

Administrative Legal Framework of Central-Local Government Relationship in Mainland Tanzania: Is it Tailored to Enhance Administrative Devolution and Local Autonomy?

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Abstract

This article is based on a research work done on Administrative Legal Framework of Central-Local Government relationship and its implication on the local autonomy in Mainland Tanzania. The study of Central-Local Government administrative relationship is crucial in decentralized systems of administration because it directly affects the autonomy and ability of local government authorities to respond to public demands for services. Tanzania has undergone several Local Government reforms. The two phases of the 1990s Local Government reform programme which ended in 2014, (among other objectives) aimed at reviewing the Central-Local Government administrative relationship to make Local Governments Authorities (LGAs) stronger and more autonomous in services delivery. Nevertheless, the said legal framework is still found different pieces of legislation, fuzzy and yet tailored to devolution and local autonomy. Harmonization of central and sector legislation; enactment of a comprehensive local government law and Constitutional review must be made if administrative devolution and local autonomy in services delivery are to be realized.

Key Words: Administrative Legal Framework, Central-Local Government Relationship, Administrative Devolution; Local Government Autonomy.

Introduction

This article is based on a research by the authors on the administrative legal framework of Central-Local Government relationship and its implication on the autonomy of Local Government Authorities in Mainland Tanzania. The study was made on the understanding that Central-Local Government relationship is crucial in decentralized systems of administration because it directly affects the autonomy and ability of Local Government Authorities (LGAs) to respond to public demands for services.¹ In the 20th Century, it

¹ See Kamugisha, D. J. (2014). *The liaison between central and local governments: Is it inclined in a symbiotic fashion to ease service delivery in Tanzania?* International Journal of Social Sciences and Entrepreneurship, 1 (10), 274-291.P.1.

was realized that administrative decentralization of social and economic development (as a remedy to the deficiencies of centralization) was a necessary condition for socio-economic development and effective service delivery. This understanding necessarily brought the need for strong and robust Local Governments in both Unitary and Federal states.² Tanzania being one of the decentralized unitary states has undergone several Local Government reforms. Notable are the two phases of the comprehensive 1990s Local Government reform programme which aimed at creating strong and robust Local Government by increasing the autonomy and capacity of local government authorities in service delivery.³ After the said two phases were completed in 2014, the authors were interested to review the administrative legal framework of Central-Local Government relationship in Mainland Tanzania with a view to determining the way the same fosters administrative devolution and the autonomy of Local Government Authorities in policy and operational decision making.

The study had five specific objectives. However, this article is based on the findings of the first and third objectives: *to expound the administrative legal framework of Central-Local Government relationship in Mainland Tanzania; and to examine the implication of the said administrative legal framework on the autonomy of Local Government Authorities in Mainland Tanzania.* The article is organized in five sections. The first section provides an introduction and the methodology adopted in the study; the second section provides conceptual analysis of the key concepts of the study; the third section gives a brief overview of the trends of decentralization and local autonomy in Mainland Tanzania; the fourth section discusses the current administrative legal framework of Central-Local Government relationship vis-à-vis administrative devolution and Local Government autonomy in Mainland Tanzania; and the fifth section provides some concluding remarks.

Methodology

The findings which are the subject of this article were gathered through qualitative approach. By this approach the researchers collected qualitative data on the administrative legal framework of Central-Local Government relationship and its implication on the autonomy of Local Government Authorities through documentary review and administration of questionnaires. The researchers employed a cross-sectional survey design through which they surveyed both primary and secondary documents. They also administered questionnaires in twelve councils from seven Regions of Mainland Tanzania. The seven surveyed regions were Dar es Salaam, Morogoro, Dodoma, Iringa, Kagera, Mwanza and Arusha Regions. The councils surveyed were six Municipal Councils: Kinondoni, Ilala, Morogoro, Dodoma, Iringa and Bukoba Municipal Councils; one City Council (Mwanza City Council); and five District Councils: Kilosa, Morogoro, Mvomero, Kongwa and Meru District Councils. The population involved Central Government officials at the National, Regional, District and Division levels; council administrative officers, council political leaders and experts in public administration and local government. A total of two hundred and ten (210) respondents, namely twenty (20) Central and Sector ministries officers; ten (10) PMO-RALG officers; thirty (30) regional secretariat officers; sixty (60) council administrative officers; sixty (60) council elected officers; and thirty (30) experts in Constitutional and administrative law and Public administration and Local governance were selected from the population universe.

² *Ibid.* Pp.8-11; See also Walker, D.B. (1991). *Decentralization: recent trends and prospects from a comparative governmental perspective.* International Review of Administrative Sciences, Vol.57,1991.Pp.113 &114.

³ See Government of the United Republic of Tanzania. (1996). *The Local Government Reform Agenda 1996-2000.* PO-RALG. P.2; Government of the United Republic of Tanzania. (1998). *Local Government Reform Programme Policy Paper on Local Government Reform.* PMO-RALG. P. 3; and Government of the United Republic of Tanzania. (2009). *Local Government Reform Programme Policy Paper II.* PMO-RALG. P.7.

The information gathered from documentary review and field respondents were processed and analyzed qualitatively. The qualitative analysis of data involved a process of preparing, organizing and categorizing the data collected in accordance with the objectives of the study and the research questions. Qualitative analysis of data involved content analysis approach and logical scrutiny of constitutional and statutory provisions to deduce propositions of the law on the Central- Local Government administrative relationship and its implication on the autonomy of local government authorities in mainland Tanzania. The units of analysis were the recurring words and phrases that denote Central-Local Government administrative interactions and local autonomy. The analysis of empirical data was also qualitative with simple descriptive statistics through the aid of IBM-SPSS 20 soft ware. Responses which appeared common were coded and entered in the IBM-SPSS 20 package. The uncommon responses were also coded in the category of *any other* so as to simplify the analysis. After data screening and exploration by descriptive statistics the data were descriptively evaluated to draw inferences upon the objectives of the study and research questions. The next section analyses the key concepts of the study.

Conceptual Analysis of Key Terms

This section attempts to describe and analyse some key concepts which formed part of the study. In particular the section analyses the concept of decentralized and centralized systems of administration; administrative decentralization; Central-Local Government administrative relationship; and Local Government Autonomy.

Decentralized *vis-à-vis* Centralized Systems of Administration

Decentralized system of administration features in states with governance at the national and local levels (Central and Local Governments respectively). Literature suggests that the Central Government, as National government, is found in every state (both unitary and federal).⁴ However, unlike Central Governments, Local Governments are found in states with decentralized system of political administration only. Decentralized system of administration is characterized by administrative transfer of authority, resources, accountability and institutions from Central Government to local entities.⁵ Generally, decentralized governance involves the restructuring or reorganization of authority between the centre and the periphery in such a way that there is a system of co-responsibilities between institutions of governance at the central and local levels according to the principle of subsidiarity.⁶ It is further characterized by increasing the autonomy or authority and capacities of sub-national government levels in decision making and public services delivery. Unlike decentralized system of administration, centralized system of administration is characterized by greater national activism in form of governmental assistance, regulation of the economy, policy interventions and total or major central funding of social-economic and welfare programs.⁷ In centralized nations, local governments may exist only as agents of the central government.⁸

Readings reveal that in Tanzania and many other African Countries as well as in European Nations, local self-rule predated the emergence of centralized governments.⁹ Both in Europe and Africa, the shift to

⁴ See The World Book Encyclopaedia. (1994). *World Book international*. World Book Inc. Vol.8. P. 268.

⁵ See Olowu, D. & Wunsch J.M.(2004). *Local governance in Africa: The Challenges of Democratic Decentralization*. Lynne Rienner Publishers. Pp.4&5. Also Shah, A & Shah, S. (2006). *The New Vision of Local Governance and the Evolving Roles of Local Governments*. World Bank. P.4

⁶ See UNDP. (1999). *Decentralization: a Sample of Working Definitions Paper*. P.2.

⁷ See Walker, D.B.(1991). *Decentralization: recent trends and prospects from a comparative governmental perspective*. International Review of Administrative Sciences, Vol.57,1991. P.114

⁸ See Bailey, S.H.(1997). *Cross on Principles of Local Government Law*, 2nd Ed. Sweet& Maxwell-London.p.243.

⁹ See Shah, A. & Shah, S. (2006). *Op.cit*. P. 27. See also Max, J.A.O. (1991). *The Development of Local Government in Tanzania*. Educational Publishers and Distributors Ltd. Pp.1-4.

centralization was not but for a reason. Administrative centralization was once thought of as a prerequisite to fast and rapid development in most of European Nations from the 1930s to 1970s.¹⁰ This had been the case also for most African Countries shortly after their political independence, Tanganyika (now Mainland Tanzania) inclusive.¹¹ The centralized administrative systems manifested themselves more clearly in unitary states than in federal states.¹² However, even the federal states also experienced a significant expansion of their central government's role and the erosion of sub-national government autonomy during this period.¹³ Regrettably, the centralized administrative system in Africa (Tanzania inclusive) resulted into strong executives under single party democracy in most states and military dictatorships in a few states. Consequently, the advent of strong executives and military dictatorships caused many criticisms over centralization.¹⁴ Later in the 20th Century, it was realized that, centralization of social and economic development was not a sufficient condition in itself for development; hence the need for strong and robust local governments through administrative decentralization.¹⁵ Thus, with the policy of administrative decentralization in many States, Local Governments increasingly assumed a greater role in socio-economic development and public services delivery.¹⁶

The Concept and Forms of Administrative Decentralization

The concept of administrative decentralization refers to reallocation of authority, responsibility and resources among different levels of government.¹⁷ It is the transfer of responsibilities in planning, financing and management of certain public functions from the central government to field units of government agencies, subordinate levels of government or semi-autonomous public authorities.¹⁸ The local government reform programme policy paper, 1998 defines administrative decentralization as the de-linking of local authority staff from their respective ministries to give power to local councils to recruit own personnel who are accountable to the councils.¹⁹ In its broader sense, administrative decentralization is on one hand linked to political decentralization, and on the other hand linked to fiscal decentralization. According the UNDP, the design of decentralization system must include a mixture of administrative, fiscal and political functions

¹⁰ See Walker, D.B. (1991). *Op.cit.* P.114.

¹¹ See Liviga, A.J. (1992). *Local Government in Tanzania: Partner in Development or Administrative Agent of the Central Government?* Journal of Local Government Studies. Vol. 18:3 of 1992. Pp.211-215. Also see Bosire, C.M. (2013). *Devolution for Development, Conflict Resolution, and Limiting Central Power: An Analysis of the Constitution of Kenya*, 2010. University of Western Cape. Pp.111-120; and Mutahaba, E. R. & Kweyamba, A.B.(2010). *Searching for an Optimal Approach to National Development Planning in Africa: Assessing the Contribution of Public Administration Systems*, a paper presented at the 32nd AAPAM Annual Roundtable Conference, Durban, South Africa 15 – 19 November, 2010. P.6.

¹² See Walker, D.B. (1991). *Loc.cit.*

¹³ *Ibid.*

¹⁴ See Mutahaba, E. R. & Kweyamba, A.B.(2010). *Loc.cit.*

¹⁵ *Ibid.* Pp.8-11; Walker, D.B. (1991). *Op.cit.* Pp.113 &114.

¹⁶ See Shah, A & Shah, S. (2006). *Ibid.* P. 41.

¹⁷ See The UNDP. (1999). *Administrative Decentralization: A sample of Definitions*, a Working Paper Prepared in Connection with the Joint UNDP- Government of Germany Evaluation of UNDP Role in Decentralization and Governance. UNDP. P.9.

¹⁸ *Ibid.* See World Bank, *Administrative Decentralization*. At <http://www1.worldbank.org/publicsector/decentralization/admin.htm>. Retrieved on August, 17th, 2014 at 20:30PM.

¹⁹ The united Republic of Tanzania. (1998). *Local Government Reform Programme Policy Paper on Local Government Reform*. *Op.cit.* P.5.

and relationship.²⁰ The combination of these three forms of decentralization determines the local autonomy in the exercise of power and the discharge of mandated functions as well as the ability of local government authorities to respond to local demands for public services in their respective areas of jurisdiction. For this reason, in this article, political and fiscal decentralizations are treated as integral components of administrative decentralization.

The nature of administrative decentralization, usually, takes three major forms: *deconcentration*, delegation and devolution.²¹ Administrative *deconcentration* refers to the redistribution of decision making power, finance and managerial responsibilities among different levels of the Central Government like Regional, District, ward and Village levels.²² Thus, *Deconcentration* simply means the presence of the centre in the field rather than flow of power from the centre to the periphery.²³ Under *deconcentration*, the field officers are usually accountable to the Central Government rather than the local people.²⁴ Besides *deconcentration*, delegation involves transfer of responsibilities of defined functions to sub-national government or the transfer of specific functions to semi- autonomous agencies in order to perform such functions on behalf of the Central Government.²⁵ Therefore, although delegation is not very distinct from *deconcentration*, under delegation, the Central Government transfers responsibility for decision-making and administration of specified public functions to semi-autonomous organizations which are not completely under central control but eventually accountable to it.²⁶

Unlike administrative *deconcentration* and delegation, administrative devolution denotes the transfer of power and authority of decision making, finance, and management to local government authorities with corporate status governed by elected representatives of the people.²⁷ Devolution involves the creation of autonomous lower-level units, such as provinces, districts and local authorities which are legally constituted as separate governance bodies.²⁸ Through devolution, the Central Government relinquishes certain functions or creates new units of government that are outside its direct control.²⁹

The local units or institutions are accountable to the local people for service delivery and provide services which are responsive to the needs of the people.³⁰ Administrative devolution requires a well defined legal framework of central-local government administrative relationship which allows reciprocal benefits and

²⁰ See the UNDP. (1998). *Factors to Consider in Designing Decentralized Governance Policies to Achieve Sustainable People-Centered Development*, Management development and Governance Division. UNDP. P. 1.

²¹ UNDP. (1997). *Decentralized Governance Programme: Strengthening Capacity for People-Centered Development*, Management Development and Governance Division. UNDP Bureau of Development Policy. Pp.5-6.

²² *Ibid.* See also World Bank, *Administrative Decentralization*. At <http://www1.worldbank.org/publicsector/decentralization/admin.htm>. Retrieved on August,17th, 2014 at 20:30PM.

²³ See Bosire, C.M. (2013). *Op.cit.* P. 17. See also UNDP. (1997). *Decentralized Governance Programme: Strengthening Capacity for People-Centered Development*, Management Development and Governance Division. *Loc.cit.*

²⁴ *Ibid.*

²⁵ *Ibid.* see also the UNDP. (1999). *Decentralization: a Sampling of definitions*. *Op.cit.* P.7.

²⁶ See World Bank, *Administrative Decentralization*. *Loc.cit.* See also the the UNDP. (1999) *Decentralization: a Sampling of definition*. *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.* See also Bosire, C.M. (2013). *Op.cit.* 7.

²⁹ See World Bank, *Administrative Decentralization*. *Loc.cit.* See also the UNDP. (1999). *Decentralization: a Sampling of definitions*. *Loc.cit.*

³⁰ *Ibid.* see also Olowu, D & Wunsch J. M.(2004). *Op.cit.* Pp. 5&6.

harmonious administrative relations between the central and local government authorities.³¹ Having analysed the concept of administrative decentralization, the next conceptual discussion is about the concept of Central-Local Government administrative relationship.

Central-Local Government Administrative Relationship

The term Central-Local Government administrative relationship is not stated in the local government laws or in the local government policy papers of Tanzania. However, the Philippine's Administrative Code of 1987 provides us an insight on what constitutes administrative relationship. Section 38 of the Philippine's Administrative Code of 1987 provides;

*...Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as ...Supervision and Control... that shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs.*³²

In this view, Central-Local Government administrative relationship connotes the administrative interactions between the Central and Local Government in the performance of executive duties and the execution of public affairs. That is the controls and supervisions of Local Government Authorities by the Central Government.

According to Griffith,³³ Central-Local Government administrative relationship is distinguishable between three forms: *laissez-fair*, regulatory and promotional. Under *laissez-fair* there is very little Central Government interference with Local Government Authorities, save only for necessary fulfillment of departmental duties. Under regulatory approach, there are more Central- Local interferences through central inspections and advices meant for ensuring local observation of statutory regulations. In respect of promotional administrative relationship, the central government creates national policies which the local government authorities must execute under the control and direction of the Minister. The Minister provides advice, supervision and inspection over the public services provision with a view to maintaining and improving standards.³⁴ These forms of administrative relationship noted by Griffith determine the modes of Central-Local Government administrative relationship.

Traditionally, modes of Central-Local Government relationship have been considered to take two rival modes: agency model and partnership model. Very recently scholars have developed another model called power dependency model. Under agency model Local Government Authorities have very little autonomy and discretion in the implementation of national policy and public service delivery.³⁵ Their task is only carrying out the duties delegated to them by the Central Government and they are completely subordinate to the central government as mere arms or agents of the central government.³⁶ In contrast, under partnership model Local Government Authorities provide a variety of public services. There are complex interactions between the central and local government authorities in which the latter do not only execute central policies but do also exert influence on the determination of central policies and exercise some considerable

³¹ See UNDP. (1999). *Decentralization: a Sampling of definitions*. Loc.cit.

³² S.38 (1). *Ibid*.

³³ See Griffith J.A.G. (1966). *Central Departments and Local Authorities*, quoted in Hampton, W. (1987) *Local government and urban politics*. London and New York, Longman. P.177.

³⁴ *Ibid*. See also Central-local Relations at www.palgrave.com/.../13_CHA09.

³⁵ *Ibid*.

³⁶ *Ibid*.

discretion in the performance of their local activities.³⁷ Nonetheless, partnership model has been criticized in treating the Central Government and Local Government as equal partners. Such relationship cannot be true particularly under unitary governments where Local Government Authorities are constitutionally subordinate to the Central Government. The criticisms over partnership mode gave rise to an alternative model called power dependency model. The Power dependency model suggests that the degree of discretion and the relative power of the Central and Local Governments result from their resources and the rules that govern the relationship; values and the interests; and distribution of resources amongst them.³⁸ The distribution of these resources creates an interdependence relationship. For this reason, neither Central Government nor Local Government has monopoly of power or completely independent of the other. This model was based on Rhodes, R.A.W. framework which used inter-organizational analysis to produce a power dependency model.³⁹ Indeed, the inference which was drawn from the review of literature is that the determining factor of Central-Local Government administrative relationship model is the nature and type of decentralization; and it is the Central-Local Government administrative relationship model which in turn determines the autonomy of local government authorities.

The Concept of Local Government Autonomy

The concept “local autonomy” is frequently used in both academics and discussions on Local Government. However, it is rarely defined conceptually in a careful way worth of empirical research. Different literatures⁴⁰ define the term local autonomy as a system of Local Government in which Local Government units have important role to play and have discretion in determining what to do without undue constraint from higher levels of government and have the means or capacity to do so. The United States Advisory Commission on Intergovernmental Relations (A.C.I.R) define local autonomy as consisting of degrees of discretionary authority that can determine their own form of movement and internal organization; capable of choosing functions to perform; having power of raising revenue, borrowing and spending; and power of determining the number, types and conditions of their employees.⁴¹ It also includes the power of local governments to initiate policy as well as their immunity from state legislation.⁴² The main indicator of local autonomy is the relaxed central interventions; namely: less frequent monitoring, few inspections, less central directions and dictations of targets, performance management removed from central control, freedom to tailor services according to perceived needs of the local communities.⁴³ Having discussed the key concepts, the next discussion centers on the trends of decentralization and search for local government autonomy in Mainland Tanzania.

Trends of Decentralization and Local Government Autonomy in Mainland Tanzania

The emergence of national governments in Africa started by colonial conquest of the pre-existing decentralized communities.⁴⁴ In Tanzania, it was the Germans who created Central Government

³⁷ *Ibid.*

³⁸ See Rhodes, R.A.W. (1981). *Control and Power in Central-local Government Relations*. Quoted in Hampton, W. (1987). *Op.cit.* P.183

³⁹ *Ibid.*

⁴⁰ See Wolman, H. & Mcmanmon, R. (2008). *Comparing Local Government Autonomy across States*, GWIPP Working Paper. Washington University. P.5.

⁴¹ See A.C.I.R Report cited in Libonat, M.E. (2001). *Local Government Autonomy*. Louisiana Law Review. Vol.62:1. P. 97.

⁴² *Ibid.*

⁴³ Hogue, et.al...2004, quoted in Kunkuta, G.E.A. (2011). *Responsiveness and Accountability of Urban Government: experiences from Provision of Water and Sanitation in Temeke Municipality in Dar es Salaam, Tanzania*. Unpublished PhD Thesis, Mzumbe University. Pp.158-161.

⁴⁴ See Olowu,D & Wunsch J. M.(2004). *Op.cit.* P.29.

administration between 1893 and 1899 and governed through direct rule system.⁴⁵ The direct rule system employed direct central control of the civil administration assisted by the “*akida*”, “*jumbe*” and “*liwali*” who were employed as agents of the central administration.⁴⁶ There were some attempts to introduce local authorities through the Imperial Decree of 29 March 1901 and the Imperial Chancellor Order of 1910, the aim being to assist the central administration to control the Colony. In 1909 the communal unions established under the Imperial Decree of 29 March 1901 were abolished.⁴⁷ By the end of the German rule, only Dar es Salaam and Tanga had municipal status under the order of Imperial Chancellor of 1910, though under strict control of the governor.⁴⁸

Decentralization of Local Government was first experienced in Tanzania in 1926 after the First World War when the British Government under the Governorship of Sir Donald Cameron introduced Local Government Authorities in Tanganyika (now Mainland Tanzania) based on native tribal authorities that had existed before German rule.⁴⁹ Literature reveals that the basic concern of the British colonial Government was to maintain peace and tranquility in the colonies for smooth extraction of resources.⁵⁰ To achieve this, the British Government introduced Local Government administration as an aspect of indirect rule in order to minimise cost of administration (since there was scarce trained manpower) and, at the same time, minimise African resistances to government orders.⁵¹ The Native Authorities were mere administrative agents of the centre. As eyes of the colonial Government, Native Authorities became the major link between the colonial Government and the local people and were under direct control of the Central Government dominated by a top-down bureaucratic system groomed to prop the Colonial Government.⁵² In 1942, the Native Authorities’ Ordinance was amended to give corporate status some specified native authorities by the Governor.⁵³ Despite this amendment, the corporate status of Native Authorities could only be enjoyed under the pleasure of the governor and they never had autonomous decision making power.⁵⁴

An attempt to democratize local government system was made in 1953, when the British Government enacted the Local government Ordinance, 1953 which created County Councils, Local Councils, and Town Councils manned by democratically elected officials though based on racialism.⁵⁵ True Local Government democratic representation remained illusory until July, 1962 when all Local Government Authorities became multipurpose and fully representative bodies.⁵⁶ Throughout the British rule, Local Government

⁴⁵ See Max, J.A.O. (1991). *Op.cit.* P.7. See also Lamber, T. A. Brief History of Tanzania at <http://www.localhistories.org/tanzania.html>. Accessed on 10th October, 2012, at 4.00 AM.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ See Max, J.A.O. (1991). *Loc.cit.* See also Government of the United Republic of Tanzania. *History of Local government in Tanzania*. President’s Office, Regional Administration and Local Governments. P.5. at <http://www.pmoalg.go.tz/menu-data/about-us/history/History%20of%20Local%20Government%20In%20Tanzania.pdf>.

⁴⁹ See Max, J.A.O. (1991). *Op.cit.* P.10. See also Government of the United Republic of Tanzania. (2012). *History of Local Government System in Tanzania.PMO-RALG*. at <http://www.pmo.go.tz/mawaziri.php?cat=12&subcat=81>. P.3

⁵⁰ Liviga, A.J. (1992). *Op.cit.* P.209.

⁵¹ *Ibid.* See also Max, J.A.O. (1991). *Loc.cit.*

⁵² See Liviga, A.J. (1992). *Loc.cit.* See also Gasto, F.(1997). *Contradictions in Local Government Decision Making in Tanzania*. Unpublished Masters Dissertation in Public Administration, University of Dar es Salaam.P.8.

⁵³ S. 3(4) of the Native authorities Act, as amended by Ordinance No.29 of 1942.

⁵⁴ Mwaikusa J.T. (1985). *Control of Local Government Authorities in Tanzania*. Mzumbe. P.13. See also Liviga, A.J. (1992). *Loc.cit.*

⁵⁵ S.4 of the Local government Ordinance, 1953.

⁵⁶ Max, J.A.O. (1991). *Op.cit.* P.80.

Authorities were subordinate and perpetually dependent on the centre in all aspects of governance and all decision making authority was concentrated at the centre which determined the function of the Local Government.⁵⁷

At independence in 1961, the Government of Tanganyika like other newly independent African states replaced the native authorities by democratically elected local officers.⁵⁸ However, the post-colonial regimes in Anglophone Africa (Tanganyika inclusive) inherited the British system of subordinating Local Governments to the centre. In the name of national unity, stability, and the need to consolidate political base, the post colonial decision makers pursued more or less the same policies with regard to Local Government.⁵⁹ Though Local Government was considered to be a tool for bringing democratic development, it was also perceived as potential source of opposition and a threat to national unity and stability.⁶⁰ For this reason, Local Government Authorities in Tanganyika after independence remained closely supervised and managed by, and accountable to the centre as agents of the Central Government.⁶¹ The government introduced a number of Local Government reforms and policy decisions which put Local Government on the road down to bankruptcy and its subsequent abolition.⁶² For instance, the Arusha Declaration of 1967 and the policy of socialism and self reliance strengthened the Central Government on one hand, and weakened the local government on the other hand.⁶³

In 1972, the Government invoked the Decentralization Policy and enacted the Decentralization Act, 1972, which substituted Regional and District Committees for the Councils.⁶⁴ The Local and Central Government responsibilities were merged by placing the task of initiating, implementing and monitoring local development programmes under the District Development Director (DDD), the Regional Development Director (RDD) and the Prime Minister's Office at the District, Region and National levels respectively.⁶⁵ The 1970s decentralization which was aimed at transferring decision making power to the people did not work. Instead, it grabbed from the people even the little decision making power they had before.⁶⁶ The decentralization programme resulted into *deconcentration* rather than *devolution*. Ultimately, a decade later the government found itself unable to continue with the decentralization scheme due to drastic fall of both rural and urban economies and social services. Thus under both internal and external pressure, the Government had to re-introduce Urban Authorities in late 1978.⁶⁷

Despite the resurgence of Urban Authorities in 1978, there had been great tension and challenges in creating an administrative legal framework of central-local government relationship tailored to enhance administrative devolution and Local Government Autonomy.⁶⁸ In 1982, a number of laws (some of which

⁵⁷ Gasto, F. (1997). *Op.cit.* P.26. See also Liviga, A.J. (1992). *Op.cit.* P.211.

⁵⁸ Olowu, D & Wunsch J. M. (2004). *Op.cit.* P.33.

⁵⁹ Liviga, A.J. (1992). *Op.cit.* P.210. See also Max, J.A.O. (1991). *Op.cit.* Pp.25&26.

⁶⁰ See Max, J.A.O. (1991). *Op.cit.* P.26. See also Liviga, A.J. (1992). *Loc.cit.*

⁶¹ Gasto, F. (1997). *Loc.cit.*

⁶² *Ibid.* Pp. 213-214. See also Olowu, D & Wunsch James, M. (2004). *Op.cit.* P.33. and Max, J.A.O. (1991). *Op.cit.* Pp. 66-76. The other reasons given for the abolition of local government authorities in 1970's were political conflicts between council officials, central government officials and politicians; lack of external supervision; weak internal administration; poor financial position of local authorities and failure by the central government to honour their obligations towards local authorities.

⁶³ Liviga, A.J. (1992). *Loc.cit.* Pp. 213-214.

⁶⁴ *Ibid.*

⁶⁵ Max, J.A.O. (1991). *Op.cit.* 83. Also Liviga, A.J. (1992). *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Liviga, A.J. (1992). *Loc.cit.*

⁶⁸ See Devas, N. & Grant, U. (2003). *Local government decision making: Citizen participation and local accountability: Some evidence from Kenya and Uganda*. Public Administration and Development, 23 (4) 307-16.

are currently in force) were enacted to re-introduce Local Government Authorities and subsequently in 1985, the Constitution was amended to recognize local government in Tanzania.⁶⁹ Unfortunately, the 1985 Constitutional amendment did not fully capture the concept of devolution.⁷⁰ Furthermore, the new local government structures had yet several impediments to local autonomy: an overlap of local government authorities with the ruling party, strong central control and supervision (command-driven)⁷¹ and unclear central-local government relationship.⁷²

The quest for local autonomy and improved local service delivery resulted into the 1990s local government reforms which, among other things, had the objective to create an appropriate administrative legal framework of Central-Local Government relationship which would ensure high Local Government autonomy in policy and operational decision making in response to local demands and priorities.⁷³ The 1990s local government reforms had two phases. The first phase started in 1998 and ended in 2008; and the second phase started in 2009 and ended in 2014. Following the completion of the two phases of the envisaged 1990s Local Government Reform Programme in Mainland Tanzania, the following questions still remain: “*has the administrative legal framework of Central-Local Government relationship been improved to enhance administrative devolution and local autonomy?*” “*Has the Government vision and objective of improving the capacity of local government authorities in public service delivery through highly autonomous Local Government Authorities been realized?*” The answers to these questions are provided in our next discussion on the current administrative legal framework of Central-Local Government administrative relationship *vis-à-vis* administrative devolution and Local Government autonomy in Mainland Tanzania.

Current Legal Framework of Central-Local Government Relationship *vis-a-vis* Devolution and Local Government Autonomy

The Local Government Reform Agenda, 1996-2000 and the Local Government Reform Programme Policy Paper, 1998-2008 revealed that the failure to meet the high expectations of improved performance by the re-introduced LGAs in 1982 was the underlying legal framework of Central-local government relationship which was complex, excessively control-oriented, ambiguous and fragmented. In several respects, there were overlaps and conflicts between principle legislation, circulars, standing orders and other regulations

⁶⁹ Max, J.A.O. (1991). *Loc.cit.* See also REPOA (2008). *Op.cit.* P.12.

⁷⁰ *Ibid.* P. 13. See also Government of the United Republic of Tanzania. (2009). *Local Government Reform Programme II (Decentralization by Devolution) Draft*. PMO-RALG. P.13. See also the Government of the United Republic of Tanzania. (1998). *Local Government Reform Programmed Policy Paper 1998-2008*. PO-RALG. P.1.

⁷¹ REPOA. (2008). *Op.cit.* P.13.

⁷² Mwaikusa J.T. (1985). *Op.cit.* P. 178. See also REPOA. (2008) *ibid.* see also Rwekaza S. M. (2004). *Local Government, Effectiveness and Human Rights: the Cases of Bukoba rural and Mtwara-mikindani Districts in Tanzania*. International Council on Human Rights Policy. Pp.6-7. See also Government of the United Republic of Tanzania. (2012). *History Of Local Government System In Tanzania*. *Op.cit.* P.3. See Also Government of the United Republic of Tanzania. (2008). *Local Government Reform Programme Implementation Report 1998-2008*. PO-RALG.

⁷³ See Government of the United Republic of Tanzania. (1998). *Local Government Reform Programme Policy Paper*. *Op.it.* P. 4. The envisaged Local Government Reform Programme introduced the idea of decentralization by devolution through two major policy documents: The Local Government Reform Agenda, 1996-2000 and the Policy Paper on Local Government Reform. This was followed by the enactment of The Local Government Laws (Miscellaneous Amendments) Act, 1999, No. 6, of 1999 to put in force the envisaged reforms. Further amendments to the local government laws were made in 2006 via the Local Government Laws (Miscellaneous Amendments) Act No.13 of 2006.

derived from Central and Sector legislation.⁷⁴ Consequently, among the key areas of concern of the two phases of the Local Government Reform Programme, namely 1998-2008 and 2009-2014 was the Legal framework of Central-Local government relationship in order to increase the autonomy of Local government authorities and improve local services delivery.⁷⁵ The changes to the said legal framework would involve the enactment of a comprehensive Local Government legislation based on the Government vision, objectives and key principles of the local government reform; harmonization and rationalization of Central and Sector legislation; and Constitutional amendments to clearly enshrine administrative devolution and Central-Local government relationship in Mainland Tanzania.⁷⁶

Documentary review revealed that up to the end of the first phase of the Local Government Reform Programme in 2008, the only change which had been made was amendment to the following local government Laws: the Local Government (District Authorities) Act, 1982[CAP 287 R.E. 2002]; the Local Government (Urban Authorities) Act, 1982[CAP 288 R.E. 2002]; The Local Government Finance Act, 1982[CAP 290 R.E. 2002] and the Regional Administration Act, 1997 [CAP 97 R.E. 2002]. All these were amended by Act No.6 of 1999 and further amended in 2006 by the Local Government Laws (Miscellaneous Amendment) Act, 2006, Act No.13 of 2006. Documentary review also revealed that, by the end of the first phase of the Local Government reforms in 2008, a legal harmonization Task force had started reviewing sector laws and policies.⁷⁷ The 1982 Local Government laws were under review since 2004, and by 2008 the review was at the stage of preliminary study for a comprehensive Local Government law.⁷⁸

Nevertheless, the second phase of the local government reform programme ended in 2014 with neither a comprehensive Local Government law, nor, a harmonised Central and Sector legislation in place. There are still many contradictory central and sector laws. For instance, the Public Service Act, 2002⁷⁹ and its Regulations, 2003 as well as the Local Government Service Scheme, 2009 centralise the recruitment of local government employees except the recruitment of lower level employees of non officer grade that has recently been delegated to the councils in 2014.⁸⁰ Council directors and heads of departments (HoDs) are centrally appointed, disciplined and transferred.⁸¹ The worst of all is the failure to review the Constitution to entrench decentralization by devolution. The Constitution still carries the two Articles: 145 and 146 which had been criticised for being too broad but scant in content.⁸² Notwithstanding the envisaged 1998-2014 local government reforms, the administrative legal framework of Central-Local Government relationship is still found in scattered pieces of legislation and fuzzy. The fuzziness of the said legal framework is intensified by the corpus of regulations, guidelines, codes of conduct, memoranda, schemes and circulars and frequent directives hailing from the Central Government. For this reason, the improvement to the administrative legal framework of Central-Local Government relationship to enhance administrative devolution has not so far been achieved. The next issue to address is *whether the Government vision and objective of improved public service delivery and high local autonomy has been realized.*

⁷⁴ See Government of the United Republic of Tanzania. (1996). *The Local Government Reform Agenda 1996-2000. Op.cit.* P.5. See also Government of the United Republic of Tanzania. (1998). *The Local Government Reform Programme Policy Paper. Op.cit.* Pp.8&9.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.* P. 10.

⁷⁷ See Government of the United Republic of Tanzania. (2009). *The Local Government Reform Programme Policy Paper (Decentralization by Devolution) II. Op.cit.* P.12.

⁷⁸ *Ibid.*

⁷⁹ Act No.8 2002.

⁸⁰ *Ibid.* Ss.9 & 29(1&6) as amended by s. 11 of the Public Service (Amendment) Act, Act No.18 of 2007.

⁸¹ *Ibid.* Ss.5 (1), 8(3) (f). See also Regulation 5- 8 of the Public Service Regulations, 2003 and Ss.4-9 of the Local Government Service Schemes, 2009.

⁸² See REPOA. (2008). *The Oversight Processes of Local Councils in Tanzania.* REPOA. P. 13.

The amendment to the local government laws by Act No.6 of 1999 and Act No13. of 2006 only introduced general provisions regarding Central-local government relationship.⁸³ For instance, the statutory provisions on the functions of the Central Government in relation to the power and functions of Local Government under s. 174A of Part VIIA of CAP 287 and s.54A of CAP 288 contain provisions which are too general and ambiguous. Furthermore, the amendment to section 174A(1)(i) as amended by s.10 (b) of Act No.13 of 2006, introduces a general and ambiguous provision that the Central government can do “*any such other acts and things as shall facilitate or secure the effective, efficient and lawful execution by the District Authorities of their statutory or incidental duties.*” The generality and ambiguity with regard to the Central-Local government relationship is manifested under S. 174A (2) as amended by s. 10(c) of Act No13 of 2006 on the functions of Sector Ministries with regard to the powers and functions of Local Government Authorities.

Besides, the Minister responsible for Local Government still enjoys overwhelming powers to influence LGAs. Documentary review showed that out of the 156 sections of CAP 287, the Minister is mentioned more than ninety five (95) times; out of the one hundred and eleven (111) sections of CAP288, the Minister is mentioned more than eighty (80) times; and out of the 65 sections of CAP 290, the Minister is mentioned more than sixty (60) times. Most of the mentions are concerned with controls and supervision of local government powers, functions and finance through approval powers, appellate power, issue of guidelines, regulations, directives, orders and direct interventions, appointment and transfer powers of local government staff, disciplinary powers over local government staff, variation of local government functions and powers to dissolve local government councils. Unfortunately, most of the said powers are discretionary and are delegable by the Minister to any Public officer.⁸⁴ Worse still, some of these powers are also extended to the Regional Commissioners.⁸⁵ Moreover and as already seen above, the Public Service Act, 2002 centralizes the local government service. Recent studies also reveal that the central government still exercises tight control and supervision of LGAs in order to meet a number of policy imperatives.⁸⁶ Therefore, from documentary review it is evident that the Government vision and objective of improved public service delivery and high local autonomy is yet to be realized.

Apart from documentary findings, field results also reveal a number of ways through which the Minister exercises control and supervision over Local Government Authorities. A total of 135 out of 210 respondents responded to the question, “*how does the Minister of State, PMO-RALG Exercise Control and Supervision over LGAs.*” The frequently mentioned ways through which the Minister exercises control and supervision over local government authorities are issuing policy statements (91.9%); issuing policy guidelines (97%); giving directives and commands that direct the LGAs to perform or not to perform certain activities (96.3%); issuing circulars (96.3%); Discipline of local government staff (87.4%); transfer of local government staffs (94.1%); meetings with local government staff (97.8%); and others (57%). The other methods of control and supervision mentioned include organizing meetings with LGAs staff; setting budget ceiling; dissolving councils in default; transfer of functions from councils in default; issuing codes of conduct; directing the regional and district commissioners to make follow-ups over local government affairs; and call for quarterly reports from LGAs. The Minister’s exercise of these powers largely affects the autonomy of Local Government authorities. It was found by 87.4% of field responses that the Power and functions of the Minister have negative influence on the Autonomy of local government authorities in Mainland Tanzania.

⁸³ See Ss.168, 174A of CAP 287 and S. 78A of CAP 288. *Loc.cit.*

⁸⁴ *Ibid.* Ss.173(1) of CAP287 and S.77(1)of CAP 288.

⁸⁵ *Ibid.* Ss. 127(4), 150(3), 156(3&4) and 177(2) of CAP 287. See also Ss.65 (2,4&5), 78, and 78A of CAP288.

⁸⁶ See REPOA. (2008). *The Oversight Processes of Local Councils in Tanzania. Op.cit.* Pp. 4-8. See also REPOA. (2008). *The Impact of Local government Reforms in Tanzania -1998-2008, PO-RALG.* P.15; and Kunkuta, G.E.A. (2011). *Op.cit.* Pp.158-161.

Field results further revealed that besides the Minister responsible for Local Government, the Central and Sector Ministries administrative interactions have negative implication over the autonomy of local government authorities too. About 62.2% of the field respondents viewed the central and sector Ministries administrative interactions as having negative influences exerted through the Minister responsible for Local Government; the Regional Secretariat (RS); direct central interventions on local Government Authorities; Central and Sector Ministries guidelines, circulars and directives; Central and Sector Ministries interferences with local governments' annual implementation plans, and frequent Central and Sector Ministries inspections, audit and ad hoc directives on Local Government Authorities. It was further found that, the Central and sector Ministries direct intervention and issue of directives to Local Government Authorities cause divided loyalty to local government authorities, hence affecting the autonomy of Local Government Authorities. Local Government's autonomy is further affected by the Central and Sector Ministries' tendency of treating technical staffs in the Local Governments as theirs; hence feeling not obliged to Local Government Authorities.

Additionally, the influence of the Regional Secretariat (RS) is not without an impact. Questionnaire survey revealed a number of ways through which the Regional Secretariat administrative interactions with LGAs negatively affects the autonomy of LGAs exercise of power and execution of their functions. Among the instances frequently mentioned include the tendency of the RS to exert direct supervision and stiff control over LGAs (58.5%); the tendency of the RCs and DCs to issue direct orders to the LGAs (81%), requirement of RC's approval of some instruments before channeling the same to the central Government (81%); and others (41.5%). Other ways through which the RS negatively affects the autonomy of LGAs include duplication of LGAs functions by frequent directives from the RCs or District Commissioners (DCs); the RC's and DCs' political interests and concentration on Party manifesto rather than the LGAs plans and priorities. Consequently, despite the amendments to the local government law which have so far been made, the legislative framework of Central-Local government relationship is yet to be sufficiently tailored to enhance administrative devolution and local Government autonomy in Mainland Tanzania.

Conclusion

This article has attempted to examine whether the administrative legal framework of Central local government relationship in mainland Tanzania is suited to enhance administrative devolution and local government autonomy. It has been observed that the government has made some efforts to amend the local government laws through the Local Government Reform programme 1998-2014. Notwithstanding the local government reforms, the administrative legal framework of Central-Local Government relationship is still found in scattered pieces of legislation fuzzy and centric in vision and gives too many powers to the Minister over local government authorities. Despite the substantial powers and functions devolved to local government authorities, the central-local government relation is still characterised by greater national activism in form of central assistances, major central funding of social-economic and welfare programs, policy interventions, Central interferences through guidelines, directives, advices, supervision and inspections over the LGAs services provision.

The autonomy of LGAs to determine their own form of movement and internal organization; to choose functions to perform; to raise revenue, to borrow and spend; and to determine the number, types and conditions of their employees is very modest. The Central Government exercises frequent monitoring and inspections over LGAs. Furthermore, the frequent Central directions and dictations of targets, Central performance management and lack of LGAs' freedom to tailor services according to perceived needs of the local communities add to the limitation of local government autonomy and local service delivery. Henceforth, the Harmonization of Central and Sector legislation; enactment of comprehensive local government law and Constitutional review must be made if administrative devolution and local autonomy in services delivery are to be realized.

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