

**“AN ASSESSMENT ON THE EFFECTIVENESS OF
PARLIAMENTARY CONTROL OVER DELEGATED
LEGISLATION IN TANZANIA: A CASE STUDY OF
PARLIAMENTARY COMMITTEE ON SUBSIDIARY
LEGISLATION”**

**“AN ASSESSMENT ON THE EFFECTIVENESS OF
PARLIAMENTARY CONTROL OVER DELEGATED
LEGISLATION IN TANZANIA: A CASE STUDY OF
PARLIAMENTARY COMMITTEE ON SUBSIDIARY
LEGISLATION”**

**By
Elihaika Henry Mtui**

**A Dissertation Submitted in Partial Fulfilment of the Requirement for Award of
the Degree of Master of Laws, (LLM) - of Mzumbe University.**

2013

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by Mzumbe University, a Dissertation entitled “An Assessment on the effectiveness of Parliamentary control over Delegated Legislation in Tanzania, A case of Subsidiary Legislation Committee” in fulfilment of the requirements for award of the degree of Master of Laws (LLM) of Mzumbe University.

Major Supervisor

Internal Examiner

External Supervisor

Accepted for the Board of
.....

Signature
.....
DEAN, FACULTY OF LAW

DECLARATION

I, Mtui Elihaika Henry, declare that this Dissertation is my own original work and that it has not been presented and will not be presented to any other University for a similar or any other degree award.

Signature:

.....

Date

.....

© COPYRIGHT

This Dissertation is a copyright material protected under the Berne Convention, the Copyright Act, 1999 and other international and national enactments, in that behalf, on intellectual property. It may not be reproduced by any means, in full or in part, except for short extracts in fair dealings, for research or private study, critical scholarly review or discourse with an acknowledgement, without the written permission of the Directorate of Postgraduate Studies, on behalf of both the author and Mzumbe University.

ACKNOWLEDGEMENT

First and foremost, I thank God the Almighty for giving me health, strength and courage to undertake this study, without his love this work would have not been possible.

I wish to extend my words of thanks to various people who in one way or another contributed to the completion of the study. It is not possible to mention every one, but to all of them I acknowledge their supports with all my heart. My great appreciation should go to Mr, Ladislaus Rwekaza for supervising and guiding me in the preparation of this report.

I am equally grateful to Mr and Mrs Mujuni Kyaruzi, Mr Charles Mloka, Director of Parliamentary Committee department, and his assistant Mr. Athuman B. Hussein, Ms. Lulu Gumbo and Mr. Emmanuel Henry Intern Dr. of MUHAS, Mr. Mgendela State Attorney in Prime Minister's Office Regional Administration and Local Government, Mr, Casmir M. Kyuki Chief Parliamentary Draftman, through material and moral support they provided to me made this work to be complete.

I would like to extend my appreciation to Parliamentary Service Commission for the sponsorship and permission which made this study possible. I owe my deepest gratitude to my beloved parents Mr and Mrs Henry Mtui for their special prayers throughout my studies.

In a very special way, I want to recognize and greatly appreciate the support, patience, endurance and understanding of my beloved husband Mr, Jovinary Wilfred during the period I have been undertaking a course of study leading to award of the Degree of Master of Laws.

Finally, I take responsibility for all that is written in this study.

DEDICATION

To the late Prof. Mwemezi Christian Mukoyogo for his academic support when I pursued my LL.B

ABSTRACT

This study examines the effectiveness of Parliament in the controlling over delegated legislation in Tanzania, specifically the parliamentary Subsidiary Legislation Committee.

The problem addressed in the study is that, despite the parliament having been empowered by the Constitution of United Republic of Tanzania to delegate its legislative power to executive authorities to enact subsidiary legislation, little has been done by the law to ensure the proper legislative control over delegated legislation, a case which result to inconsistencies in laws and practice. The study is mainly based on primary data collected through review of literary works and questionnaire given to selected personalities. The result of the study reveals that Parliament delegates its legislative power to the executive authorities and granted itself an obligation to oversee authorities without enacting a law which will empower the organ to do so. This is to say there is no hard and fast rule which bind executive authorities to stick fast to the Act of parliament while making of delegated legislation as a result the authorities fails to adhere to the procedure stipulated under the law. The study also revealed that the confusion of parliament as to which procedure to follow in the control of delegated legislation is caused by the parliament itself as it enacted various provision with various procedures for making of subsidiary legislation in Tanzania. This made the organ to play little role in the control of delegated legislation in Tanzania. It is therefore recommended that there is a need for parliament to restructuring on the issue of control of delegated legislation in Tanzania by increasing much power and provide uniformity procedures to allow parliament and its committee to watch on delegated legislation properly. Parliament should enact single legislation which provides for parliamentary control over delegated legislation in Tanzania. Last capacity building is required for Members of Parliament to be able to oversee legislation properly; they should be in a position to understand the power they delegate and the effect brought by abuse of such power. By so doing the organ will play its role effectively.

TABLE OF CONTENTS

CERTIFICATION	i
DECLARATION	ii
© COPYRIGHT	iii
ACKNOWLEDGEMENT	iv
DEDICATION.....	v
TABLE OF CONTENTS	vii
LIST OF TABLES.....	xi
LIST OF STATUTES	xii
LIST OF CASES	xvi
ABBREVIATIONS AND ACRONYMY.....	xvii
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.1 Introduction.....	1
1.2 Background of the Study	2
1.3 Statement of the Problem	5
1.4 Research Questions	6
1.5 Objectives of the Study	7
1.5.1 General Objective.....	7
1.5.2 Specific Objectives.....	7
1.6 Scope of the Study.....	7
1.7 Significance of the Study.....	8
1.8 Literature Review	8
1.9 Research Methodology	18
1.9.1 Research Design.....	18
1.9.2 Population and Sampling.....	18
1.10 Sources of Data	19
1.10.1 Data Collection Methods.....	19
1.10.2 Data Processing and Analysis	20

1.11	Area of the Study	20
1.12	Scope of the Study.....	21
1.13	Limitations of the Study	21
CHAPTER TWO		22
CONCEPTUAL FRAMEWORK OF DELEGATION OF POWER AND LEGISLATIVE CONTROL OVER DELEGATED LEGISLATION		22
2.1	Introduction.....	22
2.2	The Meaning of Delegated Legislation and Legislative Control.....	23
2.3	Reasons for the Growth of Delegated Legislation	26
2.4	The Role and Functions of Delegated Legislation.....	28
2.5	The Subsidiary Legislation Committee	29
2.6	Conclusion	30
CHAPTER THREE		32
CONTROL OF DELEGATED LEGISLATION IN TANZANIAN CONTEXT		32
3.1	Introduction.....	32
3.2	Necessity Control of Delegated Legislation	32
3.3	Organs Responsible for Control of Delegated Legislation in Tanzania.....	33
3.4	Control of Delegated Legislation by the Judicial Organ	34
3.5	The Doctrine of <i>Ultra Vires</i>	35
3.6	Control of Delegated Legislation by Legislative Organ.....	40
3.7	Control of Delegated Legislations by other Organs.....	41
3.8	Conclusion	42
CHAPTER FOUR.....		44
PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN TANZANIA.....		44
4.1	Introduction.....	44
4.2	The Role Played by the Parliament of United Republic of Tanzania	44

4.3	Laying before the Parliament	45
4.4	Scrutiny Committees	48
4.5	Parliamentary Committees and its Functions	49
4.6	Parliamentary Committee on Subsidiary Legislation.....	50
4.7	Composition of Members of the Committee	51
4.8	Functions of Subsidiary Legislation Committee.....	53
4.9	Measuring the Function of Subsidiary Legislation Committee	56
4.10	Legal and Institutional Framework for Legislative Control of Delegated Legislation in Tanzania	57
4.11	Conditions Necessary for Effective Parliamentary Subsidiary Legislation Committee.....	58
4.12	Size of the Committee	58
4.13	Leadership of the Committee.....	59
4.14	Knowledge and Skills of Members of the Committee	59
4.15	Commitment and Interest of Members of the Committee	59
4.16	Availability of Resources to the Committee.....	59
4.17	Availability of clear Guidelines	60
4.18	Capacity Building for Secretariat and Members of the Committee.....	60
4.19	Conclusion	60
CHAPTER FIVE		62
PRESENTATION OF STUDY FINDINGS ANALYSIS AND DISCUSSION...62		
5.1	Introduction.....	62
5.2	Delegated Authorities and the Law Making Power	62
5.3	Observation Made at the Parliament of the United Republic of Tanzania	63
5.4	Observation Made to the Scrutiny Committee.....	65
5.5	Work of the Scrutiny Committee	66
5.6	Legal Position for Committee Operation.....	72
5.7	Conclusion	76
CONCLUSION AND RECOMMENDATIONS.....		77
6.1	Introduction.....	77

6.2	General Conclusion	79
6.3	Recommendations	81
6.3.1	Enactment for the Special Provision for Control of Delegated Authorities in Tanzania	81
6.3.2	Need for Uniform Provision of Laying.....	82
6.3.3	Provision for the Clarity Procedural for Scrutiny Function	82
6.3.4	Division of the duty of Subsidiary Legislation Committee	83
6.3.5	Expanding the Function of the Scrutiny Committees.....	83
6.3.6	Report of the Scrutiny Committee.....	84
6.3.7	Capacity Building for Secretariat and Members of the Scrutiny Committee	85
6.3.8	Leadership in the Scrutiny Committee	86
6.3.9	Membership in the Scrutiny Committee	86
6.3.10	Ministers and Deputy Ministers Should not be Members of the Parliament	87
6.3.11	The Qualifications for Member of Parliament Should be Reviewed ...	87
6.3.12	Need for Special Studies to be Conducted.....	88
6.3.13	General Recommendations	88
APPENDICES.....		93

LIST OF TABLES

Table 1: The response of committee members on the awareness on delegated legislation.....	66
Table 2: The response from other governmental official on the factors hindering the efficiency of the committee in controlling delegated legislation in Tanzania.....	71
Graph 1: The response from Members of committee on clarity of rules and procedures for control of delegated legislation.....	75

LIST OF STATUTES

Principal Legislations

- The Constitution of the United Republic of Tanzania [CAP 2 R.E. 2002]
- The Interpretation of the Laws Act [CAP 1 R. E.2002]
- The Parliamentary Immunities, Powers and Privileges Act (CAP 296) R.E 2002
- The Local Government (Urban Authorities) Act [CAP 288 R.E. 2002]
- The Local Government (District Authorities) Act [CAP 287 R.E 2002]
- The Local Government Finances Act, Act. No.9 of 1982
- The Tanzania Civil Aviation Authority Act (CAP 80),
- The Foreign Exchange ACT [CAP 271 R.E 2002]
- The Merchandise Marks Act (CAP 85)
- The Town Planners (Registration) Act, 2007 No, 7 of 2007
- The Road and Fuel Tolls ACT [CAP 220 R.E 2002]
- The Urban Planning Act. Act No 8 of 2007

SUBSIDIARY LEGISLATIONS

The National Assembly Standing Orders, 2007 Edition

The Tanganyika Order in Council, 1926

Sheria Ndogo (MASOKO YA MIFUGO) za Halmashauri ya Wilaya ya Shinyanga, 2004 Sheria Ndogo za Halmashauri ya Manispaa ya Singida (KODI YA

MAJENGO) (MAREKEBISHO) za Mwaka, 2007 T.S Na. 86 lililotangazwa tarehe 20/06/2008.

Tanzania Civil Aviation Authority (CODE OF FUNCTION) (BOARD MEMBERS AND EMPLOYEES) RULES, GN. No. 87 published on 20/06/2008.

The Foreign Exchange (BUREAU DE CHANGE) REGULATIONS, GN. No. 88 published on 20/06/2008.

The Merchandise Marks Regulations, GN. No. 89 published on 20/06/2008

The Town Planners Registration (NOTICE) GN. No. 91 published on 20/06/2008.

The Road and Fuel Tolls (EXEMPTION) the projector for improvement of Masasi-Mangaka Road (M/S Tokura Corporation (ORDER) GN. No 98 published on 04/07/2008.

The Architects and Quantity Surveyors (AMENDMENT BY LAW 2008) GN. na 150 published on 05/09/2008.

The Universal Communications Service Access Act (COMMENCEMENT DATE) NOTICE. GN.No. 151 published on 5/09/2008.

The Notification for the Application of the Plant Breeders Right for Nine. Gn. No. 152 published on 5/09/2008.

Appointment of Taxing Officers (amendment) ORDER, 2008, GN No. 105 published on 18/7/2008.

The Veterinary (Retained Registered Veterinarians) NOTICE, 2008 GN. No. 78 published on 16/06/2008.

The Dodoma Municipal Council (fumigation) By-laws, 1995 GN.No 249 published on 4/10/1996.

LIST OF FOREIGN STATUTES

Delegated Legislation provisions (Amendment) Act, 2004 (Act No 4 of 2005) (India)

Statutory Instrument Act 1946 (United Kingdom).

Reorganization Act 1939 (United States of America)

LIST OF CASES

- Avinder Singh v. State of Punjab** (1979) 1 SCC 137: AIR 1979 SC 321
- Fatuma Awadhi Said El Hind v. Salima Ali** [1990] TLR
- Koinage Mbiu v. R** (1951) 24 (2) K.L.R. 130
- Mwangi v. R** (1950) 24 (1) K.L.R 72
- Nanal Damodar Kanji v. Tanga Township Authority.** (1940)1 TLR (R) 239
- Panama Refining Co. v Ryan** (1934) 293 US 388
- R.v. Wakiso Estate** (1955) 7 U.L.R 137
- R v. Hermitte**(1938) 18 K.L.R 55.
- Remtulla Gulamali v R** (1936) 1 TLR 203
- US v. Two hundred Barrels of whisky** (1877) 95 US 571.

ABBREVIATIONS AND ACRONYMY

AG	Attorney General
CPD	Chief Parliamentary Draftsman
CPA	Common Wealth Parliamentary Association
DPC	Department of Parliamentary Committee
KLR	Kenya Law Reports
LGA	Local Government Authorities
LAAC	Local Authorities Accounts Committee
MP	Member of Parliament
MPs	Members of Parliament
PCSL	Parliamentary Committee on Subsidiary Legislation
PAC	Public Accounts Committee
POAC	Parastatal Organisations Accounts Committee
PMO	RALG-Prime Minister's Office Regional Administration and Local Government
RC	Regional Commissioner
Sis	Statutory Instruments
ULR	Uganda Law Reports

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The United Republic of Tanzania is a state, which adheres to the principles of democracy and social justice accordingly. In any Democratic state the Constitution of the country, allow people to participate in the affairs of their government. In The United Republic of Tanzania individuals are participating in the affairs of the Government and the Government is accountable to the people,¹ in this sense the concept of power delegation and control over the same whether by parliament or by judiciary is not a new concept to discuss as it is well practised in the Government of United Republic of Tanzania, that individuals under the umbrella of the executive authorities given power by the constitution of the country to enact their own regulations for their local usage, such process is known as delegation of legislative power to the executive authorities. For the constitution to allow delegation of legislative power to the executive authorities, it is also entitled to allow safeguards of exercise of such power by executive authorities to prevent abuse of power.

The study examine the efficacy of the authority of parliament specifically its selected committee on Subsidiary Legislation in watching delegated legislation, this means it examines the power of the National Assembly upon executive authorities in law making process. Theoretically, the concept of power separation advocates separation of powers to the organs of state, whereby under such concept only Parliament vested with power to enact law of the land. However the development of governmental function compel changes from police state to welfare states hence power sharing, between Parliament and Executive, that apart from pure administrative function executive also has given legislative function to enact subsidiary legislation and making of principal legislation has been left to the Parliament.

¹ Article 8 (c) and (d) The Constitution of united Republic of Tanzania, 1977 as amended from time to time.

In Tanzania, the obligation to check on delegated legislation is within the ambit of the Parliament of United Republic of Tanzania since it evidenced to delegate its legislative power to the executive authorities to enact subsidiary legislation so it is entitled to control over the same.² Example in the Interpretation of Laws Act even president of United Republic of Tanzania has been given power to make subsidiary legislation,³ not only that but also other administrative authorities given such power to enact delegated legislation,⁴ the remain concern of this study is whether there is sufficient oversight by parliament on legislation enacted by the executive authorities. It is evidently that parliament has the initial control with the enabling Act, which sets out situation in which delegated legislation is to be made. Parliament has a scrutiny committee that watches over the making of delegated legislation and writes a report to the parliament containing information about any delegated legislation they feel need special consideration. Currently, legislative process is increasing and that legislative output is achieved at the expense of effective parliamentary amendment and scrutiny.

1.2 Background of the Study

Tanzania is a sovereign state, which believes and follows the practices of the constitutional principles including the principle of separation of powers, which provides for the distribution of powers/functions at the different organs of the State. That is, executing function is vested to the Executive organ, judicial function is vested to the Judiciary and legislative function is vested to the Parliament of the United Republic of Tanzania.⁵ Each organ establishes and discharges its functions in accordance with other provisions of the constitution.

² Article 97(5) provides powers for making of regulations and Article 63 (2) of the Constitution of United Republic of Tanzania 1977 provides powers to the Parliament to oversee and advise the Government

³ Section 35, [CAP 1RE 2002]

⁴ Local Government Authorities has been given power to make delegated legislation by Section 89, Local Government (Urban Authorities Act [CAP 288. R.E 2002]

⁵ Article 4(2) of The Constitution of United Republic of Tanzania, 1977 [CAP 2, R.E 2002]

The expedition towards the origin of the Parliament of United Republic of Tanzania can be traced back from the period before independence, when the British enacted a law called the Tanganyika Order and Council of 1926, the law empowered the Governor Sir Donald Cameron to establish The Tanganyika Legislative Council. (LEGGO), the council consisted of twenty (20) members who were appointed by the Governor. Under such council the Governor was vested with powers to make ordinances. Later on the power of the Governor came to an end and the council was changed to Legislative Assembly, this was the period when the President of Tanganyika started to assent the laws⁶ and it resulted to the current legislative organ which consists of two parts, that is, the President of United Republic and the National Assembly.⁷ The organ has authority on behalf of the people to represent them in different functions including budget scrutiny for the administration of the country, it oversee the action of the executive by being the watchdog to ensure that government is accountable for its administration and the most important function of the parliament is to make laws.

By looking back to the history, it is the parliament, which was vested with the primary power to enact laws of the land. The increase of governmental functions and the complexity of modern administration during 20th century marked the beginning of transfer of legislative power to executive organ. This changes lead to the growth of legislative power of the executive, whereby making of subsidiary legislation remains the power of the executive and the Parliament enact principles legislations which put a framework or parameters within which subsidiary legislations are enacted. The transfer of legislative power to the executive authorities help individual to participate in the affairs of their government and planning their own programme in which the implementation could be impossible if there could be no law to govern the conduct of individual within the society, thus subsidiary legislation is inevitable to the development of executive authorities. In Tanzania, people are involved in the

⁶ <http://www.parliament.go.tz> viewed on 20 February 2013

⁷ Article 62 (1) of The Constitution of United Republic of Tanzania, 1977[CAP 2 R.E 2002]

development of their country by given an opportunity to plan and implement their development programme by using local regulations enacted by the local authorities for their local use. The authorities given such power to enact their own regulations by the Constitution of United Republic of Tanzania which empowers the Parliament to enact laws which delegate its legislative power to any person or department of the Government, the power to make regulations having the force of law or conferring the force of law on any regulations made by any persons or any department of Government.⁸

The Interpretation of the laws Act⁹ provides for the concept of delegated legislation and various procedures to enact them provided therein. Again in Local Authorities Acts both Urban and Rural the power to enact legislation is given to Local Government Authorities, as a result many delegated legislations are enacted under various enabling provisions to accommodate rapidly changes while on the other side they increase difficulties on legislative organ as they informal enacted by authorities which fails to comply with procedures required by the law, hence it becomes difficult for the parliament to watch them properly. Despite of the existing difficulties, it is the obligation of the Parliament that, once it seeks to delegate its legislative power it bound to ensure the proper exercise of such power by trusted authorities. One cannot delegate its function without checking how it is performed. Thus the uniformity and effective means of Parliamentary control of delegated legislation is inevitable in Tanzania instead of relying on practises of the existence of various laws and procedures which provides for delegated legislation and at the same time brought confusion on safeguards over the same by legislative organ.

On the other side, governing the authorities would be impossible if Parliament would not give delegated powers to the ministers and other agencies such as local authorities to make legislation on a whole range of technical detailed issues, since Parliament has neither time to make all legislation needed, or the expertise to

⁸ Article 97(5) , Article 64, [CAP 2 R.E.2002]

⁹ Section 4, [CAP 1, R.E 2002]

understand what is required. So the need for delegated legislation is essential and inevitable, yet there remains whether there is sufficient oversight by parliament of such legislation.

Parliament after delegate its legislative power, it remains with the task to watch on delegated authorities while enacting subsidiary legislation. It doing such function direct by stipulates some of the limitations to the enabling Act. It also forms Subsidiary Legislation Committee responsible for control of delegated legislations. The committee is among 18 committees established by the parliament of United Republic of Tanzania by virtue of Article 96(1) of the Constitution of United Republic of Tanzania which empowers the organ to establish its standing committees for the better discharge of its functions. The Subsidiary Legislation committee established to scrutinize delegated legislations, and ensure that, legislations are conformity with constitution, parent Act, and any other law of the land. The committee scrutinizes subsidiary legislations since 2007 to the present; this means that, before 2007 regulations were enacted without being scrutinized by the parliament. However it should be noted that, the control of delegated legislations is not the only core function of the parliament, the core function is to enact laws of the land and budget scrutiny. In this sense the parliament is somehow reluctant in respect of the control over delegated legislation and concentrates much in budget scrutiny and policy making. Thus it is important to assess how parliament control subsidiary legislations in Tanzania, a function entrusted by the organ itself to the executive authorities.

1.3 Statement of the Problem

The Constitution of United Republic of Tanzania provides legal framework for delegated legislation in Tanzania¹⁰. It empowers the parliament to delegate its legislative power to any person or department of the government the power to make subsidiary legislation in order to ensure flexibility in law making regarding to the changing of circumstances. On the same side, the National Assembly of Tanzania

¹⁰ Article 97(5)

control Delegated Legislation by stipulating parameters or the ambit in the principal legislation within which the enactment (Delegated Legislation) should confine itself. It also introduced standing committee for control of delegated legislation in more detailed manner. The problem addressed in this study is that, despite the parliament having been empowered by the Constitution of United Republic of Tanzania to delegate its legislative power to the executive authorities to enact subsidiary legislation, and despite of the existence of standing committee for control of delegated legislation at the parliament of Tanzania, little has been done by the law to ensure the proper legislative control over delegated legislation, a case which result to non compliance of the procedures and inconsistencies of laws and practices in Tanzania.

Research Questions

In searching for the effectiveness of the legislative control over delegated legislation in Tanzania, the study attempts to answer the following research questions;

- What is the legal framework for enacting delegated legislation in Tanzania?
- Is the law provides clarity of rules and procedures for enacting delegated legislation in Tanzania?
- What is the legal framework for legislative control of delegated legislation in Tanzania?
- What is the rationale for the legislative organ to watch on executive authorities in law making process?
- Does the Parliamentary Subsidiary Legislation Committee having enough resources to ensure the effective control over delegated legislation in Tanzania?

1.4 Objectives of the Study

This study was guided by the following general and specific objectives;

1.4.1 General Objective

The overall objective of this study is to assess the effectiveness of parliamentary control over delegated legislation in Tanzania, specifically parliamentary committee on subsidiary legislation in order to propose ways for improving the performance of the committee and the parliament at large.

1.4.2 Specific Objectives

In order to achieve the main objective this study specifically intended to:-

1. Identify the legal framework for the control of delegated legislation in Tanzania.
2. Determine whether the rules, procedures and practises of delegated legislation are clear.
3. Identify the impediments to the effectiveness of Parliamentary Standing Committee in controlling delegated legislation.
4. Identify various factors which amounts to the effective parliamentary control over delegated legislation

1.5 Scope of the Study

The study was conducted to cover the effectiveness of parliamentary control over delegated legislation in Tanzania Mainland; mostly it confines itself on the control function performed by parliamentary committee on subsidiary legislation. The Parliamentary committee on subsidiary legislation was chosen because it is the integral part of parliament in performing oversight function of the parliament. The study was conducted in the country of Tanzania within the regions of Dar es Salaam and Dodoma, areas where the Parliament is mainly used to sit and conduct its functions.

1.6 Significance of the Study

This study poses a remarkable importance to parliamentarians, parliamentary association, politicians, academicians, and people in the United Republic of Tanzania, simply because: It reveals the strength and weakness of Parliament in the control function of delegated legislation.

Second, the findings of this study may alert the parliament, specifically parliamentary committee on subsidiary legislation to understand its position in regarding to the control over delegated legislation and by so doing the parliament may increase its efficacy over the same. It may also create an awareness to delegated authorities to enact law while having in mind that the same will be under the legislative control, by so doing the authorities may adhere to the conditions provided by enabling Act in relation to the enacting of delegated legislation.

Thirdly, the findings of this study will examine the institutional and legal framework for the performance of legislative control over delegated legislation, in so doing it will show how the constitution and parliamentary standing orders and other laws guides the parliament to delegate and control over subsidiary legislation. In case of any weakness, the study will suggest ways to improve.

Last but not least, the findings of the study will help the Parliament of Tanzania to strengthen and improve more on discharging of its functions and exercise of its constitutional powers particularly the power to control delegated legislation in Tanzania. On the same note the findings will further be useful for academicians and legal experts in their practices.

1.7 Literature Review

The concept of power delegation differ from one country to another depends on the type of the constitution and the legal system practised in that particular area. Others are limited by the constitution while others do not. The same applies to the procedures for the control of delegated legislation, sometimes vary from one country

to another depending on the nature of the legal system existing at a specified area and procedures prescribed in the enabling Act. Much has been written in the field of delegated legislation and the means of controls and safeguards over the same. But it is important to note that, one cannot mention the concept of parliamentary control over delegated legislation without first explaining how the parliament delegates its legislative power to the executive and other authorities. The two are contemplating to each other. But since the focus of this study is the effectiveness of parliamentary control over delegated legislation in Tanzania, it is worthy to concentrate with legislative control over delegated legislation while keeping in mind how delegated legislations came in to being.

Chipeta¹¹ in his book explains the concept of delegated legislation as an important source of Administrative law in Tanzania. He explains the importance of delegated legislation in recent years as it witnessed that power transferred from Central Government to local authorities, public bodies and tribunals. In his book he did not provide much about control of delegated legislation rather than the importance of delegated legislation in Tanzania and argued that with delegated legislation the authorities and other bodies legislate under supervision of parliament. This area will be detailed to see how the parliament is supervising other bodies/authorities in enacting of delegated legislation, the gap created by law will be noted and the proper safeguards will be suggested, so that the power trusted to other authorities not misused or misapplied.

David Pollard¹² while providing a detailed on the importance of governing a society by using delegated legislations he argued that, parliament has neither time to make all legislation needed, or the expertise to understand what is required, he expressed on the importance of delegated legislation that they are enacted in a wide terms, very detailed with main issues covered there inn, for example, powers to repeal or amend primary legislation itself, in comparison with many Acts of parliament which are

¹¹ **Administrative law in Tanzania** 2009, A digest of cases, Mkuki and Nyota Publishers.

¹² **Constitution and Administrative law** 4th edn. 2006, Oxford University.

become mere outline measures, so skeletal to be filled by regulation enacted by authorities. He further provides for the sufficient parliamentary oversight on delegated legislation and argued that the key to understanding the parliamentary system of control over delegated legislation is to realise that much depends on the drafting of the enabling or parent Act. This study will also proceed to view the parent Act and enabling Act as the key aspect to determine the validity of subsidiary legislation and at the same time increase difficulties in legislative control of delegated legislation, as they allow the flow of legislation with various uniformity, that each delegated legislation enacted according to what is stipulated in the enabling Act, and they are required to comply with the existing law, unless enabling law so provides, failure to that it will invalidate the rules so framed.

In supporting the above position Takwani¹³ provided the general principle, which required the delegated legislation to be valid, he argued that delegated legislation must be consistent with the parent Act and cannot travel beyond the legislative policy and standard laid down by legislature. This is to say before legislature delegate its legislative power it lay down in parent Act or in enabling statute various procedures required to be followed by delegated authorities while making delegated legislation. Those procedures can be publication of draft rules or by-law, consultations with interested parties, laying legislation before the parliament, etc. This study is aiming at assessing the efficacy of parliament in controlling delegated legislation, by so doing it will be assessing the compliance of delegated authorities to various procedures prescribed in the Enabling or Parent Act, since it is a rule that, delegated authorities are required to comply with various procedures provided by law while making of subsidiary legislation, failure to comply will invalidate the rules so framed. To ensure such compliance it is an obligation of the delegate to watch over the authorities to ensure that the power conferred to them are not misused/ violated.

¹³ **Lectures on Administrative Law**, 4th edn. 2008, Lucknow Estern Book Co. New Delhi.

Arguing further Takwani¹⁴ explained that it is open for the parliament to confer power upon anyone it likes, he argued that if the parliament delegate its legislative powers to any other authorities such as executive, it must also has the obligation to see if those powers are properly exercised by administration. He suggests two modes used by legislative organ to oversee such delegated power including laying on the table and scrutiny by the committees. He provides several types of laying legislation before the parliament and argued that , in commonwealth countries the procedure of laying legislature on the table is followed but there is no uniformity practised in the laying procedure as each legislation is originated from different parent Act hence it carry its own procedure, This factor affect the efficacy of legislative control of delegated legislation as each legislation so enacted is enacted under its own procedure and each has its own model of control since it is the parent Act which determines the type and extent of the scrutiny over delegated legislation , in this case the extent of legislative control differs from one regulation to another, thus it is important to conduct the study to trace the legal framework and procedures practiced in law making and control of delegated legislation in Tanzania.

Upholding the position above, Oluyede¹⁵ explained that in Tanzania the Interpretation of the Laws Act¹⁶ does not provides for the uniformity procedure to be followed in law making process. He provides an example on laying procedure and argued that in Interpretation of Laws Act, laying before the parliament is not a mandatory provision which will require all regulations to be laid before the parliament. It is however provides that where a particular statute prescribes this procedure then in that case the National Assembly shall have power to annul. Such a gap will cause authorities which entrusted power to enact delegated legislation to use such loophole to enact legislations and add their own things with their own interest knowing that the same will not going to be tabled before the Parliament. This is normal increases complains on delegated legislation within the society at large and at

¹⁴ *Op cit*

¹⁵ **Administrative Law in East Africa**, (1973), Nairobi:Kenya Literature Bureau.

¹⁶ [CAP 1, R.E 2002]

the same time increases difficulties for the parliament to watch on delegated legislation which enacted without proper requirement of the law. This influence to study the effectiveness of Parliamentary control over delegated legislation, where by suggestions and recommendations will be made following the current position existing in Tanzania in relation to legislative control of delegated legislation.

Emphasized on legislative control of delegated legislation, the above writer explains further about the procedure of laying legislation before the parliament as a mode of legislative control of delegated legislation. He made comparison with other jurisdiction in East African countries where by in other countries like Kenya laying before the parliament is a mandatory procedure, that it is a statutory requirement which require all rules, by-laws, and regulations made under any Act of parliament to be laid before the parliament before they come into operation¹⁷.

The position is the same in Uganda whereby it is a statutory requirement for subsidiary legislation which is made under some Act to be laid before the National Assembly before they coming in to operation. A good example is offered by section 80 of the Ugandan Employment Ordinance (Cap. 83) which states that “Rules made under paragraphs (1), (2), (3) and (15) shall be laid before the Legislative council and shall not come into operation until they have been approved either with or without modification by a resolution passed by the Legislative Council” The position is well illustrated in the case of *R.v. Wakiso Estate*¹⁸ whereby the rules which were alleged to have been contravened were purported to have been made under paragraph (1) of section 80 of the Employment Ordinance (Cap 83) to which the above quoted proviso applies. The rules under which the accused was charged were not in fact made by the Governor before a draft was laid before the Legislative Council for its approval. The learned Magistrate of the District Court in a carefully worded held that the rules which require approval could not be laid before the Legislative Council and approved or modified by the Council until they have been made by the Governor.

¹⁷ Oluyede *Op.Cit.*

¹⁸ (1955) 7, U.L.R 137

The accused who was charged on six counts under Ugandan Employment Rules was therefore discharged. The Attorney General of Uganda appeal against this decision. On appeal it was held that,

“... The words of the proviso are clear and unambiguous. What is contemplated is that the rules shall first be made by the Governor and then be submitted to the Legislative Council for its approval or otherwise, and they shall not come into operation until they are approved either with or without modification...Until the Rules have been ‘made’ by the Governor in the sense that he has signified his approval of them by signing them, there is nothing which can be laid before the Legislative Council or brought into operation...”¹⁹ .

The appeal was dismissed. The crux of the matter lies in the instrument creating the rules which reads: “Made at Entebbe this 21st day of May, 1946 and approved by a resolution passed by the Legislative Council on the 30th April, 1946, this shows that on 30 April when the rule was laid before the Legislative Council, the rule had not been made by the Governor and it was made only 21 days after, that is on the 21st May, 1946. This shows what lay before Legislative Council was nothing. This case shows the importance of the rule that any subsidiary legislation should as a matter of practice, follow the proper procedure as laid down by the parent statute otherwise it may be of no effect.”²⁰

In Tanzania the position is slightly different, parliament is delegate its enormous power to the executive authorities to enact subsidiary legislation to ensure flexibility in law making in order to meet the existing demand, but at the same time Parliament through the Interpretation of the laws Act²¹ does not provides the mandatory requirement for all legislation, regulations, by-law which are enacted by delegated authorities to be laid before the parliament before they come in to operational, it rather provides power for the National Assembly to annul if particular statute prescribes for that procedure. This means Parliament is total entrust executive

¹⁹ (1995) 7 U.L.R at pg 137 and 138

²⁰ Ibid, pg 68

²¹ [CAP 1 R.E 2002]

authorities to legislate on their behalf but it does not want to see how executive perform such function, today the question is not whether delegated legislation is desirable or not, but it is what controls and safeguards can be introduced so that the power conferred to the executive authorities not misused, abused or misapplied. Here the issue to determine is, why the law of Tanzania failed to uphold the legal position existing in Kenya or in Uganda to ensure the properly exercise of power trusted to the executive authorities. This study will answer the question by looking on the impediments for parliament to check on subsidiary legislation as it checks on other governmental functions.

Arguing on the same Wade²² insists on the impact of laying legislation before the parliament, that is to enable the parliament to check on delegated legislation and provides opportunities for criticism. The position is quiet different with the position existing in Tanzania, whereby the procedure for laying down legislation is considered for the purposes of notification and advertisement to the members of the parliament , that the particular legislation is enacted, there is no room for Members of Parliament to criticize on delegated legislation before such legislation come into operational. However the extent of parliament to supervise on delegated legislation will depends on the procedure prescribed in the enabling Act. If there is no condition for laying before the Parliament, negative resolution, affirmative resolution or approval in draft form by parliament, apart from passing the enabling Act parliament may never have a say in such particular subsidiary legislation.

Considering scrutiny of subsidiary legislation, as the alternative means used to control delegated legislation Takwani²³ argued that scrutiny is of much use compared to laying before the Parliament simply because laying on the table has not always been held to be mandatory, hence not of much use unless the rules were properly studied and scrutinized. Thus to strengthening parliamentary control over delegated legislation, scrutiny function is established and given to the selected committee an

²² Wade H.W.R & Forsyth C. F, (2004) **Administrative Law 9th edn, Oxford: Oxford University Press.**

²³ *Op Cit.*

obligation to scrutinize legislation enacted by delegated authorities. The writer goes further provides how such function of scrutiny is performed by the committee, he made reference to the situation existing in England and India and argued that, the function of the committee is to scrutinize and report to the respective houses whether the power to make regulations, bylaws, rules sub-rules are conferred to the constitution. This attract the researcher to do a comparative study to see whether parliament of United Republic of Tanzania via its specific committee of subsidiary legislation uphold such position as it is practised by parliament of other countries, and whether the committee scrutinized subsidiary legislation before they entered in to operation or it doing a post-mortem to scrutinize legislation after they start to operate within the society, the recommendation made will possibly attract the parliament to perform such function effectively.

Takwani even though acknowledge the scrutiny function as the effective means of control over delegated legislation , he did not go further explain for the legal position as far as scrutiny of By-Law is concerned. He did not explain the impact to the society when such function is not well performed. A study which will be conducted to answer the question why people's grievances increase over delegated legislation a case delegated by the parliament. The study will find out the legal framework for delegation of power and control over the same including scrutiny control, how such function is performed or required to be performed effectively, to go away from people's grievances on delegated legislation.

Erskine May²⁴ while writing on Parliamentary practices in United Kingdom has also explained a little bit about delegation of power and scrutiny of delegated legislation as a means of legislative control of delegated legislation. He argued that, legislative power is often conferred upon the executive by the statute, and various arrangements are made for parliamentary scrutiny of its exercise. He proceeds arguing that the degree of parliamentary control and scrutiny over them will depend in each case upon the particular statute, which authorizes them. He provide criticism for control

²⁴ **Parliamentary Practice** 22nd Edn, (1997), Butterworth's London.

of delegated legislation, that since they are made by delegated authorities and not parliament they avoid normal scrutiny to which parliament made law is subjected and in particular the possibility of being amended. The provided critic is one to be discussed in this study since it has impact on the society at large. That by avoiding normal scrutiny delegated legislation resulting to the increase of people's grievances on them as they allow the flow of legislation without any limitation and at the same time the situation leads to the applicability of *ultra-vires* rules as the law applicable without proper parliamentary scrutiny.

One author argued that delegated legislation is law, and ignorance of the law is no excuse for those who contravene it, the issue to clarify in this study is, why delegated legislation avoids normal scrutiny while they are enacted by authorities vested with power to do so by the Act of parliament, the answer to this will be determined by the legal position existing in Tanzania in relation to legislative control of delegated legislation.

Arguing slightly differently, Ssekaana²⁵ had the view that, there is no standard procedure for making subsidiary legislation as it takes so many forms. This possibly creates confusion to the delegated authorities as to which will be the proper procedure to follow while making of delegated legislation, on the other side this caused confusion to the legislative organ as it will be required to control legislation which is enacted without standard procedures required by the law hence erode the efficacy of the organ to the said function. This writer encourages studying the efficacy of parliamentary control over delegated legislation due to the fact that as far as Tanzania is concerned various standards and procedures for enacting delegated legislation are provided under the law²⁶ as the conditions for enacting delegated legislation. For example it is stipulated under Part VI, section 37 of Interpretation of Laws Act²⁷ that, publication of subsidiary legislation before it becomes into

²⁵ **Public Law in East Africa**, (2009) Dar es salaam: LawAfrica Publishing (T) Ltd

²⁶ Example Local Government Urban Authorities Act, 1982 provides standard and procedures to be followed by Local Government authorities in enacting by-laws.

²⁷ CAP 1 R:E 2002

operational is one of the requirements in subsidiary legislation making process. Again in section 37 (1) (a) of the same law provided that “Where a written law confers power to make subsidiary legislation all subsidiary legislation made under that power shall, unless the contrary intention appears to be published in the Gazette” . Section 38 of the same Act provides the need for laying legislation before the Parliament, which may either be subject to affirmative or negative resolution failure to do so will invalidate the law.

The issue to determine is whether there is any provision which is enacted by the parliament to ensure that, the delegate abide to those procedures and rules provided by the law in making of delegated legislation. Another issue is whether the prescribed procedure provided by the law is a mandatory or directory²⁸. And the last point to assess is whether the parliament after delegate its legislative power enacts the law to guide the organ on how to keep an eye on delegated legislation. The answer to this question will determine the existing problem by assessing the effectiveness of legislative control over delegated legislation in Tanzania.

Sathe²⁹ when supporting on the control of delegated legislation, argued that instead of objecting to the delegation of legislative power it is better to concentrate on control of the exercise of such delegated power through effective legislative supervision. He provides a recommendation for the committee which formed in England for the purpose of examining the effects of delegation of legislative power on parliamentary system whereby the committee recommend to reform the law relating to delegated legislation in order to strengthen parliamentary control over delegated legislation. Looking to the position of law in Tanzania it is now the time to assess the legal position of legislative control over delegated legislation, possibly this will help the organ to change the law relating to delegation of power and control over the same by increasing safeguards on subsidiary legislation in order to put to an end people’s grievances on delegated legislation. The recommendations of the study will

²⁸ In *Mwangi v R* the issue of publication is relevant discussed to be a mandatory requirement in many East African situations.

²⁹ **Administrative Law**, 7th edn, (2004) Pakmo Press Printers, New Delhi.

enable the legislative organ to control delegated authorities effectively and it will further raise an alarm to those authorities to be aware to the enacted legislations as they will be subject to effectively parliamentary scrutiny.

1.8 Research Methodology

Research Methodology is a way to systematically solve the research problem. It may be understood as a scientific of studying how research is done scientifically³⁰. In this study, the methodology applied is as follows:

1.8.1 Research Design

Research design is the conceptual structure within which research is conducted. It constitutes the blue print for the collection, measurement and analysis of data.³¹ It is a logical and systematic plan prepared for directing a research study. The study was explorative in nature, based on various literatures including text books, legislation, articles, journey, case laws and website on the issue of making and control of delegated legislation. The researcher employed case study design as it is time honoured approach and flexible for data collection. The selected committee on subsidiary legislation was appointed as the case study. Moreover, a survey design was also used to explore the expected results of the study within the field area of the study. Survey is a fact-finding study involving collection of data directly from a population or sample thereof.³² In additionally, comparative approach used by a researcher especially during borrowing the experience from other countries in relation to legislative control over delegated legislation.

1.8.2 Population and Sampling

The subject that targeted by the researcher in this study is divided in to three categories due to the nature of the study. The first category was a group of Members

³⁰ C. R Kothari, (2004) Research Methodology, 2 edn. New age international publishers, New Delhi. Pg 8

³¹ Ibid pg 3.

³² Bernard, P(1983) Social Research Strategy and Tactics, MacMillan Publishing, pg 93

of Parliament from Subsidiary Legislation Committee in which the researcher studied the entire population as it is a small group, the second category was members of parliament selected randomly from House of parliament of which two Members of parliament selected from each party and one member from a party with a single representative, and the third category is the group of governmental officials who at the end of the study represent the universe. Simple random sampling was applied to the second and the third category, because respondents in this category are many and each person in the universe has an equal chance of being selected in the sample.

1.9 Sources of Data

The study used documentary review for the purpose of collecting secondary data in assessing the potentiality for effectiveness of Parliamentary control over delegated legislations. Various literary works were reviewed including the standing orders, committee opinions and recommendations basing on scrutinized subsidiary legislation, case study, text book, articles, journal, and website on issues of control of delegated legislation. Moreover the researcher scrutinized various reports of the subsidiary legislation committee for the purposes of examining the efficacy of the committee. The researcher made use of the library of the Parliament of United Republic of Tanzania, the Ministry of Constitution affairs and the library of Mzumbe University since the documentary study needs various books for references. In additionally, the researcher also employed internet to search different material from different secondary sources such as relevant subsidiary legislations, text book, relevant journal, articles, and various reports in relation to Parliamentary practises specifically legislative powers and control over the same.

1.10.1 Data Collection Methods

In this study, the researcher used primary data, which was collected during field work for the purpose of getting reliable information to accomplish the study. This included direct information, which was obtained from the field, through the use of questionnaire, which was given to 21 Members of parliament, this comprised 10 members of Parliamentary Committee on Subsidiary legislation, and 11 members of

parliament who selected randomly. Questionnaire also used to collect data randomly from 7 different governmental officials from Parliament of Tanzania, Prime Minister's Office, Regional Administration and Local Government (PMO-RALG), and Attorney General's chamber, as they have reliable information in relation to law making process and parliamentary practices. The group of officials selected for the purpose of conducting opinion as to whether the parliamentary system upon which the subsidiary legislation committee is established gives adequate powers to oversee and advise the executive authorities in law making process, and due of the nature of respondents, the use of questionnaire was appropriate because it enable respondents to have adequate time to give well thought out answers, it did also allow the researcher to reach their response conveniently. The obtained information enabled the researcher to determine the effectiveness of parliamentary control over delegated legislation, specifically parliamentary Committee on Subsidiary legislation.

1.10.2 Data Processing and Analysis

The data collected undergo serious analysis. The method that employed by the researcher was qualitative analysis involving the summary of key findings in both data collected from the libraries and from individual members of parliament. Such preliminary scrutiny helped the researcher in the determination as to whether the data collected concur with the objectives of the study. Data were edited for accuracy, completeness and reliability. No any missing of information discovered to occur at the time of data processing, for that matter no any interviews conducted through telephone. Codification, classification and numeric code employed to analyze some data. The data was transferred to a data sheet for analysis, whereby qualitative analysis and logic were applied to get a quality work.

1.10 Area of the Study

The study was carried out at sub-office of National Assembly in Dar Es Salaam, because according to parliamentary standing order of 2004, sometimes committees used to meet in Dar Es Salaam for scrutiny and oversight. The study was also partly conducted in Dodoma at the headquarter of Parliament of United Republic of

Tanzania, basing on the fact that other mode of control of delegated legislation is normally occur during parliamentary session. Other areas mentioned in this study like PMO-RALG, Ministry of Constitutional and legal affairs were taken as point of the study simply they are responsible in matters of legislation.

1.11 Scope of the Study

The study focus was on assessment on the effectiveness of parliamentary control over delegated legislation in Tanzania whereby at the end of the assessment the study narrowed to the control, which is done by the Parliamentary Committee on Subsidiary Legislation, the committee which was formed under Parliamentary Standing Orders of 2007 to control delegated legislations in Tanzania. The confinement of the study was on various legislations, which were picked as an example of legislations, which scrutinized by the Parliamentary Subsidiary Legislation Committee, and for the purposes of the study the researcher will concentrate only in the Parliamentary Standing Order, 2007 version of 2007.

1.12 Limitations of the Study

The researcher faced various limitations to accomplish the study at hand. One of them is being difficult to get back questionnaire from Members of parliament, through this study the researcher come to realise that many Members of Parliament has a lot of things in their mind, this cause them not to think on feeling the questionnaire and return it to the researcher. The researcher also realised that some Members of Parliament were not aware on the concept of delegated legislation and the exercise of the function they surrender to the executive authorities through Act of parliament, this being the case that it was difficult for them to fill questionnaire and return it to the researcher on time, to overcome such limitation the researcher decided to conduct lecture, elaborate the concept of delegation of power and control over the same, at least it enable the researcher to get information to write the report at hand.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF DELEGATION OF POWER AND LEGISLATIVE CONTROL OVER DELEGATED LEGISLATION

2.1 Introduction

This chapter will present conceptual framework pertaining power delegation and legislative control over delegated legislation through parliamentary committee on subsidiary legislation. It will also stress more on the frequently used words in the study. One cannot speak on the concept of parliamentary control of delegated legislation without trace the source of delegated power, why legislation are termed delegated ones, for the clarification of this study the researcher introduced first the concept of delegation of power and safeguards over the same will be followed, where by legislative control specifically the one which is conducted by the scrutiny committee was selected as the case study.

Montesquieu³³ when addressing the doctrine of separation of power argued that when legislative and executive power united in the same body there can be no liberty and enact tyrannical laws. Again when judicial power is not separated from the legislative and executive body there could be no liberty as the life of legislative body would be exposed to the arbitrary control since the judge would then be the legislator. Thus every organ is vested with its own power so far as the doctrine of separation of power is concerned, whereby under this concept Parliament is vested with legislative power to enact law of the land. The concept is applied the same in the United Republic of Tanzania, of which Article 64 of the Constitution of United Republic of Tanzania provides for the same power to the Parliament of United Republic of Tanzania. However the increase of governmental functions lead to the increase of demand in legislative organ hence power delegation to other person or body which enable that person or body to make laws. This process is known as delegation of Parliament's legislative power, the body which is trusted with power to

³³ Nugent (Trs), *The spirit of the Laws* at pp 151-52, as quoted by Takwani C.K at pg 32

make legislation are named as delegated authorities, and the resulting laws enacted by delegated authorities are known as delegated legislation, the laws go by many names such as secondary legislation, subordinate legislation, by-law, regulations, ordinances, proclamations, statutory instrument etc, made by a person or body other than the Parliament. Thus one can argue that looking on legislative process theoretically it is only parliament which is vested with the power to make and unmake laws, Other authorities which making laws acting contrary to the principle of separation of powers, however development of administrative faction compel the making of bylaws to be done with other governmental authorities subject to Parliamentary Control.

This chapter focuses on the discussion of various keywords relating to the study: Parliamentary Control over Delegated Legislation in Tanzania. A case of Subsidiary Legislation Committee. The key words in this study are delegated legislation, and Subsidiary Legislation Committee. Control of the parliament is influenced by the parliament it's self by conferring its law making power to other bodies and enable them to make laws, so what is assessed here is how parliament ensure the compliance of executive authorities to the Acts of parliament when making of subsidiary legislation. The Acts of parliament discussed here includes Constitution, Interpretation of the Laws Act, Local Government Authorities Act (both rural and urban) and any other law of the land that are not required to be abused by authorities when making of subsidiary legislation.

2.2 The Meaning of Delegated Legislation and Legislative Control

There is no precise definition of the term 'delegated legislation'. Various writers try to define it in various ways depending on time and areas where it is defined, however a simple meaning of the term 'delegated legislation' can be defined to mean the situation when the function of legislation is entrusted to organs other than the legislature by legislature itself, the legislation made by the trusted organ is called delegated legislation.

Jain and Jain³⁴ describe the term-delegated legislation in two senses, one sense means is the exercise by a subordinate agency of the legislative power delegated to it by the legislature, this means that the legislative powers are exercised by an authority other than the legislature in exercise of the powers delegated or conferred on them by the legislature itself. Moreover, the authority that makes legislation is subordinate to legislature and the enacted legislation is valid only if it is enacted within the power conferred on them by the legislature itself. The second meaning of 'delegated legislation' according to him is "subsidiary rules themselves which are made by the subordinate authority in pursuance of the power conferred on it by the legislature, this means, in this second connotation delegated legislation includes all rules, regulations, by-laws, orders etc made by the executive in pursuance of the legislative powers conferred by the legislature.

Another author who gave the priority to the definition of delegated legislation is Salmond³⁵ to him delegated legislation is either supreme or subordinate. Whereas the former proceed from sovereign or supreme power, the latter flow from any authority other than the sovereign power, and is therefore, dependent for its existence and continuance on superior or supreme authority. From this definition, we can arrive to the conclusion that delegated legislation is a legislation made by a body or person other than the sovereign in Parliament by virtue of powers conferred by such sovereign under the statute. This is to say An Act of the parliament may empower person, or body other than parliament through an Act of parliament to enact legislation. The Act of parliament creates the framework of a particular law and tends only to contain an outline of the purpose of the Act. Parliament by giving authority for legislation to be delegated means it enables other persons or bodies to provide more detail to an Act of Parliament. However such detail must provided in accordance with the purposes laid down in the Act³⁶ and the authorities given such

³⁴ Principle of Administrative Law (Vol. 1, 2007) at pg 52 cited by Takwani at pg.63

³⁵ Salmond on Jurisprudence (12th edn) at p 116; Craies on Statute Law (7th Edn), at pp 297-98 as cited by Takwani C.K at pg. 63.

³⁶ <http://www.lawteacher.net/english-legalsystem/resources/delegated-legislation.htm> viewed on 22 January 2013

power to enact legislation must act in accordance and within the limit provided by the Act of parliament to enact delegated legislation.

In Tanzania Interpretation of the laws Act cap 1 R.E 2002 expressly the meaning of subsidiary legislation to mean any order, proclamation, rule, rule of the court, regulation, notice, by-law or instrument made under any Act or other lawful authority. Following the provision of the definition provided, it may not be wrong to equate subsidiary legislation to delegated legislation or subordinate legislation enacted by entrusted authority within the ambit required by the Act of the parliament. Other similar names given to delegated legislation are regulations, any order, by-laws, rules, regulation, proclamation, notice, rule, rule of court, subordinate legislation, instrument, ordinances, and subsidiary legislation made by lawful authority and having legislative effect.³⁷

For the matter of clarification the Ministry of law, Justice and Company Affairs-India provides difference between rules, regulations, by-law etc in the following words; Generally, the statutes provide for power to make rules where the general policy has been specified in the statute but the details have been left to be specified by the rules. Usually technical or other matters, which do not affect the policy of the legislation, are included in regulations, by-laws are usually matter of local importance, and the power to make by-laws is generally given to the local or self-governing authorities. Delegated legislation are therefore enacted by delegated authority given such power to do so by the Parliament, as it is open for the parliament to confer legislative power upon anyone it likes. However, Parliament has a duty to ensure that, delegated authorities without any misuse properly exercise those powers. This result to the concept of 'legislative control over delegated legislation'.

³⁷ Oluyede, P.A (2006), Administrative Law in East Africa, Kenya Literature Bureau, Nairobi Pg.58

Legislative control over delegated legislation imply the power of parliament to oversee delegated legislation and ensure that the legislative power surrendered to executive authorities by parliament itself are properly exercised and not misused by authorities conferred. Justice Krishna Iyer in *Avinder Singh v. State of Punjab*³⁸ insisted on the importance of legislative control of delegated legislation and stated that Parliamentary control over delegated legislation should be a living continuity as a constitutional necessity. Moreover there are two common ways by which parliament can control delegated legislation one is through laying before the table at the house and the other way of control is through scrutiny by selected committee, the Subsidiary Legislation Committee is selected as the case study to assess the effectiveness of the parliament in watching over delegated authorities while enacting delegated legislation in Tanzania.

2.3 Reasons for the Growth of Delegated Legislation

There are many reasons which lead to the rapid growth of delegated legislation in every modern democratic State, change of the status from old police state to a welfare state is one of the factor which increase the rapid growth of administrative function. This radical changes increased Governmental functions which necessitated the transfer of power from legislative organ to other administrative authorities. This was due to the reason that Parliament cannot accommodate all changes, discuss matters of those areas in details and enact all statutes with all particulars. Other factors responsible for the rapid growth of delegated legislation are as follows;

- Pressure upon parliamentary time whereby due to the bulk of legislation which needed by authorities that it is not possible for legislature to devote sufficient time to discuss all the matter in detail hence legislature formulates the general principles and delegate its legislative power to different administrative authorities to enact subsidiary legislation for their uses.

³⁸ (1979)1 SCC 137:AIR 1979 SC 321

- Flexibility is another factor for the rapid growth of Delegated legislation, at the time of legislative enactment it is impossible to foresee all the contingencies, and some of the provisions are required to be made for these unforeseen situations³⁹. So the need for flexibility legislation is inevitable for rapid adaptation. In comparison with statutory provision delegated legislation requires less formal procedure and therefore changes can be made in more easily way, while the former cannot be amended except for by amendment passed in accordance with the legislative procedure.

- Technicality, As a result if gigantic development programmes with technicality in nature more technical legislation is required where legislative organ cannot legislate on the same, this lead delegation of legislation to be allowed to deal with technical matters.

- Complexity of modern administration and expansion of the functions of the state to the economic and social sphere render it necessary for the parliament to give wide powers to various authorities to legislate on their suitable occasion.

- Emergency, is another responsible factor for the growth of delegated legislation as it help at the time of emergency example during war strike, at the time of national emergencies such as break down of law and order, in situation of epidemics, floods inflation etc, that when quick action is required to be made for such situation delegated legislation is the only convenient as it can provide for urgent solution to cover the situation at hand.⁴⁰

³⁹ http://en.wikipedia.org/wiki/Delegated_legislation_in_the_United_Kingdom. viewed on 24 January 2013

⁴⁰ Takwani C.K, (2004) Lecturers on Administrative Law, 6th Edn, Universal Publishing Company Pg.68

Due to all reasons mentioned above it is clearly that Parliament is entrusted too much power to the executive authorities to make their own regulations and it remains with essential role of enacting principal legislation as a skeleton, and empowers the executive to fill in the details. Thus one can confidently argue that even executive authorities can make the laws subject to Parliamentary control.

2.4 The Role and Functions of Delegated Legislation

Delegated legislation plays a great role to the society at large as it allows the participation of individuals in the affairs of their government. They also enable the government to amend law without having to wait for a new Act of parliament to be passed, for that matter delegated legislation can be used to make technical changes to the law such as altering sanctions under a given statute, or by way of illustration a local authority can give power to enact law in accordance with their needs, as opposed to having one law across the board which may not suit their particular area⁴¹. By other word one can argue that delegated legislation allow law to be made by those who have the relevant expert, knowledge, that the local authority which given a power to make delegated legislation can have the knowledge of what is the best for their authority rather than the parliament.

Another role of delegated legislation is that it can help to speed matter, that incase of any emergency or unforeseen events such as draught, flood or war, etc, delegated legislation can be enacted to deal with emergency situation without having to wait an Act of parliament to be passed to solve a particular situation.

Flexibility of laws is another role of delegated legislation as it allows flow of legislation to meet existing demand. That incase of any need arises which demand for a new legislation, the law will enacted to fit changing of circumstances.

⁴¹ <http://www.lawteacher.net/english> legal system/resources/delegated-legislation

Delegated legislation can help to the application of a certain law in greater detail⁴², this is because regulations, by-laws, subsidiary legislation are normally enacted to simplify the application of the main Act, once parliament has by statute laid down (often in some detail) the principles of a new law, the executive may by means of delegated legislation work out the application of the law in greater detail within these principles, adapting it to fit changing circumstances and power may even be conferred to amend the statute itself by delegated legislation.

Delegated legislation provides a very important role in the making of law as it can extend principle enacted in a statute in a cognate direction, it can provide for the commencement of a certain statute. Since there is more delegated legislation enacted each year than Act of Parliament, they are important as they are much needed to cover the existing demand.

Following various roles provided above, it is the argument that, delegated legislation plays a greater role as it allows flexibility in the law-making process, by being flexible it is able to meet changing needs of the society. Not only role but also importance, that the need for delegated legislation is inevitable as it helps to avoid overloading the limited Parliament time table, as delegated legislation can be amended or made without having to pass an Act through Parliament which can consume time. However in any case delegated legislation is enacted they are required to be created in accordance with the purpose laid down in the Act. And he who delegates has the obligation to control the delegated power to ensure that they are used in accordance with the law provided.

2.5 The Subsidiary Legislation Committee

The committee established by virtue of the Constitution of the United Republic of Tanzania to oversee the legislations enacted by executive authorities. It was mainly formed to strengthen control of delegated legislation, that it was aimed that through selected committee the legislations will be scrutinized in a more detailed manner on

⁴² Eskine May, *Op cit* pg 574

behalf of parliament, since the organ used to conduct its activities through specific committees for the same purposes the Subsidiary Legislation Committee is formed to do such a function on behalf of the parliament of Tanzania. Delegated legislation are enacted in each year and the parliament cannot manage to scrutinize them effectively due to the bulkiness. Thus the conduct of the selected committee is of importance to the development of legislative power of the executive authorities. The determination of the effectiveness of parliamentary controlling of delegated legislation is much depends on the conduct of the Subsidiary Legislation Committee. The issue is how and when the committee is scrutinizing delegated legislation at the committee level. It is important to note that, the scrutiny of legislation after becoming into operation will hinder the effective control of delegated legislation.

2.6 Conclusion

Looking to the situation of the developments of the present century, there is no doubt whether there is the growth of legislative powers of the executive. according to traditional theory executive is given power to administer the law enacted by legislature and in the ideal state the legislative power must be exercised exclusively by the legislators, however due to the expanding horizon of state activity and rapid growth of administrative functions increase the demand of immediate action and decisions whereby parliament due to its limited time could not discuss all the matters in detail and accommodates all governmental changes, therefore to afford flexibility and make for rapid adaptation and progress in matter of legislation delegation of power becomes necessary.

The power granted to the governmental authorities is limited its term and subordinated to its objects, this means executive authorities when given such power to enact legislation they required to act in good faith, reasonably, intra-vires the power granted, contrary to that will rendered to ultravires legislation. However Parliament after delegate its legislative power to the executive authorities to make rules, regulations, by-laws, orders and notice, the authorities limited to make subsidiary legislation only, and Parliament remains with the duty to ensure that

delegated authorities are acting within the power and not abuse the power granted to them. This study is accessing how the Parliament is managed to oversee delegated authorities while making of subsidiary legislation in Tanzania, given the fact that delegated legislation becomes inevitable hence increased with an increase number of complications on them.

CHAPTER THREE

CONTROL OF DELEGATED LEGISLATION IN TANZANIAN CONTEXT

3.1 Introduction

This chapter is mainly explaining about controls and safeguards of delegated legislation in Tanzania. It will discuss on the legal position governing delegation of legislative power to the executive authorities in Tanzania, the concentration will be on the control of delegated legislation in which the legal position in relation to legislative control over delegated legislation in Tanzania will be analyzed to enable the researcher to assess the efficacy of the legislative organ in safeguarding legislation enacted by executive authorities in Tanzania, at the end the model of control will be the focal point to discuss whereby in legislative organ, judicial, and other organs responsible for control of delegated legislation appeared to use different model and practices to safeguard delegated legislation. Various laws will be discussed to see how delegated legislation are safeguarded, for stance the Constitution of United Republic of Tanzania, the Interpretation of the Laws Act, the Local Government Urban and District Authorities Act, and any other Act of parliament regarding that, it provides for the existence and control of delegated legislation in Tanzania.

3.2 Necessity Control of Delegated Legislation

As discussed in the last chapter, present in almost all countries the technique of delegated legislation is resorted to and some of the legislative powers are delegated by the legislature to the executive authorities, as a result many subsidiary legislations are enacted by various authorities while at the same time there is inherent danger of abuse of the said power by the executive authorities, to overcome that, control of delegated legislation seems to be necessary to watch on authorities while making of delegated legislation. It is a settled principle that where a government minister or public department makes a piece of delegated legislation, Parliament, Judicial and

other responsible organs retains some measure of control. The ideal behind is to ensure the proper exercise of power by the executive authorities.

3.3 Organs Responsible for Control of Delegated Legislation in Tanzania

The general principle of delegated legislation is that it must be consistent with the Parent Act and cannot travel beyond the legislative policy and the standard lay down by the legislature,⁴³ to ensure this is observed the executive introduced various modes of control to prevent possible misuse or abuse of power. Such safeguards should operate at two levels the first level is at the source, this is when the legislature confers the legislative power to the executive authorities that it must lay down policy and perform essential legislative functions, and the second safeguard must be provided in case of misuse or abuse of power by the executive. In this study various organs for control over delegated legislation are deeply discussed and concentration is on legislative organ for the purposes of evaluating the efficacy of legislature in controlling delegated authorities while making of delegated legislation. The essence is to ensure that rules, by-laws, regulations, which made by delegated authorities, are not travel beyond the legislative policy, if they go beyond that the legislation enacted will be held ultra-vires, with no any legal effect.

From the aforesaid discussion, the control over delegated legislation in Tanzania can mainly be categorized in two categories such as judicial control and legislative control of delegated legislation. Other means of controls performed by other organs such as Prime Minister's Office-Regional Administration and Local Government, Ministry of Constitution and Legal Affairs, Regional Commissioners Office, etc. For the sake of this study the concentration is on legislative control over delegated legislation in Tanzania and Subsidiary Legislation Committee is a case study. Other means of control will be briefly explained. Of importance to note is that even court plays a great role when delegated authorities acted beyond the powers conferred to them by the statute as explained hereunder:

⁴³ Takwani *Op, Cit.* Pg 107

3.4 Control of Delegated Legislation by the Judicial Organ

Rules, by-laws, regulations, etc which are enacted by administrative authorities are normal subject to judicial review for the purpose of determining the validity of legislation, the court in Tanzania has the power to determine the validity of delegated legislation by way of judicial review in order to ensure that legislation are enacted within the ambit of the power delegated and in accordance with the constitution. By other word this is to say the courts used to check the compliance of executive authorities (delegated authorities) to the enabling Act, constitution or any Act of parliament through judicial review of delegated legislation. Sathe⁴⁴ in his book argued that judicial review tends to be more effective model of control of subsidiary legislation because the court do not merely recommend but can strike down a rule if it is ultra-vires the enabling Act or the Constitution.

Executive authorities given power to enact subsidiary legislation by virtue of Article 97 of the Constitution of United Republic of Tanzania which state that the provision of Article 64 of the constitution shall not prevent Parliament from enacting laws making provision conferring on any person or department of Government the power to make regulations having the force of law or conferring the force of law on any regulations made by any person, or any department of Government. Following this provision various Acts enacted by parliament provides powers to various authorities to make subsidiary legislation. Example in Tanzania President may make subsidiary legislation by virtue of the Interpretation of the Laws Act which provides that, if a written law provides that subsidiary legislation may or shall be made and does not provide by whom, such subsidiary legislation made under such provision shall be made by the President⁴⁵. Not only that, even the local government authorities (Urban and Rural) which established by virtue of Article 145 of the Constitution of United Republic of Tanzania has given such powers by legislature to make subsidiary legislation on its behalf. Example section 153, 160 and 168 of the Local Government

⁴⁴ S. P Sathe *Op.Cit.* pg 87

⁴⁵ Section 35, Part vi

District Authorities Act⁴⁶ provides legislative power for District authorities to make their own by-law for the people of that specified areas. The same power is enjoyed by urban authorities as it is stipulated by section 88, 89, 90, and 94 of the Local Government Urban Authorities Act⁴⁷ other authorities such as Appellate Jurisdiction Act⁴⁸ under section 12 Chief Justice empowered to make rules, and many other executive authorities empowered to make rules for their local usage. However it is important to note that the legislative power granted to executive authorities is not total surrendered as it is subject to judicial review. Therefore, judicial review of delegated legislation means review by the courts of any exercise of power to make some form of delegated legislation. In judicial review the courts is normally control delegated legislation by employing the doctrine of *ultra-vires*, the doctrine of Ultra-vires is used to determine the validity of delegated legislation in two test as explained below.

3.5 The Doctrine of *Ultra Vires*

The doctrine of Ultra-vires comes into play where the legislating body or person sidesteps procedures or substantive matters provided in the Enabling Act or other laws of the land. This is to say, it is a doctrine which used to determine the capacity, authority or power of a person to do a certain act. If a person or body of persons done a certain act beyond the power given to him the act can be said to be *Ultra vires*, this means that, the act is done beyond the power or authority or jurisdiction conferred. To determine the validity of subsidiary legislation enacted by delegated authorities, and to determine whether the authority conferred power to enact legislation is performed within the power provided by the constitution, enabling Act or any Act of the parliament, the court has to apply the doctrine of ultra vires . This doctrine is mainly applied in two tests, the first test is procedural ultra vires and the second test is substantive *ultra vires*.

⁴⁶ [CAP 287 R.E 2002]

⁴⁷ [CAP 288 R.E 2002]

⁴⁸ [R.E 2002]

In substantive *ultra vires* the courts check if delegated legislation has gone beyond the scope of authority conferred on it by the constitution or by the parent statute, this is to say in making of delegated legislation in Tanzania, the authorities required to act within the power conferred to them by the legislature, failure to do that the legislation will be declared by the court to be null and void. It is a fundamental principle of administrative law that an act, which for any reason, is in excess of power, is *ultra vires*. A good example illustrated in an American case of *US v. Two hundred Barrels of whisky*⁴⁹, in this case the parent Act provided for admitting duty-free animals especially imported for breeding purposes. The regulation made under the Act required the animals to be of a 'super stock' if they were to be admitted duty-free. The court held the regulation *ultra vires* as the parent Act included all animals while the regulation confined its operation to animals of a particular stock alone. In Tanzania it is well explained in section 36 (1) of the Interpretation of the Laws Act that subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act and subsidiary legislation shall be void to the extent of any such inconsistency. However it is provided that the principle of inconsistency does not mean that delegated legislation cannot deal with the same subject matter as a statute. It is when a rule or regulation etc makes lawful that which a statute makes unlawful or vice versa that inconsistency exists.

For example in *Koinage Mbiu v. R*⁵⁰, section 4 of the Crop and production and Livestock Ordinance, Kenya allowed the Governor in council to fix by name an area in the colony to which rules for controlling crop production might apply. Rule 3(1) of the African grown Coffee Rules made under this statute provides that "no coffee shall be grown by an African except on a plantation approved by the director (of Agriculture) and situated in one of the areas set out in Schedule A to these rules" The point for decision was whether this rule was a valid exercise of the power in section 4. It was held that rule 3 was invalid because in the first place it was in conflict with another statute- The coffee Industry Ordinance. Under the Coffee Industry Ordinance

⁴⁹ (1877) 95 US 571.

⁵⁰ (1951) 24(2) K.L.R 130

any person including an African, could plant coffee once he obtained a licence, and he could plant coffee anywhere in Kenya, except in the “native lands” area. Rule 3(1) was therefore in conflict with this statute because it limited the area in which an African could grow coffee to the plantations in the schedule A areas. Secondly section 4 of the Crop Production and Livestock Ordinance allowed the Governor in council to regulate areas and rule 3(1) went beyond this by regulating the areas of the whole colony, not just one area and also by regulating a particular class of person namely the Africans, rather than an area. It should be noted that delegated legislation which is properly enacted becomes part and parcel of the law of the land like any other law and capable of being enforced in the court of law.

In Procedural *ultra vires* the court checks on subordinate legislation if they fail to comply with procedural prescribed by the parent Act or by a general law. This is to say while framing rules, by-laws, regulations, etc, the delegated authorities are required to observe the procedure prescribed by the parent Act or enabling statute. The procedure includes consultation, publication of drafts, rules or by-laws, laying legislation before the Parliament etc. It is a principle in administrative law that the delegates are required to comply with these procedures and exercise the power in a manner indicated by the legislature. In Tanzania, various procedures prescribed in the laws to ensure control of delegated legislation. Example in section 37 (1) (a) of the Interpretation of the laws Act provides a requirement for publication of subsidiary legislation that all subsidiary legislation made under any Act of parliament shall be publicized. In a case of *Fatuma Awadhi Said*⁵¹ the court of Tanzania provides the importance of publication by showing the intention of each publication, as the Ordinance and legislation provides two kinds of publication, the same applied in U.S.A before 1935 there was no machinery for publication of delegated legislation,

⁵¹ *Fatuma Awadhi Said El Hind v. Salima Ali* [1990] TLR in this case the Town and Country Planning Ordinance and the legislation provided two kinds of publication. The Court held, that the first publication under section 27 refers to the declaration by the minister that he intends to apply the provisions of the third schedule and the second after he prepare the scheme he must deposit a copy of scheme at appropriate place and the notice of such deposit must be published in the gazette.

but after the decision in *Panama Refining Co. v Ryan*⁵² (wherein, the court found that there was no adequate publication of delegated legislation) the federal Register Act was passed in 1935 requiring publication of all regulations.

However, it should be noted that the courts often draw a distinction between mandatory procedure that is where a failure to comply with the procedure will result in the invalidity of the exercise power and directory procedures where in fact invalidity does not follow as a necessary consequence of failure to comply⁵³. Following explanation above it is important to note that judicial review of delegated legislation comes in various ways such as review of legislation when it conflicting with the constitution, on grounds of unreasonableness, or if the enacted legislation is uncertain. Any regulation, which is not authorized by statute, can have no legal effect and it is therefore ultra vires and void. An example is illustrated in the case of *Nanal Damodar Kanji v. Tanga Township Authority*.⁵⁴ The facts in briefly is that: the accused owned a house, which was situated at the corner of Akida No. 6 street in the township of Tanga. On the 12 June 1939 some old papers were found in the street outside his house. He pleaded not guilty to a charge under rule 25 of the Township Rule which says “No person shall know or deposit... in or upon any street... dust refuse... or noxious matter. Any such accumulation being immediately in front of any house shall be prima facie evidence that the same has been thrown there or deposited by the occupier of such house”. The accused was however convicted under the quoted rule, rule 25 which was made under section 3 of the Townships Ordinance⁵⁵ which provides that “The Governor may make rules to be published in the Gazette for health, order and good government of townships and may apply all or any of such rules to any townships, or make special rules in regard to particular townships”. The question before the court in this case was whether rule 25 was ultra-vires. The court held that;

⁵² (1934)293 US 388

⁵³ Oluyede P.A. *Op Cit.* pg 67

⁵⁴ (1940) 1 T.L.R. 239

⁵⁵ (Cap 29)

Rules and by-laws made under statutory powers enforceable by penalties are construed like other provisions encroaching the ordinary rights of persons. They must, on pain of invalidity, be not unreasonable, nor in excess of the statutory power authorizing them, nor repugnant to that statute or to general principle of law.

In this case rule 25 which used to convict an accused person was contradicting the presumption of innocence as a general principle of law which requires an accused person to be presumed innocent until he is proved guilty. Rule 25 seems to invert this general principle of law, that is, “an accused is presumed guilty until he proves his innocence” by providing that the mere finding of refuse near a man’s house is prima facie evidence of guilty. To say the least, it is ultra vires not only its parent statute, section of the Townships ordinance⁵⁶ but also repugnant to the general principle of law which advocates for presumption of innocence and to that extent is null and void⁵⁷. Currently the position is the same, the Constitution of United Republic of Tanzania express clear under Article 13(6) (b) that no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence so the mere finding of refuse near Nanal Kanji’s house that it is an evidence of him to be guilty today is against the provision of the Constitution, hence it is void.

It is a settled principle of the law that, subsidiary legislation, rules, order, by-law, etc should be clear, free from ambiguity and definite, it should not contravene the Constitution or enabling statute. On the other side the legislative power which granted to the delegated authorities must exercised strictly within the authority of law required and the legislation can be held valid only if it conforms exactly to the power granted, otherwise courts will hold them too wide and ultra vires. In *R v. Hermitte*⁵⁸ the appellant was convicted and fined under a by-law made under section 69 of the

⁵⁶(CAP 29)

⁵⁷ Oluyede pg 69

⁵⁸ (1938) 18 K.L.R 55.

Local Government (Municipalities) Ordinance 1928,⁵⁹ which reads “No person shall create any disturbance so as to be an annoyance to any residents or passengers”. The by-law is No 565 (19) of the Nairobi Municipality By-law 1929. It is important to note that the said by-law does not specify in what circumstances and in what place (whether a public place or a private residence) a disturbance would fall within the meaning of the by-law. On appeal it was contended that the by-law was ultra vires inter alia because it is (was) uncertain”. It was held that the by-law in question was uncertain, unreasonable and ultra vires of the powers conferred on the Municipality and therefore null and void.

There is also a review of delegated legislation on ground of the rule against sub-delegation, this is well explained in latin maxim *Delegatus non potest delegare* which means a delegate cannot further delegate, in legislative matters if parliament confer power upon executive authorities intention is that it shall be exercised by executive authority, and not otherwise, so the power granted to executive authorities by legislature cannot further delegated. The principle is well illustrated in the case of Remtulla Gulamali v R. In this case the Governor was given power to make by-laws under rule 11 of the Cotton Rules, 1931, for the destruction of cotton plants harboring pests and diseases of cotton. This power was exercised by the Director of agriculture and gazzeted on 11 October, 1935, as general notice No. 993. The accused subsequently contravened it and was fined Shs300/- he therefore appealed, it was held that... “the term of paragraph (11) of section 2 of the ordinance do not extend to confer such power upon the Director of Agriculture but upon the Governor and the Governor alone, who is precluded from transferring this power by the principle of law expressed in the maxim *delegatus non potest delegare*.” The conviction was therefore quashed.

3.6 Control of Delegated Legislation by Legislative Organ

This is another model of control over delegated legislation vested to the legislative organ in Tanzania. The function is automatically vest to the parliament due to the

⁵⁹ (CAP 84)

reason that in a parliamentary democracy it is the function of the legislature to legislate, so if it seeks to delegate its legislative power to the executive authorities because of some reasons, it is required also to fulfil its obligation of control them, and this is not only the right of the legislature but also its an obligation as principal to see how agent i.e executive carries out the function entrusted to it. In Tanzania the parliament is watching delegated legislation mainly in two ways: one is through laying legislation on the table before the House and second is through scrutiny of legislation which is done by specific committee. The main obligation of the organ while controlling delegated legislation is to watch on authorities if are complying with the enabling Act, and not conflicting with the Constitution and any other law of the land. To ensure that, Parliament enacted the law and introduced the mechanism of laying legislation before the parliament. To strengthen such model of control, parliament latter on introduced the scrutiny committee, the committee was given an obligation to scrutinize subsidiary legislation in more detailed manner. The committee spends public money to discharge such function. But of surprising is that, there is no clear guidelines for the parliament to do such function as it is required. The extent of control depends on what is provided in the enabling Act. This will explained much in the coming chapter.

3.7 Control of Delegated Legislations by other Organs

Over and above judicial and parliamentary controls, sometimes other safeguards and controls of delegated legislation is provided by other organs. Organs which are responsible in matter of legislating are also in one way or another responsible for controls over the same, organs such as Prime Minister's office Regional Administration and Local Government (PMO-RALG), Ministry of Legal and Constitutional affairs and Regional Commissioners office etc. In the process of by – law making the organs above has the power vested to them to ensure that delegated legislation are enacted in a proper manner. For example under Section 155(3) of the Local Government (District Authorities) Act Regional Commissioners has power vested to them to examine the subsidiary legislation made by the District Councils in

order to ensure that the by-law are made within proper procedures provided by the law. Again the same section entitle RC to send the by law to the Minister responsible for Local Government affairs who is responsible for monitoring all activities conducted by local government, that it is a general provision of a law that Regional Commission of a specific Region after satisfied himself that the by-law enacted is in proper manner he normally send it to the Minster responsible for Local Government Authorities (PMO-RALG) for approval⁶⁰.

One can argue that the process of sending by law from District council to RC, and from RC to Minister responsible for local government affairs for approval is to monitor them and ensure that the authorities enact law within the proper limit set by the law. The Minister responsible for local government and RC are responsible for determining the legality of any legislation made by district authorities. However the law provides that if the Minister Responsible for local government is prove that the by law enacted is conflicting the Constitution or any law of the land then the Minister will return the said legislation to the local government authorities for annulment or modification⁶¹ On the other side Chief Parliamentary Draftsman under Minister responsible for Constitution and legal Affairs in Attorney General department is the overall in charge to ensure that the legislation enacted are drafted in a proper legal language within a proper manner required by the law. It should be noted that for the purpose of this study mention of legislation imply delegated legislation, subsidiary legislation, by-law, orders, proclamation, notice etc.

3.8 Conclusion

This chapter focused on the discussion of the control and safeguards of delegated legislation in Tanzanian context. It provides for various organs which are responsible in a matter of control of delegated legislation in Tanzania. Their main task is to ensure that all procedure provided by law in relation to legislation making process are well observed by delegated authorities. Thus one writer argued that the

⁶⁰ Section 155 (3) Local Government (District Authorities) Act.

⁶¹ Section 155(4) Local Government (District Authorities) Act

purpose of the procedures provided under the law is to ensure that there is an effective control of subsidiary legislation. The organs mentioned above are responsible to ensure that the legislative power vested to the executive authorities is not violated by the authorities enacting legislation as they are not required to do so by the Act of parliament. However the responsible organs cannot perform such function as it is required if there is no clear guideline for them to do so. In the next chapter the legal position in relation to legislative control of delegated legislation will be discussed to see to what extent the parliament is achieve its goal in overseeing legislation enacted by delegated authorities.

CHAPTER FOUR

PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN TANZANIA

4.1 Introduction

Parliamentary control of delegated legislation is a mechanism taken by parliament to control delegated legislations which are enacted by delegated/executive authorities. That parliament after delegate its legislative power to the executive authorities it vested with an obligation to ensure that those powers are properly exercised. The essence behind parliamentary control is to keep a close watch over the rule-making authorities and provide an opportunity for criticism in case there is abuse of power on their part. In Tanzania legal system delegated legislation has come to stay, the executive authorities cannot runs their activities without enacting their own rules/ laws, regulations/ by- laws to guide them. It is sufficed to say that executive authorities cannot ignore the existence of delegated legislation, instead they depends much on them for the development of their authorities. To ensure development is achieved at that particular authorities the law required to be in a proper manner as directed by the Act of parliament and any law of the land, for that case parliamentary control is designed to ensure that the executive authorities are complying with the law, that they work efficiently and the citizens feel that they can trust the way authorities exercised their power. It is therefore argued that the effective parliamentary control to monitor and examine the work done by the executive authorities in law making process is inevitable for the achievement of democratic state.

4.2 The Role Played by the Parliament of United Republic of Tanzania

The legislative organ in Tanzania attempt to play a great role to oversee legislation enacted by various authorities in the country. One has to remember that the purpose of the study is to examine the efficacy of the parliament in controlling delegated legislation in Tanzania, and the subsidiary legislation committee is eye-marked as the

case study to assess the role played by legislative organ over legislation enacted by executive authorities. The institution and legal framework in relation to parliamentary control over delegated legislation will be assessed to get the result of the role played by legislative organ to the legislations enacted by executive authorities in Tanzania.

Institutionally legislative control of delegated legislation is an obligation conducted by the parliament of Tanzania. The organ is exercised such function in two ways: by laying legislation on the table and scrutiny by committee. In relation to the study at hand, the scrutiny by committee is the subject selected as the case study to measure the efficacy of the parliament, since the committee conduct its function on behalf of the parliament at large, but to assess the efficacy of the parliament to the legislation enacted by the executive authorities, one cannot ignore to discuss about laying of legislation before the House as it is the part and parcel of the control of delegated legislation which comprise the whole concept of parliamentary control over delegated legislation.

4.3 Laying before the Parliament

Laying before the parliament is a model used by legislative organ to safeguards legislation enacted by delegated authorities. In almost all the Commonwealth countries the procedure of laying legislation on the table is followed⁶², the same applied in the Parliament of Tanzania, that it is a statutory requirement which requires rules, by-laws, regulations, orders, subsidiary legislation, proclamations, etc made under some Act of parliament to be laid before the parliament for the scrutiny purposes.⁶³ The position is also practised in England, US, India, Kenya, Uganda etc that in all the countries rules enacted by delegated authorities are laid before the House for the scrutiny purposes. The issue to determine in this study is at what time the rules are tabled before the parliament of Tanzania. In Erskine May⁶⁴ it is

⁶² C.K Takwani *Op Cit* Pg. 158

⁶³ Section 38 of The Interpretation Of the Laws Act [CAP 1 R.E 2002]

⁶⁴ Erskine May, *Op cit* pg 574

provided that in England laying before the parliament is the first step though its contents be of minor significance only, the enabling Act may not insist upon this step or may require nothing more however, the breach of statutory duty to lay an instrument before the parliament will not of itself invalidate the instrument.

In Tanzania the position is illustrated in the Interpretation of the laws Act under section 38 which state that, all regulations shall be laid before the National Assembly within six sitting days of the National Assembly next following publication of the regulations in the gazette. This is to mean that In Tanzania the regulations are laid down before the parliament after publication of them in the official gazette. Taking an example of one subsidiary legislation which laid down before the parliament which written “SHERIA NDOGO (MASOKO YA MIFUGO) ZA HALMASHAURI YA WILAYA YA SHINYANGA, 2004” which given power to be enacted by “SHERIA YA FEDHA ZA SERIKALI ZA MITAA”, 1982 (No. 7 ya 1982), It is provided in this subsidiary legislation that, the legislation shall come in to operation on the date of its publication in the gazette. On argument this means that, in Tanzania subsidiary legislation are coming into operation after they have been publicized in the official gazette, and it is the same meaning that in Tanzania the by-laws, regulations, and subsidiary legislation when are tabled before the house they already started its operation within the authorities prior its submission, this is because they soon started to be applied after publication, and latter on they are taken to the parliament for laying purposes after such application.

Thus one can argue that in Tanzania the Interpretation of the laws Act does not provides for the mandatory provision which require all authorities to lay legislation before the parliament before they come in to operational. This being the case that, the extent of legislative organ to oversee delegated legislation depends on what is provided in the enabling Act. The practise is the same in England where there is no mandatory provision for laying procedure, however the situation in England come to differ with current situation existing in Tanzania due to the fact that in England if the enabling statute requires a statutory instrument to be laid before the parliament, a

copy must be laid before each House and shall be laid before the instrument comes into operation. And if it is essential that an instrument should come into operation before copies can be laid, the instrument may be made so as to come into operation before laying; and in this event the Lord Chancellor and the Speaker of the House of Commons must forthwith be notified that copies have yet be laid with explanation why there has been no laying before operation. In comparison with the legal system existing today in Tanzania that there is no general law which requiring all regulations to be laid before the parliament before they started to be applied, and no any legislation essential enacted to be applied before it laid at the parliament, and nothing is written to notify the Speaker about the application of legislation before they laid at the parliament, the practise remains is laying of legislation after its operation and post-mortem function conducted by selected committee to scrutiny delegated legislation after they come into operation. Moreover the extent of parliamentary supervision depends largely on the procedure prescribed in the enabling Act. If there is no condition for laying legislation before they come into force, negative resolution, affirmative resolution or approval in draft from the house, parliament may never have a say in such particular legislation⁶⁵.

The explanation above implying that, current the existing situation in Tanzania is that when the authorities laying legislation before the parliament, it is the position of the organ to determine whether the subsidiary legislations are conflicting with the Constitution and any other law of the land, there is no loophole for Members of Parliament to criticize on subsidiary legislation, and the effectiveness of National Assembly supervision will depend on the willingness of Members of National Assembly to take sufficient interest in reviewing or modifying delegated legislation⁶⁶. This come in mind that, the body which delegate its legislative power to the executive authorities is not given power to watch and scrutinize legislation properly before they come into operation, it rather given a chance to hear and determine about the existence of a particular legislation after it becomes into

⁶⁵ Oluyede *Op. Cit.* pg 66

⁶⁶ Supra

operation and the worse thing is that when parliament conducting such function others will be already affected by those legislation and the law is silent, even though it provides for the chance of parliament to disallow the regulation which not laid before the National Assembly in accordance with the law,⁶⁷ but still this has nothing to do with those who already affected with those regulations. Thus assessing the effectiveness of parliament in controlling delegated legislation one Member of Parliament had this to comment...laying legislation on parliament has not carrying more meaning than the advertisement⁶⁸

4.4 Scrutiny Committees

This model established in almost commonwealth countries with a view to strengthen parliamentary control over delegated legislation; the model introduced simply because the method of laying down legislation before the parliament as a model used by legislative organ to oversee delegated legislation has not always been held to be mandatory. Even if that requirement is complied with, mere laying of rules before the Parliament would not be of much use unless the rules were properly studied and scrutinized. In Tanzania the scrutiny committees method introduced as an alternative to strengthen control of delegated legislation, the function vested to Parliamentary Subsidiary Legislation Committee, a committee introduced purpose to oversee legislation enacted by delegated authorities in a detailed manner. In other countries, the practised is the same. Example in England the Selected Committee on Statutory Instrument was established in 1944, the same applied to India the Committee on Subordinate Legislation established for the purpose of watching regulations enacted by executive authorities.

It should be noted that the control of legislation whether is done in the house or in the committee is having impact to the house and the society at large. If parliament affirms the law tabled it leads to affirmative resolution, and if it negates it leads to negative resolution. For the control which is done by Selected Committee on

⁶⁷ S. 38(2) Interpretation of the Laws Act (Cap 1 R.E 2002)

⁶⁸ An interview conducted to Members of Parliament on November, 2012.

Subsidiary Legislation the annual report normally produced at the end of the year. The report comprised all of the activities conducted by the committee for a period of one year these includes scrutiny activities and oversight function. For that matter there is no special scrutiny report which is prepared by the committee rather than the annual report. The report is rare tabled but not debated by members of the House. However the extent of parliamentary controls whether by committee or by the whole House is largely depends on what is provided in the enabling Act. Unlike others, for instance in England, the Joint committee on Statutory Instruments has always prepare a scrutiny report and the report is always tabled before the House, no motion for affirmative resolution of the House of Lords in connection with any instrument may be moved until the report of Joint Committee on Statutory Instrument has been laid before the House. Following this practise one argued that In Tanzania control of delegated legislation is limited by some provisions of the laws, while in England control is broad and effective.⁶⁹

4.5 Parliamentary Committees and its Functions

A large part of work at the Parliament of the United Republic of Tanzania takes place in different committees made up of Members of Parliament from different political parties. Many authors have attempted to define committee and parliamentary committee as shown hereunder:

Committee can be defined as a group of people officially delegated to perform a function, such as investigating, considering, reporting, or acting on a certain matter.⁷⁰

Parliamentary committee is also defined as an individual or group of people to whom authority has been delegated by a larger group to perform a particular function or duty,⁷¹ it considers policy issues, scrutinise the work and expenditure of the government, and examine proposal for legislations.

⁶⁹ Statutory Instrument Act, 1946

⁷⁰ <http://www.thefreedictionary.com/committee> viewed on 20April 2013

⁷¹ <http://legal-dictionary.thefreedictionary.com/Parliamentary>

Article 96 (1) of the Constitution of United Republic of Tanzania empowers the National Assembly to establish various standing committees for the better discharge of its functions, moreover article 89 (1) of the same constitution vest power to the organ to enact standing orders⁷² of the National Assembly which enable the organ and the committee to conduct its functions accordingly. Following these provisions six categories of parliamentary committees introduced such as committee of the whole House,⁷³ Expenditure Committees,⁷⁴ plan committees,⁷⁵ Selected or ad-Hoc Committees,⁷⁶ Party caucuses Committee,⁷⁷ and Parliamentary standing Committees,⁷⁸ whereby within parliamentary standing committees a total number of 18 parliamentary committees established pursuant to the above Articles of the Constitution of United Republic of Tanzania. The structure and functions of parliamentary committee were empowered constitutionally through fifth constitutional amendment of United Republic of Tanzania.⁷⁹ Basically all parliamentary committees are forming part of the parliament and they function on its behalf. In the same context, the Parliamentary Subsidiary Legislation Committee established and given power to scrutinize subsidiary legislation on behalf of the Parliament of Tanzania.

4.6 Parliamentary Committee on Subsidiary Legislation

The Parliamentary Subsidiary legislation Committee is established in 2007 by virtue of Parliamentary Standing Orders No. 115 sub-order 1 and annexure 8 (1) (d)⁸⁰ which by then it was established as non-sectorial committee with no sector to oversee rather than subsidiary legislations. Under the same standing order, sub-order 5 of eight annex, the committee is vested with the specific function to scrutinize and

⁷² Parliamentary Standing Orders, 2007

⁷³ Parliamentary Standing Order, Order no 3, 2007

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Order no 117 of Parliamentary Standing Order, 2007

⁷⁷ Order no 110 of Parliamentary Standing Order, 2007

⁷⁸ Order no 115 of Parliamentary Standing Order, 2007

⁷⁹ See the evidence in Parliamentary Hansard report, in 17th session, on 23-27 October, 1984. And the constitutional amendment Act no. 15 of 1984.

⁸⁰ Ibid

examine subsidiary legislations to see whether they conforming and not conflicting with the constitution, parent Act and any law of the land. This does not mean that before the formation of the said committee, regulations were not examined by the parliament, the function was there automatically since the parliament delegate its legislative powers to the executive authorities it formed standing committee on Constitutional and Legal Affairs which was vested with the duty to deal with legal and constitutional affairs and the duty to scrutinize subsidiary legislations, to see whether they conforming and not conflicting with the law of the land, the committee was abolished in 2003 and another committee responsible for Constitution, Law and Good Governance was established and not given the duty to check on subsidiary legislation. This being the case that, from 2003 parliament did not scrutinize subsidiary legislations under the committee level, as a result many legislations were enacted without controlled by the organ, the situation continues up to 2007 when the parliamentary subsidiary legislation committee was introduced to check on delegated legislation. The committee was given a task to scrutinize legislation enacted since 2003 to date⁸¹.

4.7 Composition of Members of the Committee

The subsidiary legislation committee is composed of 10 members of the parliament from different political parties, who appointed to be members of the committee by the Speaker of the National Assembly⁸² for the term of two and a half years after general election and may re- appointed thereafter for the remaining two and a half years of full parliamentary term of five years.⁸³ In the nomination process of members of parliament in any parliamentary committee, speaker normally consider among others, the need for each committee to have the experienced and knowledgeable members of the parliament on the special duties to be performed by a

⁸¹ Charles Mloka, Kamati ya Bunge ya Sheria Ndogo: Historia na chimbuko lake katika Bunge la Jamhuri ya Muungano wa Tanzania, Mada iliyowasilishwa katika semina ya Kamati ya Bunge ya Sheria Ndogo, Ofisi ya Bunge, Dodoma, 22 juni 2008.

⁸² Parliamentary standing order number 113 (3), 2007, provides power to the speaker of the National Assembly to appoint Members of parliament in the parliamentary committees.

⁸³ Order 113(8)

particular committee. This is expressed in the standing order number 113(5) (d) which provides guidelines for the speaker of the National Assembly to appoint members of parliament in the parliamentary committees.

Even though the standing order requires the consideration of the knowledge and experience in allocation of members of the parliament in specific committees but in practice it is not possible for him to do so since the same standing order allows him to consider choices made by members of the parliament when appointing them in various committee.⁸⁴ In doing so, the speaker of the National Assembly appoints some of members of other committee on basis of their choice even though they are not knowledgeable. This means if other members are appointed on basis of their choices it is automatically that, others will be appointed not on basis of their choices. It is proposed in Commonwealth Parliamentary Association that in strengthening parliamentary committees membership on the committees should be appointed based on the member's experience and professional training⁸⁵. The issue to determine in this study is whether members of subsidiary legislation committee appointed to be member of the committee basing on their choices or knowledge and experience, the answer to this is quite different. Members of Subsidiary Legislation Committee were appointed not on basis of their choices and knowledge. This was evidenced when members of parliament when they were given form to select committee of their interest majority did not choose to be a member of Subsidiary Legislation Committee except two parliamentarians. The rest gave priority to watch dog committees named Public Accounts Committee (PAC), Local Authorities Accounts Committee (LAAC), Parastatal Organisations Accounts Committee (POAC) and Energy and Mining Committee. This factor hinder the efficacy of the committee and parliament at large in the scrutiny function of delegated legislation, since if parliamentarians themselves are not voluntarily opt to be members of subsidiary legislation committee this means he who will selected to be under the said committee will selected to be

⁸⁴ 113(c)

⁸⁵ Commonwealth (1999) Parliamentary Association: Parliamentary Committees, enhancing Democratic Governance, Cavendish publishing Limited, London.

there not on basis of their choice and even their commitment will not suffice for the committee and parliament to achieve the intended goal.

4.8 Functions of Subsidiary Legislation Committee

As explained above, the duty to scrutinize subsidiary legislations is conducted by the Parliamentary Subsidiary Legislation Committee. The committee performed such function by virtue of Parliamentary Standing Order, which empowered to be enacted by virtue of the Constitution of United Republic of Tanzania. Theoretically, scrutiny of subsidiary legislation is of much used in the field of parliamentary control over delegated legislation compared with laying legislation on the table before the parliament. This is due to the fact that, in Tanzania there is no general law which provides for the mandatory provision which require all regulations to be laid before the parliament before they come into operation, such being a case that, the scrutiny committee is established as an alternative way to strengthening parliamentary control over delegated legislation in Tanzania.

The committee is scrutinizing subsidiary legislation under the assistance of parliamentary secretaries equipped with legal knowledge to do so, and it is required to report to the House whether the power delegated by the parliament are being properly exercised within such delegation. This is the power to make regulations, rules, sub rules, and By –Laws. The committee scrutinize subsidiary legislation and the parliamentary secretariat renders all secretarial assistance to the committee. In the scrutiny process the committee required to check on different issues including the theme of the legislation itself, that it is required to be fair and just to the society concerned, other issues like proper power of authority to enact such legislation, jurisdiction covered by the legislation, retrospective effect as the law should operate prospectively, previous publication and publication of delegated legislation in Official Gazette, punishment, fees and charges if any that all are required not to exceed what is provided in the enabling Act, the drafting of legislation, and citations of the rules. All these factors are observed by committee during scrutiny of delegated legislation that they required to be in accordance with the enabling provisions. It

should be noted that during scrutiny process delegated legislation may be held invalid if it found beyond the scope of the power given by the enabling Act or if it violates any of the provisions of the Constitution or any other Act of parliament.

Looking on the provision in Parliamentary Standing Order it is like everything is in a proper way as far as the scrutiny of subsidiary legislation is concerned, but in practise the situation is slightly different. The committee undertakes the initial scrutiny of subsidiary legislation whether laid on the table before the parliament or not, but the issue here is how subsidiary legislations are available to the committee for the scrutiny process. There is neither fast rule nor any tendency for committee to call for records of legislation which are tabled before the house for scrutiny or notification, again there is no any provision which bind administrative authorities to submit legislation enacted by them to the parliament for scrutiny purposes, as a result secretariat of the committee used to search from different angles including Government Printers, Ministries of Constitutional and Legal Affairs and from administrative authorities concerned, bundle of subsidiary legislation for the committee to check on them.

This is to say, there is no any kind of legislation which submitted before the parliamentary committee for scrutiny purpose, as a result the committee used to scrutinizing subsidiary legislation without proper arrangement, It happens in several times that, the obtained legislation for scrutiny are not available in a sequence form. Something which rendered some of the legislation to be scrutinized more than one time, and others not scrutinized at all. This bring a question in mind that how an organ which is expected to be in front line to control delegated legislation has no guarantee to call for the records of legislation which are enacted by executive authorities for scrutiny function, this is because there is no legal position, there is no proper guideline for the committee to scrutinize delegated legislation, even in the parliamentary standing order which vest the power to the committee to check on subsidiary legislation there is no any guidance provided therein as a result legislation are not well debated and not well scrutinized by the committee.

After scrutiny process, the Parliamentary Subsidiary Legislation Committee, used to give to the department concerned an opportunity of making explanations orally or in writing about any matter which either found contrary to the enabling Act or any law of the land, or the committee thought there is a need for clarification for the specific By-Law. The committee after hearing from the authorities is normally preparing recommendations and opinions of which authorities will required to act accordingly with what is proposed by the committee and report to the committee after adherence, this including changes, modification and disallowance of the existence of a certain By-Law. The committee always does not prepare its scrutiny report it normally prepare annual report at the end of the year, the report which comprised what performed by the committee in scrutiny process (that is table work) and oversight function. The report of the committee is rarely tabled by being mentioned in the order paper of a day, but not debated at all before the House, this being the case the report is not subject to any criticism from other members of parliament rather than it having an impact of informing them that it exists.

Unlike the Committee of Subordinate Legislation in *Lok Sabha*-india which scrutinize delegated legislation in a well settled principles, that soon after notification of legislation in official gazette the secretariat culls out important points and send them for eliciting comments of the administrative ministries concerned and thereafter prepares self-contained memoranda for consideration of the committee, this does not meaning that members of the committee are precluded from examining the orders *suo motu* and making suggestions on their own, for this purpose, copies of all statutory orders that are laid on the Table of the House, are circulated to the members of the committee requesting them to send their suggestions in writing to the secretariat, so far the committee has made a very valuable contribution presented more than 100 reports of the scrutiny legislations to the House.⁸⁶ Due to its contribution the committee described by one as a vigorous and independent body.⁸⁷

⁸⁶ Sathe Op Cit, Pg 86

⁸⁷ Sir, Cecil Carry, Parliamentary Control over Delegated Legislation, Public Law, pp 200-15, 1956 cited by S P Sathe, *Op Cit*, pg 86.

4.9 Measuring the Function of Subsidiary Legislation Committee

In this world very few author wrote on assessment of parliamentary committees, Dr. Rodney Smith deserve a special comment who wrote that: “Over and the past decade or so, a literature on evaluating Australian parliamentary Committee has slowly grown. Measuring the effectiveness of committee has proved contentious”⁸⁸

In this study the evaluation of parliamentary committees to evaluate success or failure of the parliament specifically the subsidiary legislation committee should take into account the legal frame work in comparison with some views of the stake holders including public opinions, committee works including reports, views of members of parliament including ministers, and views of secretariats and of some officers from parliament of Tanzania. While such assessment the institutional design of Tanzania parliamentary system of government is also taken in to consideration simply because it attracts obstacles for the government to be direct accountable properly, this is the main factor limiting the effectiveness of parliamentary committee, because responsible government in Tanzania unite legislature and executive branch of government. This revealed in Standing Orders number 113(1)⁸⁹ which states that;

Mbunge yeyote ambaye si Waziri au Mwanasheria Mkuu wa Serikali anaweza kuteuliwa kuwa mjumbe wa Kamati ya Kudumu ya bunge yeyote ambayo inahusika na kanuni , na Waziri mwenye dhamamana na jambo lolote linalopelekwa au kujadiliwa na Kamati, pamoja na Naibu Waziri aliyeteuliwa kumsaidia Waziri huyo, watakuwa wajumbe wa kamati wakati kamati itakapokuwa inashughulikia jambo hilo.

The citation above shows that the minister is a member of parliamentary committee when the matters pertaining to his or her portfolio is discussed by the committee. For that case it is of the opinion that if a certain By-Law is discussed by the committee

⁸⁸ Smith R, New SouthWales Parliamentary Committee and Intergrity Oversight: Comparing Public sector Agency, New Media NGO Perspective, University of Sidney, NSW Australia, 2006

⁸⁹ 2007

the minister concerned or his representatives will automatically fails to be accountable as they required to, simply because the standing order needs them to appear before the committees as ministers and members of the committees as well.

4.10 Legal and Institutional Framework for Legislative Control of Delegated Legislation in Tanzania-

Looking on the legal and institutional frame work for delegation of power there is no doubt if executive authorities makes law subject to prior parliamentary consent, and the parliament is given an authority to do so by the constitution of the country⁹⁰ But the question is whether there is an existence of the legal framework for the effective control of delegated legislation by Members of Parliament, specifically members of subsidiary legislation committee.

Parliament after delegate its power it does not enact a single legislation for control of delegated legislation rather than it enact laws which provides for various procedures which required to be followed by executive authorities during law making process.⁹¹ The law provides various procedures such as holding consultations with particular bodies or interests, publication of draft rules of By-Law, laying them before the parliament etc, these procedures are required to be followed by authorities while framing of rules, since it is incumbent on the delegate to comply with these procedural requirements and exercise the power in a manner indicated in the legislature, the strong rules required for legislature to prevent abusive of power by the executive authorities, but of surprising is that the law does not provides for the uniform rules or mandatory provision for the prescribed procedures, example it does not provides for the mandatory provision for all regulations to be laid before the parliament prior its application. It rather allows the law to be laid down before the parliament after its operation. This also opens the door for the scrutiny committee to conduct a post-mortem exercise by scrutinized legislation which are in operation.

⁹⁰ Article 97(5) The Constitution of United Republic of Tanzania, 1977

⁹¹ [CAP 1 R.E 2002]

On the same side of safeguards, it is a practise of parliament to control delegated legislation through scrutiny committee whereby a selected committee is given power to scrutinize subsidiary legislation, the provisions of the laws in Tanzania is silent that it does not provides for the scrutiny function of delegated legislation by the committee, that apart from Parliamentary Standing Orders as regulation, no any other clear provision which empower the committee to do such a function, and the Parliamentary Standing Orders does not expressly provides for the guidance procedures for committee to conduct such function. Thus it is an argument that in Tanzania no any piece of legislation expressly provides for the control of delegated legislation this being the case that, the parliament and even the selected committee reported to play a little role in watching the executive authorities when they enacting delegated legislation. The Constitution, the Parliamentary Immunities, powers and privileges Act, the interpretations of the laws act, etc both does not confer the sufficient and comprehensive powers for the effective parliamentary control over delegated legislation in Tanzania.

4.11 Conditions Necessary for Effective Parliamentary Subsidiary Legislation Committee

The effectiveness of Parliamentary Subsidiary Legislation Committee can be valued by number of various factors: size of the Committee, leadership in the Committee, feature of the committee, knowledge and skills of members and secretariat of the committee, etc

4.12 Size of the Committee

In Parliamentary Standing Order there is no formula for the numbers of members of parliament to form a committee, but to make the committee to be effective in comparison with the tasks performed, the committee should not be too small; it should be in size for them to fulfil their obligation and for the chairman to handle them properly. Scrutiny of subsidiary legislation requires manpower, the small amount of members in the committee lead the committee not to achieve its goal. An interview conducted to the clerk of the committee reveal that the Subsidiary

Legislation Committee comprised of ten members of the committee out of 322 members of parliament.

4.13 Leadership of the Committee

The chairperson who appointed according to Parliamentary standing order is required to take charge and control the whole committee to achieve its goal. The chairperson is the leader of the committee required to lead all members of the committee on how to perform the function of the committee as they stipulated in parliamentary standing order⁹² contrary to that the committee will act *ultra-vires* to the regulation.

4.14 Knowledge and Skills of Members of the Committee

According to the constitution of the United Republic of Tanzania, the qualification of Member of Parliament is to know how to read and write in Swahili or English language.⁹³ So any one who contests required being under such qualifications, these criteria lead the parliament to accommodate different parliamentarians with or without enough skills to determine technical matters. Members of subsidiary legislation committee/parliament should possess necessary skills and knowledge for the committee to achieve their objectives.

4.15 Commitment and Interest of Members of the Committee

To achieve common goals members of the committee supposed to act in co-operative manner and much committed to the scrutiny function, Interest regarding to a certain obligations is an added advantage. Misunderstandings within the committee limit the performance of the committee hence failure to achieve the intended objectives.

4.16 Availability of Resources to the Committee

This is important factor to determine the efficacy of committee and parliament as a whole. Man power is one of the resources needed by the committee, members of secretariat required to have legal knowledge and skills to scrutinize legislation,

⁹² Order 115 of 8 Annexure, Sub-Order 5

⁹³ Article 67 (1) (a)

availability of various materials including subsidiary legislations for scrutiny, enabling Acts for reference, and any other resources, which are important for the achievement of the committee.

4.17 Availability of clear Guidelines

There should be clear guidelines and procedures, which advocates for parliamentary control over delegated legislation in Tanzania. The existence of clear rules and procedures which bind executive authorities to adhere to the Act of parliament during law making process will help the parliament to safeguards delegated legislation effectively.

4.18 Capacity Building for Secretariat and Members of the Committee

Capacity building is required to parliamentarians specifically committee members to enable them to be in a better position to table and scrutiny technical matters including the scrutiny of subsidiary legislation. Various training, seminars which reminds them on various angles of delegation of powers and control over the same is required to all members of parliament to enable them to understand the importance of delegated legislation and the existing danger of power abuse caused by executive authorities. On the other side, members of secretariat should be equipped with legal drafting and frequently training to be in a better position to assist parliamentarians to scrutinize subsidiary legislation effectively.

4.19 Conclusion

From the practise the legislative control of delegated legislation in Tanzania is exercised at the time of passing the enabling Act, while the other control is exercised when legislature scrutinises delegated legislation through laying legislation before the parliament and the scrutiny conducted by the specific committee to prevent abuse of power by executive authorities. It should be noted that for the sake of this study, measuring the efficacy of parliament in controlling of delegated legislation, one need to assess the function conducted by the selected committee on subsidiary legislation. This is because the committee is formed for the purposes of scrutinizing delegated

legislation on behalf of parliament, and this does not mean that, parliament as the whole house is unwilling to scrutinize delegated legislation, it is willing and it is doing part of it, the rest of the function is conducted by selected committee on subsidiary legislation which is formed to scrutinize delegated legislation in more detailed manner. So according to this study the efficient of parliament to oversee legislation enacted by executive authorities is measured through the function conducted by Parliamentary Subsidiary Legislation Committee, and the rest is measured through the control which is conducted by the whole House whereby the combination of these models of control lead to effective parliamentary control of delegated legislation in Tanzania.

CHAPTER FIVE

PRESENTATION OF STUDY FINDINGS ANALYSIS AND DISCUSSION

5.1 Introduction

In this chapter there are evidences and statistics revealed by means of the data and discussions. Consequently, the section infers the gathered data in detail, in order to present main findings of the study so as to encounter objectives of the study and present the study findings, analysis and discussions in relation to data which were congregated during data collection in assessing the effectiveness of legislative control of delegated legislation in Tanzania, specifically the parliamentary committee on subsidiary legislation. Moreover, this chapter delivers comprehensive recognition of factors that impinge the effectiveness of parliamentary specifically the committee in controlling delegated legislation.

5.2 Delegated Authorities and the Law Making Power

In this study the researcher discovered that, the authorities given the wide power to enact delegated legislation by the parliament and the parliament remains with an obligation to pass skeleton legislation, however in enacting legislation the authorities required to oblige to the enabling provisions and not more than that, through this the researcher realised that various procedures existing under the law to ensure there is effective control of delegated legislation.

The researcher through the study and the explanation provided by the state attorney discovered that, the practice of passing skeleton legislation containing only the barest principles and leaving important matters to the executive to be provided through subordinate legislation continued a serious invasion of the sphere of the parliament by the executive, and endangered the civic and personal liberties of individual, For stance in local government authorities ministers vested with large powers to enact delegated legislation, and they can use such power as they wish to abrogate or circumvent principal legislation or to push their hidden agenda through delegated

legislation. This shows that under regulations one can put anything for his wishes. An example was observed by the researcher during the discussions of the Constitution bills 2013 at the Constitution Legal and Public Administration Committee, that many things which were proposed by the stakeholders and various members of parliament to be included in the bill, they were recommended to be included to the regulations. This shows that under regulation one can put anything for his wishes, such loophole for the government authorities create fear to the public at large that is why there is a need for effectively control of delegated legislation in Tanzania.

5.3 Observation Made at the Parliament of the United Republic of Tanzania

At the Parliament of the United Republic of Tanzania the researcher first conducted information from the clerk of the table who is normal, appear at the House during the session, the clerk admitted that in the United Republic of Tanzania subsidiary legislation are normally started to operate before they are taken to the parliament. Example at the local government level were legislation are annually enacted they normally starts to operate soon after they assented by the Prime Minister and publicized in the official gazette⁹⁴, they are then taken to the parliament after publication and operation as well. This situation is somehow terrible as the regulations are taken to the parliament after its operations to the public, this implies that the by-law started its operation without blessings from the organ which authorise it to be enacted, whether are properly enacted or not whether the society will be affected or not, no one is concerned, thus one argued that there is a doubt whether parliament itself has fully aware of its power surrendered to the executive authorities and how easily the practice might be abused.

Looking to the provisions of the laws, example in section 38 (2) of the Interpretations of the laws Act, it is automatically that parliament after delegate its power it enact law for the organ to pass a resolution to disallow the application of laws which were not laid in the parliament within six sitting days of the National Assembly. It does

⁹⁴ Section 37 (1) (b) Interpretation of the Laws Act [CAP 1 R.E 2002]

not enact law for control of delegated legislation before it starts its operation. This means even the practise of laying procedure conducted by other countries to Tanzania become an imaginary idea, simply because if there is no any provision which advocates for the control of delegated legislation it is automatically that the organ will not be in a position to table legislation under the table properly. Moreover with non-existence of the law to control delegated legislation even parliamentarians will not dare to pass a resolution to disallow the application of a certain rule. It is difficult for Members of Parliament to declare invalidity of rules if there is no room for them to do so. Thus it was reported by the Clerk of the Table that, the notice of disallowance provided in the Interpretation of the laws Act has so far not witnessed to take place within the House, and this does not mean that all by-laws are tabled within the proper time or not contravenes the parent Act, they are, but with non-existence of the provision to control them make everything to become worse.

The researcher also discovered that, for the legislations which tabled (they are tabled after operations) they are not well scrutinized, parliamentarians has many other things and urgent matters to deal with, that they hardly find time to go into the technical questions of delegated legislation the remaining situation is for them to be informed about the existence of a certain regulation, with no any room for criticism. It is for this reason that judicial review of delegated legislation seems to be of utmost important. The researcher also gathered information from one member of the opposition who admitted that the Subsidiary Legislation Committee use a lot of government's money for oversight from one region to another, which to him he termed it as a misuse of resources and non-adherence to the Rules⁹⁵. He further explained that because it is the same parliament which empowers authorities to enact legislation still the organ is having a power to call for the authorities to submit their own by-laws before the House/ committee for the scrutiny purpose, however this will not going to be achieved if the law will continue to be silent.

⁹⁵ Parliamentary Standing Order 2007

5.4 Observation Made to the Scrutiny Committee

The researcher conducted information from members of Subsidiary Legislation Committee. Through the analysis, the researcher observed that some of members of subsidiary legislation committee are not aware of the concept of delegated legislation. A good example can be elaborated on the table below where the results shows that out of 10 members only 5 are aware of the concept of power delegation which is 50% of members of the committee. This calculation implies that in the parliament of Tanzania some of parliamentarians are not aware of the concept of power delegation, rather than they are aware of the existence of their power to make law and not to delegate such power to others, thus one member of parliament admit that no delegation of power in Tanzania and mere attempt to do that is to violate general principle of separation of power.

It of surprising to say that while the large number of legal systems in the world wide advocates for delegation of legislative power and the means of control over the same other parliamentarians are not aware of the concept of delegation of power. It is not sound proper to say member of the organ which delegates its legislative power to the executive authorities is not aware of the concept of delegated legislation, thus it become difficult to measure the duty conducted by subsidiary legislation committee and this may result to the failure of the committee to achieve its goal.

Table 1: The response of committee members on the awareness on delegated

Response	Number	Percent
Yes	5	50
No	2	20
Not sure	3	30
Total	10	100

legislation

Source: A list of committee members

5.5 Work of the Scrutiny Committee

Through this study the researcher discovered that the secretariat renders secretarial assistance to the members of the committee. They undertake the initial scrutiny of the available subsidiary legislations whether they are tabled before the parliament or not, the researcher further discovered that there is no any procedure no any law which enacted to order the authorities to submit subsidiary legislation to the committee for scrutiny purposes, and there is no any proper procedure which empower parliament as an institution /committee to collect subsidiary legislation from various authorities. This being the case that the committee scrutinized legislation, which acquired through searching from various institutions without proper arrangement. This situation made one to argue that the issue of searching legislation from door to door lead the committee to do a repetition of scrutiny of certain legislation which were already scrutinized by the same committee at the previous committee session, this happens in that way and was evidenced by the researcher during data collection that member of secretariat while searching for legislation they may found them or not, hence they scrutinize what they have as a result they examine legislation without proper sequence arrangement. Example in Financial Year 2008/2009 the committee managed to scrutinize the obtained by-law of 1998 and 2006 and few of 1996.⁹⁶

⁹⁶ It also indicated in the Committee Report of Finance Year 2008/2009

The researcher through this study discovered that in scrutiny process the committee achieved its goal by scrutinized the majority of By –Laws enacted by local government authorities and few delegated legislation from other authorities. This is well evidenced by the committee report of financial Year 2008/2009, 2009/2010 through this report the researcher discovered that the committee was largely based on the scrutiny of the By-Law, which was made by local government authorities. Moreover the Director of the of Parliamentary Committees made a researcher to observe that for the By –Laws which were scrutinized by the subsidiary legislation committee if it happens are inconformity with the enabling Act then the one who is responsible in law making process usually will required to appear before the committee for the explanation why certain law is enacted contrary to the constitution, enabling Act or any law of the land.⁹⁷ The researcher marked that this can be one of the area confused the committee since in reality it is hard to determine who is supposed to appear before the committee and who is not supposed to appear, as the By-Law making process involve a chain of personnel for the instrument to be complete, however the Director of the Committee clarified that the issue of one to appear before the committee is a matter to be determined by secretariat of the committee.

The researcher further discovered that in 2008/2009 and the first half of 2009/2010 the committee scrutinized various GN of 1998 and various GN of 2006 and discover various things such as poor legal drafting, wrong citations of the name of the parent Act which authorise for the by-law to be enacted, taking an example of GN which scrutinized by the committee, example in GN No.78 of 16.06/2008 The Veterinary (Retained Registered Veterinarians) NOTICE, 2008 which made under section 24 of The Veterinary Surgeon Act, 2003 (CAP 319), the committee observed and reported that there is a wrong citation of the name of the enabling Act, Cap 319 is Veterinary Act, 2003 and not Veterinary Surgeon Act.

⁹⁷ Paper prepared by Director of Parliamentary Committee Department 2011

Another issue observed by the committee is the application of subsidiary legislation before official gazette contrary to the interpretation of the Laws Act,⁹⁸ example GN. No. 249 of 4/10/1996 The Dodoma Municipal Council (Fumigation) By-Laws, 1995, the committee observed that the by-law started to operate since on 1st day of January 1995 but it was published in 1996 the year after. This allow the application of the law retrospectively contrary to section 37 of Interpretation of the Laws act⁹⁹ which prohibit the application of the law in retrospective manner, and this becomes a serious problem when there is existence of any punishment or any fees charged before the publication of the law, it is against the law of the land simply because any subsidiary legislation which is not gazetted is null and void. Other thing reported to be observed by the committee is failure of subordinate authorities to provide marginal notes, interpretations of key words in some of legislations and the long term process which were taken for the By-Law to be returned to the authorities concerned from Government Printers.

It was presented by the Clerk of the Committee to the researcher that in the second half of Financial Year 2009/2010 the committee changed its model of scrutiny of subsidiary legislation from table work to oversight at various local government authorities for the purposes of observing the compliance of local government authorities in by-law making process. The committee get opportunities to pay a visit to the local government authorities in various regions/cities including Tanga, Arusha, Dar es, and salaam, Mwanza, Tabora, Pwani, Lindi and Mtwara. And within the regions the following Councils tabled their By-Laws report before the Subsidiary Legislation Committee. These includes; Mwanza, Ilemela, Nyamagana, Geita, Misungwi, Kwimba, Sengerema, Magu, Ukerewe, Tabora, Tabora-Uyui, Urambo, Igunga, Nzega, Sikonge, Dar-es salaam, Temeke, Ilala, Kinondoni, Kibaha, Kisarawe, Mkuranga, Bagamoyo, Rufiji, Mafia, Mtwara,Newala, Nanyumbu, Masasi, Tandahimba, Lindi, Kilwa, Ruagwa, Nachingwea,and Liwale.¹⁰⁰ The Clerk

⁹⁸ Section 37 1(1) (a)

⁹⁹ (CAP 1, R.E 2002)

¹⁰⁰ The Annual Committee Report of 2011/2012

further reported that during the oversight the Committee interest was to hear the report of law making process made by authorities mentioned, the report tabled before the committee and the committee discover various obstacles impending authorities in making of subsidiary legislation such as;-

The long term process taken by the authorities to enact subsidiary legislation from the period of collecting opinions from stakeholders to solicitors council, Solicitors to RC, RC to PMO-RALG, POM-RALG to Government Printers, It was reported that this process took so long for the authorities to enact its By-Law, example it take a period of 12 months for a certain By-Law to be accomplished and start its operation. This is one of the reasons why local government authorities used law in retrospective manner contrary to the Interpretations of the laws Act, and such long term on the other side cause difficulties to the authorities as they fail to raise their own revenue. A good example is observed in 2011/2012 budget session where the government returned the obligation to collect service levy to local government authorities. Many councils were enacted By-Laws for such collection but till the Financial Year 2012/2013 the researcher discovered that many By-Laws were not returned to the authorities concerned and this lead the authorities not to collect revenue as it was intended for that financial year.

Another point reported by the secretariat of the committee which was observed by the committee during oversight is lack of enough legal experts, the Clerk insisted that this was reported in almost all councils visited by the committee and through this the researcher observed that in connection with this study this can be one of the reason for the authorities not to comply with law when making subsidiary legislation as a result they enacting and applying invalid rules a case delegated by parliament of which the authorities is required to observe such a practise. A good example was reported to be observed by the committee in Mkuranga and Rufiji councils were they have only one legal expert for both councils of which it will be difficult for him to work effectively in those areas which expected to enact By-Law in each year.

The clerk of the committee reported to the researcher that, there was intervention which leads the collision between local government authorities and PMO- RALG this is reported by various authorities when the subsidiary legislation committee watch the compliance of local government authorities in By-Law making process during oversight in those mentioned councils. The authorities reported to the committee that there is a tendency of orders delivered from PMO-RALG to the Local Government Authorities, which prevent the application of certain by-law, which allow the authorities to collect revenues. Example the Geita council enacted by- law to collect service levy in various areas within its jurisdiction, but latter on the council received a letter from PMO-RALG which prohibit the council to collect revenue from Geita Gold Mining, the said letter provided a reason that Geita Gold Mining is paying such kind of tax through the head quarters office situated in Dar es salaam. The Subsidiary legislation Committee provides a quarrel to the government why Minister responsible for PMO-RALG prohibits council to collect revenue within its local authority. The same implies to Misungwi council in Nyanza Roadwork Company, which always refuse to pay service levy to Misungwi council due to the permit given to them by the Minister responsible for LGAs which prohibit the company to pay tax to the council. Thus it shows that Minister in local government authorities is given enormous power to deal with delegated legislation, this being the case the parliament is required to strengthen its control model to prevent abuse of power by delegated authorities including ministers.

Another thing reported to be observed by the committee during the parliamentary oversight was the declaration of non-existence of Dar es salaam-Jiji council which was declared not to exist by the GN No. 416 of 2010, through the investigation conducted by the committee it was discovered that the decision to cease the authority of Dar es salaam- Jiji was of few people for their own interest. The Subsidiary Legislation Committee wanted to get explanation from the Government about the reasons and legality for the existence of the By-Law which put to an end the

existence of Jiji authority, and if there is existence of any law which invalidate such kind of a decision¹⁰¹

The provided above are the few things reported by secretariat and the committee to be observed by the committee responsible for control of delegated legislation during oversight function conducted at various authorities. However the effectiveness of the parliament specifically the subsidiary legislation committee was the interest of the researcher where by the clerk helped the researcher to realise that such new model of safeguards adopted by subsidiary legislation committee does not suffice the control of delegated legislation as it is required by the rules of parliament. The Parliamentary Standing Orders, a regulation enacted under the Constitution of the United Republic of Tanzania requires the committee to scrutinize delegated legislation by going to the technical matters and disallow invalid rules which conflicting the constitution and the laws of the land.

Table 2: The Response From other Governmental official on the Factors Hindering the Efficiency of the Committee in Controlling Delegated Legislation in Tanzania

Factor	No. of responders (out of 3)
Lack of knowledge and skills	3
Non adherence to standing order	2
Insufficient manpower	1
Poor prioritization	1
Insufficient time for scrutiny	2
Low level of education to Mps	2

Source: List of Governmental Officials

¹⁰¹ Committee Report of 09, February 2012 to Minister responsible for Constitutional and Legal Affairs, Minister responsible for Local Government Authorities (PMO-RALG) and Attorney General.

5.6 Legal Position for Committee Operation

The researcher through the data conducted to the clerk of the committee discovered that the scrutiny of subsidiary legislation by selected committee on subsidiary legislation conducted in two ways that is through oversight function and through table work (that is the scrutiny of legislation from word to word) Through these categories of scrutiny the committee discovered a lot of things which were contrary to the constitution and law of the land. However the researcher comes to observe that the committee is empowered to scrutinize subsidiary legislation by the National Assembly Standing Orders which expressly provides for the function of the committee¹⁰² the standing orders did not provides for the procedures and model to be applied by the committee while conducting scrutiny function. And there is no any legal framework from any law in Tanzania which expressly provides for scrutiny of subsidiary legislation by the committee. Parliament after delegate its power it didn't enact any law which will guide the organ to scrutinize delegated legislation. This being the case that, it was easy for the committee to switch model of control from scrutiny model (of word-to-word) to oversight model, which the later was termed by one as to politicize delegated legislation.¹⁰³

On the other side the researcher discovered that due to the operation of legal system in Tanzania the parliamentary committee on subsidiary legislation(PCSL) conducting the post-mortem exercise by scrutinising legislation which are in operation, this being the case the researcher discovered that the work of the committee was disregarded by some members of parliament who does not appreciate what was conducted by the PCSL, even in the institutional wise individuals are seems not to understand what is conducted by the committee since the committee is reported to scrutinize by-law which are in operation already and some of them has carry some effect to the society without any legal remedy.¹⁰⁴

¹⁰² Parliamentary Standing Orders, 2007

¹⁰³ Interview conducted to one Ex-Parliamentarian on 22 Feb 2013

¹⁰⁴ Data conducted from one Member of Parliament from opposition Party.

The researcher also observed that there is no any provision, no any procedure which provides for direction to the committee on what to do after scrutiny of delegated legislation. In practise the committee used to give to the government department concerned an opportunity to appear before the committee and make explanation orally or in writing. This is done by conduct, it does not provided by any law, and this being the case the secretariat admits that in other time they found themselves difficult to run such exercise of calling personnel to appear before the committee because it is not a single person who involved in law making process. A person to appear and not to appear before the committee is not a matter to be determined by members of the committee. It is for the secretariat to decide and invite them to appear before the committee.

Through that the researcher discovered that the large part of the scrutiny of subsidiary legislation in the committee level is conducted by secretariat. Parliamentarians have no opportunities to scrutinize legislation in *suo moto* simply because there is no opportunities, no tendency for them to visit on subsidiary legislation before they are scrutinized. When they come for scrutiny during committee sessions, they always adopt what has been done by the secretariat by adding or removing any comment in case any. Moreover, it was discovered that majority of members of the committee used to remain silent and leave the obligation to chairman and secretariat to deal with scrutinized legislation. Unlike United Kingdom, the practise is quiet different as members used to provide their own opinions in regulations first and return it to secretariat, this is not taking place in Tanzania because there is no fast rule, no procedure to follow as far as the control of delegated legislation is concerned.

The researcher also discovered that for the control which is performed by the parliament, through laying before the parliament it is not take place to each by- law unless that condition is expressly provided by the enabling provision, and even if the enabling Act is provides still not all by-law will be tabled, now days in practise by-laws are submitted to the Office of Clerk of the National Assembly of Tanzania.

Mere delivery of statutory instrument on any day during the existence of parliamentary session except holidays, Saturday and Sunday shall constitute laying, even though it is not expressly provided by any law but this is how it is practised.

The notice of disallowance which the Parliament empowered to pass by the law it has no value to add since it is allowed to take place while the law have started its application and some people has affected by such law without any compensation expressed by law, however such disallowance seems not to take place due to the lacunae of the law which existing in relation to legislative control of delegated legislation in Tanzania. This comes in mind that the organs of the government which delegate its legislative power is given a fictitious power to disallow the applicability of invalid rules, by so doing nothing is reported to take place and the invalid rule continue to exist and applied within the societies. This is to disregard and undermine the function of the delegate by given the power to check the law after its operations. It also affects the power of the parliament specifically the power of subsidiary legislation committee over legislation enacted by executive authorities.

Graph 1: The response from Members of committee on clarity of rules and procedures for control of delegated legislation



Source: A List of Committee Members

It is clear from the above diagram that the legal position for the control of delegated legislation in Tanzania is not clear and certain. This is revealed from 10 members of subsidiary legislation committee which 7 of them who constitute 70 % admit that the duty to control delegated legislation discharged under ambiguous guidelines, procedures and rules as there is no single provision to govern such function, 1 member which is 10% admit that the procedure and rules are clear, and others who make a total of 20% are not sure if the procedures and rules to control delegated legislation are existing, clear or not, while no any member from the committee who admit about the existence of clear rules and procedures for the control of delegated legislation in Tanzania.

5.7 Conclusion

This chapter provides for the position of delegated authorities in law making process that they required to abiding to the procedures prescribed by the law, failure to comply will invalidate the rules so framed. Parliamentary control is designed to ensure that the authorities are complying with the requirement of the rules and procedures in order to ensure the effective parliamentary control of delegated legislation. The study assessing the overall performance of parliament in the field of control of delegated legislation in Tanzania, various information in relation to delegation of legislative power and control over the same were conducted from parliamentarians, clerks of the committee and governmental officials, through that the researcher managed to assess the efficacy of parliament in watching legislation enacted by delegated authorities in Tanzania. It should be remembered that non-existence of uniformity procedures required in law making process within the executive authorities brought confusion to the executive authorities on what the law to abide to, at the same time this hinder the efficacy of legislative control of delegated legislation as legislations are enacted under and in accordance with a certain Act of parliament and the extent of control them shall be determined by the Act of Parliament.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter provides the general conclusion and recommendations on parliamentary control over delegated legislation in Tanzania. It analyzes the assessment of how the Parliament managed to watch over delegated authorities in the law-making process in Tanzania. It is of importance to note that the authority is required to comply with the law while making delegated legislation. To ensure compliance, effective control is required, that he who delegates its legislative power is entitled an obligation to control over the same to ensure that executive authorities do not abuse/misuse the power.

This study aims at assessing the effectiveness of parliament in controlling delegated legislation in Tanzania. Such efficacy could be obtained if at all the parliament could enact clear guidance for control of delegated legislation in Tanzania. Even though the Interpretation of the Laws Act and other enabling provisions provide for the procedures to follow in enacting delegated legislation, but the law does not clearly express about the control of delegated legislation, this being the case Parliament specifically the subsidiary legislation committee attempt to oversee delegated legislation basing on various procedures stipulated under the Interpretation of the Laws Act and any other Enabling provisions of the laws. If parliament could delegate its power, and enact law which empower the organ to control what it delegates, this means parliament could be in a better position to achieve its goal in relation to control of delegated legislation in Tanzania, and things could be very clear in relation to the law-making process as the authorities could comply with the law as they required by an Act of parliament and people grievances and complaints on delegated legislation could come to an end. But because the parliament delegate its legislative power and does not enact the law to empower the organ to watch over what it delegate and the authorities are aware of such loophole

as a result they don't comply with the law and enacting legislation knowing that the same will not be tabled before the parliament.

The explanation above shows that parliament has no enough power to watch over the rule making authorities and the authorities continue to abuse the power granted and worse enough individual are more affected by delegated legislation without any compensation provided by the law. Currently, parliament has scrutiny committee that watches over the making of delegated legislation, the committee introduced to strengthen parliamentary control as laying procedure seems to be not a mandatory procedure. The committee spends public money to discharge such function. But of surprising is that, there is no clear guideline, as well as clear provision which provides for the scrutiny of delegated legislation by the committee in Tanzania. This leads to the conflicting principles of the laws since on one side the law permit delegation of powers in a very wide manner, while on the other hand it remains silent in relation to the whole concept of legislative control of delegated legislations. The committee put in to practise the function of scrutiny of delegated legislation without clear guidelines expressed by the law. On top of that the scrutiny committee's reports are not even considered to exist by the parliament and the remaining doubt is whether members of the parliament are interested and aware of what is called delegated legislation.

The problem attempted in this study is what should be done by the parliament to ensure proper controls and safeguards of delegated legislations, in order to eliminate people grievances on subsidiary legislation in Tanzania. This part of the research will answer the existing problem by giving out general conclusion and recommendations which will enable the parliament to introduce its effective measure to control delegated legislation and it will enable parliamentarians to concentrate on that model of control instead of objecting to delegation of power and existing safeguards.

6.2 General Conclusion

The power of law- making in Tanzania is entrusted to various authorities, and very few individuals are aware of the power delegated to their authorities, as a results the power is remained to the hands of few elites, but no matter what it is existing today the requirement of the law is that even those authorities are required to enact the law with regards to what is provided in the enabling Act. The system of parliamentary control over delegated legislation is depends upon the drafting of the enabling or parent Act. It is the parent Act that for example determines the type and the extent of scrutiny over delegated legislation that made under its power, apart from the conditions prescribed in the parent Act it is the observation that the effectiveness of parliament supervision will much depends on the willingness and interest of members of parliament to scrutinize delegated legislation. It is for this reason that judicial review of delegated legislation is of utmost importance. For judiciary the important thing to consider while watching on delegated legislation is whether the procedures/condition provided in parent Act is mandatory or obligatory. The procedure of laying may be directory or mandatory depends to the scheme and language of the Act.

The use of 'shall' or 'may' suggest if the procedure is mandatory or directory. It should born in mind that if the authorities fail to comply with mandatory procedure while making of delegated legislation that failure invalidate the rule so framed but if it failed to comply with directory procedure such failure will not invalidate the law. However, the legality of every piece of delegated legislation is at the mercy of the courts¹⁰⁵.The Interpretation of the laws Act provides for the mandatory provision for the parliament to disallow all by-law, which not tabled before the house on time. It does not provide for mandatory provision for all regulations to be laid before the parliament prior its operation. If it could provides that parliament could be in a better position to scrutinize legislation and even to disallow subsidiary legislation, which appear to be contrary to the Act of parliament.

¹⁰⁵ Oluyede *Op.cit* pg 66

The researcher observed that the committee was more interested with oversight function conducted around the councils, than doing some table work of scrutinizes subsidiary legislation from word to word. This means even the committee itself is violating what is provided by the parliamentary regulation as function of the committee. This click in mind that the committee that is given the power to supervise on delegated legislation is also violates regulation, which provides for its function something, which is somehow amazing.

In this study the large part of the work, which was reported to be done by the subsidiary legislation, committee is the scrutiny of subsidiary legislation of local government authorities. Looking to the system of laws in Tanzania the local government authorities is guided by Local Government (urban authorities) Act¹⁰⁶ and Local Government (district authorities Act)¹⁰⁷ this being the case the parliament is seems to be reluctant to put his eyes -on, on the concept of delegated legislation and leave the task to the Ministry responsible for local government (PMO-RALG) to watch over rules enacted by local authorities. An evidence of this was recent quoted from Chairman of Parliamentary Committee on Lands, Natural Resources and Environmental when addressing people of Kazimzumbwi area near Kazimzumbwi forest where he admitted that, the obligation to keep eyes open on by-laws of land and natural resources is the responsibility of the government and not any other organ¹⁰⁸. It should be remembered that one of the function of the parliament is to watch the conduct of the government and there must be the distinction between the government and the parliament. If parliament leaves the task to the government to watch its own conduct the authority will relax and continue to enact unjust rules, so it is for the parliament to wake-up and examine a fresh its obligation as far as the control of delegated legislation is concerned to ensure that the authorities adhere to all enabling provisions including Interpretations of the Laws act, Constitution, and any other law of the land.

¹⁰⁶ [CAP 288 R.E 2002]

¹⁰⁷ [CAP 287 R.E 2002]

¹⁰⁸ Statement covered and reported by ITV-news on 12 July 2013.

Looking to the government structure, institutional structure of parliament and the legal system in Tanzania, it is the observations that legal sector is not given priority compared to other sectors such as energy, health, water, agriculture, infrastructure etc. Parliamentarians are busy to ensure that facilities under all mentioned portfolios are obtained at their constituencies for any cost, but they normally forget to watch over the laws which will enable individuals to enjoy the use of those facilities at their constituencies, this being the case that there is easily abusive of legislative power by delegated authorities. It is the time for the parliament of Tanzania to do a restructuring in law sector to ensure that delegated legislation is considered to be of importance as any other law. Here under are some of the recommendations, which required for the Parliament of Tanzania to achieve their goal in the field of control of delegated legislation in Tanzania:

6.3 Recommendations

6.3.1 Enactment for the Special Provision for Control of Delegated Authorities in Tanzania

In the previous chapter the researcher observed that there is no rule for commanding authorities to stick fast to the law when making of subsidiary legislation, so it is the recommendation that special provision should be enacted which will enable the parliament to control executive authorities while they making delegated legislation. The provision will enable the delegate to abide to the procedures and rules provided by the law in making of delegated legislation. The provision should not suppose to contain lots of explanations, but it has to state out the power of the parliament to the executive authorities. Such provisions will upward the power of the parliament to the field of control over delegated authorities as will be in line with what is required by the law and enact legislation without adding irrelevant materials knowing that all eyes of parliament is on those legislation and authorities concerned. Members of the parliamentary committee responsible for scrutiny of subsidiary legislation should be responsible to make follow up to all regulations which are disallowed by the National

Assembly in case any. That during the notice of disallowances the parliamentarians from scrutiny committee required being in a position to take note that certain regulation is refused by the house.

6.3.2 Need for Uniform Provision of Laying

It is recommended that for the parliament to work properly after the enactment of special provision for control of delegated authorities it requires the amendment of some of the provisions in the Interpretation of the laws Act (Cap 1 R.E 2002), For example section 38 (1) which advocates for regulations to be laid down following publication of regulations in the gazette. This provision required to be amended and replaced with the provision which will require all regulations to be tabled before the parliament before its operation, and the provision should proceed to provide that after tabled the by law should be subjected to recommendations, this will provide uniformity to all regulations and by so doing parliament will have power to scrutinize delegated legislation effectively since parliamentarians' hands will be on to criticize what it is enacted by the executive authorities if at all it is not enacted in proper manner. Not only that, the researcher also discovered that there is practical model of submitting legislation to the Clerk of the National assembly which constitutes laying before the parliament, this model is not expressed by any provision, it is the recommendation that for the best practice of the law this model should be included in the Parliamentary Standing Orders.

6.3.3 Provision for the Clarity Procedural for Scrutiny Function

In practice parliament cannot examine each regulation tabled before the house, and now days some legislation are submitted to the clerk of the national assembly which constitute laying procedure, this means parliament cannot be in a position to watch every piece of subsidiary legislation. For that means it is required to ensure safeguards of legislation is obtained properly within the parliamentary committee. That can be done by adding special provision in the Interpretation of the laws Act as a skeleton, which will, provides for scrutiny function. This will give to the

recognition of the scrutiny function, which is conducted by the parliamentary committee. The provision automatically will provide the power to amend Parliamentary Standing Orders which will be required to provide for the clarity of procedures of scrutiny function conducted by subsidiary legislation committee and the manner to make legislation available before responsible committee for the scrutiny purposes, since it is the parliament which delegates its legislative power, automatically it is having the mandate to call for the records of subsidiary legislation to be brought before committee for the scrutiny function.

6.3.3 Division of the duty of Subsidiary Legislation Committee

It is the recommendation of the researcher that the function of the committee responsible for scrutiny of subsidiary legislation should be divided into two, that is the scrutiny of subsidiary legislation such as orders, rules, notice, proclamation, etc should be conducted by specific sectorial committee, example if it is a notice made under health Act should be scrutinized by the committee which is responsible for health matters, if it is a proclamation which is made under Act of infrastructure should go to the committee responsible for infrastructure etc, and other by-laws which are enacted by local government authorities to be scrutinized by Subsidiary Legislation Committee. The division of such function will enable all legislation to be scrutinized effectively, this means apart from by-laws other rules, proclamations, notice, etc will be properly scrutinized by specific sectorial committee, another advantage is, it will enable by-law made by local government authorities to be detailedly scrutinized simply because by combining all subsidiary rules and scrutinized under one committee is to put too great a function on the selected committee as a result the committee found itself based on by-laws made by local government authorities and forget to deal with other kind of delegated legislation.

6.3.4 Expanding the Function of the Scrutiny Committees

It is the recommendation of the researcher that after division of such function as explained above any committee which will be responsible for the scrutiny function it

will required to be at front line to oversee the compliance of delegated authorities in law making process, the committees should expanding and strengthening such obligations, that apart from dealing with technical matters they should wide their function and concentrate on whether the by-law contains imposition of any tax, whether it directly or indirectly bars the jurisdiction of the courts, whether it appears to make some unusual or unexpected use of the powers conferred by the constitution or the Act pursuant to which it is made, whether there appears to have unjustifiable delay in its publication or the laying of it before parliament and the important thing is, the committee should also deal with the theme of subsidiary legislation to ensure that it does not infringe the rights and duties of individuals.

6.3.4 Report of the Scrutiny Committee

The committee responsible for the scrutiny of subsidiary legislation in the parliament of Tanzania used to prepare its Annual report, which includes all activities carried out by the committee for a period of one year. It is the recommendation of the researcher that any committee responsible for scrutiny of subsidiary legislation should prepare separate reports one for scrutiny of subsidiary and one for any other activities performed by the committee. By doing so the committee will be able to prepare a quality report which will be analyzed in a matrix form all by-laws which were scrutinized, observed, and any recommendation if any, as it will be provided by the committee. Apart from that the researcher recommends that the scrutiny report should be tabled before the House and debated by members of parliament to attract criticism if any. In case the committee takes the view that certain by-law/regulation may be annulled wholly or part of it, or amended in any respect, it should report its opinion and the grounds thereof to the parliament. Within the same line the researcher recommends that the Government of Tanzania should attaches great weight to the committee's reports and tries to implement its recommendations.

6.3.5 Capacity Building for Secretariat and Members of the Scrutiny Committee

It is the recommendation of the researcher to increase man power to subsidiary legislation committee for the sake of making committee more effective in its function. Through the study the researcher discovered that parliamentarians are not interested with subsidiary legislation that is why they are not voluntarily join the committee. Before the general election of 2010 the committee was non- sectorial committee, and the number of parliamentarians preferred to join the committee. On those days membership of the committee formed by various members from other committees, this means one person could form part in more than one committee. After general election of 2010, the committee becomes full flagged committee –that is sectorial committee with no sector to supervise other than subsidiary legislations, and his members are no longer form membership in other committee other than Subsidiary Legislation Committee. From there parliamentarians interest to join the committee came to an end, parliamentarians were no longer joined the committee voluntarily as a result Speaker by using his power vested under Parliamentary Standing Orders¹⁰⁹ decided to allocate members of parliament to form subsidiary legislation committee as he think fit. So for the purpose of the committee to achieve its goal the researcher recommending that Speaker should increase numbers of members to the committee so that not be in a small size as they are.

In addition to man power, frequently trainings required for secretariat of the committee as they are permanent officials and memory of the institution, as parliamentarians are non permanent members so it need secretariat to be more conversant in knowledge and skills of legal drafting and scrutiny of legislation to enable the institution to achieve its obligation properly.

¹⁰⁹ Parliamentary Standing Orders 2007, version of 2007

6.3.6 Leadership in the Scrutiny Committee

For the committee to achieve its goal it largely depends to the kind of the leadership in the committee. He is required to be neutral equipped with legal knowledge and skills to scrutinize subsidiary legislation. Looking on other state and how they achieve to safeguards delegated legislation the position of the leaders of the committee contributing a lot to the achievement of the committee. Example in United Kingdom the chairman of Joint Committee on Statutory Instruments has been a commons member from the opposition side, again in the Committee of Subordinate Legislation in each House of Parliament in India the chairman is usually a member of the opposition while in the Parliament of Tanzania only watch-dog committees has appoint their chairman from opposition side. The rest must appoint chairman from ruling part. So if it will not going to affect the system of parliamentary standing committee, it is the recommendation that the leader of subsidiary legislation committee should come from opposition side, this will enable the committee to be in a better position to examine and criticize subsidiary legislation enacted by executive authorities within the ruling government.

6.3.7 Membership in the Scrutiny Committee

According to Parliamentary Standing Orders members of Subsidiary legislation Committee are appointed by the Speaker of the National Assembly for the term of two and a half year after general election and re- appointed thereafter for the remaining two and a half years of full parliamentary term of five years. It is the recommendation that when members are reappointed to the committees for the second term Speaker should consider to appoint at least five members if not half of them who form membership in the committee for the first term. This is for the benefit of the committee and institution as well.

Another important recommendation is that Ministers should not form part of the selected committee. This will enable them to be accountable well when the matters pertaining to their portfolio is discussed by the committee. In the Standing Orders number 113(1) Minister and his deputy when are required to appear before the

parliamentary committee the Order needs them to appear as members of parliamentary committee and at the same time they are ministers from the ruling party. For that case if any matter or a certain subsidiary legislation is discussed by the committee the minister concerned or his deputy will automatically fail to be accountable as they required to, simply because they under two umbrella one of minister and the other one is of committee member. So it will become difficult for the one to examine his conduct.

6.3.8 Ministers and Deputy Ministers Should not be Members of the Parliament

The researcher recommends that some of the provisions in the Constitution of the United Republic of Tanzania should be amended. Example Article 55 (4) which requires all ministers and deputy ministers to be appointed from members of parliament it should be amended to enable Ministers and Deputy Ministers to be responsible to the government of the day. So, in case they are given power to enact subsidiary legislation and use such power as they think right and necessary the question will be directed to ministers to provide explanation for the use of such power.

6.3.9 The Qualifications for Member of Parliament Should be Reviewed

It is recommended that the qualification for candidate who contesting to be appointed to an office of Member of Parliament which stipulated under article 67 (1) of the Constitution of United Republic of Tanzania should be assessed based on academic grounds to increase the qualification of members of parliaments. The provided qualifications that is ability to read and write in either Kiswahili or English does not suffice the main organ of the government to hold members of adequate knowledge on most technical matters tabled and discussed in the House. This provision should be amended to enable those who appointed to an office of Member of Parliament to be able to tackle technical and complex matters tabled in the House including technical matters in delegated legislation.

6.3.10 Need for Special Studies to be Conducted

The researcher recommending that for the parliament of Tanzania to oversee delegated legislation effectively various studies should be conducted at different Commonwealth parliamentary Association (CPA) to learn how parliaments in the association perform such function. This will enable the parliament of Tanzania to copy from others and to be in a better position as far as the control of delegated legislation is concerned. On the same side, the committee when conducting oversight function a lot of problems were reported by various councils, the committee needs more experts to conduct a research to see how parliament will manage to help delegated authorities to overcome challenges faced by them in by-law making process. However parliament will achieve the best goal if at all the law to bind delegated authorities will be enacted to ensure that all authorities adhered to what is provided by the law.

6.3.11 General Recommendations

The underlying object of parliamentary control is to keep eyes-on, on the rule-making authorities and to provide an opportunity to criticize them if there is abuse of power on their part. Parliament could achieve on that if at all there could be a law to govern the relation between the delegate and the delegated ones. The authority of the parliament to exercise its power over public affairs is drawn under article 63, 89, 100 and 101 of the Constitution, the provisions of Parliamentary Immunities, Powers and Privilege Act¹¹⁰ and Parliamentary Standing Orders of 2007. Moreover the main laws which provides for delegated legislation in Tanzania is the Constitution, Interpretation of the laws Act, Local government District authorities Act and Local Government Urban Authorities Act, However apart from the provisions above and powers vested to the National assembly, there is limitations which provided by parliamentary practice, which Tanzania inherent from British parliamentary system.

¹¹⁰ (CAP 296) R.E 2002

Through parliamentary system, members of parliament who belong to the ruling party routinely exercise loyalty and discipline to the Government while they are in the National Assembly, they cannot do anything that would credit to the opposition political parties even though they individually opposing to their own government's particular policy, in practice, they will opt to abstain from voting rather than voting against their government. To that end it can be added that majority of members of parliament are not in a good position to scrutinize any matter which is tabled before the House, the same will apply to any regulations, subsidiary legislation, by-law, etc. Even though the legislation will be tabled government back-benchers will not do anything on that which will give credit to the opposition political parties. As a result, the organ becomes less effective on matter of control of delegated legislation.

Thus following such limitations, it is an argument that the provided law above are not sufficed to govern the relations between parliament and executive authorities. Parliament after delegate its legislative power it carried out an obligation to oversee delegated authorities without enacting a provision, which will guide the organ to do such a function, this being the case the authority of parliament, seems to be not committed in oversight control of delegated legislation. There should be a reform in the parliamentary system of government in Tanzania to enable organs responsible for control of delegated legislations to work as a team to achieve the best in the field of control of delegated legislation, the need for the specific legislation to monitor such kind of co-operation is also required in order to ensure justice and maintain rule of law within the society at large.

REFERENCES

BOOKS

- Chipeta B.D, (2009), **Administrative law in Tanzania**, A digest of cases, Mkuki and Nyota Publishers
- Erskine May, (1997) **Parliamentary Practice**, 22nd edition, Butterworth London
- Msekwa, P (1995): **Essays on The Transition to Multi-Partism in Tanzania**, Dar es salaam University Press Limited, Dar es Salaam.
- Oluyede P.O. (2010) **Administrative Law in East Africa**, Nairobi: Kenya Literature Bureau
- Pollard D, et al (2006) **Constitution and Administrative law** 4th edn. Oxford University.
- Ssekaana M, (2009) **Public Law in East Africa**, Dar es Salaam: Law Africa: Publishing (T) Ltd.
- Sathe S.P, (2010) **Administrative Law**, 7th edition, Rakmo Press printers, New Delhi.
- Takwani C.K, (2008) **Lectures on Administrative Law**, 4th edition, Lucknow: Eastern Book Company.
- Wade H.W.R & Forsyth C.F (2004) **Administrative Law**, 9th Edition, Oxford: Oxford University Press.

PAPERS

Buttler (1996): Ministerial Accountability: Lesson of the Scott Report, A paper presented before the Australian senate on 9th August.

Academy Management, (1975): Making Committee Effective, Journal, Volume 18, No. 2 of June, 1975.

The united Republic of Tanzania, Ministry of regional Administration and local Government (1998) Local Government Reform Programme: Policy Paper on Local Government reform, Dar es Salaam

WEBSITES

http://en.wikipedia.org/wiki/Delegated_legislation_in_the_United_Kingdom.

Accessed on 21 May 2013

<http://www.parliament.go.tz/index/php/home/paged/5> accessed on 4 May 2013

<http://www.lawteacher.net/english-legal-system/resources/delegated-legislation.php>

viewed on 4 January 2013

The free Encyclopedia -<http://en.wikipedia.org/wiki/Bicameralism> Accessed on 25 June 2013

The free Encyclopedia, -<http://en.wikipedia.org.org/wiki/Unicameralism> accessed on 24 June 2013

<http://www.thefreedictionary.com/committee> viewed on 20 April 2013

<http://legal-dictionary.thefreedictionary.com/parliamentary> accessed on 20 April 2013

APPENDICES

APPENDIX: A

MZUMBE UNIVERSITY-FACULTY OF LAW
A QUESTIONNAIRE TO BE FILLED BY MEMBERS OF PARLIAMENT IN
THE PARLIAMENT OF UNITED REPUBLIC OF TANZANIA

TITLE OF THE STUDY: AN ASSESSMENT ON THE EFFECTIVENESS OF PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN TANZANIA: A CASE STUDY OF PARLIAMENTARY COMMITTEE ON SUBSIDIARY LEGISLATION

CONSENT FORM

Dear Respondent

Please take this opportunity to complete this questionnaire intended for a research study titled “An Assessment of the Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania: A Case Study of Parliamentary Committee on Subsidiary Legislation”.

As stated on the study title, the purpose of this study is to find out Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania. The findings which will be obtained will alert the parliament, specifically parliamentary committee on subsidiary legislation to understand its position in regarding to the control over delegated legislation in Tanzania.

My take is; all information gathered will be treated with greatest confidentiality and only for the study purpose. No name is required on the questionnaire.

Procedures:

In this study you will be asked few questions, the questions will be in form of self-structured administered questionnaires. This will take about 20 - 30 minutes of your time. The information you will provide will help in identifying the effectiveness of Parliamentary Control over Delegated Legislation in Tanzania.

Possible risks or benefits:

There is no risk involved in this study. As a member of a parliament, you have been selected as a valuable person who can give actual information concerning the study. I am therefore seeking your cooperation and truthfulness in responding to questions.

Right for refusal to participate and withdrawal

You are free to choose to participate in the study. You may refuse or withdrawal any time from the study. You may also refuse to answer some or all the questions if you don't feel comfortable with it.

Confidentiality:

The information gathered will be treated with maximum confidentiality and will only be used for the purpose of this study. Only the principal investigator and supervisor will have right to access. No name is required on the questionnaire; the identity of the participant will not be disclosed at any time.

Available Sources of Information

In your convenience, if you need to know the feedback of the study, please call via my mobile number +255 715 488 680 and the appointment will be fixed and needed information will be given to you.

Authorization

I have read and understand this consent form, and I volunteer to participate in this research study.

Participant’s NumberSignature..... Date.....

Principal Investigator’s Signature Date

In the light of Article 64 of the Constitution of the United Republic of Tanzania, the Parliament is the State Organ vested with Legislative powers to enact the law of the land. However due to the development of governmental functions, the organ delegate its legislative power to administrative authorities to enact their rules/ laws in accordance with their needs. In this study, the researcher is interested in assessing how effective Parliament is, in watching delegated authorities while making their delegated legislation. On the other words, the researcher wants to know how effective parliament is, in controlling delegated legislation in Tanzania. Your participation is exceedingly honoured and the information given will be for the purpose of this study and shall be treated confidentially. For that reason, you need not to mention your name anywhere in this work.

1. The laws in Tanzania empower the Parliament to delegate its legislative power to other administrative authorities.

YES	1
NO	2
NOT SURE	3

2. The Parliament controls and advices the government under the concept of checks and balance as required by the doctrine of separation of powers. This means that even the delegated legislative powers to the government and its authorities is controlled by the Parliament. The Parliament is discharging this duty:-

Effectively	1
Ineffectively	2
Not Sure	3

3. The duty of control stated in question 2 above is discharged under laid down guidelines, procedures, rules and principles which are:-

Very Clear	1
Clear	2
Ambiguous	3
Not Sure	4

4. The following are the factors, which impedes the Parliamentary endeavours in the effective control of delegated legislation. Please tick two or more or all of the factor(s) which you consider appropriate:-

Inadequate funds and other resources	1
Inadequate knowledge	2
Lack of clear guidelines and procedures	3
Lack of commitment	4
Parties partisan	5
Lack of patriotism	6
Limitations of laws	7
Lack of priority	8

5. Complaints, riots, strikes and non-adherence to the law and orders are people's grievances which indicate for ineffective Parliamentary control of delegated legislation:-

YES	1
NO	2
NOT SURE	3

6. As a member of the Parliament which delegate and controls the delegated legislation, what are the factors which you consider to be effective tool(s) in controlling delegated legislation:-

1.
2.
3.
4.

7. (a) The Legislature has done very little in controlling delegated legislation:-

YES	1
NO	2
Somehow	3
Not Sure	4

(b) If your answer in (a) above is YES state how:-

1.
2.
3.
4.

(c) If your answer in (a) above is NO state why:-

1.
2.
3.
4.

8. In your opinion, are the resources available for parliamentary committees sufficient for them to be effective in discharging their duties?

YES	1
NO	2
To some extent	3

9. Please give your own comment on the effectiveness of the parliamentary control over delegated legislation in Tanzania.

.....
.....
10. Is there any rules, guidelines and procedures for scrutiny delegated legislation
in Parliamentary Subsidiary Legislation Committee?

.....
.....

THANK YOU FOR PARTICIPATION

APPENDIX: B

MZUMBE UNIVERSITY-FACULTY OF LAW
A QUESTIONNAIRE TO BE FILLED BY MEMBERS OF SUBSIDIARY
LEGISLATION COMMITTEE IN THE PARLIAMENT OF UNITED REPUBLIC
OF TANZANIA

TITLE OF THE STUDY: AN ASSESSMENT ON THE EFFECTIVENESS OF
PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN
TANZANIA: A CASE STUDY OF PARLIAMENTARY COMMITTEE ON
SUBSIDIARY LEGISLATION

CONSENT FORM

Dear Respondent

Please take this opportunity to complete this questionnaire intended for a research study titled “An Assessment of the Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania: A Case Study of Parliamentary Committee on Subsidiary Legislation”.

As stated on the study title, the purpose of this study is to find out Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania. The findings which will be obtained will alert the parliament, specifically parliamentary committee on subsidiary legislation to understand its position in regarding to the control over delegated legislation in Tanzania.

My take is; all information gathered will be treated with greatest confidentiality and only for the study purpose. No name is required on the questionnaire.

Procedures:

In this study you will be asked few questions, the questions will be in form of self-structured administered questionnaires. This will take about 20 - 30 minutes of your time. The information you will provide will help in identifying the effectiveness of Parliamentary Control over Delegated Legislation in Tanzania.

Possible risks or benefits:

There is no risk involved in this study. As a member of a parliament, you have been selected as a valuable person who can give actual information concerning the study. I am therefore seeking your cooperation and truthfulness in responding to questions.

Right for refusal to participate and withdrawal

You are free to choose to participate in the study. You may refuse or withdrawal any time from the study. You may also refuse to answer some or all the questions if you don't feel comfortable with it.

Confidentiality: The information gathered will be treated with maximum confidentiality and will only be used for the purpose of this study. Only the principal investigator and supervisor will have right to access. No name is required on the questionnaire; the identity of the participant will not be disclosed at any time.

Available Sources of Information

In your convenience, if you need to know the feedback of the study, please call via my mobile number +255 715 488 680 and the appointment will be fixed and needed information will be given to you.

Authorization

I have read and understand this consent form, and I volunteer to participate in this research study.

Participant's NumberSignature..... Date.....

Principal Investigator's Signature Date

In the light of Article 64 of the Constitution of the United Republic of Tanzania, the Parliament is the State Organ vested with Legislative powers to enact the law of the land. However due to the development of governmental functions, the organ delegate its legislative power to administrative authorities to enact their rules/ laws in accordance with their needs. In this study, the researcher is interested in assessing how effective Parliament is, in watching delegated authorities while making their delegated legislation. On the other words, the researcher wants to know how effective parliament is, in controlling delegated legislation in Tanzania. Your participation is exceedingly honoured and the information given will be for the purpose of this study and shall be treated confidentially. For that reason, you need not to mention your name anywhere in this work.

1. The laws in Tanzania empower the Parliament to delegate its legislative power to other authorities.

YES	1
NO	2
NOT SURE	3

2. The Parliament controls and advices the government under the concept of checks and balance as required by the doctrine of separation of powers. This means that even the delegated legislative powers to the government and its authorities is controlled by the Parliament. The Parliament is discharging this duty:-

Effectively	1
Ineffective	2
Not Sure	3

3. The duty of control stated in question 2 above is discharged under laid down guidelines, procedures, rules and principles which are:-

Very Clear	1
Clear	2
Ambiguous	3
Not Sure	4

4. The following are the factors which impedes the Parliamentary endeavours in the effective control of delegated legislation. Please tick two or more or all of the factor(s) which you consider appropriate:-

Inadequate funds and other resources	1
Inadequate knowledge	2
Lack of clear guidelines and procedure	3
Lack of commitment	4
Parties partisan	5
Lack of patriotism	6
Limitation of laws	7
Lack of priority	8

5. Complaints, riots, strikes and non-adherence to the law and orders are people's grievances which indicate for ineffective Parliamentary control of delegated legislation:-

YES	1
NO	2
NOT SURE	3

6. As a member of Parliamentary Standing Committee which controls the delegated legislation, what are the factors which you consider to be effective tool(s) in controlling delegated legislation:-

1.
2.
3.
4.

7. (a) The Legislature has done very little in controlling delegated legislation:-

YES	1
NO	2
SOMEHOW	3
NOT SURE	4

(b) If your answer in (a) above is YES state how:-

1.
2.
3.

(c) If your answer in (a) above is NO state why:-

1.
2.
3.

8. Please give your own comment on the effectiveness of the parliamentary control over delegated legislation in Tanzania.

.....

THANK YOU FOR PARTICIPATION

APPENDIX: C

MZUMBE UNIVERSITY-FACULTY OF LAW
A QUESTIONNAIRE TO BE FILLED BY PARLIAMENTARY COMMITTEE
CLERKS IN THE OFFICE OF NATIONAL ASSEMBLY

TITLE OF THE STUDY: AN ASSESSMENT ON THE EFFECTIVENESS OF
PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN
TANZANIA: A CASE STUDY OF PARLIAMENTARY COMMITTEE ON
SUBSIDIARY LEGISLATION

CONSENT FORM

Dear Respondent

Please take this opportunity to complete this questionnaire intended for a research study titled “An Assessment of the Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania: A Case Study of Parliamentary Committee on Subsidiary Legislation”.

As stated on the study title, the purpose of this study is to find out Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania. The findings which will be obtained will alert the parliament, specifically parliamentary committee on subsidiary legislation to understand its position in regarding to the control over delegated legislation in Tanzania.

My take is; all information gathered will be treated with greatest confidentiality and only for the study purpose. No name is required on the questionnaire.

Procedures:

In this study you will be asked few questions, the questions will be in form of self-structured administered questionnaires. This will take about 20 - 30 minutes of your

time. The information you will provide will help in identifying the effectiveness of Parliamentary Control over Delegated Legislation in Tanzania.

Possible risks or benefits:

There is no risk involved in this study. As a member of a parliament, you have been selected as a valuable person who can give actual information concerning the study. I am therefore seeking your cooperation and truthfulness in responding to questions.

Right for refusal to participate and withdrawal

You are free to choose to participate in the study. You may refuse or withdrawal any time from the study. You may also refuse to answer some or all the questions if you don't feel comfortable with it.

Confidentiality: The information gathered will be treated with maximum confidentiality and will only be used for the purpose of this study. Only the principal investigator and supervisor will have right to access. No name is required on the questionnaire; the identity of the participant will not be disclosed at any time.

Available Sources of Information

In your convenience, if you need to know the feedback of the study, please call via my mobile number +255 715 488 680 and the appointment will be fixed and needed information will be given to you.

Authorization

I have read and understand this consent form, and I volunteer to participate in this research study.

Participant's NumberSignature..... Date.....

Principal Investigator's Signature Date

In the light of Article 64 of the Constitution of the United Republic of Tanzania, the Parliament is the State Organ vested with Legislative powers to enact the law of the land. However due to the development of governmental functions, the organ delegate its legislative power to the administrative authorities to enact their rules/ laws in accordance with their needs. In this study, the researcher is interested in assessing how effective Parliament is, in watching delegated authorities while making their delegated legislation. On the other words, the researcher wants to know how effective parliament is, in controlling delegated legislation in Tanzania. Your participation is exceedingly honoured and the information given will be for the purpose of this study and shall be treated confidentially. For that reason, you need not to mention your name anywhere in this work.

1. Subsidiary legislations are tabled before the Committee as one of the means of the Parliamentary control of its delegated legislation:-

Must	1
Sometimes	2
Always	3
Not Sure	4

2. The rules, procedure and practices for the control of subsidiary legislation by the Parliamentary Committee for the same are:-

In place and clear	1
In place but not clear	2
In place but confusing	3
Not available	4

3. The subsidiary legislations are tabled before the Parliament only when they have come into force after their repercussion is obvious to the intended subjects:-

YES	1
NO	2
NOT ALWAYS	3
NOT SURE	4

4. The Tanzanian Parliament exercises full control over the delegated legislation

YES	1
NO	2
NOT SURE	3

5. For the Parliament to effectively control the delegated legislation, the following must be observed:-

1.
2.
3.
4.

THANK YOU FOR PARTICIPATION

APPENDIX: D

MZUMBE UNIVERSITY-FACULTY OF LAW

A QUESTIONNAIRE TO BE FILLED BY OFFICERS IN PRIME MINISTER'S
OFFICE - REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT
(PMO - RALG)

TITLE OF THE STUDY: AN ASSESSMENT ON THE EFFECTIVENESS OF
PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN
TANZANIA: A CASE STUDY OF PARLIAMENTARY COMMITTEE ON
SUBSIDIARY LEGISLATION

CONSENT FORM

Dear Respondent

Please take this opportunity to complete this questionnaire intended for a research study titled "An Assessment of the Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania: A Case Study of Parliamentary Committee on Subsidiary Legislation".

As stated on the study title, the purpose of this study is to find out Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania. The findings, which will be obtained, will alert the parliament, specifically parliamentary committee on subsidiary legislation to understand its position in regarding to the control over delegated legislation in Tanzania.

My take is; all information gathered will be treated with greatest confidentiality and only for the study purpose. No name is required on the questionnaire.

Procedures:

In this study you will be asked few questions, the questions will be in form of self-structured administered questionnaires. This will take about 20 - 30 minutes of your time. The information you will provide will help in identifying the effectiveness of Parliamentary Control over Delegated Legislation in Tanzania.

Possible risks or benefits:

There is no risk involved in this study. As a member of a parliament, you have been selected as a valuable person who can give actual information concerning the study. I am therefore seeking your cooperation and truthfulness in responding to questions.

Right for refusal to participate and withdrawal

You are free to choose to participate in the study. You may refuse or withdrawal any time from the study. You may also refuse to answer some or all the questions if you don't feel comfortable with it.

Confidentiality: The information gathered will be treated with maximum confidentiality and will only be used for the purpose of this study. Only the principal investigator and supervisor will have right to access. No name is required on the questionnaire; the identity of the participant will not be disclosed at any time.

Available Sources of Information

In your convenience, if you need to know the feedback of the study, please call via my mobile number +255 715 488 680 and the appointment will be fixed and needed information will be given to you.

Authorization

I have read and understand this consent form, and I volunteer to participate in this research study.

Participant's NumberSignature..... Date.....

Principal Investigator's Signature Date

In the light of Article 64 of the Constitution of the United Republic of Tanzania, the Parliament is the State Organ vested with Legislative powers to enact the law of the land. However due to the development of governmental functions, the organ delegate its legislative power to administrative authorities to enact their rules/ laws in accordance with their needs. In this study the researcher is interested in assessing how effective Parliament is, in watching delegated authorities while making their delegated legislation. On the other words, the researcher wants to know how effective parliament is, in controlling delegated legislation in Tanzania. Your participation is exceedingly honoured and the information given will be for the purpose of this study and shall be treated confidentially. For that reason, you need not to mention your name anywhere in this work.

1. The process of legislating subsidiary legislation in local government involves inter alia consulting the people to be affected by the legislations for their suggestions and or comments and publication in the government gazette. Most of the times the people are not consulted:-

True	1
Not True	2
Not Always	3
Not Sure	4

2. Most of the time the procedures for the subsidiary legislation have been overlooked by local authorities mandated to legislate thus necessitating Parliamentary intervention. This intervention has been done through rules and procedures clearly known to both the parliamentarians and the local government officials:-

Yes	1
No	2
Not always	3
Not Sure	4

3. However the Parliament has been keen and effective in controlling the subsidiary legislation so that they conform to parent Acts and not repugnant to the ground norm. This control has been done:-

Effectively	1
Fairly	2
Not sure	3
Not done	4

4. Suggest the factors which you consider to have been impeding the Parliament in exercising its full control over delegated legislations:-

1.
2.
3.
4.

5. Suggest the remedy for the factors in 4 above

1.
2.
3.

6. The process of legislating subsidiary legislation in local government involves inter alia consulting the people to be affected by the legislations for their suggestions and or comments and publication in the government gazette. Most of the times the people are not consulted:-

True	1
Not True	2
Not Always	3
Not Sure	4

7. Most of the time the procedures for the subsidiary legislation have been overlooked by local authorities mandated to legislate thus necessitating Parliamentary intervention. This intervention has been done through rules and procedures clearly known to both the parliamentarians and the local government officials:-

Yes	1
No	2
Not always	3
Not Sure	4

8. However the Parliament has been keen and effective in controlling the subsidiary legislation so that they conform to parent Acts and not repugnant to the ground norm. This control has been done:-

Effectively	1
Fairly	2
Not sure	3
Not done	4

9. Suggest the factors which you consider to have been impeding the Parliament in exercising its full control over delegated legislations:-

.....
.....

10. Suggest the remedy for the factors in 4 above

.....
.....

THANK YOU FOR PARTICIPATION

APPENDIX: E

MZUMBE UNIVERSITY-FACULTY OF LAW A QUESTIONNAIRE TO BE FILLED BY STATE ATTORNEYS IN THE OFFICE OF ATTORNEY GENERAL

**TITLE OF THE STUDY: AN ASSESSMENT ON THE EFFECTIVENESS OF
PARLIAMENTARY CONTROL OVER DELEGATED LEGISLATION IN
TANZANIA: A CASE STUDY OF PARLIAMENTARY COMMITTEE ON
SUBSIDIARY LEGISLATION**

CONSENT FORM

Dear Respondent

Please take this opportunity to complete this questionnaire intended for a research study titled “An Assessment of the Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania: A Case Study of Parliamentary Committee on Subsidiary Legislation”.

As stated on the study title, the purpose of this study is to find out Effectiveness of Parliamentary Control over Delegated Legislation in Tanzania. The findings which will be obtained will alert the parliament, specifically parliamentary committee on subsidiary legislation to understand its position in regarding to the control over delegated legislation in Tanzania.

My take is; all information gathered will be treated with greatest confidentiality and only for the study purpose. No name is required on the questionnaire.

Procedures:

In this study you will be asked few questions, the questions will be in form of self-structured administered questionnaires. This will take about 20 - 30 minutes of your time. The information you will provide will help in identifying the effectiveness of Parliamentary Control over Delegated Legislation in Tanzania.

Possible risks or benefits:

There is no risk involved in this study. As a member of a parliament, you have been selected as a valuable person who can give actual information concerning the study. I am therefore seeking your cooperation and truthfulness in responding to questions.

Right for refusal to participate and withdrawal

You are free to choose to participate in the study. You may refuse or withdrawal any time from the study. You may also refuse to answer some or all the questions if you don't feel comfortable with it.

Confidentiality: The information gathered will be treated with maximum confidentiality and will only be used for the purpose of this study. Only the principal investigator and supervisor will have right to access. No name is required on the questionnaire; the identity of the participant will not be disclosed at any time.

Available Sources of Information

In your convenience, if you need to know the feedback of the study, please call via my mobile number +255 715 488 680 and the appointment will be fixed and needed information will be given to you.

Authorization

I have read and understand this consent form, and I volunteer to participate in this research study.

Participant's NumberSignature..... Date.....

Principal Investigator's Signature Date

In the light of Article 64 of the Constitution of the United Republic of Tanzania, the Parliament is the State Organ vested with legislative powers to enact the law of the land. However due to the development of governmental functions, the organ delegate its legislative power to the administrative authorities to enact their rules/ laws in accordance with their needs. In this study the researcher is interested in assessing how effective Parliament is, in watching delegated authorities while making their delegated legislation. On the other words the researcher wants to know how effective parliament is, in controlling delegated legislation in Tanzania. Your participation is exceedingly honored and the information given will be for the purpose of this study and shall be treated confidentially. For that reason you need not to mention your name anywhere in this work.

1. Statutorily, the delegated legislation is chiefly governed by part VI of the Interpretation of Laws Act, (Cap 1 R. E. 2002) and other related laws. Sometimes the requirement of the law has been put into jeopardy. Do you think that the Parliamentary control over delegated legislation has been effective?

Yes	1
No	2
Not Sure	3

2. In controlling the delegated legislation the Parliament has established a Standing Committee for overseeing the delegated legislation. This committee has discharged its duties:-

Effectively	1
Somehow	2
Not sure	3

3. Like any other Parliamentary Standing Committee of the Parliament of the United Republic of Tanzania, the Committee for subsidiary legislation has been facing a lot of impediments and or challenges. Mention at least four of them:-

1.
2.
3.

4. Complaints, riots, strikes and non-adherence to the law and orders are people's grievances, which come as a repercussion for ineffective Parliamentary control of delegated legislation. Do you agree?

Yes	1
No	2
Not certain	3

5. If your answer in 4 above is Yes, suggest the remedy. If your answer is No, state why?

1.
2.

THANK YOU FOR PARTICIPATION