



PARLIAMENT OF UGANDA

**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY
AFFAIRS ON THE LOCAL GOVERNMENT (AMENDMENT) BILL, 2019**

OFFICE OF THE CLERK TO PARLIAMENT,
PARLIAMENT BUILDINGS, KAMPALA.
December, 2019.

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prescribe the manner of conducting campaigns; to bar persons not ordinarily resident in a local government area from contesting for councilor for that area; to provide for the procedure for commencement of polls at each polling station and to align the Local Governments Act with the provisions of the Constitution as amended by the Constitution (Amendment) Act, 2018.

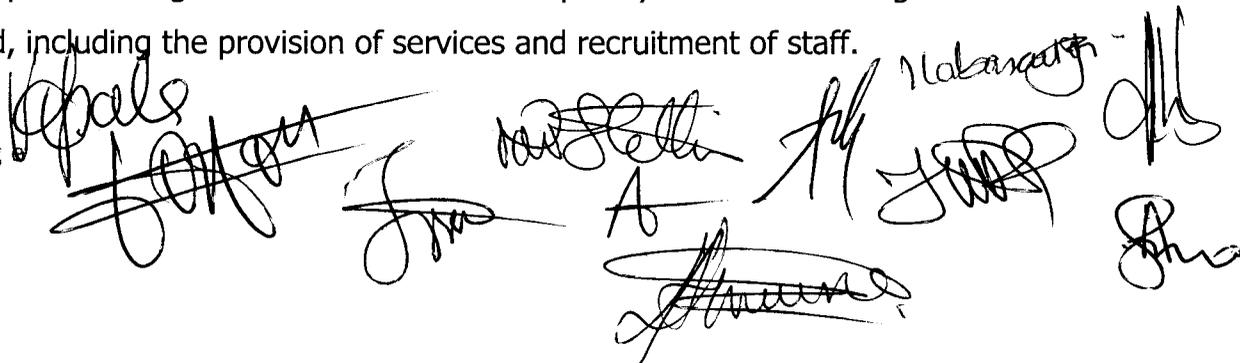
4.0. Need for the Bill

The amendment to the Local Government Act, 243 is chiefly necessitated by the need to bring the Local Government Act in tandem with the Constitution, following the amendment of the Constitution by the Constitution (Amendment) Act, 2018. The Constitution (Amendment) Act of 2018 made changes to the qualifications for election of a district chairperson, removing the age restrictions that had been imposed on that position in Article 183 of the Constitution.

4.1. Consultation of the Minister of finance before creation of districts and lower local governments units

The Bill variously makes proposals for the consultation of the Minister responsible for finance before a district or local government creates a local government unit. The Bill in Clause 1, proposes to amend section 7 of Local Government Act to require the consultation of the Minister of Finance, in addition to the Minister of Local Government Act, before altering the boundaries of or creating a municipality, city and lower local governments unit.

It is the considered opinion of the Committee that the above provision should be supported. The requirement to consult the Minister responsible for finance is necessary since it will help in examining the viability of the proposed local government unit and this will not only go a long way in ensuring that the proposed alteration of boundaries of, or creation of a municipality, city or lower local government is able to run its activities, but also help in ensuring that Government can adequately sustain the local governments once created, including the provision of services and recruitment of staff.

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The proposal to consult the Minister responsible for finance will further alleviate the current problems faced by newly created districts and local governments where in most cases suffer from chronic staffing challenges while some have not even commenced. Even where they are created or commenced, they are not financially viable since they do not collect enough revenue to finance their expenditure, thereby affecting service delivery and failing the objective for which they are created.

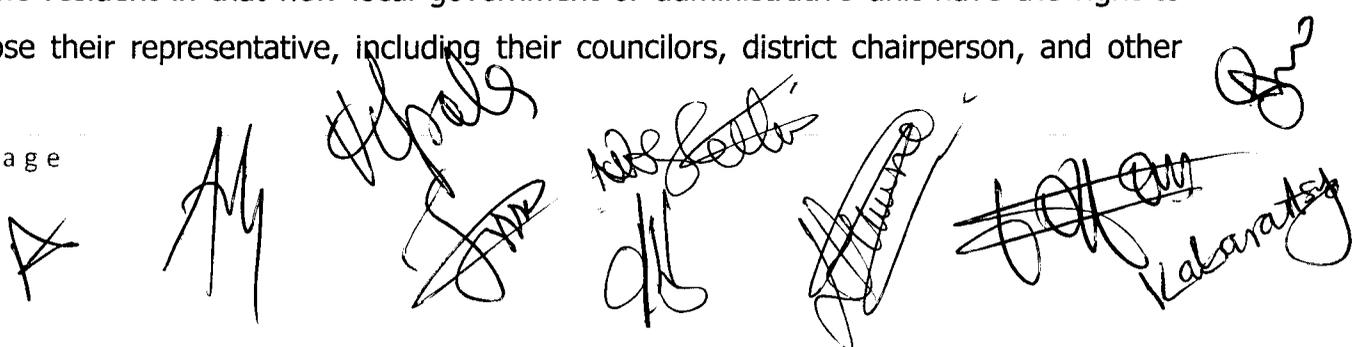
Whereas the consultation of the Minister should be supported, the proposal in Clause 1, paragraph (f) needs to be rethought. Paragraph (f) proposes to insert a new subsection (9a) as follows-

"(9a) Notwithstanding anything in this section, the Electoral Commission shall not hold elections, in a local government or administrative unit created after the general elections, until the next general elections."

There is need for this provision to be harmonized with the Constitution, especially Article 1 of the Constitution. The proposal as it stands in the Bill might be challenged for infringing on Article 1 (4) of the Constitution in as far as it proposes to postpone the holding of elections in the local government or administrative area to fulfil the local government elective offices in the local government or administrative area when such local government or administrative units has already come into effect.

Article 1 of the Constitution deals with sovereignty of the people of Uganda and it commands that the people of Uganda are sovereign. Clause 4 of Article 1 directs that the people of Uganda shall express their will and consent on who shall govern them and how they are governed, through regular, free and fair elections of their representatives or through referenda.

Once a new local government or administrative unit is created and commenced, the people resident in that new local government or administrative unit have the right to choose their representative, including their councilors, district chairperson, and other



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elective office bearers. The proposal in the Bill however, will mean that the residents of that new local government or administrative unit will not, in spite of the commencement of that new local government or administrative unit, be able to choose their representative in contravention of Article 1.

In order for the proposal in the Bill to be effective and to comply with Article 1 of the Constitution, there is need for a stand-alone provision in the Bill to specifically require that once a new local government or administrative unit district is created, it only commences at the next dissolution of the term of the local government in place at the time of its creation.

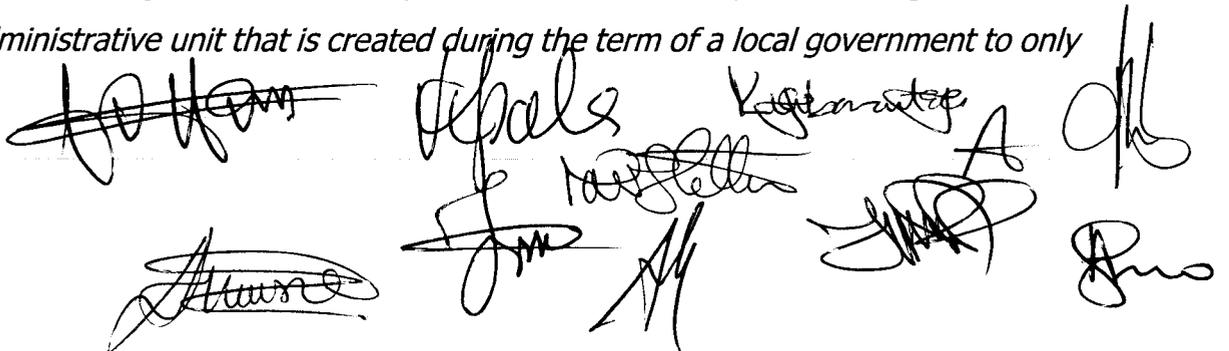
More so, the provision is ambiguous in as far as requiring the postponement of the elections to fill those vacant elective positions existing in the district until the next general elections. The ambiguity is in the use of the words "general elections".

It is the opinion of the Committee that there are three types of general elections in Uganda as outlined in Article 61 (2) of the Constitution; the Presidential election, General Parliamentary Elections and Local Government Election. It is not unascertainable when the elections to fill the vacant positions in the new local government or administrative unit will be held since the provision makes reference to general elections, without specifying which general election. This begs the question as to when the postponed elections will take place; is it after the Presidential, General Parliamentary or Local Government?

Recommendation

The Committee recommends the Clause 1 of the Bill stands part of the Bill albeit with the following amendments-

- an amendment to paragraph (f) to specifically prescribe the commencement of a district or local government unit upon creation and to require a local government or administrative unit that is created during the term of a local government to only*

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commence one year prior to the date of the next General, Parliamentary or Local Government Elections;

- *an insertion is made in Clause 1 requiring that where a new local government or administrative unit is created after the local government council elections, the elections to fill the elective positions in the newly created local government or administrative unit shall be held at the next local government council elections in order to do away with bye-elections.*

4.2. Qualification for election of the office bears of local government and administrative unit

The Bill in Clauses 3, 6 and 7 makes proposals to amend the Local Government Act to make changes to the qualifications of office bearers in local government and administrative units.

The Bill proposes to-

- (a) amend section 12 of the Local Government Act to remove the age restrictions imposed on a district, municipality, town, division and Subcounty chairperson;
- (b) amend section 111 of the Local Government Act to require the chairperson of a district, municipality, town, division and Subcounty to be ordinarily a resident of the district and to remove the option of a district chairperson making an undertaking in writing to the Electoral Commission of establishing a residence in that district within six months; and
- (c) impose an additional obligation on local government councilors to be residents in the local government area they represent in the various councils within the local government.

It is the opinion of the Committee that the proposed amendments to the local government Act as proposed in the Bill be supported. The proposed amendment, especially to section 12 and 111 of the Local Government Act are intended to bring the provisions in line with the amendments made to Article 183 of the Constitution. The Constitution (Amendment)

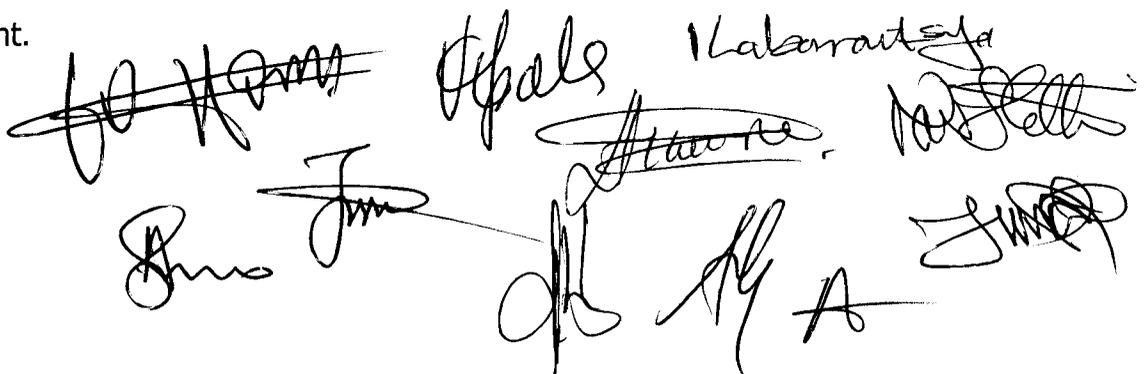
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Act of 2018 made various amendments to the Constitution, including removing the age restrictions imposed on the district chairperson under the Constitution. Following the amendment, there is now need to harmonize the provisions of the Constitution with the Local Government (Amendment) Bill to reflect the above amendment.

Furthermore, the proposal to require the chairperson of a district, municipality, town, division and Subcounty to be ordinarily a resident of the district and to remove the option of a district chairperson making an undertaking in writing to the Electoral Commission of establishing a residence in that district within six months should be supported since it harmonizes the provisions of the Local Government with the Constitution. While consulting in Mbale District, the proposal was supported with the argument that having a Chairperson who is a resident of an area guarantees proper appraisal from the locals of their abilities to lead or not. It should be noted that there currently exists a divergence between the Constitution, especially Article 183 (2) (a) and section 12 of the Local Government Act.

Whereas Article 183 (2) (a) requires a district chairperson to be ordinarily resident in the district, section 12 of the Local Government Act imposes the same requirement only that it extends the provision by granting the District chairperson, the option of making an undertaking in writing to the Electoral Commission of establishing a residence in that district within six months. This option although contained in various provisions of the Local Government Act contravenes Article 183 in so far as imposing additional requires beyond what Article 183 prescribes.

More so, the proposal to require all local government councilors to be residents in the local government area they represent is welcome since it harmonizes the qualification requirements for all office bearers in the Local government. It should be noted that currently, local government councilors do not have to be residents in the local government areas they represent yet it is a requirement for all the other elective offices in the local government.



Recommendation

The Committee recommends that Clauses 3, 6 and 7 stand part of the Bill.

4.3. Population Quotas for Urban Areas.

Clause 5 of the Bill proposes to amend section 108 of the principle Act by revising upwards the population quotas that Electoral Commission must take into account when demarcating electoral areas in urban areas. The Bill proposes that for an electoral area to be declared in a city it must have a population of one hundred thousand people, in a district thirty thousand, in a Municipality or City division fifteen thousand, in a municipal division or town council, seven thousand, in a sub county twelve thousand.

The Committee notes that this proposal should be supported since it enhances the population quotas required to declare an electoral areas from the quotas that were set in 1991 to the current quotas which reflect the current population growth. However the Committee was informed during the stakeholders consultations that there is need to reduce the geographical areas of represented by women councilors from three sub counties to one as is the case with other councilors.

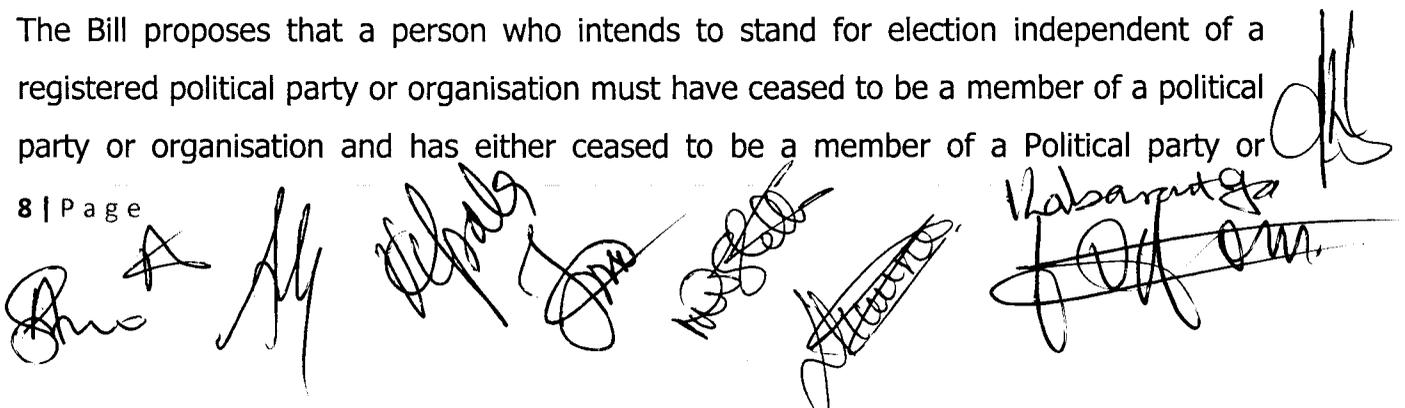
Recommendation

The Committee recommends that Clause 5 stands part of the Bill. However government should consider reviewing the geographical areas represented by women councilors in order to reduce the burden on such persons.

4.4. Eligibility to stand as independent candidate

The Bill proposes in Clause 8 to insert sections 119B, 119C and 119D in the Local Government Act dealing with eligibility of an independent person to stand in a local government election.

The Bill proposes that a person who intends to stand for election independent of a registered political party or organisation must have ceased to be a member of a political party or organisation and has either ceased to be a member of a Political party or

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organisation twelve months before nomination day or has never been registered as a member of a political party or organisation.

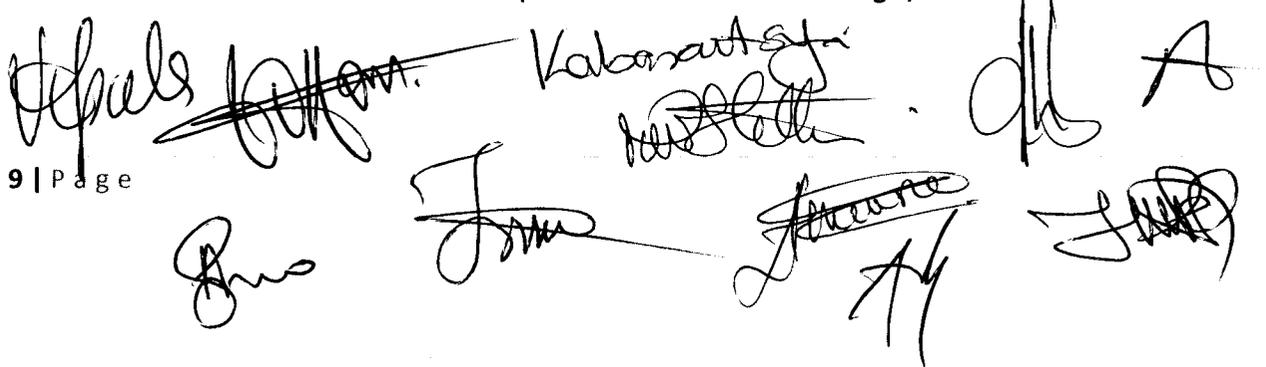
The provision further requires that an independent candidate shall be taken to have ceased to be a member of a political party or organisation if that person has complied with the constitution, rules and regulations of the political party or organisation to which he or she belonged, that relate to cessation of membership of that political party or organisation, and was discharged by the political party or organisation.

In analyzing this proposal, the Committee considered the effect it will have on Articles 1, 21, 29 (1) (e), 72 (4) and 183 of the Constitution as well as section 3 (2) of the Political Parties and organisations Act and section 119A of the Local Government Act. These provisions collectively and individually guide and guarantee the enjoyment of rights of a person standing as a candidate in a local government election independent of a party or organisation.

The Constitution, in Article 72 (4) grants and guarantees a person's right to stand for election as a candidate independent of a political party or organisation. The same Constitution commands that all persons in Uganda are equal before law in all spheres of political, economic, social and cultural life and in every other respect and direct that such persons must enjoy equal protection of the law. Other than the provisions of Article 183 of the Constitution, the Constitution does not impose any additional requirements on a person intending to contest for election as district chairperson and does not discriminate against such persons whether independent or party sponsored. The Committee is also aware that the Constitution guarantees a person's right to associate with others and the only limitations imposed on such a person must be demonstrably necessary in a free and democratic society as prescribed in Article 43 (2) (c) of the Constitution.

The Committee reviewed the proposal made in the Bill and identified the following matters that make it controversial and susceptible for a Court Challenge;

9 | Page

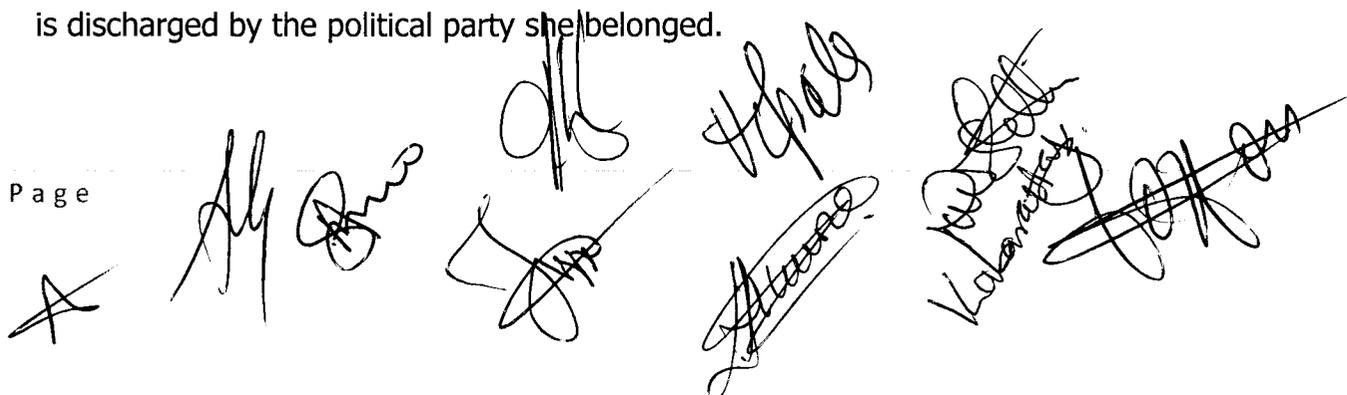
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- (a) the requirement that a person can only stand as an independent candidate if that person ceased to be a member of a political party or organisation twelve months before nomination day;
- (b) The requirement that for one to be taken to have ceased to be a member of a political party or organisation one must have complied with the constitution, rules and regulations of the political party or organisation to which he or she belonged, that relate to cessation of membership of that political party or organisation;
- (c) The requirement that a person ceases to be a member of a political party or organisation if he or she is discharged by the political party or organisation.

Whereas the above provision may be well intentioned, the above identified issues may collectively and individually be challenged for-

- (a) Infringes on the right to association as guaranteed under the Constitution. Article 29(1) (e) of the Constitution guarantees a person's right to associate with others and it commands that every person shall have a right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

The Bill, in prescribing the conditions which must be satisfied by a person to stand as an independent candidate, may have inadvertently infringed the rights of association of an independent candidate in a local government election. The provision particularly infringes on the right to association by requiring a person to be eligible to stand as an independent candidate if he or she has ceased to be a member of a political party or organisation twelve months before nomination day. The provision further infringes on the right to association in so far as requiring that a person ceases to be a member of a political party or organisation if that person is discharged by the political party she belonged.

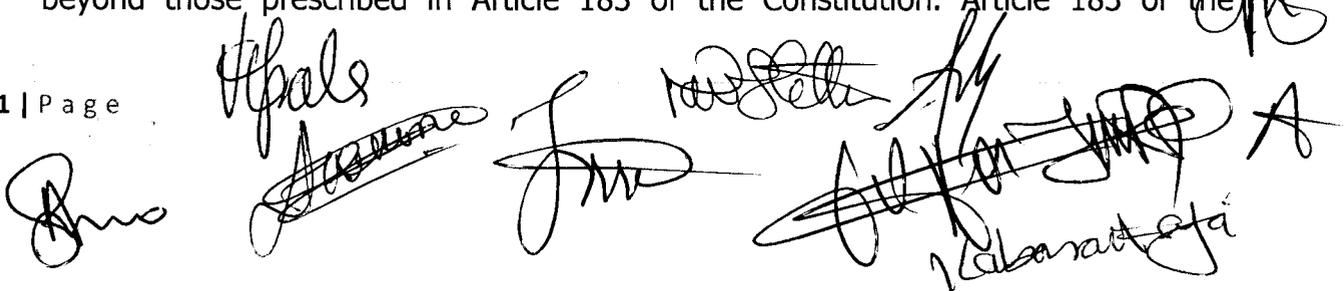
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The above provisions will have the effect of forcefully conscripting a person to remain a member of a political party against his or her wishes contrary to the Constitutional guarantee of the person's right to association.

It should be noted that section 3 (2) of the Political Parties and Organisations Act 2005 guarantees a person's right to form or join a political party of his or her choice. By the command of that provision, association with political parties is voluntary in nature, and no individual should be forced to join, remain or belong to any association against their will. That same right is re-echoed in Article 10 of the African Charter on Human and Peoples Rights and Article 20 of the Universal declaration of Human rights which jointly require that a person shall not be compelled to belong to an association. This now forms international best practices that Uganda must respect.

(b) The Bill infringes on Article 21 (1) of the Constitution which deals with equality before the law and commands that all persons are equal before the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. The provision, especially Clause 119B (a) which requires that a person should have ceased being a member of a political party or organisation twelve months before nomination day equally infringes on Article 21 (1) in so far as imposing additional qualification requirements which do not apply to any other person other than an independent person. For instance, whereas an independent candidate must have ceased being a member of a political party or organisation twelve months before nomination day in order to participate in local government elections, an independent Member joining a political party qualifies immediately to stand in the same elections without hindrance. This differential application of the law contravenes Article 21 of the Constitution.

(c) This provision also imposes additional qualifications on a person intending to stand as a candidate in a local government election for the office of District Chairperson beyond those prescribed in Article 183 of the Constitution. Article 183 of the



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Constitution prescribes the qualifications a person must possess in order to qualify for election as a District Chairperson. These qualifications are re-echoed in section 12 of the Local Government Act. The proposal therefore to include a unique qualification for independent candidates as proposed in the Bill not only amends Article 183 by infection but expands that provision unlawfully.

It is important to note that the Constitution specifically prescribes the manner in which it is to be amended. Article 259 is instructive on this matter and requires as follows-

"259. Amendment of the Constitution

- (1) Subject to the provisions of this Constitution, Parliament may amend by way of addition, variation or repeal, any provision of this Constitution in accordance with the procedure laid down in this Chapter.*
- (2) This Constitution shall not be amended except by an Act of Parliament—*
- (a) the sole purpose of which is to amend this Constitution;*
and
 - (b) the Act has been passed in accordance with this Chapter"*

In this situation, Article 259 (1) and (2) (a) is relevant and it allows for the amendment of the Constitution by way of addition, variation or repeal as long as there is an Act the sole purpose of which is to amend the Constitution. This means that for the Constitution to be amended, there must be a specific bill for an Act of Parliament to amend the Constitution. The effect of the amendment of the Constitution by infection was discussed in the landmark decision in the case of Paul K. Ssemogerere, Zachary Olum and Juliet Rainer Kafire vs. Attorney-General Constitutional appeal No. 1 of 2002 wherein Oder JSC observed that-

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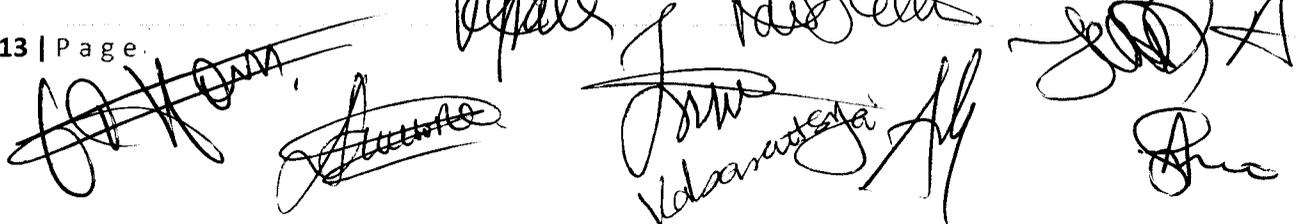
"Amendment of the Constitution is provided for by Article 258 of the Constitution, the provisions of which are to the effect that the Constitution can only be amended if an Act of Parliament is passed for that purpose; the Act has the effect of adding to, varying or repealing any provision of the Constitution; and the Act has been passed in accordance with the provisions of Chapter Eighteen of the Constitution. To me, it follows that if an Act of Parliament has the effect of adding to, varying or repealing any provisions of the Constitution, then the Act must be said to have amended the affected Article of the Constitution"

He further observed that-

"In view of my finding that Act 13/2000 is in conflict with the constitution, it is my considered opinion that Act 13/2000, was a "colourable" legislation. A colourable legislation occurs where a legislature lacking legislative power or subject to a constitutional prohibition may frame its legislation so as to make it appear to be within the legislative power or to be free from the constitutional prohibition. Such a law is "colourable" legislation, meaning thereby that while pretending to be a law in the exercise of undoubted power, it is, in fact, a law on a prohibited field"

In the end, he held that-

"in the instant case, Act 13/2000, in my view, was a colourable legislation, by which Parliament sought to amend Articles 28, 41, 44(c), 128 and 137 (1) and (3) of the Constitution without saying

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so. It did indirectly what it could not do directly, without complying with the Constitutional procedural requirements. For this reason and the others I have already given in this judgment, section 5 of Act 13/2000 is in conflict with the provisions of the Constitution in question, and is null and void.”

In the instant case, since Clause 8 of the Bill proposes to expand the qualification requirements of a person to stand for election as a District Chairperson, it ought to have first amended Article 183 directly instead of doing so through an Act whose sole purpose is not to amend the Constitution.

Recommendation

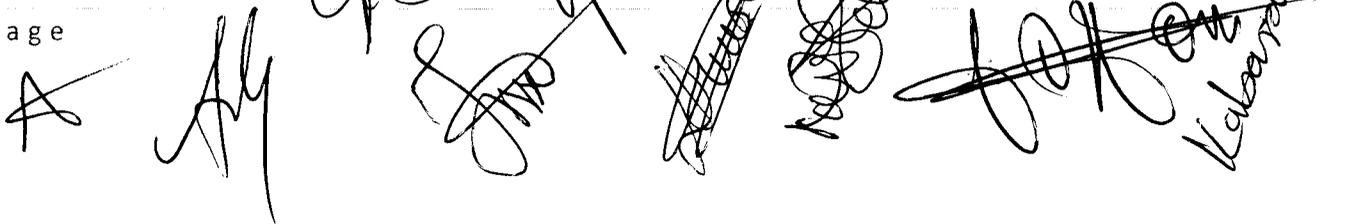
The Committee recommends that Clause 8 is amended in the proposed 119B, by requiring that a person is only eligible to stand as an independent candidate only if that person is not a member of a registered political party or organisation—

- *having ceased to be a member of a political party or organisation before nomination day;*
- *having had his or her membership of a political party or organisation terminated before the nomination day; or*
- *having never been registered as a member of a political party or organisation.*

4.5. Election financing

The Bill proposes to insert a new section 119C in the Local Government Act to provide for financing of elections.

The Bill proposes to impose an obligation on a candidate in a Local Government election to declare to the EC, within fourteen days after nomination day, the source of funds for financing his or her election.



The Bill proposes to prohibit the obtaining, soliciting or receiving any financial or other assistance from any foreign Government, institution, body or person which or who has demonstrated an intention to overthrow the lawfully established Government of Uganda, or to endanger the security of Uganda and from organisations that have been declared terrorist organisations.

The Bill proposes to impose a punishment on a candidate or agent for contravening the provisions of that section in form of a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both. The provision empowers court to order the funds received in contravention of the provision to be forfeited to the state.

It is my considered opinion that the proposed amendment on election financing should be lauded and supported. First, the current legislation regulating the election finance and expenditure, such as the Constitution of the Republic of Uganda, 1995, the Electoral Commission Act, Cap 140, the Parliamentary Elections Act, 2005, the Presidential Elections Act, 2005, the Local Government Act, Cap 243 and the Kampala Capital City Authority Act, 2010, do not adequately regulate election financing and expenditure in Uganda.

The inadequacy of the legal regime has resulted in commercialisation of politics: increasing the cost of running for political office and resulting into unsustainable pressure on the part of candidates, wastage of resources, macro-economic volatility such as was experienced after the 2011 General Elections as well as increased occurrence of corruption cases in Uganda.

The increased commercialisation of politics has not only resulted in an uneven playing field amongst candidates and political parties and organisations but has led to voter apathy, personal financial ruin for persons who participate in elections as well as abuse of state resources. Unless election campaign financing and expenditure is regulated by enacting legislation limiting the election financing and expenditure, the unrestricted

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