

LOCAL GOVERNMENT IN TANZANIA: DOES THE LOCAL  
GOVERNMENT LAW IN TANZANIA GIVE AUTONOMY TO  
LOCAL GOVERNMENT.

Submitted in partial fulfilment of the requirements for the degree LLM  
(constitutional litigation)



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## DECLARATION

### Declaration

I, Mzee, Mzee Mustafa, do hereby declare that this work is original and is a result of my own efforts and initiatives. It has never been submitted in any academic institution for awarding a degree.

I further declare that all secondary sources of information used in this work have been duly acknowledged. I will take all responsibility for any errors in this work.

Student

Signed



Date

Supervisor

Signed

Date

## DEDICATION

To the memory of my son, Mustafa, who sadly passed away while I was writing this research paper.



## ACKNOWLEDGEMENTS

In the first place, I wish to express my gratitude to the Almighty God for giving me the courage, ability and guidance throughout the process of writing this thesis.

I wish to acknowledge other researchers whose work directly or indirectly contributed to this thesis. This research work would not have been completed successfully without the assistance and encouragement of a number of people and their intellectual contributions. I cannot mention all of them in this limited space.

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## Chapter 1

### 1.1 Introduction

The concept of decentralization in Tanzania is not a new one. Local administration has a long and colourful history in Tanzania. It is estimated that about 100 years ago the first local authorities were established in Tanzania.<sup>1</sup>

Local governments in Tanzania have been established, abolished and re-established not because of any actual demands by local interest, but largely to promote some particular schemes in the interests of the centre.<sup>2</sup>

Currently, the establishment and objectives of local governments in Tanzania is governed by article 145 of the Constitution of the United Republic of Tanzania of 1977. The Constitution empowers the National Assembly to enact laws for the establishment of local governments in every region, district and urban areas.<sup>3</sup>

One of the objectives of the establishment of local governments in Tanzania is to transfer the authority over planning and implementation of development programmes to the people.<sup>4</sup> But unfortunately, the Constitution does not declare the main functions of the local government councils. Apart from the Constitution, there is other legislation which governs the administration of local government in Tanzania.

### 1.2 Problem statement

It is argued that local government is one of the institutions which can facilitate development and democracy in the country.<sup>5</sup>

It is said that local government requires autonomy to exercise its activities effectively.

The word autonomy in relation to local government consists of different meanings; it

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<sup>1</sup> Tanzania history: [www.tanzania.go.tz/history.html](http://www.tanzania.go.tz/history.html) accessed on 27/3/2008.

<sup>2</sup> Mwaikusa 1996: 59.

<sup>3</sup> Article 145 (1) Constitution of the United Republic of Tanzania.

<sup>4</sup> Article 146 Constitution of the United Republic of Tanzania.

<sup>5</sup> De Visser 2005: 19.



includes a legal status distinct from that of central government, the power for local authorities to raise their own revenue and spend it in the discharge of their functions as assigned by the law,<sup>6</sup> the power to make decisions as responsible organs in their own right and not as extension of the central government.<sup>7</sup>

However, the autonomy criteria which I have discussed in this research are the ones that were used by De Visser.<sup>8</sup> According to him, the word autonomy can be defined as the power of the people to elect their local leaders without interference from the central government (democracy). Furthermore, powers and functions of the local government must be protected by the Constitution so that no other organ of the state can take them as they wish. Lastly the local governments must have the power to raise and spend their funds without depending on subsidies from the central government.

Therefore, attempts to curtail one of the elements of the autonomy to the local government will result into poor operations of local governments in the country.

The main question which this research will address is: does the local government law in Tanzania give autonomy to local government? Within this question, I will discuss three sub questions. Firstly, does the local government law in Tanzania guarantee the functional powers of the local governments? Secondly, does the local government law in Tanzania give opportunity to the people to participate to their local activities? Lastly, does the local government law in Tanzania give powers to the local governments to raise and spend its funds?

It will be argued that the laws governing the administration of local governments do not offer sufficient autonomy to the local governments to exercise its functions. The Constitution failed to incorporate an article which states the main functions of the local government councils. The central government sometimes exercises the functions of the

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<sup>6</sup> Mwaikusa1996: 59.

<sup>7</sup> *Ibid.*

<sup>8</sup> De Visser 2005.

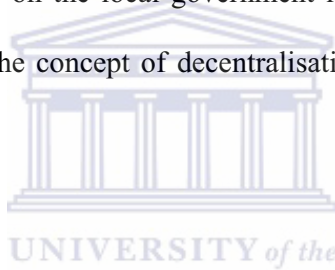
local government. Furthermore, there is limited freedom to local governments to raise and spend its funds.

### **1.3 Significance of research**

Despite a highly centralised system of government, Tanzania, has attempted several measures aimed at achieving decentralisation of its immense powers to allow people to have a say on matters affecting their respective areas of jurisdiction.<sup>9</sup>

By discussing the autonomy of local government in Tanzania, this research will highlight whether or not local government in Tanzania has the autonomy to exercise its functions without undue interference from the central government.

There is not much literature on the local government laws of Tanzania .Therefore, this research will contribute to the concept of decentralisation in Tanzania in particular and Africa in general.



### **1.4 Research Methodologies**

The research was confined to literature survey, including different laws relating to local government in Tanzania, i.e. the Local Government (District Authorities) Act, No.7 of 1982, the Local Government (Urban Authorities) Act, No.8 of 1982 and the Local Government Finance Act, No.9 of 1982. In addition different textbooks, articles, journals, government policies and websites were consulted.

### **1.5 Limitation of Study**

Tanzania is a union of the former independent states Tanganyika and Zanzibar. They merged in April 1964 and created a union with the adoption of the Articles of Union between Tanganyika and Zanzibar. However, in this research the word Tanzania refers to Tanzania mainland or former Tanganyika. The research paper is confined to discussing

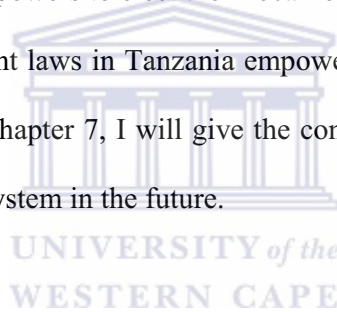
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<sup>9</sup> Ngware and Haule 1992: 31.

whether or not local governments in Tanzania have autonomy to perform their tasks.

## **1.6 Chapters outlines**

Chapter 1 deals with the importance of this work and its limitation. Chapter 2 continues by discussing the concept of autonomy in local government. In Chapter 3, I will discuss the establishment and composition of local government in Tanzania. In Chapter 4, I will discuss whether the local government laws in Tanzania give functional powers to the local governments to exercise their functions without interference from the central government. Whether the local government laws in Tanzania give the powers and opportunities to the people to participate on their local activities will be discussed in chapter 5. This includes the powers to elect their local leaders. In Chapter 6, I will discuss whether the local government laws in Tanzania empower local governments to raise and spend their own funds. In Chapter 7, I will give the conclusion and recommendations to improve local government system in the future.



## Chapter 2

### 2 Local government and autonomy

#### 2.1 Introduction

Decentralisation is commonly viewed as the transfer of legal and political authority from the central government and its agencies to other organizations and institutions.<sup>10</sup> Decentralisation of powers and responsibilities to local governments is but one of the many variations in which such process may take place.<sup>11</sup>

Other types of decentralisation are:

1. Deconcentration, which means the transfer of some amount of administrative authority or responsibility to lower levels within central government ministries and agencies.<sup>12</sup>
2. Devolution, which means the creation or the financial or legal strengthening of sub national units of government concerned with activities which are substantially outside the direct control of the central government.<sup>13</sup> Under devolution, local units of government are autonomous and independent, and their legal status makes them separate or distinct from the central government.<sup>14</sup>

It is very important to note that the essence of decentralization does not occur in general, but rather in a particular country.<sup>15</sup> Each country may make decentralisation with its own history and traditions and its own specific institutional, political and economic context.<sup>16</sup>

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<sup>10</sup> Rondinelli 1984: 9.

<sup>11</sup> Abdul-hakim 2004: 1.

<sup>12</sup> Rondinelli, Nellis and Cheema 1983: 14.

<sup>13</sup> Rondinelli, Nellis and Cheema 1983: 24.

<sup>14</sup> *Ibid.*

<sup>15</sup> Stephen Lister and Mary Betley 1999: 2.

<sup>16</sup> *Ibid.*

## 2.2 Defining Local government

Local government is a system of local administration under local communities that are organized to maintain law and order, provide some limited range of social amenities, and encourage cooperation and participation of inhabitants towards the improvement of their living conditions.<sup>17</sup> Therefore, local government is that part of the government of the country operating at a local level, functioning through a representative organ, known as local authority or council, established by law to exercise specific powers within a defined area of jurisdiction.<sup>18</sup>

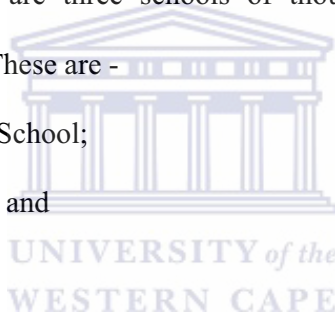
## 2.3 Objectives of local government

According to Adeyemo, there are three schools of thought on the objectives of local government to the community. These are -

(a) the democratic Participatory School;

(b) the Efficient-Service School; and

(c) the Developmental School.<sup>19</sup>



Essentially, the democratic school of thought holds that the function of local government is to bring about democracy and to afford opportunities for political participation to the citizen as well as to educate and socialize them politically.<sup>20</sup> The efficiency school argues that what is central and important to local government is not the bringing about of democracy but rather that local government must be judged by its success in providing services up to a standard measured by a national inspectorate.<sup>21</sup> The developmental school differs from the two schools of thought mentioned above. It emphasizes how local governments in the developing world

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<sup>17</sup> Adeyemo 2005: 77.

<sup>18</sup> Warioba 1999: 1.

<sup>19</sup> Adeyemo 2005: 78.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

can be an effective agent of a better life, an improved means of living, socially and economically, and a means to a better share in the national wealth.<sup>22</sup>

#### **2.4 The concept of autonomy in local government**

The local authorities which represent the needs of local people require autonomy to perform their functions freely from any interference from central government. Obviously it cannot have a complete autonomy or complete local self-government within sovereign states as indeed if local governments were completely autonomous they would be sovereign states.<sup>23</sup> However, it is argued that the transfer of power to the local community should be accompanied by self governance which includes responsibility, resources and accountability directly to the ordinary citizens in the local community.<sup>24</sup>

#### **2.5 Defining local government autonomy**

Local government autonomy is a degree of freedom that local authorities have in making political, economic and administrative decisions within their areas of jurisdiction.<sup>25</sup> It is argued that if a local government does not have sufficient and real powers, it cannot respond adequately to the needs of the people it is meant to serve. Autonomy for a local government is therefore imperative.<sup>26</sup>

There is no consensus as to what constitutes autonomy in local government, but it is generally accepted, that local governments must possess enough power to enable them to perform their activities freely without interference from the central government. According to De Visser the following are some of the requirements a local government must have to function effectively.

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<sup>22</sup> Adeyemo 2005: 78.

<sup>23</sup> *Ibid.*

<sup>24</sup> Olowu and Wunsch 2004: 45.

<sup>25</sup> Adeyemo 2005: 80.

<sup>26</sup> De Visser 2005: 35.

### **2.5.1 Democracy**

It is argued that autonomy in local governments has to refer to local democracy which means peoples' power to elect their representative and to participate in local government activities.<sup>27</sup>

A central government must ensure that its people have the opportunity to participate in local government activities.<sup>28</sup> Also, it is argued that a local government must have an elected local council; this means that those who represent local people must be elected by the people whom they represent through democratic elections.<sup>29</sup> It is moreover suggested that senior local officials, who work for the local government must be appointed by the local government authority.<sup>30</sup> This will make the senior local officials accountable to the appointing authority and not to the central government.<sup>31</sup>

### **2.5.2 Financial powers**

Local authorities have to perform different functions, for which adequate funding is needed. Without this they cannot deliver their services. This means that the local governments must have the power to raise and spend their own funds. Local governments may raise funds via tax collection, via conditional and unconditional funds from central government or via grants.<sup>32</sup> It has also been strongly argued that local government must have the freedom to decide on the allocation of their revenue resources among competing expenditure demands.<sup>33</sup> Since the local authorities are closer to the people they are certainly in a better position to understand their needs.

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<sup>27</sup> De Visser 2005: 36.

<sup>28</sup> *Ibid.*

<sup>29</sup> De Visser 2005: 38.

<sup>30</sup> Ebel and Yilmaz 2002: 5.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

### **2.5.3 Demarcation of power**

The area of governance over which a local government has power must be clearly defined.<sup>34</sup>

The law must demarcate which functions can be performed by the central government and those of local governments. This can be best achieved when embodied in the Constitution, which in turn has the added advantage of needing elaborate procedures to be amended. In South Africa, for example, some functions of local government are enshrined in the Constitution.<sup>35</sup> The incorporation of the functions of local governments into the Constitution will therefore guarantee that the local government has final decision making powers in the areas under its jurisdiction.

### **2.5.4 Power to take decisions**

Local governments must possess the power to make independent decisions in exercising their functions. This decision making must, of course, be within the limits laid down by the law.<sup>36</sup>

It is crucial for local governments to make their own decisions in order to guarantee their independence. Only then will they be able to function effectively and properly serve their people who elected them.<sup>37</sup>

## **2.6 Conclusion**

In conclusion, if a local government has to perform its function effectively it must be free from undue influence from central government. The local government will have the autonomy to perform its functions freely if people participate in the activities of their respective local authorities, and if the local authority has the power to find and spend its own financial resources. A clear demarcation of functions between local and central governments is urgently called for to avoid administrative clashes. And lastly the power of local

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<sup>34</sup> De Visser 2005: 40.

<sup>35</sup> Section 156 Constitution of the Republic of South Africa.

<sup>36</sup> Adeyemo 2005: 80.

<sup>37</sup> Ngware and Haule 1993: 15.



governments to make decisions free from central interference needs to be constitutionally guaranteed.



## Chapter 3

### 3 Establishment and Composition of local government in Tanzania

#### 3.1 Introduction

The United Republic of Tanzania is a unitary republic, administratively divided into regions. Regions are divided into districts, which are then further subdivided into divisions.<sup>38</sup> The local government authorities are divided into Urban and Rural areas.<sup>39</sup>

Local government can be traced back to the period from 1954 to 1961 when the British administration established local government through a Local Government Ordinance, 1953 (Cap .133).<sup>40</sup> This was a system whereby the people of a particular locality had a council of representatives known as councillors.<sup>41</sup> The British system was composed of township authorities, urban Councils and the smaller bodies which worked as advisory and administrative bodies within their locality.<sup>42</sup> Subsequently, in 1959 British administration in Tanganyika established the Municipal Council as part of local government.<sup>43</sup>

Despite the establishment of local authorities, there was no democratic system of local government. The system of local government election in Tanganyika followed the multi racial electoral system that required every eligible voter to vote for three people namely an African, a European and an Asian.<sup>44</sup>

After independence in 1961, the local government system followed after the British model, and the government of Tanganyika used it as a tool of bringing about development through democratic means.<sup>45</sup> In 1972 - 73 the government of Tanzania abolished the local government

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<sup>38</sup> The local government system in Tanzania.

<sup>39</sup> *Ibid.*

<sup>40</sup> Warioba 1999: 6.

<sup>41</sup> *Ibid.*

<sup>42</sup> Warioba 1999: 7.

<sup>43</sup> Max 1991: 156.

<sup>44</sup> Max 1991: 21.

<sup>45</sup> Max 1991: 26.

system due to the heavy responsibilities they were obliged to shoulder without adequate financial assistance from the central government.<sup>46</sup> The local government system was replaced by a system of deconcentration of government administration through direct rule by the government down to the district level.<sup>47</sup> Central government and line ministries were put in charge of the administration of basic government services at the local level, including primary education and health care.<sup>48</sup>

Local government was re-established by the government in 1982. The aim was, among other things, to give people the powers to determine their own development.<sup>49</sup> Since the re-introduction of local governments in Tanzania, the structure of local government has slightly changed. The current configuration of local governments in Tanzania has the characteristics of devolution with specific areas of jurisdiction and functions to perform as well as their own sources of revenue.

The current local government system in Tanzania is laid down in the Constitution which requires the establishment of local governments in every part of the country.<sup>50</sup> On the basis of the articles of the Constitution, different laws were enacted to govern the administration and to establish local governments in Tanzania. The main laws which governed the administration of local government are

1. Local Government (District Authorities) Act, No. 7 of 1982. This Act establishes local government authorities within rural areas of Tanzania. The Act also explains the functions and powers of the local government authority within rural areas.
2. Local Government (Urban Authorities) Act, No. 8 of 1982, This Act establishes local government authorities within urban areas of Tanzania. The Act explains the functions and powers of the local government authority within urban areas.

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<sup>46</sup> Mmari 2005: 5.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> Ngware and Haule 1992: 9.

<sup>50</sup> Articles 145 and 146 Constitution of the United Republic of Tanzania.

3. The Local Government Finances Act, No. 9 of 1982, this Act explains the powers of local government to raise and spend their funds.
4. The Local Authorities Elections Act, No. 4 of 1979. This Act explains the process of electing ward councillors as the representatives of local people.

The local government system in Tanzania is divided into two main units namely;

1. District authority, which covers the rural area of the country.
2. Urban authority which covers the urban area of the country.<sup>51</sup>

### **3.2 The establishment of the District Authorities**

The Local Government (District Authorities) Act no 7 of 1982 provides for the establishment of local government authorities in rural areas. The Act establishes district councils, township authorities, ward development committees, village councils and *vitongoji* (hamlets).

#### **3.2.1 KITONGOJI (village neighbourhood)**

The lowest local government organ in rural areas is the *Kitongoji*, consisting of a part of a registered village. The law requires that the area of a village shall be divided into not more than five *vitongoji*<sup>52</sup> consisting of such number of households or of such geographical areas as may be determined by the village council and approved by the District Council.<sup>53</sup> Every *Kitongoji* has a chairperson elected by the adult members of the *Kitongoji*. The chairperson of a *Kitongoji* may appoint a committee of three persons from amongst the residents of the *Kitongoji* to advise him on issues relating to the *Kitongoji*. He or she may also appoint one of the residents to act as secretary.<sup>54</sup> A *Kitongoji* does not have any legislative or decision-

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<sup>51</sup> Warioba 1999: 85.

<sup>52</sup> *Vitongoji* is a plural of *kitongoji*.

<sup>53</sup> S. 30 (3) Local Government District Authorities Act. Act No. 7 of 1982. ( District Authorities Act)

<sup>54</sup> S. 30 (4) District Authorities Act.

making powers. It operates rather as a forum for mobilising community participation and support than as an organ of administration.<sup>55</sup>

### **3.2.2 Village government**

The village government is the smallest local government unit in Tanzania. To qualify for registration a local authority must comprise at least 250 households per village.<sup>56</sup> In addition to that, the registrar must be satisfied that the people of that village have really settled in that area and are not moving from one place to another.<sup>57</sup> The registrar of the village is a public officer appointed by the Minister responsible for local government.<sup>58</sup> The law is silent about the other roles of the registrar. The main organs of the village government are the village assembly and the village council. The village assembly is composed of any permanent member of the village above the age of 18.<sup>59</sup> Theoretically the village assembly is the supreme body at the village level. Practically, its only major function is to elect the council every five years.<sup>60</sup> Neither in law nor in practice does the village assembly have ultimate legislative and executive powers these powers being vested in the village council.<sup>61</sup> This village council is composed of elected members from among the inhabitants of the same villages. It acts as the executive and legislative organ of the village government. The village council performs the following functions;

1. to promote the social welfare and economic well being of its people by planning and coordinating activities;
2. to maintain peace, order and good government within the village;
3. to give assistance and advice to the villagers engaged in agriculture, forestry, horticultural, industrial or any other activity;

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<sup>55</sup> Mmari 2005: 28.

<sup>56</sup> Max 1991: 154.

<sup>57</sup> S. 22 District Authorities Act.

<sup>58</sup> S. 23 District Authorities Act.

<sup>59</sup> S. 55 District Authorities Act.

<sup>60</sup> S. 56 (1) (a) – (c) District Authorities Act.

<sup>61</sup> Mmari 2005: 28.

4. to encourage village residents to undertake and participate in communal enterprises;  
and
5. to make by-laws which are applicable within the village.<sup>62</sup>

### **3.2.3 Township authorities**

The next to village government are township authorities. By law, a township authority may be established by an order published in the government *gazette* by the minister responsible for local government.<sup>63</sup> The minimum qualification for township authorities to be established is 500 households or a population of 9000 permanent residents in that area.<sup>64</sup> The township authorities have both executive<sup>65</sup> and legislative<sup>66</sup> powers. These functions are exercised by the council of the township authority. This council consists of -

1. chairmen of the *Vitongoji* within the area of the township authority;
2. three members appointed by the district council;
3. the Member of Parliament representing the constituency within the township authority;
4. women members who are declared by the electoral authority after being proposed by political parties represented in the township authority. Their numbers may not exceed one quarter of the council.
5. the Township Executive Officer of that Township.<sup>67</sup>

Generally speaking, all members of the council have powers to participate in the business of the council. This includes the power to vote on the decision of the council. However, the

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<sup>62</sup> Ss. 142 and 163 District Authorities Act.

<sup>63</sup> S. 13 District Authorities Act.

<sup>64</sup> Max 1991: 157.

<sup>65</sup> S. 136 District Authorities Act.

<sup>66</sup> S. 160 District Authorities Act.

<sup>67</sup> S. 45 District Authorities Act.

Township Executive Officer has no power to vote on the decision of the council, but merely acts as secretary of the council.<sup>68</sup>

The township authority has specific functions which are stipulated in the second schedule of the Act.<sup>69</sup> The council has also the power to make by-laws to enable it to administer its functions within the township authority.<sup>70</sup>

### **3.2.4 The Ward**

The minister responsible for local government has been mandated to subdivide the area of every District into wards.<sup>71</sup> The ward is the electoral area for the election of councillors representing the ward in the district council.<sup>72</sup> There is no elected council at the ward level.

Each ward has a ward development committee which is composed of:

1. a councillor representing the ward in the District council who is the chairperson of the committee;<sup>73</sup>
2. the chairpersons of all villages within the ward;
3. a member of parliament representing a constituency within the ward and who is an ordinary resident in the ward;
4. invited members from non-government organizations and other civic groups involved in the promotion and development of the ward.<sup>74</sup> These members do not have the right to vote.

The Ward Development Committee has the following functions:

1. promotion, establishment and development of cooperative enterprises and activities within the ward;

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<sup>68</sup> S. 45 District Authorities Act.

<sup>69</sup> S. 137 District Authorities Act. The functions will be discussed in 4<sup>th</sup> chapter.

<sup>70</sup> S. 160 District Authorities Act.

<sup>71</sup> S. 30 District Authorities Act. See also S. 8 of The Local Government (Elections) Act No. 4 of 1979. (Local Government Elections).

<sup>72</sup> S. 2 Local Government Elections.

<sup>73</sup> Councillors are elected at local government election as we shall see at fifth chapter.

<sup>74</sup> S. 31 District Authorities Act.

2. initiation and formulation of any task, venture or enterprise designed to ensure the welfare and well being of ward residents;
3. supervision and coordination of the implementation of council projects and programmes;
4. planning and coordination of activities of, and rendering assistance and advice to the residents of the ward engaged in any activity or industry of any kind;
5. formulation and submission of proposals for the making of by-laws in relation to the affairs of the ward to the village councils or to the district councils;
6. monitoring revenue collection;
7. initiating and promoting participatory development in the ward;
8. supervising all funds established and entrusted to the ward; and
9. managing disasters and environments; and
10. promoting gender issues.<sup>75</sup>



### **3.2.5 The District Authorities**

Section 5 of the Act gives the power to the minister to establish the district councils after consultation with the president.<sup>76</sup> In terms of hierarchy, the district council is the highest authority for local government in the rural parts of Tanzania, evident from the fact that it authorises all by-laws from village and township councils.<sup>77</sup> It is also required by law to provide financial support to them.<sup>78</sup> The district council is composed of

1. members elected from each ward (councillors);
2. the members of Parliament representing constituencies within the area of the district council and who are ordinary residents of the district;

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<sup>75</sup> S. 32 District Authorities Act. See also Mmari 2005: 25.

<sup>76</sup> S. 5(2) District Authorities Act.

<sup>77</sup> S. 122 (1) d District Authorities Act.

<sup>78</sup> Local Government Financial Act No. 9 of 1982 (Local Government Finances Act). See also Max 1991: 115.



3. the members of Parliament appointed by the President in accordance with the Constitution<sup>79</sup> and who are ordinary residents of the district;
4. three members appointed by the minister responsible for the local government,
5. women members who are declared by the electoral authority after being proposed by political parties represented in the district council. Their numbers may not exceed one quarter of the council;
6. any member of Parliament (special seats) who resides in the District ;
7. The director of the council.<sup>80</sup>

All members have the same right to participate in the functions of the council.

The director of the council acts as secretary of the council, but has no voting powers.<sup>81</sup>

The district councils are entrusted with different functions as explained in detail in the first Schedule of the Act. The main functions are to deliver key government services including basic education, basic health care, local water supply and local roads.<sup>82</sup> To exercise these functions, the councils are empowered to collect revenues, taxes, levies and donations so as to finance those services.<sup>83</sup> Again, to function effectively, the district councils have the power to make by-laws. Also all by-laws which are enacted by its subordinate authorities (village and township councils) must be approved by the district council before becoming law.

### **3.3 The establishment of Urban Authorities**

The Local Government (Urban Authorities) Act No.8 of 1982 is an Act which provides for the establishment of local government authorities in urban areas. Section 5 of the Act empowers the minister for local government to establish the urban authority or authorities in any area of Tanzania mainland. The same section 5 of the Act establishes different kinds of

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<sup>79</sup> Article 66 (1) (e) Constitution of the United Republic of Tanzania.

<sup>80</sup> S. 35 District Authorities Act.

<sup>81</sup> S. 35 District Authorities Act.

<sup>82</sup> S. 11 District Authorities Act.

<sup>83</sup> S. 7 Local Government Finances Act. See also Warioba 1995: 85.

urban authorities; namely City Councils, Municipal Councils, Town Councils, Ward Development Committees and *Mitaa* (neighbourhood). Historically, the first urban authorities in Tanzania were established by the British administration when Dar es Salaam was declared a township in 1920.<sup>84</sup>

### 3.3.1 MITAA (NEIGHBOURHOOD)

*Mtaa* is the lowest level of local government in urban authorities.<sup>85</sup> Every *Mtaa* has a committee of not more than six members elected from amongst the residents of the *Mtaa*.<sup>86</sup> In practice the *mitaa* has no executive or legislative powers. It is a forum for mobilising community participation.

### 3.3.2 The Ward

The minister responsible for local government has been mandated to subdivide the area of every town, municipality or city council into wards.<sup>87</sup> The ward is the electoral area for the election of councillors representing the ward in the council.<sup>88</sup> There is no elected council at the ward level.<sup>89</sup> Instead, each ward has a ward development committee, which comprises

1. a councillor representing the ward in the urban council who is the chairperson of the committee;<sup>90</sup>
2. the chairpersons of all *Mitaa* within the ward;
3. the member of parliament who represents the constituency which is within the ward and is also a resident of that ward; and
4. the invited members from non-government organizations and other civic groups involved in the promotion and development of the ward.<sup>91</sup>

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<sup>84</sup> Max 1991: 156.

<sup>85</sup> Mmari 2005: 29.

<sup>86</sup> S. 14A Local Government Urban Authorities Act No.8 of 1982 (Urban Authorities Act).

<sup>87</sup> S. 14(1) Urban Authorities Act.

<sup>88</sup> S. 2 Local Government Elections Act.

<sup>89</sup> Mmari 2005: 29.

<sup>90</sup> Councillors are elected at local government election; See chapter 5 for an explanation of the electoral system.

The invited members of the ward do not have voting power but can express their opinions.

The Ward Development Committee has different functions including:

1. promotion, establishment and development of cooperative enterprises and activities within the ward;
2. initiation and formulation of any task, venture or enterprise designed to ensure the welfare and well being of ward residents;
3. supervision and coordination of the implementation of council projects and programmes;
4. planning and coordination of activities as well as rendering assistance and advice to the residents of the ward engaged in any activity or industry of any kind;
5. formulation and submission of proposals for the making of by-laws in relation to the affairs of the ward to the urban authority;
6. monitoring revenue collection;
7. initiation and promotion of participatory development in the ward;
8. supervision of all funds established and entrusted in the ward;
9. disaster management and environment related activities; and
10. promotion of gender issues within the ward.<sup>92</sup>

### **3.3.3 Town and Municipal council**

The town and municipal councils are other types of local authorities within urban areas. These two authorities have the same functions and powers within their jurisdiction. The only difference is the size of the population within their areas. The minimum qualification for an urban authority to become a town council is that it must have the population of over 30,001 permanent residents.<sup>93</sup> The minimum qualification for an urban authority to become a

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<sup>91</sup> S. 15 Urban Authorities Act.

<sup>92</sup> S. 21 Urban Authorities Act.

<sup>93</sup> Warioba 1999: 70.

municipality is that it must have a population of over 80,000 permanent residents.<sup>94</sup> Both authorities have councils to run their activities.

A town council is comprised of -

1. one member elected from each of the wards in the town;
2. the member of parliament representing the constituency within which the town is situated;
3. women members who are declared by the electoral authority after being proposed by political parties represented in the town council, their numbers may not exceed one quarter of the council; and
4. three members appointed by the minister from among the residents of the town.<sup>95</sup>

A municipal council is comprised of:

1. one member elected from each of the wards within the municipality;
2. a member of parliament representing the constituency within which the municipality is situated;
3. a Member of Parliament residing in the area of council who is appointed by the President;
4. women members who are declared by the electoral authority after being proposed by political parties represented in the municipal council. Their numbers may not exceed one quarter of the council; and
5. three members appointed by the minister from among the residents of the municipality.<sup>96</sup>

It is important to note that in terms of hierarchy the town council is a lower authority compared to the municipal council.

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<sup>94</sup> Max 1991: 119.

<sup>95</sup> S. 19 (1) Urban Authorities Act.

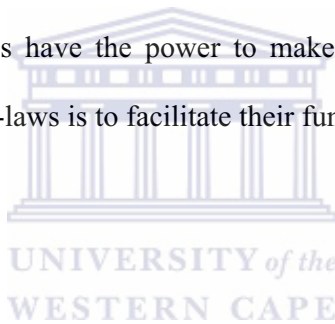
<sup>96</sup> S. 24 (2) Urban Authorities Act.

### 3.3.4 Powers and functions

The town and municipal councils have the same powers and functions within their jurisdictions. Each municipal and town council provides the following services –

1. provision of health services;
2. provision of primary education;
3. control of solid waste management;
4. control of infrastructure including local roads;
5. control and management of natural resources;
6. promotion of trade within its area; and
7. promotion and development of the informal sector.<sup>97</sup>

Moreover, the urban authorities have the power to make by-laws applicable within their localities. The purpose of the by-laws is to facilitate their functions. They also have the power to collect their own revenues.<sup>98</sup>



### 3.3.5 City council

The city council is the superior authority in urban local authorities in Tanzania. The establishment of the city council is made by the order of the president.<sup>99</sup> The minimum requirement for an urban authority to qualify as a city is having population of over 612,000 permanent residents.<sup>100</sup> The city council has the responsibility of co-ordinating the functions of the other local authorities within its jurisdiction.<sup>101</sup> The city council is made up of municipalities which are within its jurisdiction. For example, the Dar es Salaam City Council consists of three municipalities namely, Ilala Municipal Council, Temeke Municipal Council and Kinondoni Municipal Council.

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<sup>97</sup> S. 55 Urban Authorities Act.

<sup>98</sup> Ss. 60 (1) (g) and 73 Urban Authorities Act.

<sup>99</sup> S. 5 (3) Urban Authorities Act.

<sup>100</sup> Warioba 1999: 71.

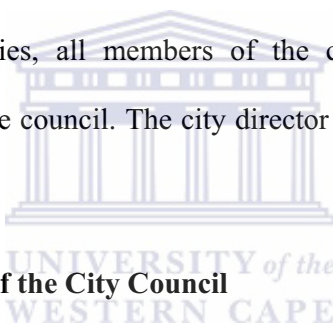
<sup>101</sup> S. 77 Urban Authorities Act.

### 3.3.6 Composition of the city council

The city council is comprised of:

1. a mayor elected by the councillors of the urban authorities within the area of the city council from among themselves;
2. a deputy mayor elected from among the councillors themselves;<sup>102</sup>
3. every constituency member of Parliament who resides in the City;
4. a member of Parliament residing in the city who is appointed by the president;
5. three councillors from each of the urban authorities (one of whom shall be a woman)
6. the mayor of each urban authority within the city council; and
7. the City Director.<sup>103</sup>

Similar to other local authorities, all members of the city council have the power to participate in the functions of the council. The city director acts as a secretary of the council but has no voting power.<sup>104</sup>



#### 3.3.6.1 Functions and powers of the City Council

The city council coordinates the powers and functions of all urban authorities which are within its area of jurisdiction.<sup>105</sup> The city council must support and facilitate the functions and performance of the urban authorities which are within the city.<sup>106</sup> Moreover, the city council is empowered to ensure that proper cooperation exists between the local government authorities within its jurisdiction.<sup>107</sup>

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<sup>102</sup> A mayor and the deputy mayor are elected from different urban authorities; they are not elected from the same urban authorities.

<sup>103</sup> S. 19 (4) Urban Authorities Act.

<sup>104</sup> S. 19 (4) Urban Authorities Act.

<sup>105</sup> S. 69 Urban Authorities Act.

<sup>106</sup> S. 69 Urban Authorities Act.

<sup>107</sup> S. 69 Urban Authorities Act.

### 3.4 Boundaries of Local Government

The Acts for the establishment of local government authorities in Tanzania empower the minister responsible for local government to vary the boundaries of local authorities after consultation with the local authorities concerned.<sup>108</sup> There is no specific board in Tanzania which determines local government boundaries as in other countries like South Africa (where the duty of determining the boundaries of local government is vested in the Municipal Demarcation Board).<sup>109</sup> It is undoubtedly difficult for local authorities to reject a proposal by the Minister, for changing the boundaries of a certain local authority. There is certainly the need to establish an independent board to determine the boundaries of a local government, ensuring fairness and freedom from manipulation by political interests. Moreover, this study finds that there is no guideline for establishing a particular type of local authority. Population and geographical size are not the criteria for determining the type of local authority in Tanzania. Unlike in other countries like South Africa, criteria standards exist.<sup>110</sup> The following examples show that there are no clearly defined criteria to determine the type of local authority in Tanzania. Every Regional administrative headquarters has the municipal status and every District administrative headquarters has the town status regardless of population and geographical size between them.<sup>111</sup> It can therefore be argued that there is no proper standard for determining types of local authority in Tanzania.

### 3.5 Conclusion

The structure of local government in Tanzania is divided into two parts; urban and rural authorities. The urban authorities comprise of city, municipal, town councils, wards and *Mitaa* (neighbourhood). In rural areas local government is composed of district, township, village councils and ward. Local authorities are entrusted with different functions and powers

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<sup>108</sup> S. 9 Urban Authorities Act.

<sup>109</sup> S. 155 (3) Constitution of the Republic of South Africa.

<sup>110</sup> S. 2 of the Local Government Municipal Structures Act 117 of 1998.

<sup>111</sup> Interview with Mr. **Nazar Sola**, Senior Lecturer at Mzumbe University, Tanzania on 28<sup>th</sup> August 2008.

but the main function is to provide services to the communities within their jurisdictions.<sup>112</sup> The local government councils have two categories of elected and non-elected members, most of the latter being parliamentarians. The involvement of parliamentarians in the local government councils has however fuelled fears that the ruling party is insidiously trying to influence decisions in favour of the central government.<sup>113</sup> The composition of local government councils need therefore to be limited to elected member from the local authorities.



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<sup>112</sup> Warioba 1999: 89.

<sup>113</sup> Nengwkhulu 1996: 25 cited in De Visser 2005:31.



## Chapter 4

### 4 Functional power of the local government

#### 4.1 Introduction

This chapter looks into the question whether the local government laws in Tanzania give sufficient powers to local governments to exercise its functions without any interference from the central government. This study argues that the Tanzania government, through its Constitution, creates local governments and empowers them to exercise different functions and powers subject to the laws which are enacted by parliament. However, the Constitution only mentions the basic functions of local government<sup>114</sup> and does not go into detail what constitutes the functions of local government. The Constitution of Tanzania mentions the general functions of local government, stating that local government must perform the functions of local government within its area, to ensure the enforcement of law and public safety of the people, consolidate democracy within its area and apply it to accelerate the development of the people.<sup>115</sup> The Constitution itself fails to include the functions of local government. It rather gives the parliament powers to enact laws which can detail the functions of local government. Therefore the functions of local authorities are provided in the Acts that established local government,<sup>116</sup> which have no authority to carry out any function not stipulated in any law in the country.<sup>117</sup>

The Acts establishing local governments in Tanzania contain nearly one hundred (100) functions that local governments are supposed to perform.

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<sup>114</sup> Article 146 (2) Constitution of the United Republic of Tanzania.

<sup>115</sup> Article 146 (2) Constitution of the United Republic of Tanzania.

<sup>116</sup> District Authorities Act and Urban Authorities Act.

<sup>117</sup> Warioba 1999: 182.

## **4.2 Final decision making powers**

It is argued that the local authorities must have a legal range in which to operate without undue influence by the central government.<sup>118</sup> However, that is not the case in Tanzania, where there are still a number of legal setbacks that prevent local authorities from exercising their functions free from interference by central government.<sup>119</sup> Local government authorities are not afforded the power to make their own policies and plans in response to the needs of their localities.<sup>120</sup> On the other hand, the local government authorities are required to follow central government policies and development plans.

The following are some of the areas in which local government authorities have no final say.

### **4.2.1 Primary school Education**

The most important function of local governments in Tanzania is the provision of primary education.<sup>121</sup> The Act empowers local government to deal with primary education. However this Act sets out numerous conditions to be met before the local authorities can come with any plans or decision. For instance, when the local authorities have any education plans, the law requires that they must be approved by the ministry of education.<sup>122</sup> It is not my intention here to say that the national government should not have a say on education. My point, however, is that in matters which can be better planned locally, local government must have a free hand.

### **4.2.2 Local roads**

The local authorities are responsible for the local road networks in district and urban areas.<sup>123</sup> However these local governments have no final say over road maintenance. The local government authorities are supposed to prepare a Road Maintenance Master Plan, which

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<sup>118</sup> De Visser 2005: 158.

<sup>119</sup> Chaligha, Henjewe, Kessy & Mwambe 2007: 3.

<sup>120</sup> S. 111 District Authorities Act and S. 54A (b) - (c) Urban Authorities Act.

<sup>121</sup> S. 118 (2) (j) District Authorities Act and S. 9(1) Education Act, No 25 of 1978 (Education Act).

<sup>122</sup> S. 10(1) (a) (Education Act).

<sup>123</sup> S. 118 (4) District Authorities Act. See also clause 90-93 of the 1<sup>st</sup> schedule of the District Authorities Act.

must be approved by the council and subsequently be submitted to the minister responsible for local government to be sent to the Road Fund Board. The Road Fund Board then decides whether the local road needs maintenance or not.<sup>124</sup> Therefore the final decision on local road maintenance rests with the Road Fund Board. This deprives the local authorities of a final say in this matters.

### **4.2.3 Burial Services**

Local governments are responsible for providing funeral services in their localities. This includes allocating land for burial.<sup>125</sup> However, the Central government has power to remove any grave or dead body without consulting the local authorities.<sup>126</sup> The Graves (Removal) Act has no provision for consulting local governments before the Minister orders the removal of a grave. Over this the local authorities have no say.

### **4.3 Clear Demarcation**

The clear demarcation of governance areas is also considered as an important element of local government autonomy.<sup>127</sup> The law must clearly state which functions are to be carried out by the local authority, to avoid overlapping of functions. The following functions of local government in Tanzania are not well demarcated.

#### **4.3.1 Primary education**

Primary education is the function of local government. However, the law empowers the Minister of Education to transfer this function of local government to the ministry or to any person or body of persons in the public interest.<sup>128</sup> However, the laws are silent as to what constitutes the public interest. This means that, this function of the local government can be

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<sup>124</sup> S. 4 Fuel and Road Cap 220 R.E (2006).

<sup>125</sup> S. 118 (4) District Authorities Act. See also clause 21-24 of the 1<sup>st</sup> schedule of the Act District Authorities.

<sup>126</sup> S. 3 Graves (Removal) Act No. 9 of 1969.

<sup>127</sup> De Visser 2005: 160.

<sup>128</sup> S. 13 Education Act.

usurped at any time, and does not clearly and exclusively belong to the local government. The term 'public interest' needs to be clearly defined to avoid abuse of power by the minister.

### **4.3.2 Issuing of Traditional Liquor Licences**

Local governments are empowered to grant and revoke a licence for a manufacturer of traditional liquor.<sup>129</sup> However, the law empowers the Minister to revoke any licence granted by the local authority in the public interest without giving any reason to any one, not even the local authority which issued that licence.<sup>130</sup> The law remains salient as to what constitutes the public interest. The paradox here is that whereas the local authorities have power to grant and revoke the licence, the Minister has equal power to revoke it. The whole position is dubious.

### **4.3.3 Maintenance of Law, order and good governance**

The local government authorities are entrusted with the maintenance of law, order and good governance.<sup>131</sup> However, all police force services are currently managed by the central government through the Ministry of Home affairs.<sup>132</sup> Therefore, this leaves local governments with no power to manage the police force within its localities despite this being among their functions.

## **4.4 Relevance of functions**

It was argued that the functions of local government must be relevant to development goals.<sup>133</sup> This would suggest that the functions of local government must relate activities which have impact on the development of the local community.<sup>134</sup> This study shows that local governments are empowered to exercise some functions that are relevant to

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<sup>129</sup> S. 3 the Traditional Liquor (Control of Distillation) Cap 384 R.E 2001.

<sup>130</sup> S. 14 the Traditional Liquor (Control of Distillation) Cap 384 R.E 2001.

<sup>131</sup> S. 111(a) District Authorities Act) and S. 54(1) (a) Urban Authorities Act.

<sup>132</sup> Max 1991: 152.

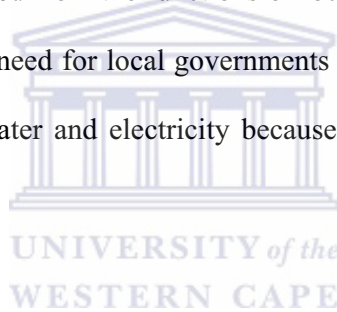
<sup>133</sup> De Visser 2005: 40.

<sup>134</sup> *Ibid.*

development. One example is the authority to build dwelling houses.<sup>135</sup> But there are some important functions that ought to belong to the local government such as water and electricity which are actually missing. For example local governments in urban areas,<sup>136</sup> do not have the authority to supply water and electricity to their communities.<sup>137</sup> These functions are under the control of the central government and not to local government themselves.<sup>138</sup>

#### **4.5 Conclusion**

It is my submission that local government authorities in Tanzania lack some powers to make decisions in some of the functions that they are entrusted with. Also there are some functions of local government which are not clearly demarcated. Finally, there are some important functions that have been excluded from the functions of local government such as water and electricity. Therefore there is a need for local governments that are close to the people to be given the mandate to supply water and electricity because their importance to the life and development of the people.



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<sup>135</sup> S. 118 (4) and Regulation 7 -12 of 1<sup>st</sup> Schedule (District Authorities Act)

<sup>136</sup> Urban areas like Dar es Salaam and some part of Coastal Region.

<sup>137</sup> S. 6 Dar es Salaam Water and Sewerage Authority Act, No. 20 of 2001.

<sup>138</sup> Electricity is supplied by a Corporation owned by the central government.

## Chapter 5

### 5 Participation in Local activities and Elections

#### 5.1 Power and opportunity of the people to participate in local activities

This chapter discusses whether local government laws in Tanzania have provisions for residents of local authorities to participate in the activities of their local government authorities. This includes the power to elect their local leaders. The principle of people's participation and local democracy are enshrined under the Tanzanian Constitution. The Constitution states that people should participate in the affairs of their government and that the local government should consolidate democracy within its area.<sup>139</sup>

It was argued that real decentralisation can only be achieved if local government is as close to its people as possible. People's participation will give the local community the opportunity to identify and articulate the services most needed in their community.<sup>140</sup> This can be done if the preparation of the policies and programmes of local government authorities involve the people, on who they will be directly impacted.<sup>141</sup>

Both Acts which establish local government in Tanzania emphasise the principle of local participation in the activities of local government.<sup>142</sup>

##### 5.1.1 Ward development committees

District Authorities Act and Urban Authorities Act provide for a system of people's participation through ward development committees. The function of these committees is to initiate and promote participatory development in the ward.<sup>143</sup> This is also mentioned in the

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<sup>139</sup> Articles 8 (1) (d) and 146(2) (c) Constitution of the United Republic of Tanzania.

<sup>140</sup> Chaligha 2008: 6.

<sup>141</sup> *Ibid.*

<sup>142</sup> District Authorities Act and Urban Authorities Act.

<sup>143</sup> S. 30A (2) (n) District Authorities Act and S. 15A (2) (n) Urban Authorities Act.

Policy Paper on Local Government Reform of 1998.<sup>144</sup> The paper states that local government reform should concentrate on facilitating the role of the people in deciding matters affecting their lives as well as on planning and executing development programmes.<sup>145</sup> Law and policy emphasise this need for local participation by instructing ward development committees to involve people in their activities.

### **5.1.2 Budget making**

Participatory budget-making has also become a means of increasing resident participation. It is currently made possible by the bottom-up budgeting approach through the ward development committees.<sup>146</sup> This may involve the people, but considering the level of education of most ward members, there can be doubts about the effectiveness.

### **5.1.3 Public hearing**

Meetings of local government authorities are held in public. This gives residents the opportunity to attend meetings and to hear what their local authorities are discussing. But they don't have the opportunity to make any meaningful contribution since they are not council members.<sup>147</sup> However, a non-council member may be invited by the chairman of the council to attend a meeting and is free to speak, but he or she has no power to vote on the decision of the council.<sup>148</sup> In my view, genuine participation takes place in the village assembly only. It allows all adult resident members of the village to participate in the meeting and discuss issues that relate to their welfare.<sup>149</sup> It is only at this stage that all people are allowed to participate and discuss their local issues.

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<sup>144</sup> United Republic of Tanzania, Ministry of Regional Administration and Local Government.

<sup>145</sup> Policy Paper on Local Government Reform 1998 issued by The Ministry of Regional Administration and Local Government at page 6.

<sup>146</sup> S. 32 (f) - (h) District Authorities Act.

<sup>147</sup> S. 39 (1) Urban Authorities Act and S. 67 (1) District Authorities.

<sup>148</sup> S. 54 (1) Urban Authorities Act.

<sup>149</sup> S. 55 Urban Authorities Act.

#### 5.1.4 Local Government Board

Councils have also been empowered to establish a special kind of service boards, open to all citizens in the area. This board provides an opportunity for people to influence service provision.<sup>150</sup> There are different boards which are established for the purpose of involving people in the affairs of their local authorities. For instance, in the education sector there are statutory bodies like school committees at school level.<sup>151</sup> The roles of the School Committee are -

1. to support in planning school development;
2. to advise the village council in matters of interest to the school's development;
3. to support the day-to day running of the school; and
4. to provide a link between the school management and the community.<sup>152</sup>

Again, at the district level, there are Health Boards that are composed of council health staff and four community members in the district.<sup>153</sup> The functions of this board are:

1. to guide the implementation of health service delivery;
2. to approve plans and forward them to the standing committee of the council responsible for social services;
3. to supervise health investment in the district; and
4. to monitor and advise on income and expenditure of the health sector.<sup>154</sup>

It is my contention that despite the participation of local people in these boards, the final decision still lies in the hands of the central government as stated in the previous chapter.

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<sup>150</sup> S. 86A District Authorities Act.

<sup>151</sup> S. 39 Education Act.

<sup>152</sup> S. 39 Education Act. See also Mwaipopo 2004: 28.

<sup>153</sup> District Council (Council Health Service Board Establishment) Instrument, 2001.

<sup>154</sup> S. 10 District Council (Council Health Service Board Establishment) Instrument, 2001. See also Mwaipopo 2004: 28.



### **5.1.5 Making of by-laws**

As earlier stated, the local government has the power to enact by-laws. Before a local authority can enact by-laws, it is required by law to give two weeks' prior written notice of objection from the local inhabitant.<sup>155</sup> Considering that a big proportion of Tanzanians, particularly in rural areas, are illiterate, it is impossible for them to understand the implications of those by-laws.

So it may be said that although by law people do get the opportunity to participate in the running of local government in Tanzania, special mechanisms need to be put in place to ensure that all people participate effectively in the affairs of their local authorities.

## **5.2 Participation in Local Elections**

In Tanzania there are two types of local government laws which deal with local elections. These are;

1. The Local Authorities Election Act, No. 4 of 1979, which determines the election of ward councilors and the Local Government (District Authorities) Act, No. 7 1982; and
2. Local Government (Urban Authorities) Act, No. 8 of 1982 which deals with local election at village, *mtaa* and *Kitongoji* level.

### **5.2.1 Ward Election**

The councillors represent the people in the local government authorities. The councillors are elected into each ward after every five years.<sup>156</sup> Every ward has one elected councillor who represents the people of that ward who elect him to represent them in the council authorities.<sup>157</sup> There are however certain obstacles pertaining to these elections. For instance,

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<sup>155</sup> S. 90 (1) Urban Authorities Act.

<sup>156</sup> S. 12 (1) Local Authority Election Act.

<sup>157</sup> S. 14 (1) Local Authority Election Act.

aspiring candidates must belong to a political party, which rules out the participation of independent candidates.<sup>158</sup> The case is different in South Africa where, independent candidates are allowed, but only on condition that they, firstly, must be nominated by persons who are residents in the municipality in which the ward falls and who are registered as voters on the municipalities segment of the voters' roll.<sup>159</sup> Secondly, an independent candidate needs at least 50 signatures of voters registered in that ward.<sup>160</sup> In other words, once these requirements are met an independent candidate in South Africa can fully participate as candidate in local election. Tanzania can follow suit.

### **5.2.2 Village, *Mtaa* and *Kitongoji* Election**

Village chairpersons and *vitongoji* chairpersons with other members are elected through the village, *mtaa* and *kitongoji* election.<sup>161</sup> These elections are conducted in accordance with the rules and regulations made by the minister responsible for local government.<sup>162</sup> According to these, the District Executive Director or Municipal Director is the Returning Officer for the elections, while the Ward Executive Officer and Village Executive Officer are Assistant Returning Officers.<sup>163</sup> My argument is that this does not make for free and fair polls, since may exert undue influence in favour of his party. Existing laws governing local government need to be changed to allow the National Electoral Commission to conduct this election since it is a more independent organ.

Another point is that local and general election are held at different times. This tends to minimise the importance of local elections in the eyes of certain people and may lead to voter

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<sup>158</sup> S. 39 (1) (f) Local Authority Election Act.

<sup>159</sup> S. 16 Local Government: Municipal Electoral Act 27 of 2000 (Municipal electoral Act). See also Steytler and De Visser 2007: 41.

<sup>160</sup> S. 16 Municipal electoral Act. See also Steytler and De Visser 2007: 41.

<sup>161</sup> Refer chapter 3 of this study.

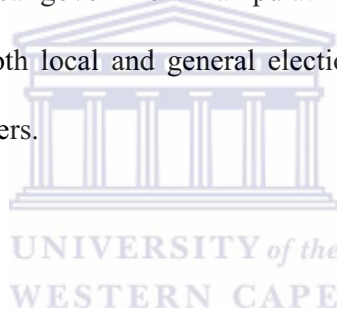
<sup>162</sup> S. 56 (3) District Authorities Act.

<sup>163</sup> Mwaipopo 2004: 38.

apathy in some cases.<sup>164</sup> Conducting local and national elections simultaneously should be better.

### 5.3 Conclusion

To conclude, it is my argument that whereas the laws which establish local government in Tanzania do provide opportunities to people to participate to in the functions and activities of local authorities. Certain setbacks exist which tend to exclude or discourage some people from full participation. The solution lies in (a) allowing independent candidates to participate in local elections (b) transferring the responsibility for conducting elections at village, *vitongoji* and *mitaa* level to the independent National Electoral Commission to avoid the possibility of the minister for local government manipulating the whole exercise in favour of his or her party. (c) holding both local and general elections simultaneously to encourage participation by all qualified voters.



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<sup>164</sup> Chaligha 2008: 19.

## Chapter 6

### 6 The power of local government to raise and spend their own funds

#### 6.1 Financial Autonomy

It was argued that, for local governments to have real autonomy, they need to have a fair degree of financial autonomy from the central government. They should have the power to raise and spend their own funds in accordance with the law.<sup>165</sup> It was further argued that the financial resources of local governments should correspond to their functions as given by the law. In other words, there should be a balance between the functions of a local government and the financial resources at its disposal.<sup>166</sup>

#### 6.2 Sources of revenue for local government

The Constitution of the United Republic of Tanzania accords each local government authority in Tanzania the status of government.<sup>167</sup> This means that each local government or council can raise funds to meet the costs of the delivery of public goods and services including financing development projects.<sup>168</sup> However, the Constitution does not provide any source of revenue for local government.<sup>169</sup> Local government's power to raise funds is mentioned in the Local government Finances Act No. 9 of 1982. This Act contains provisions dealing with the sources of revenue, funds, and resources of all categories of local government authorities, namely village council, township authorities, district and urban council. The sources of revenue for local governments in Tanzania are of two types:

1. contributions and grants from the central government; and

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<sup>165</sup> This refers to different means and ways through which the local governments get revenue to run their activities.

<sup>166</sup> De Visser 2005:41.

<sup>167</sup> Repoa 2004: 1.

<sup>168</sup> *Ibid.*

<sup>169</sup> Article 145(2) Constitution of the United Republic of Tanzania.

2. local government authorities' own revenues.

### 6.2.1 The Contribution and Grants from the Central Government

According to the Act,<sup>170</sup> the central government is required to provide contributions and grants to the local government authorities annually.<sup>171</sup> Grants may be conditional or unconditional. Conditional grants are sector specific and are earmarked for education, health, roads, water and agricultural services.<sup>172</sup> Unconditional grants are meant for the remaining functions of local government; such as natural resource management, trade, co-operatives, lands and community development.<sup>173</sup> The law empowers the minister to determine the amount to be granted to the local authorities.<sup>174</sup> The final decision of how much each council will receive rests jointly with the minister for finance and the minister for local government.<sup>175</sup> The amount of grants available from the central government depends on the ability of the central government to pay,<sup>176</sup> and in the event of the central government experiencing budgetary constraints, local government authorities will automatically suffer.<sup>177</sup> It is estimated that about 80 % of the funds for the current expenditure of local government authorities are transfers from the central government.<sup>178</sup> This underscores the excessive dependence of local governments in Tanzania on revenues from central government, which clearly undermines the autonomy of local governments.

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<sup>170</sup> Local Government Finances Act No.9 of 1982.

<sup>171</sup> S. 10 Local Government Finances Act.

<sup>172</sup> S. 10A (1) (2) (Local Government Finances Act).

<sup>173</sup> S. 10 (1) Local Government Finances Act. See also Baker and others 2002: 28.

<sup>174</sup> S. 10 (1) (a) Local Government Finances Act.

<sup>175</sup> No local government authority's representative who participate at this stage.

<sup>176</sup> Baker and others 2002: 28.

<sup>177</sup> *Ibid.*

<sup>178</sup> Mallya (2000) cited in Baker and others 2002: 28.

## 6.2.2 The Local government authorities' own revenues

The Local Government Finances Act No. 9 of 1982 requires the local government authorities to levy taxes and raise other types of revenues.<sup>179</sup> Generally, local government authorities are empowered to impose rates and taxes, charges and service fees to raise funds. Examples of taxes are the development levy, business taxes, property taxes, road toll taxes and hotel taxes.<sup>180</sup>

Local authorities have no power to change any of the local government revenue sources without the approval of the minister.<sup>181</sup> This provision deprives the local government of any fiscal power within its own area of jurisdiction. Though local governments have power to make by-laws imposing rates and taxes this power is subject to the Minister's approval.<sup>182</sup>

The minister is moreover empowered by an order in the *Gazette* to exempt any category of person from paying any rate imposed by local government, but the law is silent on the criteria the minister may use to exercise the exemption.<sup>183</sup> Furthermore, the laws require this order to be deliberated upon in the national parliament.<sup>184</sup> The central government's control of sources of revenue of local governments is clearly evident.

It is my argument that there is need for a provision in the Constitution which states the sources of the revenue to the local government. This will help local government authorities to have financial power beyond the control of the central government. The Constitution of Republic of South Africa has provisions which state clearly some sources of fund for local government.<sup>185</sup> I think Tanzania needs to follow this example.

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<sup>179</sup> Ss. 6 - 8 Local government Finances Act.

<sup>180</sup> Ss. 6 - 8 Local government Finances Act. See also Ngware and Haule 1993:13.

<sup>181</sup> S. 9A (1) Local government Finances Act.

<sup>182</sup> S. 13 (1) Local government Finances Act.

<sup>183</sup> S. 13 (5) Local government Finances Act.

<sup>184</sup> S. 13 (6) Local government Finances Act.

<sup>185</sup> S. 229 Constitution of the Republic of South Africa.

### 6.3 Power to spend revenues

With regard to expenditure, local authorities need the approval of the minister before any expenditure may take place. There is a strong central control over the expenditure priorities.<sup>186</sup> This even applies to expenditures areas financed through a local authorities own revenue, where a prescribed percentage has to be used on various specific purposes.<sup>187</sup> The central government gives direction as to how local governments should spend their revenues. For instance in the year 2008/09, the ministry of local government issues directives on how the local government budget must be used in the education sector.<sup>188</sup>

### 6.4 Assessment

It is my submission that numerous government policies and acts limit the functions of the council.<sup>189</sup> Local governments tend to be assigned unpopular local taxes which are also difficult to collect.<sup>190</sup> All council budgets for income and expenditure require the approval of the minister responsible for local government,<sup>191</sup> and the central government takes for itself taxes that are very profitable as well as also easy to collect, leaving the problematic ones unfairly to local governments.<sup>192</sup>

Local government in Tanzania lacks financial autonomy. There is thus very urgent need to incorporate in the Constitution provisions that will state the revenue sources of local governments in order to prevent the central government from weakening local government's fiscal power.<sup>193</sup> Second, local governments need to have power to make their own budget free from interference from central government. If the local government authorities have these powers they will be in a far better position to discharge their responsibilities more effectively.

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<sup>186</sup> Baker and others 2002: 29.

<sup>187</sup> *Ibid.*

<sup>188</sup> Guidelines for the Preparation of Local Government Authorities' Medium Term Plans and Budgets for 2008/09 to 2010/11.

<sup>189</sup> Baker and others 2002: 27.

<sup>190</sup> Baker and others 2002: 29.

<sup>191</sup> *Ibid.*

<sup>192</sup> Baker and others 2002: 29.

<sup>193</sup> De Visser 2005:162.

## **7 Conclusions and Recommendations**

### **7.1 Conclusion**

This research has focused on the question whether local government laws in Tanzania provide autonomy to local government. Information gathered in the course of this research show clearly that local government in Tanzania has not yet been fully empowered to carry out their functions and obligations effectively. It is clear from the study that the Tanzanian government through its Constitution establishes local government.<sup>194</sup> On the basis of the Constitution different laws were enacted to govern the administration of the local government system in Tanzania.

Chapter three of this paper shows the establishment and composition of the local government. I have noted here some problems with regard to the establishment and composition of local government. One notices a conspicuous absence of objective standards which are used to determine the type of local government. The composition of local government authorities is comprised of members of parliament, who outnumber those of the council. This is contrary to both the principle of decentralisation and local democracy.

In chapter four I discussed the function of the local government. In that chapter I pointed out despite the fact that local governments have been entrusted with different functions, the central government is still free to encroach on some functions of local government. This is due to the fact that there is no clear demarcation of functions of local government in Tanzania. Again, in many cases local governments have no final say over their functional areas. The final say still lies with the central government. Lastly, I find that some functions of local governments are not at all relevant to development.

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<sup>194</sup> Article 145(1) Constitution of the United Republic of Tanzania.



Chapter five examines the question whether local government laws ensuring full local participation. Whereas it is clear that local people do participate in some functions of local authorities, some legal impediments do still exist, for example to conduct of local government election is left in the hands of the minister. Again, the law prohibits independent candidate to contest the election of local government. Chapter six looks into the question of whether local governments have powers to raise and spend their revenues. I find that local government law provides sources of revenue for local governments but the approval of the minister is often needed for the exercise of these powers. Local government in Tanzania is therefore robbed of its autonomy.

## **7.2 Recommendations**

### **7.2.1 Determining the types of local government**

There is a need for the central government to establish a special board that will determine the boundaries and types of local government. This will help avoid complaints from people who feel that ruling party manipulates boundaries to its political advantage.

### **7.2.2 Member of the Council**

The current composition of the local councils must be changed to exclude the members of parliament, whose presence undermines democracy at local level. Tanzania can follow the example of Uganda where a member of parliament is not allowed to be a member of the local bodies.<sup>195</sup> The law also needs to include more members from the local community, such as member from civil society and others organisations and institutions.

### **7.2.3 Demarcation of Functions**

As I pointed out earlier there are some functions which are exercised by the central government despite the fact that by law they fall under the province of local government.

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<sup>195</sup> Jesper 2006: 96.

Water supply is a case in point. I suggest that water and electricity be matters for the local government. The supply of water and electricity for a charge will bring revenue to the local government. Since these two are absolutely essential this would guarantee a steady flow of revenue.

#### **7.2.4 Local government election**

My own recommendation on the issue of local government election is that the law be changed which empowers the minister to control elections. This will eliminate the possibility of biased polls. The power to conduct local elections should be vested in the National Electoral Commission. Secondly, the government should allow independent candidates to contest in local government election so as to enable them to participate in local government councils. Finally the local government elections must be conducted on the same day as general election to improve voter turnout. The present arrangement makes for voter apathy.

#### **7.2.5 Financial power**

Central government must empower local government to have full authority to raise and spend funds. The law must allow the local government authorities to approve their own budgets as in other countries such as Uganda.<sup>196</sup> The central government must give power to local government to collect those taxes which are possible to be collected. Also the central government must not hedge in their grants to local authorities with too many conditions. Finally, it is my argument that sources of revenues for local government must be included in the Constitution. This will help local government to have a guaranteed and continuous.

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<sup>196</sup> Jesper 2006: 111.

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### **Interview**

I conducted an interview with Mr. **Nazar Sola**, Senior Lecturer at Mzumbe University, Tanzania on 28<sup>th</sup> August 2008.