RE-CENTRALISATION WITHIN
DE-CENTRALISATION: A REVIEW OF THE
LOCAL GOVERNMENT SERVICE ACT,
2003, ACT 656

by
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PART B

SECTION-BY-SECTION ANALYSIS

A section-by-section analysis of Act 656 reveals serious conceptual and drafting problems with several of the sections. Only a few will be highlighted here.

Section 2: Membership of the Service

Section 2 restricts membership of the Service to persons holding "non-elected public office" in the listed organisations. The effect is to make the appointed members of the MMDAs and the Urban, Zonal, Town and Area Councils members of the LGS, but not the elected members. It is not thought that this was the intention and is a defect that could be cured by appropriate re-drafting.

It is the author's belief that the reference should be to persons holding "non-elected public service office" in the listed organisations.

Section 3: Object of the Service

The very important object of "service delivery to the community" is left out of this section on the "Object of the Service". This "Object" is, however, even more important than the stated object of "the effective administration and management of local government".

An amendment to this effect could be tagged on to the end of the stated object.
Section 4: Functions of the Service

The staff of the MMDAs and the RCCs who form the membership of the Service are the initiators and formulators of policy and programmes for consideration by the political MMDAs. They also implement the policies and programmes as well as the decisions of the MMDAs once approved.

These fundamental functions of the Service are not captured in the section, which appears to confuse "the Service" with "the Council of the Service". Taking a cue from the analogous provisions of the Civil Service Law, the following could be added to the functions of the Service:

(i) Initiate and formulate policy options for the consideration of the MMDAs and the RCCs;
(ii) Initiate and advise on MMDA and RCC plans;
(iii) Undertake such research as may be necessary for the effective implementation of the plans of the MMDAs and the RCCs;
(iv) Implement MMDA and RCC policies, plans and programmes;
(v) Review MMDA and RCC policies, plans and programmes;
(vi) Monitor, coordinate and evaluate the policies, plans and programmes of the MMDAs and the RCCs.

Section 5: Governing Body of the Service

Given the nature of its staffing and its functions, the Council of the Service would benefit from representation from the following bodies who are currently not members of the Governing body:

(i) Public Services Commission;
(ii) Office of the Head of Civil Service;
(iii) Ghana Institute of Management and Public Administration (GIMPA).

Section 6: Functions of the Council

As the policy making body of the Service operating within the country's larger governance system, the remit of the Council under this section should go beyond the narrow one of simply making recommendations to the Minister on the very technical and restrictive terms of reference stated in the section.

Again taking a cue from the Civil Service Law, the following functions could be considered for incorporation in any future amendments:

(i) Deliberate on the overall government policy relating to local government and suggest improvements and modifications to Government;
(ii) Advise and promote policies aimed at ensuring that the cost of the Service to government and to the people is not excessive;
(iii) Periodically review the objectives of the Service in relation to political, economic, social and cultural changes.

Section 15: Head of the Service

Section 15(5) of the Act provides as follows:

"The Head of Service may delegate the functions of the office to an officer of the Service-----"
However, no "office" has been established anywhere under the Act, so it is not clear which office is being referred to.

Under the parallel provisions in the Civil Service Law, an "Office of the Head of Civil Service" (OHCS) is first created (section 5) before a Head of Civil Service is appointed (section 6).

The analogous provision in Act 656 to the "Office of Head of Civil Service" under PNDCL 327 is "the Secretariat" created under section 13. Since section 13 refers to "the Secretariat" and not "the Office", section 15(5) should be amended to read, "The Head of Service may delegate the functions of the Secretariat to an officer of the Service".

However, if the intention is to delegate any of the functions of the Service, then the amendment should read: "The Head of Service may delegate any of the functions of the Service to an officer of the Service".

Section 16: Office of the Regional Coordinating Council

Though the ultimate power of appointment of the Regional Coordinating Director (RCD) is vested in the President, the processing and recommendation for his appointment is done by the OHCS, and he is currently responsible to the Head of the Civil Service. Section 16(2) makes the RCD the head of the RCC and makes him responsible to the Regional Minister. Yet under section 16(3), his conditions of service are determined by the LGS Council, and under section 16(5), he is an officer of the RCC. Under section 2(a) of the Act, as a person holding a "non-elected office" in the RCC, he is a member of the LGS.

There is enough confusion here already, but the following questions also arise:

(i) Who appoints the RCD, now that he is effectively not a civil servant but a member of the LGS?

(ii) Who performs the civil service functions of the RCD as well as his functions relating to the non-decentralised departments in the region now that Part V of the Civil Service Law relating to decentralisation of the Civil Service has been repealed?

(iii) Similarly, by virtue of section 2 of Act 656, staff of the RCC become members of the LGS. What about the staff of the non-decentralised departments? Do they become members of the LGS even though they are civil servants, or do they now cease to be staff of the RCC?

Section 17: Departments of the RCC

Section 17 of Act 656 provides as follows:

(1) Government departments in any region of the Civil Service shall be known as Departments of the RCC.

(2) The heads of departments of a RCC are answerable in the performance of their duties to the RCC.

It is submitted that a future amendment of Act 656 should restrict this section to the decentralised departments only, otherwise the effect is to make all departments in the
region, both decentralised and non-decentralised, part of the LGS, thus effectively abolishing the Civil Service in the regions.

**Sections 19-23**

The comments on the RCCs, mutatis mutandis, apply to these sections on the MMDAs as well.

**Section 34: Transitional Provision**

Section 34 transfers the staff of the decentralised departments to the departments of the MMDAs on the coming into force of the Act. Two problems arise.

First, the section is specific to District Assemblies, but there are analogous departments at the level of the RCCs. The wording of the section seems to exclude them, but the logic and intendment of the Act seems to include them. The situation needs clarification.

Second, though technically, the staff of the decentralised departments are deemed to have been transferred to departments of the MMDAs, in practice this cannot work because the LGS Regulations and other subsidiary legislation to support the LGS Act are not ready for implementation. It is very likely therefore that for a very long time to come, the staff will continue to operate as members of the Civil Service and governed by the Civil Service Regulations, General Orders and similar other regulations.

**Section 35: PNDCL 327 amended**

Section 35 of Act 656 amends sections of the Civil Service Law, 1993, PNDCL 327, the consequences of which may not have been thoroughly appreciated. The following consequences are considered important.

(i) **Section 4(a) ofPNDCL327 repealed**

Section 35(1)(b) of Act 656 repeals sub paragraphs (iv) (v) (vi) and (vii) of section 4(a) of PNDCL 327. These are the sub-paragraphs that make the staff of the RCCs, the Departments of the RCCs, the Offices of the District Assemblies and the Departments of the District Assemblies members of the Civil Service. By repealing these sections, all those staff cease to be members of the Civil Service.

But there are staff of the RCCs, Departments of the RCCs, staff of the Office of District Assemblies and Departments of the District Assemblies who are not staff of the decentralised departments. The effect of the repeal is to make such staff members of the LGS, even though their Departments remain Civil Service Departments. Departments like the Meteorological Service Department, Survey Department and the State Protocol Division readily come to mind.

(ii) **Part V ofPNDCL327 repealed**

We have earlier dealt with the consequences of the repeal of Part V of PNDCL 327 by section 35(1)(c) of Act 656.
(iii) Section 45 of PNDCL 327 repealed

Section 35(1)(d) of Act 656 repeals section 45 of PNDCL 327. The latter section established District Advisory Committees at the regional and district levels. The repeal has the effect of re-centralising the Advisory Committees at the Central Government level.

(iv) Section 46 of PNDCL 327 amended

Section 35(1)(e) of Act 656 amends section 46 of PNDCL 327 by the deletion of the words "Regional and District" from the section that otherwise read as follows:

"Regulations may provide for the establishment of staff appointments advisory boards in the Service at the Ministerial, Department, Regional and District levels."

This amendment nails the coffin in the head as to the possibility of any appointments being ever made by the RCCs and the District Assemblies, a critical requirement of effective decentralisation.

(v) Section 62 of PNDCL 327 amended

Sections 62(3) and (4), which made Regional Ministers and District Chief Executives (DCEs) responsible for intra-regional and intra-district postings of staff within the region and the district respectively, have been repealed by section 35(1)(f) of Act 656.

As we noticed earlier, this power has now been re-centralised in the Minister of Local Government under section 26 of Act 656. However, there continue to be civil servants in the regions and the districts, that is those who belong to the non-decentralised departments, and their intra-regional and intra-district postings will continue to be done by Regional Ministers and DCEs after the Head of Civil Service has posted them to the regions and the districts. By repealing these two sub-sections, the legal basis for the exercise of that power by the Regional Ministers and DCEs is eroded.

(vi) Section 70 of PNDCL 327 amended

Finally, section 35(1)(g) amends section 70 of PNDCL 327 by the deletion of the words "and decentralised administration". The section simply sought to regulate the health and safety conditions of Civil Service workplaces by vesting responsibility therefor in the Heads of those departments.

Once that amendment was made, a provision analogous to the repealed section 70 should have been incorporated into Act 656. In its absence, a lacuna has been created and responsibility for the health and safety conditions of workplaces in the LGS is vested in nobody.

CONCLUSION AND RECOMMENDATIONS

There are very serious conceptual, drafting, contextual and consequential problems with the Local Government Service Act, and this paper has served to highlight some of them. Far from furthering decentralisation, the Act has re-centralised functions and powers already
decentralised and centralised newly legislated functions and powers.

The Act has taken powers and responsibilities that hitherto belonged to other sector Ministries and MMDAs and concentrated all such powers and authority in the hands of the Minister of Local Government or on occasion, the President. The country seems to have decentralised with one hand and immediately re-centralised with the other hand.

To redress this, it is proposed that the LGS itself must be decentralised. The powers of appointment and promotion currently vested in the Council of the Service must be decentralised to the RCCs and the District Assemblies.

The Secretary to the Council of the Service must be appointed by the Council and not the Minister of Local Government.

Whilst the non-decentralisation of the Forestry Service and the Department of Game and Wildlife could be rationalised, there can be no justification for the re-centralisation of the Education and Health sectors.

On the Service's finances and budget, it is the considered view of the author that there is no justification for the remuneration of the staff of the District Assemblies recruited by the District Assemblies themselves to continue to be a charge on the Consolidated Fund.

The omission of any references to the revenue of the District Assemblies in Part III of the Act dealing with "Financial Provisions" is a serious deficiency and makes it difficult to comprehend the sections of the Act on finance.

There is a real likelihood of a parallel submission of expenditure estimates for national budgetary purposes by both the sector MDAs and the LGS. If the defect is not cured, that function assigned to the LGS could easily fall into "desuetude".

There is the need to define "new and special expenditure" within the context of the requirement of ministerial approval for District Assemblies' expenditure.

The section-by-section analysis of the provisions of the Act has revealed further difficulties that do not necessarily impact on decentralisation but which nevertheless ought to be addressed.

The major ones relate to the membership of the Service, the 'Object' of the Service, the functions of the Service, and the functions of the Council of the Service. Proposals have been made on how all the identified anomalies, difficulties and bottlenecks could be rectified and removed.

There is confusion in the relationship that is sought to be struck between the RCD, the staff of the RCC and its Departments, the District Coordinating Director, the staff of the Office of the District Assembly and its Departments, the LGS and the Civil Service, and these ought to be properly sorted out, based on the understanding that notwithstanding the creation of the LGS, there continue to be civil servants working at the regional and district levels who are members of the Civil Service and not the LGS.
Serious problems in this regard have been created by the amendments that have been made to the Civil Service Law, 1993, PN-PCL 327, that also need cleaning up, and there is a case for the subsidiary legislation to support Act 656 envisaged under section 32 of the Act to be made as early as possible.

Finally, in the light of the very fundamental nature of some of the problems that have been identified with Act 656, it is proposed that a study be commissioned into a review of the Act as well as implementation difficulties that have arisen since it came into force. The report of the study should be subjected to a stakeholders' discussion at the end of which a revised draft Amendment Bill on the LGS could be tabled before Parliament, the objective being to further decentralisation implementation.

NOTES

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2. 1993, Act 462
3. L.1.15890f1994
4. Act 480 of 1994
5. Act4550f1993

7. See Article 190(2) of the 1992 Constitution: "The Civil Service shall, until provision is otherwise made by Parliament, comprise service in both central and local government"

8. Public Procurement Act, 2003, Act 663, section 99(1 )(a)
9. Article 195(2) of the 1992 Constitution states as follows: "The President may, subject to such conditions as he may think fit, delegate some of his functions under this article by directions in writing to the governing council concerned or to a committee of the councilor to any member of that governing councilor to any public officer".

10. The range of categories of personnel classified as Categories A, B, C, D and E are in the general Public and Civil Service organisations
11. Uganda Local Government Act
12. Section 46 ofPNDCL 327 of 1993, amended by section 35(1)(e) of Act 656
13. Section 27(1) of Act 656
15. The "disappearance" of the "Ghana Education Service" from the final list of decentralised departments' in Act 462 remains a mystery till this day to the author who, as Minister of Local Government, piloted the Bill through Parliament and recollects quite clearly that the "Ghana

Policy Analysis 7
Education Service" was at all times on the list of departments to be decentralised. Under the predecessor Local Government Law, 1988, PNDCL 207, the "Ghana Education Service" topped the list of the decentralised departments.

16. Section 15(6)(c) of Act 656  
17. Section 28 of Act 656.  
18. Section 29(1) of Act 656  
19. Act 654 of 2003  
20. PNDCL 3270 of 1993

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Note: Nothing written herein is to be constructed as necessarily reflecting the views of The Institute of Economic Affairs