

The same provision implies that councilors representing electoral areas in the original local government that now fall in the newly created local government shall be subjected to a new election irrespective of the fact that those people were voted by the people of the same area. This is unfair on both the chairperson and councilors and is a wastage of resources since the same people were elected by the same populace and their term has not ended.

- (b) Section 181(1) of the Local Government Act cap 243 states that “Where the chairperson or a member of the executive committee of an original council is a person who was representing an electoral area within the newly created local Government, that person shall cease to hold that office”.

In section 181(2) it is provided that; ***“Notwithstanding subsection (1), a chairperson elected by universal adult suffrage shall have an option to remain chairperson of the original local government.*** This provision does not provide for circumstances where the chairperson is a resident of the newly created local Government and where he/ she may wish to remain the chairperson in that newly created local government. It is pertinent to note that it would still be the same electorate but just divided. It is therefore a waste of the tax payers’ money to conduct another election in the same area on the same person.

- (c) Section 182 of the Local Government Act states as follows—

(1) An interim local government council shall elect an interim chairperson from among the members of the council by secret ballot.

- (2) *At the election of an interim chairperson, no person shall be declared elected chairperson unless that person gets over 50 percent of the votes of all the members of the council cast in his or her favor.*
- (3) *If no person gets more than 50 percent of the votes cast, the elections shall be repeated between the first two persons getting the highest votes until one of them gets over 50 percent of the votes.*
- (4) *If during the election of an interim chairperson only one person is nominated, that person shall be declared elected unopposed.*
- (5) *The quorum at a meeting for election of an interim chairperson shall be two-thirds of all the members of the interim council.*

This section doesn't prescribe who will supervise or preside over the elections. Furthermore, the provision only looks at an interim council as the council in the newly created local government but not a council which remains without a chairperson when the current chairperson decides to either join the newly created local government or remain in the original local government.

- (d) Section 183 of the Local Government Act states as follows—

The interim chairperson of an interim council shall nominate from among the members of the council an interim vice chairperson and secretaries not exceeding five to be approved by two-thirds of all members of the council to form the interim executive committee of the newly created local government.

This provision gives powers to the interim Chairperson to nominate an interim vice chairperson and secretaries not exceeding five to be approved by two thirds of all members of the interim council to form an interim executive committee of the newly created local government. However, the provision does not take into account circumstances where the seat of the chairperson in the original local government falls vacant following the decision of the original chairperson to move to the newly created local government which will cause an interim local council.

(e) Section 184 of the Local Government Act states as follows—

(1) The interim council of a new local government shall, in accordance with this Act, appoint interim standing committees.

(2) For the avoidance of doubt—

(a) interim local councils shall not have powers to appoint district service commissions, district or urban tender boards or local government public accounts committees;

(b) the functions of commissions, boards or committees referred to in paragraph (a) shall be exercised by the interim council under guidelines issued by the Minister;

(c) interim councils shall not have powers to alter the boundaries of or create new administrative units without the approval of the Minister.

The above provisions only apply to the newly created local governments yet it should apply to both the newly created local government and the original local government since any of them could have an interim council, depending on the decision of the original chairperson. Furthermore, whereas the provision grants the interim council powers to appoint standing committees, the provision doesn't prescribe the duration of service of those standing committees.

(f) Section 186 on term of office of interim council provides that—

(1) An interim council shall exercise the powers conferred upon it until elections are held under Part X of this Act.

(2) Councillors of a new local government unit holding office under this Part, shall hold office for the unexpired term of the local government council."

The section is ambiguous since it is not clear how the councillors in the new local government unit come to be, considering, that the councillors who had hitherto been representing electoral areas in the original local government that has been subdivided to create a new electoral unit automatically cease to represent those areas when the same no longer constitute the original local government. Furthermore, the provision doesn't specify what would happen if the period for the expiry of the term of the local government is less than one year. This means that the Electoral Commission will have to organise elections even when the remaining period is less than one year.

(g) Section 187 of the Local Government Act states as follows—

(1) The Electoral Commission shall organize and conduct elections of the interim chairperson.

(2) The Electoral Commission shall organize and conduct elections under Part X of this Act within six months from the effective date of the new local government unit.

This provision does not specify which election the Electoral Commission is supposed to organise. Furthermore, just like the earlier mentioned provisions of this part, section 187 applies only to the newly created local government and not to both the original and newly created local government. Further still, by implication, it means that the election in the interim local government shall be for all elective office bearers, including those office bearers who had been representing those electoral areas in the original local government which now fall in the newly created local government.

Remedies

The above defects need to be addressed by amending the Principal Act to provide that—

- (a) the interim council is a council which remains without a chairperson as a result of the decision of the chairperson of the original local government to either remain in the original local government or join the newly created local government;
- (b) a chairperson has the option of choosing to remain a chairperson in the original local government or to join the newly created local government;

- (c) in case of a councillor, the bill proposes to allow such a person to remain a councillor in the newly created local government without being subjected to a new election;
- (d) a speaker, deputy speaker and vice chairperson of a local government vacate their positions where the chairperson of the original local government joins a newly created local Government; and
- (e) the electoral commission conducts elections to only fill vacant elective positions in the original or newly created local government.

3. PROVISIONS OF THE BILL

The Bill has 1 part.

Amendment of Section 180, 181, 182, 183,184,186 and 187 of the principal Act.

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A Bill for an Act

ENTITLED

THE LOCAL GOVERNMENT (AMENDMENT) ACT, 2017

An Act to substitute Part XII of the Local Government Act, Cap. 243, to make provision for the legal consequences arising from a division of an original council or the creation of a new local Government and for other related matters.

BE IT ENACTED BY Parliament as follows:

Amendment of the Local Government Act Cap. 243

The Local Government Act, in this Act referred to as the principal Act is amended by replacing Part XII with the following—

“PART XII—INTERIM COUNCILS

180. Composition of the Interim council following the creation of a new local government.

(1) Until the election of a chairperson is held under Part X of the principal Act, the composition of an interim council of an original or newly created local government shall be—

- (a) in case of a district, all members of the original district council representing sub counties or other electoral areas where the seat of the chairperson has fallen vacant as a result of the decision of the chairperson in section 181 (1) of the principal Act;

(b) in case of the lower local government, all members of the original local government council representing parishes and other electoral areas within the original or newly created local government where the seat of the chairperson falls vacant as a result of the decision of the chairperson in section 181 (1) of the principal Act.

(2) If a new town is created where there was no immediate original local government, the district council shall govern the town until the town is published in the gazette and the election of a chairperson is held under Part X of the principal Act.

(3) Notwithstanding subsection (2), where a new town is created out of a sub county, the chairperson of the original sub county shall have the option of remaining the chairperson of the original sub county or of the newly created town council.

181. Chairperson, members of the executive committee and councilors of the original local council.

(1) A chairperson elected by universal adult suffrage shall have the option to remain the chairperson of the original local government or of the newly created local Government, for the unexpired term of the local government council, without being subjected to another election.

(2) A councilor representing an electoral area in the original local government which now forms part of a newly created local government shall automatically represent that electoral area in the newly created local government for the unexpired term of the local government council without being subjected to another election.

(3) Where a new local government is created out of the original local government, the speaker or deputy speaker of the original local council shall, upon the commencement of the newly created local government, cease to hold that office.

(4) A councilor representing a special interest group in the original local government shall have the option to remain a councilor in the original local government or join the newly created local government without being subjected to another election.

(5) A member of the executive committee of an original council shall cease to hold that office unless re-appointed by the chairperson.

(6) Notwithstanding section 18 (5) of the principal Act, where a chairperson exercises his or her option under subsection (1) to join a newly created local Government, the vice chairperson in the original local government shall cease to hold the office of vice chairperson.

(7) Where a person is elected to represent a parish or is a chairperson or member of the executive committee of the parish which is later divided to create another parish, that person shall be allowed to continue representing that parish in which he or she resides and elections shall accordingly be held in the other parish.

182. Election of interim chairperson

(1) Where the Chairperson elected by universal adult suffrage exercises the option under section 181 and either remains a chairperson in the original local government or joins the newly created local government as chairperson, the councilors in the local government which remains without a chairperson as a result of that decision shall elect an interim chairperson from among the members of the council, by secret ballot.

(2) At the election of an interim chairperson, no person shall be declared elected chairperson unless that person gets the highest number of votes cast in his or her favor by all members of the council present and voting.

(3) If no person gets the highest number of votes cast, the election shall be repeated between the persons getting the highest number of votes until one of them gets the largest number of votes cast in his or her favor.

(4) If during the election of an interim chairperson only one person is nominated, that person shall be declared elected unopposed.

(5) The quorum at a meeting for the election of an interim chairperson shall be two-thirds of all the members of the interim council.

(6) For avoidance of doubt, the election of an interim chairperson in subsection (1) shall be organised and conducted by the Electoral Commission.

183. Election of interim vice chairperson, speaker, deputy speaker and secretaries.

(1) The interim chairperson shall nominate from amongst the members of the interim council, an interim vice chairperson and secretaries not exceeding five who shall be approved by two thirds of all members of the council to form an interim executive committee.

(2) The interim council shall elect from amongst themselves, an interim speaker and deputy speaker.

(3) At the election of an interim speaker and deputy speaker, no person shall be declared elected interim speaker or deputy speaker unless that person gets the highest number of votes cast in his or her favor by all members of the council present and voting.

(4) If no person gets the largest number of votes cast, the election shall be repeated between the persons getting the highest number of votes until one of them gets the largest number of votes cast in his or her favor.

(5) If during the election of an interim speaker or deputy speaker only one person is nominated, that person shall be declared elected unopposed.

(6) The quorum at a meeting for the election of an interim speaker or deputy speaker shall be two-thirds of all the members of the interim council.

(7) The election of an interim speaker or deputy speaker shall be organised and conducted by the Electoral Commission.

(8) The interim executive committee shall serve for the duration of the interim council as prescribed under section 186 of the principal Act.

184. Appointment of interim standing committees.

(1) The interim council shall, in accordance with the principal Act, appoint interim standing committees.

(2) For the avoidance of doubt—

(a) interim local councils shall not have powers to appoint district service commissions, district or urban tender boards or local government public accounts committees;

(b) the functions of commissions, boards or committees referred to in paragraph (a) shall be exercised by the interim council under guidelines issued by the Minister;

(c) interim councils shall not have powers to alter the boundaries of or create new administrative units without the approval of the Minister.

(3) The interim standing committees shall serve for the duration of the interim chairperson as prescribed under section 186 of the principal Act.

185. Existing employees in the new local government.

Any person being an officer or employee of the original local government council immediately before the coming into effect of the new local government and deployed or assigned responsibility in the new local government shall be deemed to have been appointed under the principal Act, and shall hold office in the new local government until removed from office under the principal Act.

186. Term of office of interim council.

(1) An interim council shall exercise the powers conferred upon it until elections are held under Part X of the principal Act.

(2) Where the unexpired term of the local government council is less than one year, the interim council shall continue in office until the expiry of the term of the local government.

(3) Notwithstanding subsection (1), a councilor representing an electoral area on the interim council shall, notwithstanding the expiry of the interim council, continue in office and serve for the unexpired term of the local government council.

187. Electoral Commission to organize elections.

(1) Notwithstanding anything to the contrary, the Electoral Commission shall organize and conduct elections to fill all elective offices that remain vacant as a result of the decision of the chairperson or councilor to remain or join the original or newly created local government within six months of the effective date of the new local government unit.

(2) The elections under subsection (1) shall be conducted in accordance with Part X of the principal Act.

188. Equitable sharing of property.

At the creation of a new local government unit, the Minister shall ensure the equitable sharing of property between the original and new local governments.

189. Interpretation.

In this Part, unless the context otherwise provides—

- (a) “Interim chairperson” means a chairperson elected by the councilors from members of a local government which remains without a chairperson as a result of the decision of the chairperson of the original local government in section 181 (1) of the principal Act;
- (b) “Interim Council” means a council which remains without a chairperson as a result of the decision of the chairperson of the original local government in section 181 (1) of the principal Act;
- (c) “Interim executive committee” means an executive committee appointed by the interim chairperson from members of the interim council.