



STEP BY STEP GUIDELINES FOR MAKING ORDINANCES AND BYELAWS FOR LOCAL GOVERNMENTS IN UGANDA

(REVISED EDITION)

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Acknowledgements

Law making process by local governments is a challenging task in Uganda largely due limited skills at the local government level. These guidelines, therefore, are intended to simplify the process of law making by providing step by step procedure of making ordinances by district councils and byelaws by lower local governments. These guidelines are based on the Local Government Act, and the Handbook on Making Ordinances and Byelaws in Uganda (Second Edition-2010) by the Uganda Law Reform Commission. We are grateful to the commission for the collaboration with the Advocates Coalition for Development and Environment and other partners in the production of the handbook.

The Advocates Coalition for Development and Environment (ACODE) is greatly indebted to its partners especially CARE International in Uganda for extending support to the Natural Resources Governance Programme under which this work has been executed. It is our sincere hope that the local governments will find these guidelines useful in executing their legislative mandates.

1.0 Making of Laws by Local Governments

1.1. Introduction

The Local Government Act, Chapter 243 gives legislative powers to local government councils to enact ordinances and byelaws for proper and effective implementation of government's programmes, national policies and laws. The district councils have power to formulate ordinances while the lower local governments have powers to formulate byelaws. However, formulation of these ordinances and byelaws has been one of the challenges faced by local government councils due to limited funding and expertise. The "Step by Step Guidelines for Making Ordinances and Byelaws" are therefore intended to illustrate in a simple way the procedures for making ordinances and byelaws by both the district councils and lower local governments. These guidelines are based on the Local Government Act. In compiling the guidelines, we extensively used the "Handbook on Making Ordinances and Byelaws in Uganda, Revised Edition, 2010" by Uganda Law Reform Commission and the Third Schedule of the Local Government Act.

This booklet is divided into five parts: the introduction, principles and key considerations for making ordinances and byelaws, procedure for making ordinances, procedure for making byelaws and conclusion. The guidelines provide the most simplified procedure for making ordinances and byelaws and are handy for both district councils and lower local governments.

1.2. Ordinances and Byelaws

In the context of local governments, ordinances are laws made by districts and city councils in accordance with the procedure provided for under Section 38 (7) and Part IV of the Third Schedule of the Local Government Act. On the other hand, byelaws are laws that are made by lower local governments such as urban councils, subcounty councils, divisions and village councils in accordance with the procedure provided for under Section 39(6) and Regulation 22 of the Third Schedule of the Local Government Act.

The power to make ordinances and byelaws by district councils and lower local governments is derived from sections 38, 39 and 40 of the Local Governments Act, CAP 243. Section 38 of the Local Governments Act provides that a district council shall have power to make laws that are not inconsistent with the constitution or any other law made by legislature which power shall be exercised by passing of bills for ordinances by the council and signed by the chairperson. Section 39 of the Act provides that

an urban or subcounty or division or village council may in exercising its powers and functions make byelaws which are not inconsistent with the constitution or any other law enacted by Parliament, or an ordinance of the district council or a byelaw passed by a higher council. When making laws, the local governments should be guided by the following principles and considerations.

2.0 Guiding Principles and Basic Considerations for Making Ordinances and Byelaws

2.1 Guiding Principles

- An ordinance or byelaw should address local issues and not individual concerns.
- An ordinance or byelaw should not be inconsistent with or in conflict with the existing laws whether enacted by the local governments or central government.
- Matters already adequately provided for by the constitution or an Act of Parliament should not be included in an ordinance or byelaw except for ease of reference in which case the entire provision should be lifted or reproduced in its entirety.
- Consider the nature and magnitude of the problem and justification for passing an ordinance or byelaw:
- Public participation is critical in successful implementation of the legislation and the public must be consulted during the formulation of the ordinances and byelaws.
- A law is intended to regulate several activities and the conduct of human beings in a given geographical area and as such, must contain the “do” and “don’ts”. The law should prescribe offenses and penalties.
- Ordinances or byelaws must be reasonable and enforceable; and
- It is also advisable that districts initiate sensitisation programmes on law making to encourage local participation in the process. This is the essence of decentralisation to bring power closer to the people. The sensitisation should include information about the local administration, the roles of the people and the councillors in law making and enforcement, and the relationship between the public and the council.

2.2. Basic Considerations

When making ordinances and byelaws, local governments should among other things adhere to the following aspects:

- A bill for an ordinance passed by the district and municipal local authorities must be sent to the Attorney General through the Minister of Local Government for certification to ensure that it does not contradict the constitution or other national laws before it is signed by the chairperson.
- Local councils have no powers to make a law relating to the establishment or administration of courts and should not attempt to do so.
- Byelaws made by the lower local councils must be certified by the superior local government councils.
- The process of making of ordinances and byelaws should be widely consultative to ensure reasonableness and fairness of the law.
- Fines imposed in an ordinance or byelaw must be within the law as prescribed by Local Government Act. The penalty of a fine should not exceed two currency points or a term of imprisonment of six months, but the convict can be subjected to both a fine and imprisonment.

3.0 The Process of Making an Ordinance by District Councils

3.1. Step 1: Appointment of a Law Committee

The process of making ordinances and byelaws is commenced with the appointment of the Law Committee by the district council. Composition of the committee is as follows:

- The committee is composed of 7 members, the CAO being the Chairperson;
- Clerk to Council as the secretary;
- A Legal Officer;
- Coordinator community-based services; and
- 3 other co-opted members. Such members may involve a magistrate from the area, State Attorney or head of department from the relevant field.

3.2. Step 2: Problem Identification

After the formation and composition of the Law Committee the relevant department at the district through its technical officers will:

- Identify the problem that needs to be addressed by legal means.
- The identification of the problem will consider the impact of the problem on the community.
- The problem is identified through interactions and consultations with the people affected.
- The committee will also consider how the problem is being dealt with or tackled by people affected by the problem. Example of such a problem may be rampant destruction of crops by vermin or polluting a water source.



A law committee & local government technical committee identifying issues for legislation

3.3 Step 3: Examination of the Existing Laws and Identification of Gaps

After identifying problem, the Law Committee will: Carryout and audit or examination of the existing laws i.e. Constitution, Acts/Statutes, Ordinances, Regulations and Byelaws. The purpose is to establish whether there are laws in place to handle/solve the problem identified and to avoid duplication and conflicting with the existing laws. The examination will also help to propose the way forward in case there is no law/ordinance to solve the problem at hand.



A law committee and local government technical committee examining the existing laws

3.4. Step 4: Consultation Stage

At consultation stage, the Law Committee does the following:

- The Law Committee will carry out consultations with people and authorities to allow consensus building on key aspects/issues that will be incorporated in the draft bill at the drafting stage.
- Consultations with concerned stakeholders will help determine whether or not the law will be successfully implemented.
- The Law Committee which is mandated by the council should ensure that all relevant authorities, the constituents, stakeholders and other organisations that are likely to be affected by the ordinance are consulted.

Consultations may be organised or conducted through group discussions, rallies, meetings, sending questionnaires and any other means it considers appropriate for information gathering.

- The Law Committee writes a report to the council incorporating the findings, institutions to implement the resulting law, key guiding principles and issues to be contained in the bill, lead institutions, the social, political and economic impact of the resulting law and the estimated cost of implementing the resulting law.
- The council will transmit the report of the Law Committee to the responsible department.



A law committee and local government technical committee making consultation

3.5 Step 5: Drafting Stage

The following is done on receipt of the report:

- The responsible department will in consultation with the CAO prepare a summary of aspects the bill should address.
- The Law Committee receives back the report from the CAO and in conjunction with the responsible department prepares the draft bill.
- Upon completion of the draft bill the Clerk to Council who doubles as the secretary of the Law Committee shall present the bill to the council.



A Law Committee and local government technical committee drafting the law

3.6 Step 6: Proposing and Introducing the Bill to Council

When the committee is satisfied with the draft bill, it shall:

- Prepare a motion which shall contain the main issues and rationale of the bill.
- The Secretary/Clerk to Council shall forward the bill accompanied by the motion to the Council for tabling and debating.
- The motion shall outline the purpose and objectives of the bill, key provisions and issues, how they are being addressed.
- The bill is introduced by a Councillor.

- The Council debates the motion and if the motion is passed by majority vote, the council will publish the bill at least fourteen days before commencement of its debate.



A councillor presenting a motion for the bill

3.7 Step 7: Publication and Dissemination of the Draft Bill

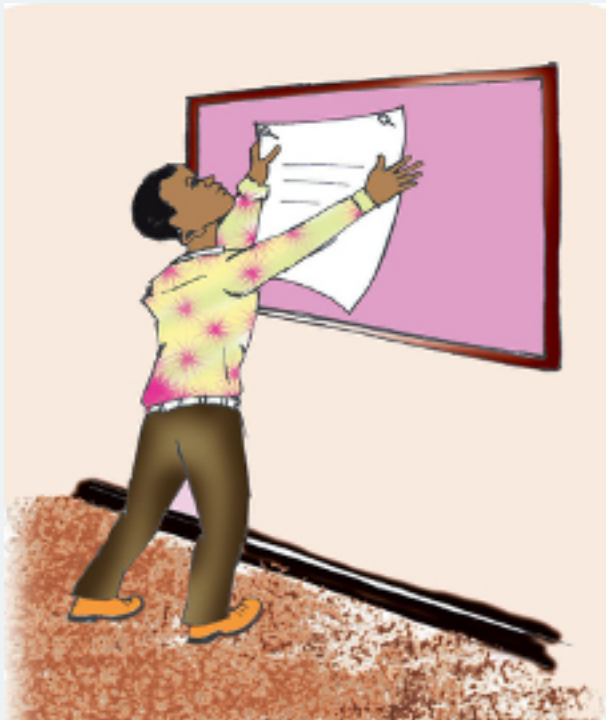
Publication of the draft bill is a mandatory requirement. A draft bill must be published before it is debated by the plenary council. Publication of the draft bill helps in the following ways:

- a. It enables the public to contribute and participate in the law making process.
- b. The draft bill is brought to the attention of the members of the public to view and make their contributions.

Publication and dissemination of a bill is done in the following ways:

- Fixing a copy of the draft bill in a place where the public can easily access it i.e. on the notice board and the outer door of the office of the district council.
- By including the draft bill as a supplement to an official local publication, if the district council has one.
- By posting copies of the draft bill for public scrutiny either by sending or pinning a copy at the notice boards of various sub counties, urban areas and villages.

- By putting a copy in a local or national newspaper with wide circulation and readership in the district.
- By putting copies in places of worship, marketplaces and other public places.
- The Clerk to Council must ensure that each member of the council gets a copy to enable them to study the draft bill and consult on it in their constituencies.



A responsible officer fixing a copy of the bill in a public place

3.8 Step 8: Debating the Bill

After the draft bill has been published and distributed to the councillors, the council shall after 14 days of its publication start debating the draft bill in the following manner:

- Debating of the draft bill commences immediately after the lapse of 14 days.
- Where there is an emergency, the 14 days period of publication may be waived by a resolution of the council.

- Before commencement of the debate the speaker shall invite the member or head of the committee under whose docket the draft bill falls to introduce the bill.
- Upon introducing the bill, the Clerk to Council shall then read the tittle of the bill.
- The speaker shall call upon the member introducing the bill to give introductory speech giving reasons for introducing the bill and what it is intended to achieve.



- After the speech of the member introducing the bill, the Speaker shall invite the council members to debate the bill based on the memorandum and the introductory speech.
- Members of the council may be allowed to make amendments in writing and submit them before the closure of the debate.
- At the close of the debate the Speaker shall put the question in respect of each clause of the bill as published or as is amended by any member.
- The bill shall be passed if the members pass through voting all clauses as published or amended by the council.

- Upon passing the bill, the council formally dissolves and adopts the ordinance.
- The adopted ordinance shall be sealed with the seal of the council which is affixed after the schedule or plan if any is to be included in the ordinance.
- The Chairperson shall sign and date the document.
- The Speaker upon passing and adopting the ordinance, shall forward the ordinance to the Minister for Local Government for onward transmission to the Attorney General for certification and approval respectively.

3.9. Step 9: Certification of the Bill

- When the bill is passed and adopted by the council, it is forwarded to the Attorney General through the Minister of Local Government for certification as provided for under section 38 of the Local Government Act, Cap 243.
- The main purpose of certification is to ensure that the ordinance complies with other national laws and policies governing the subject being covered.
- The other purpose is to ensure that the ordinance is not inconsistent with the Constitution or any other law passed by parliament.
- The application for certification of a bill should be signed by the district Council Chairperson.
- If the Minister on the advice of the Attorney General is of the opinion that the bill is inconsistent with other laws or the Constitution, he/she shall within ninety days return it with comments for modification or other appropriate action.



The Attorney General certifying the Bill

3.10. Step 10: Signing and Publication

After certifying the ordinance:

- Five copies of the certified copy shall be signed by the Chairperson.
- After the Chairperson has signed the bill, it becomes law.
- The ordinance shall be distributed as follows; one copy to the Chairperson, one copy to the Speaker, one copy to the Minister responsible for Local Governments, two copies to the Attorney General of which one shall be for publication in the gazette.



The Chairperson signing copies of the bill

3.11 Step 11: Publication of an Ordinance



- The council is obliged to notify the public about the new ordinance and when it is going to commence.
- The Attorney General shall cause one copy of the ordinance to be published in the official gazette.
- On publication of the ordinance, the date of signature and commencement shall be indicated.
- The date of commencement is fixed by the relevant council.
- The ordinance shall be given a number.
- The number given shall be in order of its publication among ordinances of all districts in Uganda.

An ordinance published in the Uganda Gazette

4.0 The Processes of Making Byelaws by Lower Local Government Councils

The stages and procedures of making byelaws are almost similar to those used in making ordinances. Under section 39 of the Local Government Act, an urban authority, subcounty, division or village council can make byelaws. The procedure is provided for under the third schedule of the Local Government Act. The difference is about the process of introducing the bill and certification.

4.1. Step 1: Constituting the Law Committee

Like in the process of formulating an ordinance, it is important for lower local governments to constitute a Law Committee to take care of the legislative requirements.

4.2. Step 2: Problem Identification

This step involves identification of problems that require legislative solutions.

4.3. Step 3: Examining the Existing Laws and Identify the Gaps that Require New Laws

An audit of the existing laws is necessary to identifying the gaps and avoiding duplication.

4.4. Step 4: Consultations

Consultations are very important to obtain stakeholders views on the legal problems and possible solutions.

4.5. Step 5: Drafting the Bill for a Byelaw

After stakeholder consultations have been done, the report is submitted to a responsible department. On receipt of the report:

- The responsible departments will in consultation with the Town Clerk or Subcounty Chief prepare a summary of the aspects the bill should address.
- The Law Committee of a town council, division, municipal council, subcounty council receives back the report from the Town Clerk, the Subcounty Chief or chairperson and the draft bill is prepared in conjunction with the responsible departments.

4.6. Step 6: Proposing and Introducing the Bill to Council at Subcounty, Municipal, Division or Town and Village Councils

This involves bringing to the attention of the members of the lower local government council or administrative unit the contents of the bill. A councillor in a local government administrative unit wishing to introduce a byelaw forwards it to the Chairperson as they do not have a Speaker. Councillors in the sub-county, division, town council or municipal council forward their bills to the Speaker. The procedure of introducing the bill for a byelaw is described below.

- a. Any councillor can introduce a bill for a byelaw in his or her local council by a motion.
- b. A councillor wishing to introduce a bill for a byelaw shall forward the bill to the Speaker (subcounty, division, town, municipal councils) or Chairperson (for village councils).
- c. A subcounty, municipality, division, or town council can use the sub county chief or Assistant Town Clerk as clerks as the case may be for the purpose of making byelaws. The village councils can use Parish Chiefs as Clerks to their councils for purposes of making laws.

4.7. Step 7: Publication and Dissemination of the Draft Bill

On receipt of the draft bill, the Speaker or the Chairperson shall:

- Distribute or ensures distribution of copies to all council members at least fourteen days before the byelaw is to be debated.
- Publish or ensure publication of a notice of intention to make the byelaw and invite presentation in writing by any person who objects to the making of the byelaw within 3 weeks from the date of the notice.
- Publication of the draft bill with a short memorandum signed by the person introducing the bill and its intended purpose in the following manner:
 - a. Fixing a copy of the draft bill in a place where the public can easily access it i.e. on the places of worship, marketplace, and other public places.
 - b. Availing copies to the public.
 - c. Including the bill in any official local publication.

4.8. Step 8: Debating the Bill for a Bye-law

After the draft bill has been published and distributed to the councillors, the council shall after 14 days of its publication start debating the draft bill in the following manner:

- Debating of the draft bill commences immediately after the lapse of 14 days.
- Where there is an emergency, the 14 days period of publication may be waived by a resolution of the council.
- Before commencement of the debate the Speaker/Chairperson shall invite the member or head of the committee under whose docket the draft bill falls to introduce the bill.
- Upon introducing the bill, the clerk to council shall then read the title of the bill.
- The Speaker/Chairperson shall call upon the member introducing the bill to give introductory speech giving reasons for introducing the bill and what it is intended to achieve.
- After the speech of the member introducing the bill, the speaker shall invite the council members to debate the bill based on the memorandum and the introductory speech.
- Members of the council may be allowed to make amendments in writing and submit them before the closure of the debate.
- At the close of the debate the speaker shall put the question in respect of each clause of the bill as published or as is amended by any member.
- The bill shall be passed if the members pass through voting all clauses as published or amended by the council.
- Upon passing the bill, the council formally dissolves and adopts the byelaw.
- The adopted byelaw shall be sealed with the seal of the council which is affixed after the schedule or plan if any is to be included in the byelaw.
- The Speaker/Chairperson shall sign and date the document.
- The Speaker or Chairperson upon passing and adopting the byelaw, shall forward the byelaw to the district council or Minister as the case may be for certification and approval respectively.

4.9. Step 9: Certification of the Bill

Certification means a process of okaying the bill as being in line with the Constitution and other laws.

- When the bill is passed and adopted by the lower local council other than the municipality, it is forwarded to the district council for certification of its conformity with the subcounty, district or national laws and policies.
- Byelaws made by a village council are forwarded to the sub county council for certification of their compliance with national and district laws and policies.
- The main purpose of certification is to ensure that the byelaws comply with other national laws and policies governing the subject being covered.
- The other purpose is to ensure that the byelaw is not inconsistent with the Constitution or any other law passed by parliament.

4.10. Step 10: Publication of a Byelaw

- The council is obliged to notify the public about the new byelaw and when it is going to commence.
- The Chairperson of the local government concerned with the making of the byelaw shall cause one copy of the byelaw to be published in the official gazette or district publication if any.
- On publication of the byelaw the date of signature and commencement shall be indicated.
- The date of commencement is fixed by the relevant council.

5.0 Conclusion

Law making is an overwhelming task for local governments. It requires specialised skills which are lacking in the majority of the cases, making it difficult for local governments to execute this noble role. The situation has been worsened by limited financial resources due to dwindling local revenue and limited financial support from the central government. The preparation and publication for these step by step guidelines for making local legislation will provide invaluable support to local government in formulating laws.



About the Authors

Onesmus Mugenyi is a Public Policy Analyst with ACODE. He has undertaken policy research and analysis in a number of areas. He has extensive knowledge of the working of national and international environmental policy and legal processes, adequate knowledge on the national development frameworks and rural poverty reduction strategies. Mugenyi holds a Master of Laws from Makerere University, Kampala. He is an advocate and the Deputy Executive Director of the Advocates Coalition for Development and Environment.

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ABOUT ACODE

The Advocates Coalition for Development and Environment (ACODE) is an independent public policy research and advocacy think tank based in Uganda. ACODE's work focuses on four programme areas: Economic Governance; Environment and Natural Resources Governance; Democracy, Peace and Security; Science, Technology and Innovation. For the last eight consecutive years, ACODE has been ranked as the best think tank in Uganda and one of the top 100 think tanks in Sub-Saharan Africa and globally in the Global Think Tanks Index Report published by the University of Pennsylvania's Think Tanks and Civil Societies Program (TTCSP).

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