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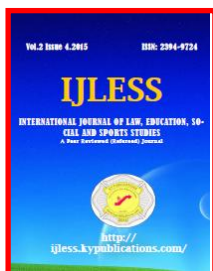
LOCAL GOVERNMENT REFORMS IN TANZANIA: DOES THE LEGAL FRAMEWORK INFORM ADMINISTRATIVE DEVOLUTION AND RELAXED CENTRAL-LOCAL GOVERNMENT CONTROLS?

THOBIAS R. MNYASENGA¹, Dr. ELEUTER G. MUSHI²

RESEARCH ARTICLE

¹PhD candidate in the department of Constitutional and Administrative law- Faculty of Law Mzumbe University-United Republic of Tanzania-East Africa.

²Senior lecturer in the department of Constitutional and Administrative law- Faculty of Law Mzumbe University-United Republic of Tanzania-East Africa



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ABSTRACT

This article is an upshot of a PhD research done 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 article examines whether the administrative legal framework of Central local government relationship in Mainland Tanzania informs administrative devolution and relaxed central-local government controls. It is noted that despite the Local Government Reform Programme, 1998-2014, the central government still exercises firm control and supervision over LGAs. The absence of constitutionally entrenched local government functions, financial and personnel resources makes devolution and relaxed central controls and supervisions over LGAs a myth. The article recommends for review of the constitution, harmonization of central and sector legislations and enactment of a comprehensive local government Act.

Key words/ Phrases: Local government reforms, Legal framework, Administrative devolution, Central-local government controls, Tanzania.

1.0 INTRODUCTION AND BACKGROUND INFORMATION

This article is an upshot of a PhD research done 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 researchers were motivated by the fact that Mainland Tanzania has undergone through several local government reforms from independence to date.¹ The most remarkable reform was the recent local government reform programmed (LGRP) which started in 1998 and ended in 2014.² This reform aimed at (among other objectives) reviewing the administrative legal framework of central-local government relationship to create strong, effective and more autonomous

¹Such reforms include the replacement of Native authorities by elected representatives through the Chiefs (Abolition of Office Consequential Provisions) Act No. 53 of 1963; the Decentralization Policy of 1972 which was implemented through the Decentralization of Government Administration (Interim Provisions) Act No. 27 of 1972 and the Presidential Circular No.8 of 1st September, 1972; re-introduction of LGAs through the Urban Councils (Interim Provisions) Act No. 11 of 1978, the Local Government (District Authorities) Act No.7 of 1982 and the , the Local Government (Urban Authorities) Act No.8 of 1982; and the Local Government Reform Programmed, 1998 -2014.

²This LGRP was promulgated in the Local Government Reform Agenda, 1996-2000. PMO-RALG and endorsed into two policy papers: the Local Government Reform Programme Policy Paper I, 1998-2008. PMO-RALG and the Local Government Reform Programme Policy Paper (Decentralization by Devolution) II, 2009-2014. PMO-RALG.

LGAs in managing their financial and personnel affairs.³ By the end of this reform, the central government role would be limited to policy making and monitoring local government accountability and therefore, LGAs would no longer be administratively subordinate to central government institutions.⁴

The popular adage which accompanied the envisaged reforms was “*hands off, eyes on,*” meaning that the Central Government would cease the direct control and intervention over LGAs. The envisaged local government reform would result into relaxed central-local government interventions. Thus, having completed both phases of the LGRP in 2014, the authors thought to review the present legal framework in a view to determining the way the same reflects administrative devolution and relaxed central-local government control and interventions in Mainland Tanzania.

This article addresses findings on the first research objective which was intended to expound the administrative legal framework of central-local government relationship in Mainland Tanzania. The article is organized into four major sections. The first section provides an introduction; the second section explains the methodology adopted in the study; the third section makes analysis of the pre-local government reform programme and the present legal framework; and the fourth section provides the concluding remarks.

2.0 Methodology

The study being a legal discipline with the central object to examine the implication of the present legal framework on the autonomy of LGAs in Tanzania, it was governed by three theories: *juridification* theory,⁵ normative theory,⁶ and instrumental legal theory.⁷ Accordingly, doctrinal empirical data was obtained through content analysis and interpretation of primary or normative resources (the constitution, statutes and case law) and secondary data was obtained through content analysis of secondary or non-normative sources (government policies, selected foreign constitutions and statutes and case laws, journal articles and other documentary materials).⁸

³ See Government of the United Republic of Tanzania. (1996). The Local Government Reform Agenda 1996-2000. *Op.cit.* Pp.2-3. See also Government of the United Republic of Tanzania. (1998). Local Government Reform Programme Policy Paper I, 1998-2000. *Op.cit.* Pp. 3-13; and Government of the United Republic of Tanzania. (2009). Local Government Reform Programme Policy Paper (Decentralization by Devolution) II. 2009-2014. *Op.cit* P.7.

⁴ *Ibid.*

⁵ Juridification theory in legal analysis of central-local government relationship connotes the use of law as an instrument to regulate central-local government relationship and it was first applied in legal analysis of central-local government relationship in UK by Martin Loughlin. For details see Loughlin, M. (1996). *Legality and Locality: the Role of Law in Central-local Government Relationship*. Oxford, Clarendon Press. Available at

https://books.google.co.tz/books?id=uyoRNDuojpWC&pg=PP4&lpg=PP4&dq=locality+and+legalitymartin+loughlin&source=bl&ots=if_bdfgrbh&sig=aPJ4zEkRoYRnxni4HgQjRCozGgs&hl=sw&sa=X&redir_esc=y#v=onepage&q=locality%20and%20legality-martin%20loughlin&f=false. Cite visited on 4-4-2016 at 18:00:PM. See also Loughlin, M. (2000). *The restructuring of Central-local Relations*. In Jowell, J. & Olver, D. (Eds). (2000). *The Changing Constitution*. Oxford, Oxford University Press. P.137.

⁶ Normative theory of law is generally concerned with theoretical analysis and description of the nature of law as a normative social practice guiding human behaviour. It deals with description and systematization of legal norms as well as making choices among values and interests especially in search for better law. This theory allows description of not only what the law is, but also what the law ought to be. For details see Stanford Encyclopedia of Philosophy. (2015). *The Nature of Law*. Available at <http://plato.stanford.edu/entries/lawphil-nature/> cite visited on 4-4-2016 at 06:00 AM; and Hoercke, M.V.(2011). *Legal Doctrine: Which Method(s) for What Kind of Discipline?* In Hoercke, M.V. (2011). *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* UK, Hart Publishing Ltd. P.10.

⁷ Legal instrumentalism is a theory in legal philosophy promulgated by Rudolph Von Jhering which considers law as an instrument of achieving a certain purpose or goal. It postulates that law is created for a particular effect or purpose in mind which once not achieved, the legal rules and institutions so designed are regarded ineffective. For details see Jhering, R.V.(1913). *Law as a Means to an End*. Boston: Boston Book Company. See also Fortson, R.(1999). *Three Roles for a Theory of Behavior in a Theory of law: a Commentary on Talk by Lewis Kornhauser*. *Stanford Journal of Legal Studies*, 1(1), 30-34.

⁸ Primary Sources of imperial data for doctrinal legal research are normative sources and authoritative sources such as statutory texts, treaties and general principles of law, customary law, binding precedents, and the like. See Hoercke, M.V.(2011). *Legal Doctrine: Which Method(s) for What Kind of Discipline?* *Op.cit.* P.11.

The data obtained through documentary review was complemented by field data obtained through in-depth interviews. Consequently, the predominant method of data collection for the purpose of this study was documentary review. In-depth interviews which involved two hundred and ten (210) respondents selected through non-probability (purposive and convenient) sampling techniques from twelve councils: Kinondoni, Ilala, Morogoro, Dodoma, Iringa and Bukoba Municipal Councils; Mwanza City Council; and Kilosa, Morogoro, Mvomero, Kongwa and Meru District Councils were used only for the purpose of complementing and verifying doctrinal data. Both documentary review and in-depth interviews data were analyzed through qualitative approach. The next discussion presents the legal reforms made through the LGRP in Mainland Tanzania

3.0 The Legal Reforms Made through the LGRP

It has been noted under the introductory section above that among the fundamental tasks of the 2008-2014 LGRP was to review the legal framework of central-local government relationship to create strong, effective and more autonomous LGAs in managing their financial and personnel affairs.⁹ Such review was supposed to include enactment of a single comprehensive local government legislation, harmonisation and rationalisation of central and sector legislation, and amendment of the Constitution to clearly enshrine administrative devolution and central-local government relationship. These legal reforms were deemed necessary to improve local government autonomy in Mainland Tanzania.¹⁰ This section demonstrates the legal reforms so far made in the context of administrative devolution and local autonomy. This is done by brief analysis of the pre- reforms and post reforms legal framework.

3.1 Pre-Reforms Legal Framework

The legal framework before the LGRP was based on the framework of the constitution of the united republic and the local government Acts enacted in 1982.¹¹ The constitutional amendment of 1984 added only two Articles 145 and 146 which provided for establishment and objectives of LGAs in Tanzania.¹² The Articles did not establish any local authority or thereby transfer any function to any local authority, but only vested in the parliament the power to make legislation to establish and prescribe the types, designation, the structure and composition, sources of revenue and procedure for the conduct of the business of LGAs.¹³ This (like the case of the Britain and Wales) made LGAs a creature of the central government which through the Parliament retained the authority to tilt and shape the local government system anyhow it liked through parliamentary legislation.¹⁴

The Acts of Parliament enacted in 1982, especially the the Local Government (District Authorities) Act, 1982¹⁵ and the Local Government (Urban Authorities) Act, 1982¹⁶ established corporate urban and district authorities as they appear in the present local government system in Mainland Tanzania. These Acts provided for the establishment, composition and

⁹ See Government of the United Republic of Tanzania. (1996). The Local Government Reform Agenda 1996-2000. *Loc.cit.* See also Government of the United Republic of Tanzania. (1998). The Local Government Reform Programme Policy Paper I, 1998-2008. *Loc.cit.*

¹⁰ *Ibid.* P.10.

¹¹ Among the Acts passed in 1982 to fully re-establish Local Government Authorities in Mainland Tanzania included the Local Government (District Authorities) Act No.7 of 1982; the Local Government (Urban Authorities) Act No.8 of 1982; the Local Government Finances Act No.9 of 1982; the Local Government Service Act No.10 of 1982; the Local Government Negotiating Machinery Act No. 11 of 1982; and the Decentralisation of Government Administration (Interim provisions Amendment) Act No.12 of 1982. Other Acts were passed in 1983 which included the Urban Authorities Rating Act No. 2 of 1983; the Local Authorities (Elections Amendment) Act No. 3 of 1983; and the Human Resources Deployment Act No.6 of 1983.

¹² See the Fifth Constitutional Amendment Act No.15 of 1984.

¹³ See Art. 145(1-2) CAP 2 R.E. 2002.

¹⁴ See Bailey, S.H.(1997). Cross on Principles of Local Government Law, 2nd Ed. London: Sweet& Maxwell. P..

¹⁵ Act No. 7 of 1982.

¹⁶ Act No. 8 of 1982.

functions of District Authorities (District Councils, Township Authorities and Village Councils)¹⁷ and Urban Authorities (Town Councils, Municipal Councils and City Councils).¹⁸

The Acts vested LGAs a number of functions including maintenance and facilitation of the maintenance of peace, order and good government within their respective areas of jurisdiction; promotion of the social welfare and economic well being of all persons within their areas of jurisdiction; and furthering the social and economic development of its area of jurisdiction subject to the National Policy and plans for rural and urban development; to make bylaws; to acquire and use or dispose land; charging rent or fees in respect of land or premises; power to contract; power to accept gifts; power to write off and borrowing, to mention but a few.¹⁹ Most of these powers and functions were subject to approval by or consent of the Minister who among other things had the power to establish or abolish LGAs and enforce performance of functions by LGAs or transfer functions from LGAs.²⁰

Besides Act No. 7 and Act No.8 of 1982, there was also the Local Government Finance Act, 1982²¹ which Among other things, vested all the assets and liabilities which were vested on the former urban and district councils before the abolition of the Urban and District authorities on the newly established Urban and District councils established in the area of the previous Urban and district development councils respectively²² and spelt out the sources of revenue of both Urban and District Authorities.²³ LGAs were also given power to raise funds through loans and taxes and the Act further imposed upon the central government the duty to provide such amount of annual grants to LGAs payable from the public revenue to cover the cost incurred by the Urban or District authorities in provision of essential social services particularly education, health, water, roads and agriculture.²⁴

Notwithstanding such financial provisions, all the powers of LGAs to raise and spend moneys was subject to approval of or subject to rules made by the Minister after consultation with the Minister responsible for finance or approval by the proper officer. Even the amount of grants payable to LGAs was determined by the Minister in consultation with the Minister for finance.²⁵ The proper officer for Urban Authorities was the Minister and the the RC was the proper officer for each District Authority in his region and assistant proper officer for each town and municipal council within his region.²⁶ Furthermore, every area commissioner was designated as assistant proper officer for each District Council and for each township authority and village councils established within is district.²⁷ Thus, LGAs autonomy over finance was highly restricted.

Besides restriction of financial autonomy, LGAs also had restricted autonomy over local government personnel (human resources). Apart from the Constitution which provided for the powers of the President to appoint top local government officers in the local government service, the Local Government Service Act No.10 of 1982 also vested in the President the power to appoint all city and municipal directors.²⁸ The Act also established a unified local government service under the Local Government Service Commission.²⁹

The Commission which consisted of only central appointed members was vested with the power to appoint township executive directors and other officers in District councils; to employ and promote local government officers within

¹⁷ See ss. 5, 13, 22, 25, 117, 118, 131,132, 141 &142, 155, 156, 163 & 164 of Act No. 7 of 1982 and Ss 61-66 and 79-81 of Act No. 8.

¹⁷ Act No. 9 of 1982.

¹⁸ See S. 5 of Act No. 8 of 1982.

¹⁹ *Ibid.* Ss 111, 117 and 118 of Act No.7 & Ss 54, 55, 57 and 59 of Act No. 8.

²⁰ *Ibid.* Ss.5, 13, 129, 139, 169, 171 &172 of Act No. 7 and ss. 5, 71, 73,75 &76 of Act No.8.

²¹ Act No. 9 of 1982.

²² *Ibid.* S. 5.

²³ *Ibid.* Ss.5-9.

²⁴ *Ibid.* S. 10-12 & 31.

²⁵ *Ibid.* Ss. 11, 12 & 31.

²⁶ *Ibid.* Ss.33 & 34.

²⁷ *Ibid.*

²⁸ *Ibid.* S32.

²⁹ See S.4 (1-3) of Act No.10, 1982.

the category of LGGS 5 up to 10; to act as a disciplinary authority in respect of officers it employed; to deal with allegations against a director and report to the Minister on the disciplinary action to be taken.³⁰ The commission was further delegated all the powers of the president in respect of constituting and abolishing offices in the local government service; and making appointments of officers in the Local Government service; making transfers and promotion of local personnel; and determining termination of appointment, dismissal and disciplinary control of local government employees.³¹

Apart from the commission, the Act also provided for the powers of the Minister and the council in respect of the Local Government service.³² The Act vested in the Minister the powers to make Schemes of service and to appointment some members of the commission; to transfer directors of district Councils and Urban councils; to appoint heads of departments of district and urban councils; to transfer heads of departments and staff employed by the commission; to act as the disciplinary authority for all directors and appellate authority for officers employed by the commission; to coordinate training of local government staff in consultation with the commission; to prescribe the code of conduct for employees of the Local Government Authorities; and to appoint District executive directors.³³

Councils were given powers to employ only such employees other than those employed by the president, the commission or the Minister and had disciplinary authority over only the employees employed by them with the RC being the final disciplinary appellate authority in that respect.³⁴ The powers of the councils over local personnel was further restricted upon specification of salary increments by the Commission. The Act expressly provided that councils shall have no power to appoint or dismiss an officer or employee whose monthly salary exceeded such sum as the commission would from time to time specify for the local government authority.³⁵

The discussion of this section reveals that the pre-reforms legal framework transferred substantial powers and functions to LGAs but the same framework provided for strict central control over LGAs exerted through statutory powers of the Minister, the Regional Commissioner, the District commissioner and other central departments.³⁶ As noted in the foregone discussion, all aspects of governance which constitute the fundamentals of local autonomy particularly finance and personnel were subjected to the central government control. Generally as stated by the Local Government Reform Agenda (LGRPA), 1996-2000 and the Local Government Programme Policy Paper I, 1998-2008 the pre-reforms legal framework was fragmented, complex, ambiguous and excessively control-oriented.³⁷ The complexity was aggravated by the overlaps and conflicts between central legislation, circulars, standing orders and other regulations imposed by the central and sector Ministries.³⁸

3.2 Post Reforms Legal Framework

By the end of the two phases of the LGRP, all the 1982 local government Laws and the the Regional Administration Act, 1997 [CAP 97 R.E. 2002] 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. Furthermore, the 1982 local government laws were under review since 2004 and a legal harmonization task force had started reviewing sector laws and policies but there was yet a comprehensive local government Act or harmonised central and sector legislation were in place.³⁹ Worse still, the constitution was also not amended and even the proposed constitution pending referendum does not contain any notable

³⁰ *Ibid.* Ss 4,14B & 33.

³¹ *Ibid.* S. 7

³² *Ibid.* S. 14A.

³³ *Ibid.* Ss.14A & 20A.

³⁴ *Ibid.* s.14C.

³⁵ *Ibid.* S.8(2).

³⁶ See for instance ss. 4, 5, 13, 18, 148, 149, 147, 148, 157, 158, 165 186,171 & 172 of Act No. 7; ss. 4, 10, 71, 75, 76, 80, 81, 82 & 83 of Act No. 8; ss. 10, 13, 11, 12, 31, 33, 34, 44, 45 & 48 of Act No.9; and ss. 14 A and 20A of Act No. 10.

³⁷ 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.

³⁸ *Ibid.*

³⁹ See Government of the United Republic of Tanzania.(2009). The Local Government Reform Programme Policy Paper (Decentralization by Devolution) II. *Op.cit.* Pp.12-13.

change. It only rephrases the same provisions of Arts.145 and 146 and adds one more Article which states the manner the leaders of the LGAs shall be elected.⁴⁰

The amendment to the local government laws by Act No.6 of 1999 and Act No.13 of 2006 only introduced general provisions regarding central-local government relationship.⁴¹ Under the said new provisions, the central government is required to facilitate LGAs in exercise of their powers; to formulate national policy and regulatory framework for the local government system; and to co-ordinate and monitor the performance of local government authorities for compliance with national policies, guidelines and standards.⁴² It is further required to provide necessary technical support or assistance to LGAs; to assist the implementation of decisions and resolutions of the councils; to provide and secure enabling environment for successful performance of functions of LGAs; to ensure compliance by all persons and local authorities with appropriate government decisions and guidelines in relation to promotion of the local government system; and to do such acts and things as shall facilitate or secure the effective, efficient and lawful execution by local authorities of their statutory or incidental duties.⁴³

Besides the general functions of central government in relation to local government powers and functions, sector ministries are required to supervise professionalism of personnel related to particular sectors in the LGAs; to ensure quality assurance in the performance of the functions of technical personnel relating to the sector in the LGAs; to undertake monitoring and evaluation of the technical personnel's performance of their functions; ensure all posts as required by establishment of a particular profession are filled; to ensure human resources development; and to ensure availability of equipment, human resources and funds for implementation of sectoral programmes in the local government.⁴⁴

Above all, the Minister responsible for Local Government still enjoys overwhelming powers to influence LGAs. The Minister is responsible for (among other things) formulation and implementation of all policies on decentralization by devolution, local government administration, rural and urban development policies, primary education and secondary education, performance improvement and development of human resources in the ministry and oversight of LGAs.⁴⁵ Other functions of the minister are vested in him under CAP 287 R.E 2002; CAP 288 R.E. 2002; CAP 290 R.E.2002; and Act No.8 of 2002. Analysis of CAP 287 R.E 2002; CAP 288 show 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. All most in every aspect of local government exercise of powers and and discharge of functions the minister is involved.

The Minister enjoys facilitative, control and supervisory powers over local government functions, finance and personnel through approval powers, appellate powers, issue of guidelines and regulations, issue of directives or orders, power of direct interventions, power of appointment and transfer of local government staff, disciplinary powers over local government staff, variation of local government functions and powers to dissolve local government councils.⁴⁶ Most of these powers are discretionary and are delegable by the Minister to any Public officer (most often delegated to the regional

⁴⁰ See Arts. 124, 125-126 of the 2014 Proposed Constitution.

⁴¹ See Ss.168, 174A of CAP 287 and S. 78A of CAP 288. *Loc.cit.*

⁴² *Ibid.*

⁴³ *Ibid.* s. 174A (1) CAP 287 and 54A (1) CAP 288.

⁴⁴ *Ibid.* s. 174A(2) CAP 287 and s.54A(2) CAP288.

⁴⁵ See the Ministers (Assignment of Ministerial Functions) Notice, 2016. Government Notice No. 144 of 2016 published in the Gazette of the United Republic of Tanzania No.17 vol. 97, 22nd April, 2016. See also Government of the United Republic of Tanzania. (2011). The Functions and Organisation Structure of the Prime Minister's Office, Regional Administration and Local Government (PMO-RALG). PO-PSM. P.10.

⁴⁶ See for instance ss. 4, 5, 13,147, 148, 150, 152, 157, 165, 168, 169, 171, 172 & 174 CAP 287; ss. 4, 5, 70-78A CAP288; and ss. 9A, 10, 13, 11, 12, 31, 34, & 48 CAP 290. See Regulations 8, 11-12 of the Public Service Regulations, 2003 and S.7(1) of the Local Government Service Schemes, 2008.

administrative secretary-RAS and the regional commissioner-RC).⁴⁷ Furthermore, some of these powers are vested in the RC who can also order them to be performed by the District Commissioner.⁴⁸

At the regional and district level, the Regional Administration Act, 1997 [CAP 97 R.E.2002] also makes some important provisions worth of discussion in respect of central-local government administrative relationship at the regional and District level. Like other pre-local government reforms legislation, the Regional Administration Act which was enacted one year after adoption of the local government reform agenda in order to restructure the Regional Administration in a view to strengthening local government system in Mainland Tanzania was also amended in 1999 and 2006 by Act No. 6 of 1999 and Act No.13 of 2006 respectively so as to consolidate the LGRP at the Regional administration level by re-defining the role of the Regional Commissioner (RC) and the Regional Secretariat (RS).⁴⁹

The amendment of the Regional Administration Act re-defined the role of the RC from control to facilitative and enabling role. Now, the Act Requires the RC assisted by the Regional Administrative secretary(RAS) to ensure compliance by all persons and authorities with central government decisions, guidelines and regulations in relation to the promotion of the local government system.⁵⁰ The Act further empowers the RC to do all such acts and things as shall facilitate or secure the effective, efficient and lawful execution by the local authorities of their statutory or incidental functions.⁵¹ The RC's control and supervisory powers over LGAs are bestowed by CAP 287 and CAP 288.⁵² At the district level, the Act establishes the office of the District Commissioner (DC) and the District Administrative Secretary (DAS).⁵³ The DC is required to provide and secure LGAs an enabling environment for the successful performance of their duties and functions within the District.⁵⁴

Generally, the LGRP has brought no noticeable changes to the legal framework which is worth of enhancing local autonomy. The legal framework has remained entirely the same as the pre-local government reforms legal framework. The foregone discussion and analysis reveals overwhelming powers of the central-government over LGAs. The central-local government administrative relationship reflected under the present legal framework is more of agency rather than partnership model. We of course need not replicate the control and supervisory powers vested in the Minister and other other central government actors but we find ourselves bound to cite and discuss some few practical examples in the next section which verify the inference that LGAs in Mainland Tanzania are still under stringent central control. In this respect, we deliberately choose to discuss the discretion of LGAs in financial mobilization and expenditure; discretion of LGAs in personnel management and independence of LGAs in setting priorities and discharge of their functions.

3.2.1 Discretion of LGAs in Fiscal Mobilization and Expenditure

Local government discretion on fiscal mobilization and expenditure is highly restricted. As we have stated above, the duty to ensure availability of finance, proper management of finances, acquisition of funds, preparation of the annual budget of LGAs.⁵⁵ The sum of block grants payable by central government to LGAs is determined by the Minister after consultation with the Minister responsible for finance.⁵⁶ The Minister may also vary the amount of block grants from one local authority to another depending on the grades and standards or criteria prescribed and published in the gazette by him.⁵⁷ Not only that but also as observed in the previous discussions other sources like borrowing and taxing are also subject to approval by the Minister individually or after consultation with the Minister for finance and further subjected to rules and regulations given by the Minister.

⁴⁷ See Ss.173(1) of CAP287 and S.77(1)of CAP 288. *Ibid.*

⁴⁸ See Ss. 127(4), 150(3), 156(3&4) and 177(2) of CAP287. *Ibid.* See also Ss.65 (2,4&5), 78, and 78A of CAP288. *Ibid.*

⁴⁹ See s. 5(3) CAP 97 R.E.2002

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² See Ss. 127(4), 150(3), 156(3&4) and 177(2) of CAP287. *Ibid.* See also Ss.65 (2,4&5), 78, and 78A of CAP288.

⁵³ *Ibid.* Ss.13, 14(1)(a), 15A &16(2).

⁵⁴ *Ibid.*

⁵⁵ See ss. 4 CAP 287 and CAP 288. and s. 34 CAP 290.

⁵⁶ See s. 10A of CAP 290.

⁵⁷ *Ibid.*

Such framework is cumbersome and inconsistent with the spirit of fiscal devolution and local government autonomy. For instance, the power of the Minister to issue budget ceiling and guidelines makes LGAs tied up their hands to direct their priorities to the prior-determined central priorities rather than the locally determined priorities. Just to mention as an illustration, on January 15th 2015, the PMO-RALG issued to all Regional Administrative Secretaries (RASs) circular No.HA.131/395/01 for 2015/16 budget priorities. This circular enumerated seventeen priorities which all LGAs must take into consideration in planning and preparation of the 2015/16 council budget. This has always been the trend in respect of LGAs planning and setting priorities.

Research findings revealed that the trend of local government financial autonomy has been unpleasant since the LGRP started. For instance, in 2004, the Cabinet endorsed formula-based grants and local government capital development grants (LGCDG) in order to reduce the disparities in LGAs finance allocation between urban areas and rural areas and to facilitate autonomous and discretionary local government spending.⁵⁸ This study revealed that local government expenditure is still largely driven by the central government which prescribes and dictates how and where money should be spent by LGAs.⁵⁹ Most of these grants are still earmarked and accompanied with frequent instructions from the PO-RALG which dictates targets and priorities.⁶⁰

The central financial influence is also prevalent on local government own revenue collection. The sources of local government own revenue and collections have remained restrictive and substantially poor.⁶¹ The central government interferes with even the very scarce local government sources. For instance, in 2004, many local taxes were abolished when the Minister for finance circulated a closed list of local revenue which prohibited LGAs from imposing or collecting any tax which is not in the prescribed list save with the prior approval of the Minister (PMO-RALG).⁶²

Interviews also revealed that in 2002, Mwanza City Council negotiated with stake holders that two shillings per every litre of petrol or diesel sold at the filling station should be paid to the council so that the same can be used to repair roads within the council. This plan had started working very effectively, but central government intervened and ordered not only two shillings, but ten shillings per litre to be paid to the TRA. Now it was said that the TRA collects this amount of revenue and pays back to the council 30% while the larger amount of 70% is given to the TANROADS which has fewer roads to repair compared to local government councils. Similar experience was revealed in Dar es Salaam where it was reported that TRA has grabbed hotels and guest house rents which was one of the most reliable source of revenues for the councils. Even taxi license charges were grabbed by TRA but have been restored to the Councils very recently after long term complains by the councils.

⁵⁸ See Per Tidemand and Jamal, M. (2010). *Loc.cit.* See also Government of the United Republic of Tanzania. (2007). Joint Government-Development Partner Evaluation Working Papers. *Op.cit.* P.127; Per Tidemand and Sola, N. (2014). Tanzania: Devolution under Centralized Governance. *Op.cit.*; P.214-215; Per Tidemand, Olsen, H.B., and Sola, N. (2008). Local Level Service Delivery, Decentralization and Governance: A Comparative Study of Uganda, Kenya and Tanzania Education, Health and Agriculture Sectors. Tanzania Case Report. *Op.cit.* P.14-16. and Per Tidemand, Sola, N.,et.al.(2010). Comparative Assessment of Decentralization in Africa: Tanzania in Country Assessment Report. *Op.cit.* P. 18-20.

⁵⁹ See Per Tidemand and Sola, N. (2014). Tanzania: Devolution under Centralized Governance. *Loc.cit.*; Per Tidemand, Olsen, H.B., and Sola, N. (2008). Local Level Service Delivery, Decentralization and Governance: A Comparative Study of Uganda, Kenya and Tanzania Education, Health and Agriculture Sectors. Tanzania Case Report. *Loc.cit.* and Per Tidemand, Sola, N.,Bofin, P., Chaligha, A.(2010). Comparative Assessment of Decentralization in Africa: Tanzania in Country Assessment Report. *Loc.cit.*

⁶⁰ *Ibid.*

⁶¹ See Per Tidemand and Jamal, M. (2010). The Impact of Local Government Reform in Tanzania 1998-2008. *Op.cit.* P.13.

⁶² See also Government of the United Republic of Tanzania. (2007). Joint Government-Development Partner Evaluation Working Papers. *Op.cit.* P.127; Per Tidemand and Sola, N. (2014). Tanzania: Devolution under Centralized Governance. *Op.cit.*; P.216; Per Tidemand, Olsen, H.B., and Sola, N. (2008). Local Level Service Delivery, Decentralization and Governance: A Comparative Study of Uganda, Kenya and Tanzania Education, Health and Agriculture Sectors. Tanzania Case Report. *Op.cit.* P.16; and Per Tidemand et.al.(2010). Comparative Assessment of Decentralization in Africa: Tanzania in Country Assessment Report. *Op.cit.* P. 18; and 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. *Op.cit.* P.196.

3.3 Local Government Discretion over Human Resources

The legal framework of local government staff management has been changing since the implementation of the LGRP started in 1999. For instance, in 1999 the Local Government Service Act No.10 of 1982 was amended to allow specified LGAs to appoint, remunerate, Promote, develop, discipline and dismiss its own employees in accordance with regulations issued by the Minister and in accordance with employment policies and scheme of service as guided by the local government service commission.⁶³ In 2002, the government enacted the Public service Act No. 8 of 2002 which created a unified public service and *decentralized* staff management to permanent secretaries and regions in addition to LGAs.⁶⁴ The Public Service Act 2002 also abolished the Local Government Service Act No.10 Of 1982 and made the President's Office-Public Service Management (PO-PSM) in charge of staff management for local government.⁶⁵ LGAs remained the appointing, confirmation, promotion and disciplinary authority for only such staff other than those appointed by the president or the Minister.⁶⁶ Even this power was immediately removed by subsequent amendment to the Act in 2003 whereby these powers of LGAs were shifted to council directors.⁶⁷ In the same year the PO-PSM issued the Public Service Regulations, 2003 which to date guide personnel management in LGAs.⁶⁸

In 2004, the Act was again amended to restore the LGAs appointing, confirmation, promotion and disciplinary authority for all local government staff other than those appointed by the president or the Minister.⁶⁹ This amendment was not incorporated in the regulations made in 2003; as a result, the Regulations define the council director as the appointing authority of local government staff other than those appointed by the president and the minister responsible for local government.⁷⁰ The regulations also establish Employment boards in every LGA to facilitate appointments of local government staff.⁷¹ The local government employment boards are mainly composed of externally appointed members except one member appointed from the LGAs and the director of human resources in the respective LGA who shall have no voting power but mere secretary.⁷² Moreover, the decisions of the boards depend on the guidance of the public service commission on which powers they would wish to delegate.⁷³

The public service regulations, 2003 also retain the central government power to transfer staff across ministries, and regions.⁷⁴ Besides the regulations, the local government schemes, 2009 also contains a similar provision which requires the Minister to facilitate labour mobility in the local government service. This has frequently been used by the PO-RALG to transfer employees across LGAs without sufficient consultation with LGAs and with very late replacement.⁷⁵ Interviews with respondents in the surveyed councils revealed three patterns of transfers of employees in LGAs. Transfers within the council are done by the director but transfers across councils within the region are done by the RAS; and transfers across regions or ministries are made by the permanent secretary of the PO-RALG.

Furthermore, some of sector Ministries like Health and Education were from the beginning exempted by the PO-PSM from the decentralized and merit procedures for recruitment. Further more, in 2006 the PO-PSM issued a circular on *superlative staff* which instructed council directors to exclude all heads of departments from the Public Service Staff

⁶³ See s. 87 of the Local Government Laws (Miscellaneous Amendment) Act No.6 of 1999.

⁶⁴ See ss. 4, 5, 6, 8, 9 & 15 of Act No. 8 of 2002. See also Rule 5, 6 & 18 of the Public Service Regulations, 2003.

⁶⁵ See s. 35 of Act No. 8 of 2002.

⁶⁶ *Ibid.* s.6(6).

⁶⁷ See s.2 of the Written Laws (Miscellaneous Amendments) Act, No.25 of 2002.

⁶⁸ See Regulation No.2 (b) of the Public Service Regulations, 2003.

⁶⁹ See s.2 of Written Laws (Miscellaneous Amendments) Act, No.19 of 2002

⁷⁰ *Ibid.* Regulation 6 (g) & s.6 (1) (b) of Act No. 8 of 2002.

⁷¹ *Ibid.* Regulation 127

⁷² *Ibid.* Regulation 128(4&5).

⁷³ *Ibid.* Regulation 128(1-3).

⁷⁴ See Regulation 107. *Lco.cit.*

⁷⁵ See Government of the United Republic of Tanzania. (2007). Joint Government-Development Partner Evaluation Working Papers. *Op.cit.* Pp.84-85.

Regulations provisions for open and decentralized recruitments as otherwise stipulated in the regulations.⁷⁶ The worst legal development was brought by the Public Service (amendment) Act No. 9 of 2007 which established the public service recruitment secretariat that completely centralized the recruitment of local government employees.⁷⁷

By this amendment, all local government employees even the operational service (non-officer grade) had to be recruited by the secretariat. What remained with the councils was only to report vacancies to the PO-PSM. The whole process vacancies advertisement, long listing and short listing, conducting written and oral interviews and selection of employees was the duty of the secretariat. Although this with complained of by many councilors and directors of human resources in the councils visited, the vice versa was true for most of respondents in the Regional secretariat and ministries visited. Whereas the former claimed this centralized recruitment as being interference and encroachment to local autonomy, the latter praised the same and said it was necessary because when councils were given the mandate to recruit there were many instances of corruption and favoritism whereby most of employees who were being recruited were children or relatives of their Excellency councilors and political elites.

However, in 2013 the Act was further amended to allow the secretary of the the public service recruitment secretariat to by notice published in the Gazette delegate to any Chief Executive Officer or council the functions and powers of the Secretariat to conduct recruitment process in the service.⁷⁸ Pursuant to this amendment, the secretariat delegated the recruitment of twenty two (22) cadres of non-officer grade like village executive officers, office assistants, security guards, and auxiliary policy to LGAs.⁷⁹ Interviews revealed that even the recruitment of these lower cadres is still heavily controlled by the PO-PSM. For instance, council must first obtain permit from the the PO-PSM. After obtaining the permit, the whole process of recruitment from vacancy advertisement to oral interviews must involve a member of the public service recruitment secretariat.

The study further revealed that other aspects of local government personnel have not been reformed. For instance, remuneration policies are almost centralized and staff salaries are entirely paid from central government transfers where LGAs have no power of budget planning and control.⁸⁰ Local governments are only consulted during restructuring exercises but all decisions on staff budgets and numbers of approved staff are ultimately done by the PO-PSM.⁸¹ The role of LGAs in recruitment, choice of personnel, fixing the number of employees and determining the conditions of their employees is very restricted.⁸² The LGAs' role is only to identify staff needs in the preparation of annual budgets which is send to the PO-PSM for approval and employment permit. When approval and permit is granted, other employment processes are either made by the commission through the secretariat or by respective sector ministries and departments except for the 22 delegated cadres named above.

Interviews revealed that in most cases local staff priorities are not met. Centrally posited employees do not fill and fit the actual local needs and even those recruited by the LGAs, permits given by the PO-PSM does not match with the requested number. It was also noted that even replacement of transfers does not take into consideration the profession or career of the transferred employees. The situation is worse in rural areas where there are very few employees. It was also

⁷⁶ See Government of the United Republic of Tanzania. (2007). *Joint Government-Development Partner Evaluation Working Papers*. *Op.cit.* P.81.

⁷⁷ See s.29 of Act No 8 of 2002 as amended by s.11 of Act No.18 of 2007.

⁷⁸ *Ibid.* S.29A as amended by s.13 of the Written Laws(Miscellaneous Amendment) Act No.2 f 2013.

⁷⁹ See the Public Service (Delegation of Functions and Powers of the Secretariat to Conduct Recruitment Process) Notice, 2014. G.N. No. 70 in the Gazette of the United Republic of Tanzania No. 11 vol.95 of March 14th, 2014.

⁸⁰ See See Government of the United Republic of Tanzania. (2007). *Joint Government-Development Partner Evaluation Working Papers*. *Op.cit.* P.82; Per Tidemand and Sola, N. (2014). *Tanzania: Devolution under Centralized Governance*. *Loc.cit*; Per Tidemand, Olsen, H.B., and Sola, N. (2008). *Local Level Service Delivery, Decentralization and Governance: A Comparative Study of Uganda, Kenya and Tanzania Education, Health and Agriculture Sectors*. Tanzania Case Report. *Loc.cit*; and Per Tidemand, Sola, N.,Bofin, P., Chaligha, A.(2010). *Comparative Assessment of Decentralization in Africa: Tanzania in Country Assessment Report*. *Loc.cit*

⁸¹ *Ibid.*

⁸² See Per Tidemand, Sola, N.,et.al.(2014). Local Government Authority (LGA) Fiscal Inequities and the Challenge of Disadvantaged LGAs. The Overseas Development Institute (ODI) Reports. Pp.36-38.

revealed that most of councils have acting HODs because of late conformation by the PO-PSM. In respect of HODs, councils can only propose three names for each post, but the vetting and confirmation is in authority of the PO-PSM.

The worst of all is the line of accountability and disciplinary authorities. It was noted that local government employees have multiple lines of accountability and disciplinary authorities including the council, the director, the RAS, the RC, the PO-RALG, the PO-PSM, sector ministries and departments, the chief secretary and the President. Therefore management of local government staff is approximately centralized and strictly controlled by the central government. This, together with the restrictions over mobilization of finance and expenditures makes LGAs mere appendages of the centre in discharge of their functions as discussed next.

3.4 Independency of LGAs in Setting Priorities and Discharge of Functions

In the preceding discussion it has been observed that the discretion of LGAs over finance and human resources is highly restricted. The implication of such financial and personnel restrictions is the lack of independency in local government decision making and discharge of functions. We have cited the ministerial circular No.HA.131/395/01 for 2015/16 budget priorities which restricted all councils to seventeen priorities that all LGAs must abide with.

Such circulars have been a common practice in the local government exercise of power and discharge of their functions including matters of human resources. For instance, on December 30, 2015 the permanent secretary of the then PMO-RALG (now PO-RALG) issued circular No. CB161/ 352/01/44 to all RAS directing all councils to include in their 2016/2017 budget at least five posts of Social work officers in every ward, street and village; and the report on implementation of this directive had to be furnished with him on March 30, 2016. On January 5th, 2016, he issued another circular No.CCD.129/215/10/40 which threatened to take away from any council which councillors interfere with the recruitment of the twenty two (22) delegated cadres the powers of recruitment and restore the same to the secretariat.

The circular further directed that all councils must make sure that all recruitment process of the said twenty cadres is made in the presence of a representative of the public service recruitment secretariat.

The study also discovered several central interferences over LGAs's affairs. For instance, in 2012, the Regional Commissioner of Kilimanaro Region stopped a trip of Councilors and staff of Moshi Municipal Council to Kigali Rwanda on the ground that it was wastage and misuse of public funds notwithstanding the fact that the trip was in the council plan and approved budget.⁸³ Likewise, interviews with councilors in Kilosa District Council revealed similar conflicts between the DC and the council director in 2009 which arose under the umbrella of controlling council misuse of public funds. It was also noted that several times the central government issues orders to LGAs on political basis without regard to council budgets and priorities. For instance, in 2014 the President ordered all councils to construct laboratories in every ward secondary school.

Taking an example of Kinondoni Municipal Council had planned to construct only four laboratories in their budget. But with this order they had to construct one hundred and twenty six (126). This forced them to take a loan from banks so as to accomplish this exercise. In many councils visited this exercise was yet to be completed up to the time of completing data collection for this study. Yet while striving to accomplish this exercise the currently the president issued another order that by June30, 2016 every council must make sure that all primary schools in their councils have enough desks for all students. Justifying these interferences, one of the RASs who were interviewed remarked, *"How can a son claim for autonomy while whole depending on me for his living? Let him find his own to earn his living that he can claim autonomy."* This entails that frequent central interventions, monitoring, directions or orders shall persistently remain the order of the day unless LGAs are financially self-sufficient. Instances that defeat local autonomy are numerous and cannot be exhausted in this article. The above discussed instances suffice to infer that the reformed administrative legal framework of central-local government relationship in Mainland Tanzania does not inform the envisaged administrative devolution and relaxed central-local government controls. The next section provides the concluding remarks.

4.0 Conclusion

⁸³ Tanzania Broadcasting Corporation - (TBC); at <http://www.tbc.go.tz/~tbcgo/local-general/2516-gama-afuta-ziara-ya-madiwani-kigali.html>. Accessed on 25Nov.2012 at 6am.

This article has attempted to examine whether the local government reforms in the administrative legal framework of Central local government relationship in Mainland Tanzania inform administrative devolution and relaxed central-local government controls. It has however been noted that, despite the LGRP, central-local government controls and interventions have not been relaxed. The central government still exercises firm controls and supervision over LGAs. The absence of constitutionally entrenched local government functions, financial and personnel resources makes devolution and relaxed central controls and supervisions over LGAs a myth. For this reason, it is imperatively recommended that the constitution of the United Republic of Tanzania, 1977 be reviewed to capture and define the functions, financial and human resources management in LGAs. It is also recommended for harmonisation of central and sector legislations and enactment of comprehensive local government legislations. These recommendations are inevitable if the objective of improved public service delivery through autonomous LGAs is to be realized in Mainland Tanzania.

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