining relevant support programmes and concurring centre-local relations.

**Decentralization Secretariat
Ministry of Local Government
August 1997**

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DECENTRALIZATION IN UGANDA: CENTRE - LOCAL RELATIONS

1. INTRODUCTION

Uganda has adopted a decentralized system of government. The 1995 Constitution provides under the National Objectives and Directive Principle of State Policy that **the State shall be guided by the principles of decentralization and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.** The Constitution further provides in Chapter 11 that the following principles shall apply to the Local Government system:-

The system shall be such as to ensure that functions, powers and responsibilities are devolved and transferred from the Central Government to Local Governments units in a coordinated manner;

Decentralization shall be a principle applying to all levels of Local Government and in particular, from higher to lower Local Government units to ensure people's participation and democratic control in decision making;

The system shall be such as to ensure the full realization of democratic governance at all Local Government levels;

There shall be established for each Local Government unit a sound financial base with reliable sources of revenue;

Appropriate measures shall be taken to enable Local Government units to plan, initiate and execute policies in respect of all matters affecting the people within their jurisdiction;

Persons in the service of Local Government shall be employed by the Local Governments; and

The Local Governments shall oversee the performance of persons employed by the Central Government to provide services in their areas and monitor the provision of Central Government services or the implementation of projects in their areas.

The question of how the Central Government relates to the Local Governments is central to the fulfilment of the constitutional objectives and principles. To a considerable extent, the implementation of decentralization will be affected by centre - local relations. In the interest of the development of our decentralized system, it is important that we consider the relations between Central Government and Local Governments.

2. THE POWERS, FUNCTIONS AND SERVICES FOR WHICH CENTRAL GOVERNMENT IS RESPONSIBLE

Under Article 189 and the Sixth Schedule of the Constitution, Central Government is responsible for the following:

- . Arms, ammunition and explosives.
- . Defence, security, maintenance of law and order.
- . Banks, banking, promissory notes, currency and exchange control.
- . Taxation and taxation policy.
- . Citizenship, immigration, emigration, refugees,

deportation, extradition, passports and national identity cards.

Copyrights, patents and trademarks and all forms of intellectual property, incorporation and regulation of business organizations.

Land, mines, mineral and water resources and the environment.

National parks, as may be prescribed by Parliament.

Public holidays.

National monuments, antiquities, archives and public records, as Parliament may determine.

Foreign relations and external trade.

The regulation of trade and commerce.

Making national plans for the provision of services and coordinating plans made by Local Governments.

National elections.

Energy policy.

Transport and communications policy.

National censuses and statistics.

Public Services of Uganda.

The Judiciary.

National standards.

Education policy.

National surveys and mapping.

Industrial policy.

Forest and game reserve policy.

National research policy.

Control and management of epidemics and disasters.

Health policy.

Agricultural policy.

Any matter incidental to or connected with the functions and services mentioned above.

3. THE POWERS, FUNCTIONS AND SERVICES OF LOCAL GOVERNMENTS

Local Governments derive their powers from the Constitution. Article 189 of the Constitution states, quote:

"189 (2) District Councils and the Councils of lower Local Government units may, on request by them, be allowed to exercise the functions and services specified in the Sixth Schedule to this Constitution or if delegated to them by Government or by Parliament by law."

"189 (3) District Councils shall have responsibility for any functions and services not specified in the Sixth Schedule to this Constitution."

In addition, the Local Governments Act 1997 defines the powers of Local Governments, quote:

Section 31 (1) Subject to the Constitution a Local Government Council shall, within its areas of jurisdiction -

(a) exercise all political and executive powers and functions;

(b) provide services as it deems fit with the exception of functions, powers and services listed under Part I of the Second Schedule [Functions and Services for which Central Government is responsible];

(c) Protect the Constitution and other laws of Uganda and promote democratic governance; and

(d) ensure the implementation and compliance with Government policy.

At first glance, the Constitution and the Local Governments Act, 1997, might appear to confine Local Governments to the "delegated powers" of the Centre. But because **Central Government is bound by the Constitution to guarantee the principles of decentralization and devolution of governmental functions and powers**, Local Governments in Uganda possess considerable powers to manage local affairs.

All Local Governments retain and exercise to some degree the following powers:

3.1. EXECUTIVE POWERS

The Executive Committees of District Councils have important responsibilities to:

Initiate and formulate policy for approval by Council;

Oversee the implementation of Central Government and Council policies and monitor and coordinate activities of Non-Governmental Organizations;

Monitor the implementation of Council programmes and take remedial action where necessary;

Recommend to Council persons to be appointed Members of District Service Commission, Local Government Public Accounts Committee, District Tender Board, District Land Board or any other Boards, Commissions or Committees that may be created;

Receive and solve problems or disputes forwarded by lower Local Government Councils;

At the end of each financial year consider and evaluate the performance of the Council against the approved work plans and programmes; and

Carry out any other duty as may be authorized by Council or any law.

The Executive Committees of Lower Local Government Councils enjoy similar powers besides supervision of the implementation of policies and decisions made by the respective Councils.

3.2 LEGISLATIVE POWERS

District Councils have been vested with powers to make policy and local laws not inconsistent with the Constitution or any other law made by legislature. Typical uses of legislation include setting rules or legislation pertaining to the community. Councils are also empowered to enforce obedience of their ordinances and local laws by creating offences and penalties.

At lower levels, legislative power lies with Urban, Sub-County, Division and Village Councils who may, in relation to their powers and functions make bye-laws not inconsistent with the Constitution, or any other law enacted by Parliament, or an Ordinance of the District Council or a bye-law passed by a higher Council.

3.3 FINANCIAL AND PLANNING POWERS

The financial and planning powers of Local Governments include the powers to:

- Formulate, approve and execute budgets and plans provided the budgets shall be balanced;
- Levy, charge and collect fees and taxes, including rates, rents, royalties, stamp duties, personal graduated tax, and registration and licensing fees as listed in the Fifth Schedule of the Local Governments Act, 1997.

It should be emphasized that no tax can be imposed except under the authority of an Act of Parliament.

3.4 ADMINISTRATIVE POWERS

The powers to administer or manage Council services are entrusted to the Chief Administrative Officers in the case of District Councils and Town Clerks in the case of Urban Councils and other staff employed by the respective Councils. The duties of Chief Administrative Officers and Town Clerks include:

- Implementation of lawful decisions taken by the District or Urban Council;
- Giving guidance to Councils and their Departments in the application of relevant laws and policies;
- Supervising, monitoring and coordinating the activities of Council employees and Departments; and ensuring accountability and

transparency in the management and delivery of Council services;

- Developing capacity for development and management of the planning function;
- Supervising and coordinating the activities of all delegated services and the Officers working in those services (applicable to Chief Administrative Officer only);
- Having custody of all documents and records of Council;
- Acting as a liaison between the Council and Central Government;
- Advising the Chairperson on the administration of the Council;
- Assisting in the maintenance of law, order and security; and
- Performing other duties assigned by the Council from time to time or imposed by any law.

The specific functions and services for which Local Governments are responsible are enumerated in Parts 2 to 5 of the Second Schedule of the Local Governments Act, 1997.

4. FORMS OF CENTRAL GOVERNMENT INFLUENCE OVER LOCAL GOVERNMENTS

The influence that Central Government has over Local Governments is established in the provisions of the Constitution and the Local Governments Act, 1997. Most of the influence relates to the following:

4.1 GRANTS TO LOCAL GOVERNMENTS

The Constitution provides in Article 193 (1) that Central Government shall transfer money to Local Governments in three ways:

- . Unconditional Grant
- . Conditional Grant
- . Equalization Grant

These provisions are reproduced in Section 84 of The Local Governments Act, 1997.

4.1.1. Unconditional Grant

Unconditional grants are defined by the Constitution (Article 193 (2)) as the minimum grant that shall be paid to Local Governments to run decentralized services and shall be calculated in accordance with the following formula:

$$Y_1 = Y_0 + bY_0 + X_1 \\ = (1 + b)Y_0 + X_1$$

Where Y_1 is the minimum unconditional grant for the current fiscal year;

Y_0 is the minimum unconditional grant in the preceding fiscal year;

b is the percentage change if any in the general price levels in the preceding fiscal year; and

X_1 is the net charge in the budgeted cost of running added and subtracted services in the current year.

For purposes of the above formula, the base year was fixed by the Constitution as the fiscal year 1995/96.

In line with the principal of devolution, unconditional (block) grants are budgeted for and used at the discretion of the Local Governments. In 1995/96 unconditional grants accounted for 21% (Shs: 24.5 billion) of Central Government transfers to District and in 1996/97 28% (Shs: 48.7 billion).

4.1.2 Conditional Grant

Conditional grants are defined by the Constitution as moneys given to Local Governments **to finance programmes agreed upon** (emphasis added) between the Central Government and the Local Governments; and shall be **expended only for the purposes for which it was made and in accordance with the conditions agreed upon** (emphasis added). In other words, conditional grants are above or on top of the unconditional grant and are earmarked for specific purposes only in ways clarified by Central Government through contract or administrative regulations set by the sector Ministry. It is important that agreements reached with Local Governments do not create an additional financial burden on the Local Governments budgets. Local Governments should be seen as willing and able partners who should be negotiated with.

In 1995/96 Conditional Grants accounted for 79% (Shs: 93.3 billion) of Central Government Transfers to Local Governments and in 1996/97 72% (Shs: 127.8 billion). Conditional grants catered for in 1997/98 are universal primary education, feeder roads and primary health care.

4.1.3 Equalization Grant

Equalization grants are moneys to be paid to Local Governments as special subsidies. Equalization grants shall be based on the degree to which a Local Government is lagging behind the national average standard set by the Central Government for a particular mandated service and after a Local Government has marshalled all revenue from its revenue sources to improvements in the service.

It is the responsibility of the Local Government Finance Commission to advise the President on how equalization grants shall be worked out and allocated to individual Local Governments.

4.1.4 Application of Conditional and Equalization Grants

Conditional and Equalization grants are the principal means by which Central Government may influence Local Governments policies and programmes. Under the Constitution [Article 193 (5)], District Councils are obliged to account/indicate how conditional and equalization grants obtained from the Central Government are to be passed on to the lower levels of Local Government. In addition, to be eligible for a Conditional Grant, Central Government may require

Local Governments to put up some of their own funds in order to access the conditional grant and in doing so Central Government may also take into account the Local Governments ability to pay/raise its own tax revenues (thus "equalize" the Local Governments). Furthermore, Central Government has the right to audit local accounts relating to expenditure of the conditional and equalization grants.

4.2 CONTROLS ON LOCAL GOVERNMENT FINANCIAL MANAGEMENT

4.2.1 Budgeting and Appropriation of Funds

The powers of Local Governments to approve budgets (Section 78 of the Local Governments Act, 1997) are qualified in the sense that Local Government budgets must be balanced and must accord National Priority Programme Areas preferential budget outlays. If a Local Government budget significantly detracts from Priority Programme Areas, the Local Government Finance Commission is required to inform the Council and, through the Minister responsible for Local Government, the President for appropriate action.

In addition, Section 83 of the Local Governments Act, 1997, compels Local Governments not to spend money unless approved in a budget by the respective Council. Furthermore, no money can be withdrawn from the general fund account or any other accounts of the District unless the withdrawal has been

approved by the Auditor General or his or her representative. The main consideration here is the legality of the proposed expenditure and the adequacy of funds to meet the obligation.

4.2.2. Local Government Finance Commission

An opportunity exists through the Local Government Finance Commission (Article 194 of the Constitution and Sections 75-78 of the Local Governments Act, 1997) to coordinate the financial relationship between Central Government and Local Governments. The primary purpose of the Local Government Finance Commission is to advise the President on all matters concerning the distribution of revenue between the Central Government and Local Governments and the allocation to each Local Government of moneys out of the Consolidated Fund. Other functions requiring intergovernmental cooperation which the Local Government Finance Commissions deals with are:

In consultation with the National Planning Authority consider and recommend to the President the amount to be allocated as equalization and conditional grants and their allocation to each Local Government;

- Consider and recommend to the President potential sources of revenue for Local Governments;
- Advise the Local Governments on appropriate tax levels to be levied by Local Governments;
- Deal with disputes between Local Governments over financial matters and tender advice relating thereto to the parties involved, the Minister responsible for Local Governments and the Minister responsible for Finance as may be necessary.

4.2.3. Accounts, Audit and Accountability

Every Local Government Council and Administrative Unit is required under Section 87 of the Local Governments Act, 1997, to keep proper books of accounts and other records in relation thereto; and to balance accounts for the year and produce statements of final accounts within four months from the end of each financial year.

Every District, City, Municipal or Town Council is required under Section 91 of the Local Governments Act, 1997, to provide for an Internal Audit Department. The Internal Auditor reports to the Council giving a copy to the Local Governments

Public Accounts Committee. The main concern of both the Internal Auditor and Auditor General (provided for in Section 88 of the Local Governments Act, 1997) is the legality of the completed transactions and accuracy of accounts.

The Local Government Public Accounts Committee (Section 89 of the Local Governments Act, 1997) is required to examine the reports of the Auditor General, Internal Auditor and any reports of Commissions of Inquiry and may, in relation thereto, require the attendance of any Councillor or Officer to explain matters arising from the reports. Local Governments Public Accounts Committees are also required to submit their report to the Council and to the Minister responsible for Local Governments who shall lay the report before Parliament.

Of greater importance are the Constitutional provisions on accountability which provide that:

164 (2) Any person holding a political or public office who directs or concurs in the use of public funds contrary to existing instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office.

164 (3) Parliament shall monitor all expenditure of public funds.

4.2.4 Local Government Tender Boards

In the performance of their functions District and Urban Tender Boards are required to conform to the Standards established by the Central Tender Board for procurement of goods, services and works, and shall be guided by the Local Government Financial Regulations. Additionally, every District or Urban Tender Board is required to publish a quarterly summary of all tenders awarded and give a copy to all relevant councils, the Minister responsible for Local Governments, the Inspector General of Government and Central Tender Board.

4.2.5 Borrowing Powers

The powers of Local Governments to borrow or incur debts are limited by Article 195 of the Constitution and Section 83 of the Local Governments Act, 1997. The first limitation is that loans must not exceed 25% of the locally generated revenue provided that a Local Government demonstrates ability to meet its statutory requirements. The other limitations are that borrowing shall be exercised:

- With the approval of the Minister responsible for Local Governments if the amount to be borrowed exceeds 10% of the total amount the Local Government Council is eligible to borrow;

- After the Auditor General has certified the books of accounts of the preceding financial year;

- If the Auditor General's report is not qualified;

- If funds are intended for investments in priority activities as identified by the whole Council; and

- After the Executive Committee has given guarantee to the effect that repayment of the loan shall not adversely affect the operations of the Local Government Council and in particular, meeting the statutory obligations, including salaries.

4.3 PLANNING POWERS

The planning authority in a District is the District Council. The District Council is required, working according to guidelines established by the National Planning Authority, to prepare a comprehensive and integrated development plan incorporating plans of lower level Local Governments for submission to the National Planning Authority.

4.4 LEGISLATIVE CONTROL

Legislative control is exercised largely through the enactment of statutes, the issuance of regulations and legislative investigations. Meaningful legislation should follow a detailed study and agreement on Central Government and Local Government tasks. Generally laws regulating the affairs of Local Governments to be effective must pertain to national goals or be of general application. More than often national goals will be achieved especially when the Local Governments are consulted on legislations. Further and on agreement on questions of national policy goals and other matters, Central Government may request Local Governments to implement decisions through the enactment of local laws (ordinances and bye-laws).

4.5 ADMINISTRATIVE SUPERVISION

The supervision of Local Governments by Central Government agencies such as line Ministries is provided for in Sections 96-101 of the Local Governments Act 1997. The main purpose of administrative supervision is to:

- . Ensure adequate standards of service performance by Local Governments;
- . Lessen inequities of service levels among Local Governments; and

- . Improve the efficiency of Local Government services

Administrative supervision has a number of advantages that make it more effective than legislation. Advantages include greater flexibility in application methods some granting Local Governments a larger measure of freedom in tackling their own day-to-day problems. **Methods of administrative supervision include persuasion, consultation, negotiation, information, circulars, guidelines, reports, inspection, monitoring, mentoring, education, training, advice, technical assistance, conditional grants, audit, orders and the taking over of administration of a District.**

Also there is in each District the Office of Resident District Commissioner (Section 71-74 of the Local Governments Act, 1997) with general responsibility to coordinate the administration of Central Government services in the District. Other key functions of the Resident District Commissioner are to:

- . Represent the President and Central Government in the District;
- . Advise the District Chairperson on matters of a national nature that may affect the District or its plans or programmes, and particularly the relations between the District and the Central Government;

Monitor and inspect the activities of Local Governments and where necessary advise the Chairperson.

4.6 JUDICIAL CONTROL

Since local law is subject to the Constitution, local laws and administrative actions must not be in conflict with the national law. In exercising judicial control Courts can clarify law, overrule it and check its enforcement or reasonable application as well as nullify local ordinances which are found contrary to the Spirit or letter of the land. Courts may exercise their control through the issuance of judicial writs such as:

The writ of *mandamus* which is an order of a Superior Court commanding a lower Court, Local Government, Public Official etc. to carry out a public duty .

The writ of prohibition which is an order of a Superior Court forbidding a lower Court to determine a matter outside its jurisdiction or an order that prohibits a Local Government or Public Officer from taking certain actions.

The writ of *quo warranto* which questions the power or right by which an action is being promulgated.

The writ of *certiorari* which directs that a record of proceedings in a lower Court be set up for review.

In keeping with the provisions of Local Governments Act, 1997, Courts will issue judgment in relation to the removal of a Chairperson (Section 15 of the Local Governments Act, 1997), Chief Administrative Officers (Section 69 of the Local Governments Act, 1997) or other Public Officers. Courts also have the role of protecting the rights of citizens against unwarranted actions by local Officials or other citizens. In other words, ordinary persons who feel unfairly treated or unfairly served may sue the Council or Officials.

Because Courts exist to administer justice, judicial control over Local Government is basically no different from judicial control over the State itself. Any reasonable and substantial conflicts or questions concerning the executive, administrative, finance and planning powers of Local Government arising out of the interpretation of the Constitution may be determined by the Court of Appeal sitting as the Constitutional Court as provided in Article 137 of the Constitution.

4.7 PROTECTION OF PUBLIC OFFICERS

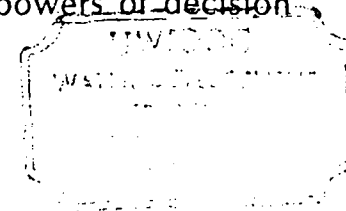
The Constitution in Article 166 mandates the Public Service Commission to review the terms and conditions of service, standing orders, training and qualifications of Public Officers and matters connected with personnel management and the development of the Public Service. Besides the Public Service Commission has powers to guide and coordinate District Service Commissions. District Service Commission are required to submit reports (Section 59 (2) of the Local Government Act, 1997) to the District Council and the Public Education or Health Service Commissions as may be applicable on the performance of its functions after every four months and whenever a report is required by the Council or the Public, Education or Health Service Commissions.

Further, Article 173 of the Constitution (reproduced as Section 60 (1) in the Local Governments Act, 1997) protects a Public Officer from victimization or discrimination or dismissal or removal from office or reduction in rank or otherwise without just cause. Aggrieved Public Officers in the service of Local Governments may appeal to the Public Service Commission, provided that the ruling of the District Service Commission shall remain valid until the Public Service Commission has ruled on the matter. The ruling of the Public Service Commission on the appeal is final.

A Local Government employee whose services are terminated contrary to the terms and conditions of service or the ruling of the Public Service Commission shall be compensated as provided in Section 62 of the Local Governments Act. For the avoidance of doubt, Officers retrenched under the ongoing Civil Service Reform Programme are not entitled to separation packages as given in Section 62 of the Act but will be paid in accordance with guidelines issued by the Ministry responsible for the Public Service.

4.8 REQUESTS BY LOCAL GOVERNMENTS

Subject to the Constitution (Article 189 (2)), Local Governments may, following the provisions of Section 32 of the Local Governments Act, 1997, request to be allowed to exercise the functions and services reserved for Central Government. Also subject to Article 199 of the Constitution and following Section 54 of the Local Governments Act, 1997, Central Government may, on request by a District or Urban Council or in concurrence with that Council, through the Ministry responsible for Local Governments, post persons to fill, assist or complement the service of a Local Government. It should be appreciated that the principle objective of requests by Local Governments is to enable Local Governments exercise their powers of decision making.



5. CONCLUSION

As the old adage says "Government is best which governs least". The 1995 Constitution established the framework for renewed decentralization in Uganda. Subject to the Constitution, it is best to view Local Governments as partners in a system of government characterized by decentralized decision making and administration. Local Governments, like Central Government, are required to protect the Constitution and laws of Uganda, determine policy, promote the welfare of citizens, and in practice, deliver the bulk of services to the population. Through coordination as opposed to subordination all concerned institutions should adopt mutually consistent decisions which ensure the attainment of common goals.

Decentralization clearly demonstrates the need for reorganization of Government and to accept change and prompt attitudinal as well as institutional changes. There is need to improve capacity to formulate national policies, plans and guidelines for use by Local Governments. There is also need to improve the national information system, consultative process and Central Government's capacity to inspect, monitor, offer technical advice, support supervision and training for Local Governments in a coordinated and integrated manner.