

**LEGAL FRAMEWORK OF CENTRAL-LOCAL GOVERNMENT
ADMINISTRATIVE RELATIONSHIP AND ITS IMPLICATION ON THE
AUTONOMY OF LOCAL GOVERNMENT AUTHORITIES IN MAINLAND
TANZANIA**

**LEGAL FRAMEWORK OF CENTRAL-LOCAL GOVERNMENT
ADMINISTRATIVE RELATIONSHIP AND ITS IMPLICATION ON THE
AUTONOMY OF LOCAL GOVERNMENT AUTHORITIES IN MAINLAND
TANZANIA**

By

Mnyasenga Tobias Raphael

A Thesis Submitted in Fulfilment of the Requirements for the Degree of Doctor of
Philosophy of Mzumbe University

2017

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a thesis entitled “**Legal Framework of Central-Local Government Administrative Relationship and Its Implication on the Autonomy of Local Government Authorities in Mainland Tanzania**” in fulfilment of the requirements for the Degree of Doctor of Philosophy of Mzumbe University.

Signature _____

Dr. Eleuter G. Mushi.

Major Supervisor

Signature _____

Dr. Benedict T. Mapunda.

Co-Supervisor

Accepted by the faculty of Law,

Signature _____

DEAN, FACULTY OF LAW.

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I, Tobias Raphael Mnyasenga, do hereby declare that this Thesis is my own original work and that it has not been presented and will not be presented to any other University for the award of a similar or any other degree.

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Lastly, I am so grateful to the Almighty God for His blessings and grace and for keeping me in good health throughout the period of conducting this study. Without God's blessings nothing would have been possible.

DEDICATION

This Thesis is dedicated to my lovely sister, Victoria Mnyasenga; my lovely wife, Dafrosa Mnyasenga; my distinguished children: Catherine, Faith, Isaac and Nelisa; and the Memory of my parents Mr. Raphael Epiphany and Ms. Maria Antony.

LIST OF INTERNATIONAL INSTRUMENTS, CONSTITUTIONS AND STATUTES

International Instruments

The European Union Protocol No.2 on the Application of the Principles of Subsidiarity and Proportionality, 1992.

The Treaty on European Union (Maastricht Treaty), 1992.

United Nations Human Settlements Programme.(2007).International Guidelines on Decentralisation and Strengthening of Local Government Authorities. UN-HABITAT.

Constitutions and Statutes

English Statutes

The Education Reform Act, 1988.

The Local Government (Wales) Act, 1994.

The Local Government Act, 1972 CAP 70 of 1972.

The Local Government Act, 1985.

The Local Government Act, 1992.

The Local Government and Public Involvement in Health Act 2007.

The Local Government and Rating Act 1997.

The Philippines Constitution and Statutes

The Constitution of the Republic of Philippines, 1987.

The Local Government Code of 1991, Act No. 7160 of 1991.

The Philippine's Administrative Code of 1987, Executive Order No. 292 of 1987.

South African Constitution and Statutes

The Constitution of the Republic of South Africa, 1996.

The Intergovernmental Relations Framework Act No.13 of 2005.

The Local Government: Municipalities Structure Act No. 117 of 1998.

The Republic of Kenya Constitution and Statutes

The Constitution of Kenya, 2010.

The Intergovernmental Relations Act, 2012 CAP 5G.

The Local Government Act, 1963 CAP 265 R.E. 2012.

The Republic of Uganda Constitution and Statutes

The Constitution of the Republic of Uganda, 1995 (as amended in 2005).

The Local Governments Act, CAP. 243.

The Republic of Tanzania Constitution and Statutes

The Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984,
Act No.16 of 1984.

The Constitution of the United Republic of Tanzania, CAP. 2, R.E.2002.

The Courts (Land Dispute settlement) Act, Act No.2 of 2002.

The Decentralisation of Government Administration (Interim provisions Amendment)
Act, 1982, Act No.12 of 1982.

The Fifth Constitutional Amendment Act, 1984, Act No.15 of 1984.

The Human Resources Deployment Act, 1983, Act No.6 of 1983.

The Land Act, CAP. 113, R.E.2002.

The Land Use Planning Act, 2007, Act No.6 of 2007.

The Local Authorities (Elections Amendment) Act, 1983, Act No. 3 of 1983.

The Local Authorities (Elections) Act, CAP. 292, R.E. 2002.

The Local Government (District Authorities) Act, CAP. 287, R.E.2002.

The Local Government (Urban Authorities) Act, CAP. 288, R.E.2002.

The Local Government Finances Act, CAP. 290, R.E.2002.

The Local Government Negotiating Machinery Act, 1982, Act No. 11 of 1982.
The Local Government Service Act, 1982, Act No.10 of 1982.
The Public Audit Act, 2008, Act No.11 of 2008.
The Public Finance Act, CAP. 348, R.E.2002.
The Public Health (Sewage and Drainage) Act, CAP. 333, R.E.2002.
The Public Health Act, 2009, Act No.1 of 2009.
The Public Procurement Act, CAP. 410, R.E.2002.
The Public Service (Negotiating Machinery) Act, CAP.105, R.E. 2002.
The Public Services Act, CAP.298, R.E. 2002.
The Regional Administration Act, CAP.97, R.E.2002.
The Urban Authorities Rating Act, CAP.289, R.E. 2002.
The Urban Planning Act, 2007, Act No.8 of 2007.
The Village Land Act, CAP.114,R.E.2002.

Subsidiary Legislation

The Land (Allocation Committees) Regulations, 2001, G.N.No.72 of 2001.
The Local Government Scheme, 2008, G.N. No. 146 of 2008.
The Public Service Disciplinary Code of Good Practice, 2007, G.N. No.53 of 2007.
The Public Service Recruitment Code of Good Practice, 2007, G.N. No.54 of 2007.
The Public Service Scheme, 2003, G.N.No.169 of 2003.
The Public Service Standing Orders of 2009, G.N.No.493 of 2009.
The Public Services (Regulations), 2003, G.N.No.168 of 2003.

LIST OF CASES

Cases from Tanzania

Anderson Chale v. Abubakari Sakapara, Civil Appeal No.121 of 2004, High Court of Tanzania Dar es Salaam District Registry (unreported).

Meatu District Council v. Weons Tanzania Ltd, Commercial Case No.53 of 2008, High Court of Tanzania (Commercial Division) at Dar es Salaam (unreported).

The Attorney General v. Christopher Mtikila, Civil Appeal No. 45 of 2009, Court of Appeal of Tanzania at Dar es Salaam (unreported).

The City Council of Dar es Salaam v. Taj Mohamed, Civ. Case 64-D-67[1968] HCD No.247.

Cases from Other Jurisdictions

Agricultural, Horticultural & Forestry Industry Training Board v. Aylesbury Mushrooms Ltd. [1972] 1W.L.R.190.

Baroness Wenlock v. River Dee Co. [1885] AC. 354.

Bradbury v. Enfield London Borough Council [1967] 1W.L.R.1311.

Cullimore v. Lyme Regis Corporation [1962] 1Q.B.718.

London & Clydeside Estates Ltd.v. Aberdeen District Council [1980] 1W.L.R.182.

Noble v. Inner London Education Authority [1983] 82 L.G.R.291.

Salomon v. A Salomon And Co Ltd [1897] AC. 22.

Sheffield City Council v. Graingers Wines Ltd. [1977] 75L.G.R.743.

ABBREVIATIONS AND ACRONYMS

A.C.I.R	-	United States Advisory Commission on Intergovernmental Relations
AAPAM	-	African Association for Public Administration and Management
AC	-	Appellate Cases
AELG	-	Academic Experts in Local Government Management
ALAT	-	Association of Local Authorities of Tanganyika
AM	-	Ante Meridiem/ before noon
AMNUT	-	All Muslim National Unit of Tanganyika
ANC	-	African National Congress
Apr.	-	April
ARLAT	-	Association of Rural Local Authorities of Tanganyika
Art.	-	Article
Arts.	-	Articles
ASP	-	Afro Shiraz Part
CAG	-	Controller and Auditor General
CAP	-	Chapter
CCM	-	Chama cha Mapinduzi
CD	-	Council Director
CG	-	Central Government
Civ.	-	Civil
Co.	-	Company
CSR	-	Civil Service Reforms
D by D	-	Decentralisation by Devolution
DAS	-	District Administrative Secretary
DC	-	District Commissioner
DCC	-	District Consultative Committee
DDC	-	District Development Council
DDD	-	District Development Director
DDPC	-	District Development and Planning Committees
Dec.	-	December
DED	-	District Executive Director
DFC	-	District Financial Controller
DFMs	-	District Functional Managers
Dist. C	-	District Council
DLGD-PO-RALG	-	Director of Local Government Division, President's Office, Regional Administration and Local Government
DPLG	-	Department of Provincial and Local Government
DPLO	-	District Planning Officer
DPO	-	District Personnel Officer

Ed	-	Editor
Eds	-	Editors
Etc.	-	et cetera/ and other things
EU	-	European Union
FALAT	-	Federation of the Associations of Local Authorities of Tanganyika
Febr.	-	February
FY	-	Fiscal Year
G.N.	-	Government Notice
HoDs	-	Heads of Departments
HRM	-	Human Resources Management
HS	-	Health Secretary
i.e.	-	id est/ that is
Ibid	-	ibidem/ in the same source
Inc	-	Incorporation
IPFs	-	Indicative Planning Figures
JICA	-	Japan International Cooperation Agency
L.G.R.	-	Local Government Reports
LG	-	Local Government
LGA	-	Local Government Authority
LGAs	-	Local Government Authorities
LGCDG	-	Local Government Capital Development Grants
LGGS	-	Local Government Gross Salary
LGO/AAS	-	Local Government Officer or Assistant Administrative Secretary
LGRP	-	Local Government Reform Programme
LGRPPP	-	Local Government Reform Programme Policy Paper
LGSC	-	Local Government Service Commission
Loc.cit.	-	Loco citato/ in the same place cited
Ltd	-	Limited
MC	-	Municipal Council
MED	-	Municipal Executive Director
MoF	-	Ministry of Finance
NGOs	-	Non-Governmental Organisations
No.	-	Number
Nov.	-	November
O&OD	-	Obstacles and opportunities for development
ODI	-	Overseas Development Institute
Op.cit.	-	Opere citato/ in the work cited
PC	-	Permanent Secretary
PM	-	Post Meridiem/Afternoon
PMO	-	Prime Minister's Office
PMO-RALG	-	Prime Minister's Office Regional Administration and Local Government

PO-PSM	-	President's Office, Public Service Management
PO-RALG	-	President's Office Regional Administration and Local Government
Q.B.	-	Queens Bench
R.E.	-	Revised Edition
RAS	-	Regional Administrative Secretary
RC	-	Regional Commissioner
RCC	-	Regional Consultative Committee
RDC	-	Regional Development Committee
RDD	-	Regional Development Director
REPOA	-	Research on Poverty Alleviation
RS	-	Regional Secretariats
s.	-	Section
Sep.	-	September
SOPAM	-	School of Public Administration and Management
SR	-	Sector Reforms
ss.	-	Sections
STSD	-	Secretaries of Teachers Service Department
TANROAD	-	Tanzania National Roads Agency
TANU	-	Tanganyika African National Union
TRA	-	Tanzania Revenue Authority
UK	-	United Kingdom
UN	-	United Nations
UNDP	-	United Nations Development Programme
UN-HABITAT-		United Nations Human Settlement Programmes
UNRISD	-	United Nations Research Institute for Social Development
USA	-	United States of America
USAID	-	United States Agency for International Development
UTP	-	United Tanganyika Party
VDC	-	Village Development Committee
VEO	-	Village Executive Officer
Vol.	-	Volume
W.L.R.	-	World Law Report
WDC	-	Ward Development Committee
WEO	-	Ward Executive Officer

ABSTRACT

The purpose of this study was to examine the legal framework of central-local government administrative relationship and its implication on the autonomy of Local Government Authorities (LGAs) in the exercise and discharge of their statutory powers and functions in Mainland Tanzania. The study was necessary because though the government amended the local government laws in the implementation of its local government reform programme undertaken in 1998-2014, the legal framework of central-local government administrative relationship is still unclear. The LGAs still find themselves under the influence and strong control of the central government in the exercise of their statutory powers and in carrying out their statutory functions. This called for the need to examine the implication of this relationship on the autonomy of LGAs because local government autonomy is important if LGAs are to function effectively.

The study was confined to Mainland Tanzania only and adopted qualitative and cross-sectional survey to collect data using documentary review and in-depth interviews. The survey was conducted in six Councils, at the PO-RALG and at Mzumbe University. A sample of fifty five (55) respondents was involved. The data obtained was analysed and interpreted through qualitative technique. The study found that the law on central-local government administrative relationship in Mainland Tanzania is found in different scattered pieces of legislation. The Constitution is silent and none of the legislations states with precision the central-local government administrative relationship. This weighs down the autonomy of LGAs. The study recommends that the Constitution of the United Republic of Tanzania which establishes LGAs should state with precision the relationship between the central government and LGAs. In addition, the local government legislation should be reviewed in order to come up with a comprehensive legislation that will regulate the central-local government administrative relationship in Mainland Tanzania.

TABLE OF CONTENTS

CERTIFICATION	ii
DECLARATION AND COPYRIGHT	iii
ACKNOWLEDGEMENT	iv
DEDICATION.....	v
LIST OF INTERNATIONAL INSTRUMENTS, CONSTITUTIONS AND STATUTES	vi
LIST OF CASES	ix
ABBREVIATIONS AND ACRONYMS	x
ABSTRACT	xiii
TABLE OF CONTENTS.....	xiv
LIST OF TABLES	xix
CHAPTER ONE	1
GENERAL INTRODUCTION.....	1
1.1. Introduction	1
1.2 Background to Research Problem.....	5
1.3 Statement of the Problem	14
1.4 Objectives of the Study	17
1.4.1 General Objective.....	17
1.4.2 Specific Objectives.....	17
1.5 Research Questions	17
1.6 Significance of the study.....	18
1.7 Scope of the study	20
1.8 Literature Review	21
1.9Justification for the Study	33
1.10 Theoretical Basis of the Study	35
1.11 Research Methodology.....	36
1.11.1 Research Design and Approach	36

1.11.2 Area of the study	37
1.11.3 Study Population and Sample Size	38
1.11.4 Sources of Data	40
1.11.5 Methods of Data Collection	41
1.11.5.1 Documentary Review	41
1.11.5.2 In-depth Interviews	42
1.11.6 Data Analysis and Interpretation.....	43
1.12 Ethical Consideration	44
1.13 Limitations of the Study	45
1.14 Conclusion	46
CHAPTER TWO	47
CONCEPTUAL FRAMEWORK OF THE STUDY	47
2.1 Introduction.....	47
2.2 Theories and Principles Governing this Study.....	47
2.2.1 The Juridification Theory.....	48
2.2.2 Instrumental Theory of Law.....	49
2.2.3 The Decentralisation Theory.....	50
2.2.4 The Subsidiarity Principle.....	52
2.2.5 The Holistic Principle	55
2.3 Central-Local Government Relationship and Local Government Autonomy	56
2.3.1 Central Government	57
2.3.2 Local Government.....	61
2.3.3 Decentralisation.....	63
2.3.3.1 Political Decentralisation	68
2.3.3.2 Financial Decentralisation.....	68
2.3.3.3 Administrative Decentralisation.....	69
2.3.3.3.1 Deconcentration	70

2.3.3.3.2 Delegation	71
2.3.3.3.3 Administrative Devolution.....	71
2.3.4 Central-Local Government Relationship	72
2.3.4.1 Central-Local Government Administrative Relationship	73
2.3.4.2 Models of Central-Local Government Administrative Relationship	75
2.3.4.2.1 Agency Model.....	76
2.3.4.2.2 Partnership Model	76
2.3.4.2.3 Power Dependency Model	77
2.3.5 Legal Framework of Central-Local Government Administrative Relationship	78
2.3.6 Local Government Autonomy	79
2.4 Conclusion	81
CHAPTER THREE	82
EVOLUTION OF CENTRAL-LOCAL GOVERNMENT ADMINISTRATIVE	
RELATIONSHIP IN MAINLAND TANZANIA.....	82
3.1 Introduction.....	82
3.2 The Road to Independency and Democratisation of LGAs in the 1950s-1960s.....	84
3.2.1 Enactment of the Local Government Ordinance.....	85
3.2.2 Registration of TANU and Its Role in Democratic Development of LGAs	87
3.3 Independence and Thereafter	88
3.3.1 Abolition of Native Authorities	89
3.3.2 The Adoption of One-Party State and Its Consequences on Local Government Autonomy.....	90
3.3.3 The Arusha Declaration	95
3.3.4 The Decentralisation Policy and Abolition of LGAs in the 1970s	99
3.4 Revival and Constitutionalisation of LGAs	103
3.4.1 The 1982 Revived District Authorities	106
3.4.2 The 1982 Revived Urban Authorities	110

3.4.3 Local Government Finance before the LGRP.....	114
3.4.4 Local Government Personnel before the LGRP.....	118
3.5 The 1990s Local Government Reform Programme	121
3.6 Conclusion	128

CHAPTER FOUR.....131

THE LEGAL FRAMEWORK OF CENTRAL-LOCAL GOVERNMENT ADMINISTRATIVE RELATIONSHIP IN MAINLAND TANZANIA131

4.1 Introduction.....	131
4.2 The Constitutional Framework of Central-Local Government Relationship.....	132
4.3 The Legislative Framework of Central-local Government Relationship.....	152
4.3.1 Regional Administration Act	154
4.3.2 The Local Government (District Authorities) Act	160
4.3.2.1 Establishment, Composition and Incorporation of District Authorities.....	160
4.3.2.2 Power and Functions of District Authorities.....	166
4.3.3 The Local Government (Urban Authorities) Act.....	170
4.3.3.1 The Establishment, Composition and Incorporation of Urban Authorities	170
4.3.3.2 Powers and Functions of Urban Authorities	173
4.3.4 The Local Government Finance Act	177
4.3.5 The Public Service Act, 2002.....	180
4.4 Conclusion	194

CHAPTER FIVE.....196

RESEARCH FINDINGS196

5.1 Introduction.....	196
5.2 The Legal Framework.....	197
5.3 Areas of Central-Local Government Administrative Interactions	207
5.3.1 Control and Supervision of Local Government Functions	209

5.3.2 Control and Management of Local Government Finance.....	216
5.3.3 Management of Local Government Personnel.....	220
5.4 Implication of the Present Legal Framework on the Autonomy of LGAs.....	223
5.4.1 Local Government Autonomy in Personnel Management.....	223
5.4.2 Local Government Autonomy in Financial Affairs	235
5.4.3 Local Government Autonomy in Setting and Implementing Own Priorities	240
5.5 Conclusion	249
CHAPTER SIX	251
SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS ..	251
6.1 Introduction.....	251
6.2 Summary of Major Findings	252
6.3 Conclusions	254
6.4 Recommendations	259
6.4.1 Constitutional Amendment	259
6.4.2 Enactment of an Intergovernmental Relationship Act.....	262
6.4.3 Legal Harmonisation.....	263
REFERENCES	264
APPENDICES	276

LIST OF TABLES

Table 1.1: Summary and Break Down of Sample Size.....	40
Table 5.1A: Trend of Employment Permits (Establishments) between July 2012- June 2016 in Dodoma, Kinondoni and Morogoro Municipal Councils	227
Table 5.1B: Trend of Employment Permits (Establishments), July 2012- June 2016 in Mvomero and Meru District Councils	228
Table 5.2: Kinondoni MC Contribution in the Budget between 2012 and 2016	239
Table 5.3: Variation of Budget Estimates at the Council and Approved, 2012- 2016 ..	243
Table 5.4:Trend of Unreleased Recurrent Grants between 2010-2015 Financial Years	246
Table 5.5: Trend of Unreleased Capital Development Grants between 2010-2015 Financial Years.....	247

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Introduction

This study examined the present legal framework of central-local government administrative relationship and its implication on the autonomy of local government authorities (LGAs) in the exercise of their statutory powers and in discharging their functions particularly in the management of their personnel, financial affairs and in determining their own priorities in local service delivery.

The study was moved by the fact that, the government of the United Republic of Tanzania has made several efforts to review and amend the local government laws during the 1998-2014 Local Government Reform Programme (LGRP) in order to improve the central-local government administrative relationship and protect the autonomy of LGAs in the exercise of their statutory powers and in discharging their functions. Notwithstanding these government efforts, the legal framework of central-local government administrative relationship in Mainland Tanzania seems to be not very much clear both in the Constitution and in other laws made under the authority of the Constitution. This suggests that, the efforts made by the government in the implementation of its LGRP have yet brought important changes suggesting improved central-local government administrative relationship and the desired local government autonomy in Mainland Tanzania.¹

¹Literature shows that the LGAs' exercise of statutory powers and discharge of their functions especially in the management of personnel, financial affairs and in determining their own priorities has largely remained under the influence and control of the central government. See for instance Kunkuta, G.E.A. (2011). "Responsiveness and Accountability of Urban Government: experiences from Provision of Water and Sanitation in Temeke Municipality in Dar es Salaam, Tanzania". Unpublished PhD Thesis, Mzumbe University, pp. 158-161; Warioba, M.D. & Warioba, L. (2012). *Local Government Reforms in Tanzania*. Mzumbe: Mzumbe University pp. 64-73; Per Tidemand & Sola, N. (2014). "Tanzania: Devolution under Centralised Governance". In Dickovick, T.J. & Wunsch, J.S. (Eds). *Decentralisation in Africa: the Paradox of State Strength* (pp.205-228). Boulder, Colorado: Lynne Rienner Publishers. pp. 205-228; and Per Tidemand, Sola, N., Maziku, A., Williamson, T., Tobias., Long, C., et.al. (2014). *Local Government*

The study proceeded from the idea that, an ideal legal framework of central-local government administrative relationship which allows central-local government consultations, negotiations and support from ministries (partnership) as opposed to central-local government command relationship (agency) model is vital in determining the degree of local government autonomy in the operation of local government alongside the central government in Mainland Tanzania.² For such reason, studying the legal framework of central-local government administrative relationship is crucial in decentralised systems of administration because it shows the nature of central-local government administrative relationship and the degree of autonomy that is necessary for LGAs to effectively exercise their statutory powers and discharge their statutory functions.³

Decentralised system of administration is a feature of states with governance at the national and local levels. Literature shows that the central government (CG) as national government is found in every state but local governments (LGs) are found in decentralised states only.⁴ According to the decentralisation theory,⁵ decentralised systems of administration are characterised by administrative transfer of authority, resources, accountability and institutions from the central government to autonomous local entities or sub-national governments.⁶

Authority (LGA) Fiscal Inequalities and the Challenges of Disadvantaged LGAs. The Overseas Development Institute (ODI) Reports.pp.12-16, 37& 48-57.

² See Government of the United Republic of Tanzania. (1998). *Local Government Reform Programme Policy Paper I, 1998-2008.* Dar es Salaam: PMO-RALG. p. 15.

³ See Fleurke, F. & Willemse, R. (2006). Measuring Local Autonomy: A Decision-making Approach. *Journal of Local Government Studies*, Vol. 32(1),pp.71-87. Also see Lambright, G. M. S.(2013). Decentralisation in Uganda: Explaining Successes and Failures in Local Governance. *African studies review*, vol.56 (1),pp. 182-184; and Kamugisha, D. J. (2014). The Liaison between Central and Local Governments: Is it Inclined in a Symbiotic Fashion to Ease Service Delivery in Tanzania? *International Journal of Social Sciences and Entrepreneurship*, Vol.1 (10),pp. 274-291.

⁴ See The World Book Encyclopaedia. (1994). *World Book International.* World Book Inc. Vol.8. p. 268.

⁵ Discussed in detail under items 2.2.3 and 2.3.3 in chapter two.

⁶ See Olowu, D. & Wunsch J.M.(2004). *Local governance in Africa: the Challenges of Democratic Decentralisation.* Boulder, London: Lynne Rienner Publishers. pp.4&5. Also See Shah, A. & Shah, S.

Decentralisation involves the restructuring or reorganisation of authority between the centre and the periphery in such a way that there is a system of co-responsibilities among institutions of governance at the central and local levels founded on the principle of subsidiarity.⁷ It is further characterised by increasing the autonomy or authority and capacities of sub-national government levels in decision making and public services delivery. On the basis of the type of decentralisation and the degree of local government autonomy, decentralisation may take the form of deconcentration, delegation, devolution or a combination of more than one of these forms.⁸

Unlike decentralised systems of administration, centralised systems of administration are characterised by greater national activism in form of governmental assistance, regulation of the economy, policy interventions and total or major central funding of social-economic and welfare programmes.⁹ In centralised nations, local governments may exist only as agents of the central government operating under the principle of residuality as opposed to subsidiarity.¹⁰ Literature reveals that administrative centralisation was once thought of as a prerequisite to fast and rapid development in most of the European Nations from the 1930s to 1970s.¹¹ This had been the case also for most African countries shortly after independence, Tanganyika (now Mainland Tanzania) inclusive.¹²

(2006). "The New Vision of Local Governance and the Evolving Roles of Local Governments". In Shah, A. (Ed.). *Local Governance in Developing Countries* (pp.1-46). Washington D.C: World Bank. p.4.

⁷ *Ibid.* Also see UNDP. (1999). *Decentralisation: a Sample of Working Definitions Paper*. UNDP. p.2.

⁸ *Ibid.* pp. 6&7.

⁹ See Walker, D.B. (1991). Decentralisation: Recent Trends and Prospects from a Comparative Governmental Perspective. *International Review of Administrative Sciences*, Vol.57 (1),pp. 113-129.

¹⁰ See Shah, A. & Shah, S. (2006). *Loc.cit.* Also See Bailey, S.H.(2004). *Cross on Principles of Local Government Law*, 2nd Ed. London: Sweet& Maxwell. p. 243.

¹¹ See Walker, D.B. (1991). *Op.cit.* p.114.

¹² See Liviga, A.J. (1992). Local Government in Tanzania: Partner in Development or Administrative Agent of the Central Government? *Journal of Local Government Studies*, Vol. 18(3),pp. 211-215. Also See Lambright, G. M. S.(2013). *Loc.cit.*; Bosire, C.M. (2013). "Devolution for Development, Conflict Resolution, and Limiting Central Power: An Analysis of the Constitution of Kenya, 2010". Unpublished PhD Thesis, University of Western Cape. pp.111-120; and Mutahaba, E. R & Kweyamba, A.B.(2010 November). "Searching for an Optimal Approach to National Development Planning in Africa: Assessing

Centralised administrative system manifested itself more clearly in unitary states like Tanzania than in federal states like the United States of America.¹³ Even the federal states also experienced a significant expansion of their central government's role and erosion of sub-national governments' autonomy during this period.¹⁴ Centralised administrative system in Africa resulted in strong executives under single party democracy in most states and military dictatorships in a few states which in turn caused many criticisms over centralisation.¹⁵ Later in the 20th century, it was realised that, centralisation of social and economic development was not a sufficient condition in itself for development; hence the need for strong and robust local governments through administrative decentralisation.¹⁶ Consequently, local governments have increasingly assumed a greater role in socio-economic development and public services delivery.¹⁷

Despite the ever-increasing importance of local governments, there have been tensions in allocation of powers and resources between the central and LGAs in Africa, particularly in unitary states like Tanzania.¹⁸ Consequently, this has affected the autonomy of LGAs in the exercise of their powers and in carrying out their statutory functions. Such tensions resulted in the 1998-2014 LGRP in Mainland Tanzania. These reforms aimed at, among other things, creating an appropriate legal framework of central-local government administrative relationship that would improve the autonomy of LGAs in the exercise of their powers and in discharging their functions especially in

the Contribution of Public Administration Systems". Paper presented at the 32nd AAPAM Annual Roundtable Conference, Durban, South Africa. p.6.

¹³ See Walker, D.B. (1991). *Loc.cit.*

¹⁴ *Ibid.*

¹⁵ See Mutahaba, E. R & Kweyamba, A.B. (2010 November). *Loc.cit.* Also see Lambright, G. M. S.(2013). *Loc.cit.*

¹⁶ *Ibid.* Also see Walker, D.B. (1991). *Op.cit.* pp.113 &114.

¹⁷ See Shah, A & Shah, S. (2006). *Loc.cit.* p. 41 and Lambright, G. M. S. (2013). *Loc.cit.*

¹⁸ See Golola, M.L.(2001). *Decentralisation, Local Bureaucracies and Service Delivery in Uganda.* Discussion Paper No. 2001/115, UNU/WIDER. pp.1, 9-12.

managing their personnel, financial affairs and in determining their own priorities in local service delivery.¹⁹

The LGRP which had two phases (1998-2008 and 2009-2014) ended in 2014.²⁰ Following these reforms, all the local government legislation enacted in 1982 and the Regional Administration Act²¹ were amended several times since 1999.²² Therefore, this study was conducted to examine the manner the present legal framework of central-local government administrative relationship in Mainland Tanzania (having regard to the 1998-2014 concluded LGRP) enhances the autonomy of LGAs in exercise of their statutory powers and discharge of their functions especially in the management of their personnel, financial affairs and in determining their own priorities in local service delivery.

1.2 Background to Research Problem

The study on the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs is associated with the concept of decentralisation and local government autonomy.²³ Decentralisation and local government autonomy are interrelated concepts and rest in the heart of central-local government administrative relationship because, the more the decentralisation, the more the autonomy of LGAs and the vice versa.²⁴ This relationship has been prevalent for many years in the studies of central-local government relationship, particularly from the time of recourse to administrative decentralisation in the 20th century.²⁵

¹⁹ See Government of the United Republic of Tanzania. (1996). *Local Government Reform Agenda 1996-2000. Dar es Salaam*: PMO-LGM. pp. 2-3. Also see Government of the United Republic of Tanzania. (1998). *Op.cit.* pp. 4-6, 14-15 &24.

²⁰ See Government of the United Republic of Tanzania. (2009). *Local Government Reform Programme II (Decentralisation by Devolution)*. PMO-RALG. pp. 2-4.

²¹ Act No.19 of 1997.

²² Explained in detail under items 1.2 in this chapter and item 3.5 in chapter three.

²³ See Fleurke, F. & Willemsse, R. (2006). *Op.cit.* pp. 71-87.

²⁴ *Ibid.*

²⁵ *Ibid.*

The concepts central-local government administrative relationship and local government autonomy emerged after local government institutions were established alongside national governments. History reveals that autonomous institutions for local self-rule in the form of chiefdoms in Tanganyika (now Mainland Tanzania), like in many other African countries, predated the emergence of national governments (central governments).²⁶ The emergence of national governments in many African states started with colonial conquest of pre-existing autonomous decentralised local communities.²⁷ In Tanganyika, it was the German colonial government which created the central government administration between 1893 and 1899.²⁸

The Germans were distrustful of the African traditional rulers; hence they introduced the direct rule system which meant direct central control of the civil administration with the assistance of the “*akida*”, “*jumbe*” and “*liwali*” who were employed as agents of the central administration.²⁹ Thus, during the German period there was virtually no autonomous local administration although there were attempts to introduce Communal Unions under the Imperial Decree of 29th March 1901; and Municipal Councils under the Imperial Chancellor Order of 1910.³⁰ The Communal Unions and Municipal Councils were aimed at assisting the central administration to control the colony and were therefore not autonomous. They existed at the desire of the central government.³¹ Consequently, in 1909, the said Communal Unions were abolished. By the end of the German rule, only Dar es Salaam and Tanga had municipal status under the Imperial

²⁶See Shah, A & Shah, S. (2006). *Op.cit.* p. 27. Also Max, J.A.O.(1991). *The Development of Local Government in Tanzania*. Dar es Salaam: Educational Publishers and Distributors Ltd. pp.1-4.

²⁷ See Olowu, D. & Wunsch J. M.(2004). *Op.cit.* p.29.

²⁸ See Max, J.A.O. (1991). *Op.cit.* p.7. Also see Lamber, T. *A Brief History of Tanzania*. Retrieved October 10, 2012 from the World Wide Web: <http://www.localhistories.org/tanzania.html>.

²⁹ See Max, J.A.O. (1991). *Op.cit.* pp.7-8.

³⁰ *Ibid.*

³¹ *Ibid.*

Chancellor Order of 1910, but they had no autonomy due to strict control of the governor.³²

In 1926 after the First World War, the British government took over Tanganyika from German and under the governorship of Sir Donald Cameron, introduced the Native Authorities in Tanganyika based on native tribal authorities which had existed before the German rule.³³ The basic concern of the British colonial government was to maintain peace and tranquillity in the colonies for smooth extraction of resources.³⁴ To achieve this, the British government introduced local government administration not with the aim of creating autonomous local institutions for local self-rule, but as an aspect of indirect rule in order to minimise the cost of administration (since there was scarce trained manpower) and African resistance to government orders.³⁵

The Native Authorities established by the Native Authorities Ordinance of 1926 were thus mere administrative agents of the centre (the colonial government). As eyes of the colonial Government, the Native Authorities became the major link between the colonial government and the local people. Native Authorities had no autonomy and were under direct control of the central government dominated by a top-down bureaucratic system, groomed to prop the colonial government.³⁶

³²*Ibid.* Also See Government of the United Republic of Tanzania, *History of Local government in Tanzania*. PO-RALG. Retrieved April 14, 2012 from the World Wide Web: <http://www.pmoralg.go.tz/menu-data/about-us/history/History%20of%20Local%20Government%20In%20Tanzania.pdf>.

³³See Max, J.A.O. (1991). *Op.cit.* p.10. Also see Government of the United Republic of Tanzania. (2012). *History of Local Government System in Tanzania*. PMO-RALG. Retrieved April 14, 2012 from the World Wide Web: <http://www.pmo.go.tz/mawaziri.php?cat=12&subcat=81>.

³⁴See Liviga, A.J. (1992). *Op.cit.* p.209.

³⁵ *Ibid.* Also see Max, J.A.O. (1991). *Loc.cit.*

³⁶See Liviga, A.J. (1992). *Loc.cit.* Also see Gasto, F. (1997). "Contradictions in Local Government Decision Making in Tanzania". Unpublished Master's Dissertation in Public Administration, University of Dar es Salaam.p.8.

An attempt to give Native Authorities some autonomy in decision making was made in 1942 when the Native Authorities Ordinance was amended to give power to the Governor to declare by notice in the gazette any specified Native Authority to be a body corporate where he deemed it necessary and desirable so to do.³⁷ By amending the Native Authorities Ordinance, 1926, the Native Authorities were given some limited powers to levy local taxes and to hire or fire local personnel.³⁸ The Native Authorities were not given autonomous decision making powers and the corporate status of Native Authorities could only be enjoyed under the pleasure of the Governor, let alone this amendment.³⁹ For instance, their autonomy in personnel management was limited to hiring a treasury, court clerks and messengers only, after consultation with the District Commissioner.⁴⁰

Further attempt to improve the autonomy of LGAs through devolution was made in 1953. In 1953, the British government enacted the Local Government Ordinance of 1953⁴¹ which created County Councils, Local Councils and Town Councils partly manned by democratically elected officials.⁴² The Local Government Ordinance had also given some limited powers to individual LGAs to hire and fire clerks as well as other officers and employees except those with salaries exceeding 3,000 per year whose appointment and dismissal was subject to prior approval by the proper officer.⁴³ Furthermore, the Local Government Ordinance required the government to pay District and Town councils annual contributions and grants to finance local services.⁴⁴

³⁷ See s. 3(4) of the Native authorities Act, as amended by Ordinance No.29 of 1942.

³⁸ See Max, J.A.O. (1991). *Op.cit.* p.55.

³⁹ See Mwaikusa J.T., (1985). *Control of Local Government Authorities in Tanzania*. Mzumbe: Research, Information and Publication Department. p.13.

⁴⁰ See Max, J.A.O. (1991). *Loc.cit.*

⁴¹ CAP. 333.

⁴² See s.4 of the Local government Ordinance, 1953.

⁴³ By proper officer it was meant the Minister in respect of Urban Authorities and the Regional Commissioner in respect of Rural (District) Authorities.

⁴⁴ See ss. 76-77, CAP. 333, *loc.cit.*

Notwithstanding such attempts, the envisaged devolution and local government autonomy were paradoxical as elections under the Local Government Ordinance, 1953 were based on racism. The councils' autonomy over personnel and financial resources was restricted because, on one hand, local councils had no full power of hiring and firing employees and, on the other hand, it was the Minister who determined the proportion of grants to be distributed to local councils for lack of established formula for allocation of the same and.⁴⁵ Thus, throughout the British rule, LGAs were not fully autonomous. They were perpetually subordinate to, and an agent of the central government because decision making authority was concentrated at the centre which determined the functions and resources of the local government.⁴⁶

After Tanganyika's political independence in 1961, the government replaced the Native Authorities by democratically elected local officers.⁴⁷ LGAs became full representative though in most cases, the Government of Tanganyika, like other post-colonial regimes in Anglophone Africa, inherited the British system of subordinating local government to the centre. In the name of national unity, stability, and the need to consolidate political base, the post-colonial decision makers in Tanganyika pursued more or less the same policies with regard to local government and deliberately limited local government autonomy by concentrating political and economic decision making powers at the centre.⁴⁸

Although after independence local governments were thought of as a tool for bringing development through democratic means,⁴⁹ strong and autonomous LGAs were perceived as potential source of opposition and a threat to national unity and stability.⁵⁰ For such

⁴⁵ See Max, J.A.O. (1991). *Op.cit.* p.80.

⁴⁶ See Liviga, A.J. (1992). *Op.cit.*p.211. Also see Gasto, F. (1997). *Op.cit.*p.26.

⁴⁷ See Olowu, D. & Wunsch J. M.(2004). *Op.cit.* p.33.

⁴⁸ See Liviga, A.J. (1992). *Op.cit.* p.210. Also see Max, J.A.O. (1991). *Op.cit.* pp. 25&26.

⁴⁹ See Max, J.A.O. (1991). *Op.cit.* p.26.

⁵⁰ See Liviga, A.J. (1992). *Loc.cit.*

reason, after political independence in Tanganyika, the LGAs remained closely supervised and managed by and accountable to the centre as agents of the central government.⁵¹ Just as it was the case during the British colonial government, at independence, the central government of Tanganyika saw the LGAs not as promoters of local self-local rule but as mere administrative agents of the central government.⁵²

Later, the Government introduced a number of political, economic and administrative reforms and policy decisions which, as discussed in chapter three, curtailed the autonomy of LGAs and put them down the road to bankruptcy and their subsequent abolition in 1970s.⁵³ For instance, as discussed under item 3.3.3 of chapter three, the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance strengthened the central government on the one hand, and weakened the local government on the other hand.⁵⁴ Furthermore, the decentralisation policy invoked in 1972 and the Decentralisation Act of 1972 substituted the Regional and District Development Committees for the Councils.⁵⁵

The 1970s decentralisation measures which aimed at transferring decision making powers to the people did not work. Instead, it grabbed from the people even the little decision making powers they had before.⁵⁶ The decentralisation programme resulted in deconcentration rather than devolution of decision making powers. A decade later the government found itself unable to continue with the decentralisation scheme as a result

⁵¹ See Gasto, F. (1997). *Loc.cit.*

⁵² Liviga, A.J. (1992). *Loc.cit.*

⁵³ *Ibid.* pp. 213-214. Also see Olowu, D. & Wunsch James, M. (2004). *Op.cit.* p.33; and Max, J.A.O.(1991). *Op.cit.* pp. 66-76. Other reasons given for the abolition of local government authorities in 1970's were political conflicts between council officials, central government officials and politicians; lack of external supervision; weak internal administration; poor financial position of local authorities and failure by the central government to honour their obligations towards local authorities.

⁵⁴ See Liviga, A.J. (1992). *Loc.cit.* pp. 213-214.

⁵⁵ *Ibid.* Also see Max, J.A.O.(1991). *Op.cit.*p.83

⁵⁶ *Ibid.*

of drastic fall of both rural and urban economies and social services. Thus, from both internal and external pressure, the government decided to re-introduce LGAs in 1980s.⁵⁷

In 1982, a number of laws were enacted to implement the policy decision to re-introduce LGAs.⁵⁸ In 1984, the Constitution of the United Republic of Tanzania was amended to recognise local government in the country's system of administration.⁵⁹ It was expected that this amendment would institute LGAs which are strong and autonomous through decentralisation by devolution, but the final draft of the constitutional amendment did not fully capture this intention and ended up with two broad Articles which are scanty in their content.⁶⁰

The local government system established after enactment of the 1982 local government legislation and amendment of the Constitution in 1984 had yet several impediments to local government autonomy. These impediments included overlaps of local government administration with the ruling political party; strong central control and supervision (command-driven);⁶¹ and unclear central-local government relationship.⁶² These impediments had adverse impact on the autonomy of LGAs in the exercise of their powers and in discharging their functions particularly in managing their personnel, financial affairs and in determining their own priorities in local service delivery.⁶³ It was for for this reason, the government embarked on the 1998-2014 LGRP.⁶⁴

⁵⁷ Liviga, A.J. (1992). *Loc.cit.*

⁵⁸ Max, J.A.O. (1991). *Loc.cit.*

⁵⁹ REPOA. (2008). *The Oversight Processes of Local Councils in Tanzania*. REPOA. p.12.

⁶⁰ *Ibid.* p. 13. These are Articles 145 &146, CAP. 2, R.E.2002. This view is also supported by the Local Government Reform Programme II (Decentralisation by Devolution) Policy Paper, 2009-2014 which specifically states that D by D is yet to be properly enshrined into the constitution to strengthen the D by D and put in place a strong local government system. See Government of the United Republic of Tanzania. (2009). *Op.cit.* p.13.

⁶⁰ See REPOA.(2008). *Op.cit.*p.13.

⁶¹ *Ibid.*

⁶² *Ibid.* Also see Mwaikusa J.T. (1985). *Op.cit.* p. 178.

⁶³ See Rwekaza S. M. (2004). *Local Government, Effectiveness and Human Rights: the Cases of Bukoba rural and Mtwara-mikindani Districts in Tanzania*. International Council on Human Rights Policy. pp.6-7.

Among the key objectives of the LGRP as stated under the local government reform programme Agenda, 1996-2000 was to make LGAs largely autonomous institutions in the management of personnel, financial affairs and in determination of their own priorities in local service delivery.⁶⁵ This objective was incorporated in the Local Government Reform Programme Policy Paper I, 1998-2008 which declared that the envisaged LGRP would, among other things, involve a review of the entire legal framework of local government system in Mainland Tanzania. The reviewed legal framework would abolish the previous central-local government command relationship (agency model) and provide for a new system of consultations, negotiations and support of LGAs by line ministries (partnership model) and non-subordination of LGAs to central government ministries or agencies.⁶⁶

Through the envisaged LGRP, the local government system in Mainland Tanzania would be characterised by decentralisation by devolution (D by D) founded on the principle of subsidiarity and holistic local government. Local government councils would be the authorities vested with full responsibilities for local government finance, local government personnel and determination of priorities in service delivery within their respective areas of jurisdiction. By the end of the LGRP in 2014, the relevant local government legislation were amended several times.⁶⁷

See also Government of the United Republic of Tanzania. (2012). *Loc.cit*; and Government of the United Republic of Tanzania. (2008). *Loc.cit*.

⁶⁴The reform introduced the idea of decentralisation by devolution through two major policy documents: The Local Government Reform Agenda, 1996-2000 and the Policy Paper on Local Government Reform Programme. This was followed by the enactment of the Local Government Laws (Miscellaneous Amendments) Act, 1999, Act No. 6 of 1999 to put in force the envisaged reforms. Further amendments to the local government laws were made in 2006 via the Local Government Laws (Miscellaneous Amendments) Act, 2006, Act No.13 of 2006 and in 2009 via the Written Laws (Miscellaneous Amendments) (No.2) Act, 2009, Act No.17 of 2009.

⁶⁵ See Government of the United Republic of Tanzania. (1996). *Op.cit*. p.2.

⁶⁶ See Government of the United Republic of Tanzania. (1998). *Op.cit*. pp. 14, 15, &19.

⁶⁷ For detailed discussion of the amendments in the local government legislation during the two phases of the LGARP in Mainland Tanzania see the discussion under item 3.5 in chapter three.

The major changes relating to central-local government administrative relationship and local government autonomy were made in the first phase of the LGRP, 1998-2008.⁶⁸ In this phase, the local government laws enacted in 1982 and other relevant legislation were reviewed and amended twice: in 1999⁶⁹ and in 2006.⁷⁰ In the same spirit, the Local Government Laws (Miscellaneous Amendments) Act⁷¹ re-defined the role of the Minister responsible for local government;⁷² the role of the central government (central ministries) in relation to local government powers and functions⁷³ and replaced the proper officer and assistant proper officer for the Minister, the Regional Commissioner (RC) and the District Commissioner (DC).⁷⁴ Also, this amendment made some improvements in the local government finance by introducing (among other things) annual block grants⁷⁵ and, in the Local Government Service Act, 1982⁷⁶ by (among other things) devolving to LGAs the power to appoint, remunerate, promote, develop, discipline and dismiss their own employees.⁷⁷ In 2002, the Local Government Service Act was repealed through the enactment of the Public Service Act, 2002.⁷⁸ The 2006 amendment of the relevant legislation further elaborated the role of central government, sector ministries, the RC and the DC in relation to the powers and functions of LGAs.⁷⁹

The second phase of the LGRP (2009-2014) aimed at consolidation of decentralisation by devolution (D by D). The local government laws were further reviewed and amended in 2009.⁸⁰ This amendment strengthened Village, Kitongoji and Mtaa governments in a view to consolidate devolution of powers and functions from the higher local

⁶⁸ Discussed at length under item 3.5 in chapter three.

⁶⁹ Amended by Local Government Laws (Miscellaneous Amendments) Act, 1999, Act No.6 of 1999.

⁷⁰ Amended by the Local Government Laws (Miscellaneous Amendments) Act, 2006, Act No.13 of 2006.

⁷¹ Act No.6 of 1999. *Loc.cit.*

⁷² See ss.4 & 40, Act No.6 of 1999, *ibid.*

⁷³ See ss.35 & 53. *Ibid.*

⁷⁴ See s. 3(d). *Ibid.*

⁷⁵ See s.68. *Ibid.*

⁷⁶ Act No.10 of 1982.

⁷⁷ See s. 87. *Ibid.*

⁷⁸ CAP. 298, R.E.2002.

⁷⁹ See ss. 9, 10 & 20, Act No.13 of 2006.

⁸⁰ Amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2009, Act No.17 of 2009.

government levels to lower levels of LGAs.⁸¹ Notwithstanding these amendments of the law, literature seems to suggest that LGAs in Mainland Tanzania are yet to attain the desired autonomy in the exercise of their powers and in the discharge of their functions.⁸² It is unclear whether by the review and amendments of the relevant legislation under the LGRP, the legal framework of central-local government administrative relationship has been tuned to support the desired local government autonomy. It was for this reason that the interest in this study was to examine the current legal framework of central-local government administrative relationship in Mainland Tanzania and determine its implication on the autonomy of LGAs in exercise of their powers and in discharging their functions particularly in the areas of personnel management, financial affairs and in determining their priorities in local service delivery.

1.3 Statement of the Problem

The United Republic of Tanzania is a unitary state with a written constitution which allows for the establishment of LGAs in every region, district and village in Mainland Tanzania.⁸³ The purpose for establishing LGAs was to transfer authority to the people and bring services closer to the people through autonomous LGAs.⁸⁴ For this to be achieved, there has to be in place a well-established legal framework of central-local government administrative relationship that will guard against unwarranted encroachment by the central government of the powers and functions assigned by law to the LGAs.

⁸¹ See for instance ss.4-7, 10 &13. *Ibid.*

⁸² See REPOA. (2008). *Op.cit.*pp.21-23. Also see Per Tidemand & Msami, J. (2010). *Op.cit.* p.30; the Government of the United Republic of Tanzania. (2009). *Op.cit.* p.7; Kunkuta, G.E.A. (2011). *Loc.cit*; Warioba, M.D.& Warioba, L. (2012). *Loc.cit*; Per Tidemand & Sola, N.(2014). *Loc.cit*; and Per Tidemand, Sola, N., Maziku, A., Williamson, T., Tobias., Long, C., et.al. (2014). *Loc.cit.*

⁸³ See Art.145 (1) of the Constitution of the United Republic of Tanzania, 1977, CAP. 2, R.E. 2002.

⁸⁴ See Art. 146(1), CAP. 2, *ibid.*

The government of the United Republic of Tanzania has made several efforts to improve the legal framework of central-local government administrative relationship in order to improve the capacity of LGAs in service delivery by making LGAs highly autonomous institutions in the exercise of their powers and discharge of functions. Among the efforts taken to improve the legal framework of central-local government administrative relationship was the adoption and implementation of the 1998-2014 LGRP.⁸⁵ In the implementation of the 1998-2014 LGRP, all the local government legislation and other relevant legislation were reviewed and amended in order to give LGAs autonomy in exercise of their powers and discharge of functions especially in the management of personnel affairs, financial affairs and in determining their own priorities in service delivery.⁸⁶ Notwithstanding the review and amendment of the local government legislation and other relevant legislation, literature suggests that, the LGAs' exercise of statutory powers and discharge of functions has largely remained under the influence and control of the central government.⁸⁷

The continued strong central control and influence over LGAs' exercise of powers and discharge of functions suggest that, the efforts taken by the Government to review and amend the local government legislation and other relevant legislation during the 1998-2014 LGRP have yet brought important changes in the legal framework of central-local government administrative relationship that suggests improved autonomy of LGAs in Mainland Tanzania. This situation makes it difficult for the LGAs to conclusively make decisions on the basis of their powers and in line with their priorities in local service

⁸⁵ See the Government of the United Republic of Tanzania. (1996). *Loc.cit.* Also see Government of the United Republic of Tanzania. (1998). *Loc.cit.*

⁸⁶ The relevant laws reviewed and amended include the Regional Administration Act, 1997, Act No.19 of 1997; the Local Government (District Authorities) Act, Act No.7 of 1982; the Local Government (Urban Authorities) Act No.8 of 1982; the Local Government Finances Act, Act No.9 of 1982; the Local Government Service Act, Act No.10 of 1982; the Local Government Negotiating Machinery Act, Act No. 11 of 1982; the Urban Authorities Rating Act, Act No. 2 of 1983; and the Local Authorities (Elections Amendment) Act, Act No. 3 of 1983. See the Local Government Laws (Miscellaneous Amendments) Act, 1999, *loc.cit.*; the Local Government Laws (Miscellaneous Amendments) Act, 2006, *loc.cit.*; and the the Written Laws (Miscellaneous Amendments) (No.2) Act, 2009, *loc.cit.*

⁸⁷See Footnotes 1 and 82 above.

delivery. Although central control and supervision over LGAs are important for proper exercise of powers and discharge of functions by the latter, it is also important that they are kept minimum because excessive central controls and supervisions which take away the necessary autonomy of LGAs in exercising their powers and in carrying out their functions defeats the whole purpose behind the establishment of LGAs in Tanzania.⁸⁸ It is only when the LGAs are autonomous that a fair assessment of their powers and role in the performance of their functions can be made.⁸⁹

The legal framework of central-local government administrative relationship is vital in determining the central-local government administrative interactions and the autonomy of LGAs.⁹⁰ By autonomy it means, self-determination or discretion of LGAs in managing their personnel, finance and in setting their priorities in service delivery.⁹¹ To the knowledge of the researcher, there do not seem to be any research which so far has been conducted to examine the implication of the present legal framework of central-local government administrative relationship on the autonomy of the LGAs in Mainland Tanzania.

This study was therefore thought to be necessary because the legal framework of central-local government administrative relationship is very important not only for the purpose of understanding the scope of powers and functions primarily assigned to each of these two levels of government, but also for the purpose of understanding the areas in which control and supervision by central government over the LGAs may lawfully be justified without affecting the autonomy of LGAs in the exercise of powers and discharge of functions assigned to them.

⁸⁸ See Warioba, M.M.D. (1999). *Management of Local Government in Tanzania*. Mzumbe: Research, Information and Publication Department.p.177. Also see Liviga, A.J. (1992). *Op.cit*.pp.218-221.

⁸⁹ *Ibid*.

⁹⁰ See Enejo, W. & Isa, A. (2014).The Imperative of Local Government Autonomy and Intergovernmental Relations in Nigeria. *International Journal of Public Administration and Management Research (IJPAMR)*, 2(3), 74-83.

⁹¹ See Government of the United Republic of Tanzania. (1998). *Op.cit*. pp. 12, 21,24&27.

1.4 Objectives of the Study

This study had one general objective and three specific objectives as stated hereunder:-

1.4.1 General Objective

The general objective of this study was to examine the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in Mainland Tanzania.

1.4.2 Specific Objectives

The specific objectives of the study were:-

- a) To expound the legal framework of central-local government administrative relationship in Mainland Tanzania.
- b) To examine the manner in which the Central Government administratively interacts with LGAs in the latter's exercise of statutory powers and discharge of their functions.
- c) To examine the way the legal framework of central-local government administrative relationship affects the autonomy of LGAs in the management of personnel, financial affairs and determination of their own priorities.

1.5 Research Questions

The following research questions were used in this study:-

- a) What is the legal framework of central-local government administrative relationship in Mainland Tanzania?
- b) How does the Central Government administratively interact with LGAs in the latter's exercise of statutory powers and discharge of functions?
- c) How does the present legal framework of central-local government administrative relationship affect the autonomy of LGAs in managing their

personnel, financial affairs and in determining their own priorities?

1.6 Significance of the study

The study on the legal framework of central-local government administrative relationship and its implication on local government autonomy is important because effective local government service delivery largely depends not only on the legal framework that governs the administrative relationship between the central government and LGAs but also on the extent to which the LGAs are autonomous in exercising and carrying out their statutory powers and functions respectively.⁹²

The local government reform programme policy paper states that Tanzania local government system is based on decentralisation by devolution which is founded on the principle of subsidiarity.⁹³ The subsidiarity principle and decentralisation theorem assume that service delivery is more efficient if handled by the lowest competent authority and that local councils should have discretionary powers in planning, budgeting, administration and organisation of service delivery.⁹⁴ In any case, this requires a legal framework of central-local government administrative relationship which promotes good relationship between the two government levels and which allows central-local government consultations, negotiations, support from ministries and, minimum central control and supervision of LGAs. The reason is that, in unitary states, LGAs cannot be completely independent of the central government as it is the central government which is sovereign and which decides which powers and functions to be vested in LGAs. This relationship is true, notwithstanding the fact that central

⁹² See Gale, T. (2008). *Local Government*. International Encyclopedia of Social Sciences. Retrieved July 24, 2016 from the World Wide Web: http://www.encyclopedia.com/topic/local_government.aspx. Also see Jered B. Carr, J.B. (2006). Local Government Autonomy and State Reliance on Special District Governments: A Reassessment. *Political Research Quarterly*, Vol. 59(3).pp. 481-492.

⁹³ See Government of the United Republic of Tanzania (1998). *Op.cit.*p.15.

⁹⁴ See Shah, A. & Shah, S. (2006). *Op cit.* p.4. Also see Oplas, N. (2008). *Subsidiarity, Decentralisation and Privatisation*. Minimal Government Thinkers Inc. p.1. Retrieved July 24, 2016 from the World Wide Web: http://www.minimalgovernment.net/media/mg_20080904.pdf.

government and LGAs are different administrative entities. In practical sense, they are not separate because in a unitary state like Tanzania, sovereignty is not constitutionally shared between the national and sub-national government units but resides in the national government only.

Since the main object is effective public service delivery, the central government and LGAs in unitary states complement each other. Sometimes the central government is required to provide great financial assistance by way of grants to cover the cost of service delivery and development projects. Such financial assistance necessitates the extension of central government control and supervision over LGAs in order to ensure that the public moneys entrusted to the latter are spent in the manner intended for. Unless there is an appropriate legal framework of central-local government administrative relationship, central-local government controls and supervisions may curtail local government autonomy and reduce LGAs to mere appendages of the central government.

The legal framework of central-local government administrative relationship is very important as it seeks to balance between national interests in the welfare state and the need for devolution of powers and greater local government autonomy for the overall welfare of the nation. This study therefore is important as it examines the aptness of the present legal framework of central-local government administrative relationship in ensuring effective central-local government administrative relationship and local government autonomy in Mainland Tanzania. The study points out the areas in which the central government interacts administratively with the LGAs in the latter's exercise of power and in discharge of their functions. It also reveals the challenges associated with central-local government administrative relationship and local government autonomy, and shades light for the improvement of this relationship in Mainland Tanzania.

The study is also academically valuable in the sense that it discloses the practical challenges of devolution and local government autonomy in Tanzania and other unitary states. Whereas it has become a fashionable trend in many unitary countries to talk of administrative devolution and popularising the dictum of local government autonomy as an approach towards improved democracy and economic development, this study poses a challenge in the field of constitutional and administrative law on how devolution and local government autonomy can be achieved in unitary states like Tanzania.

Lastly, this study is also academically valuable because it adds reference materials for further studies in the field of constitutional and administrative law, particularly, in the area of local government law in Mainland Tanzania.

1.7 Scope of the study

This study was confined to the examination of the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in the exercise of their powers and in discharging their functions alongside the central government in Mainland Tanzania. Specifically, the study examined the provisions of the law regulating LGAs and how the said LGAs relate with the central government (after the 1998-2014 LGRP) with a view to determining the implication of the same on the autonomy of local government authorities (LGAs) in the management of their personnel, financial affairs and in determining their own priorities in local service delivery.

The study was conducted in Mainland Tanzania only. The reason is that, Tanzania is a union of two parts, namely Zanzibar and Mainland Tanzania but local government is not a union matter. Therefore, this study involved only six Councils selected from four regions i.e. Dodoma Municipal Council in Dodoma Region; Kinondoni Municipal

Council in Dar-Es-Salaam region; Morogoro Municipal Council, Kilosa District Council and Mvomero District Council in Morogoro region; and Meru District Council in Arusha. Other areas involved in the collection of primary data were the PO-RALG in Dodoma region and Mzumbe University in Morogoro region.

1.8 Literature Review

Legal analysis of central-local government administrative relationship seems to have attracted little attention to public law scholarship and researches. One possible reason for this is that, these areas are being perceived as local with no questions of wider constitutional or theoretical nature. The focus by scholars and researchers has been on internal institutional structures of the state.⁹⁵ It is for these reasons that notwithstanding the different works in which the concept of central-local government administrative relationship and local government autonomy are discussed; only a few literature address the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs. In other words, legal research on the role of law as an instrument of shaping the central-local government administrative relationship and local government autonomy (particularly in Tanzania) does not seem to have been done.

Most of the literature available deal with central-local government administrative relationship and local government autonomy from the perspective of public administration and political sciences and not from the legal perspective. However, they provide different forms of central-local government administrative relationship, something which is useful in understanding the present legal framework of central-local government administrative relationship in Mainland Tanzania and its implication on local government autonomy as a focus of this study.

⁹⁵ See Mauthe, B. (2005). A Critique on Legal Analysis of Local Government and the Central-Local Relationship. *Northern Ireland Legal Quarterly*, Vol. 56(3). pp. 373-393.

In most of these literature, the concept of central-local government administrative relationship has been used to denote central government control and supervision over LGAs and, hence, characterising central-local government administrative relationship as one of either agency or partnership model. For instance, Hartlye⁹⁶ informs us that the literature on central-local government administrative relationship from 1950s to 1960s was based on distinction between agency and partnership modes of relationship. Under agency model, LGAs have very little or no discretion. Their role is to implement national policies under the supervision of central government. Under partnership model, central government and LGAs are co-equals and the latter has wider discretionary powers in designing and implementing their own policies.

The propositions of Hartlye seem to suggest that central-local government administrative relationship is determined by the degree of central control and the role of LGAs in relation to the central government in service delivery. The focus of his work was on central-local government relations in the Philippines from the public administration perspective. Thus, it does not discuss and tell the role of the legal framework in shaping the central-local government relationship and its implication on the autonomy of LGAs. However, the literature is useful to this study as it shades light on the understanding of traditional models of central-local government administrative relationship on which the legal framework of central-local government administrative relationship in Mainland Tanzania can be understood.

Raul and De Duzman⁹⁷ also consider central-local government controls and supervision as necessary elements of central-local government administrative relationship. The authors go further to argue that, controls and supervision are necessary for the maintenance of minimum standards in services provision; safeguarding standards of

⁹⁶ Hartlye, O.A. (1971).The Relationship between Central and Local Authorities. *Journal of Public Administration*,Vol.49,pp. 439-456.

⁹⁷ Raul, P. & De Duzman, D.T.(Eds). (1973). *Philippine Local Government: Issues, Problems and Prospects*. Manila: University of the Philippines. pp. 146-147.

administration between and among various levels of government; controlling government expenditures as part of the management and planning of the national economy; protecting the citizens against abuse of powers by local authorities; and integrating the people into a nation (national unity). In this case, the authors generally consider central-local government administrative relationship as being one of control and supervision but they do not consider the role of the legal framework in that relationship. They only share views with Hartlye that central control and supervision are the main constituents of central-local government administrative relationship. They also tell the importance and inevitability of central-local government control and supervision especially in unitary states, but they do not say how the legal framework should accommodate the same for harmonious central-local government relationship. This study will find out the existing relationship in the legal framework of Mainland Tanzania and its implication on the autonomy of LGAs.

In contrast to Raul and De Duzman, Rhodes⁹⁸ views the characterisation of central-local government relations as one of agent or partnership model on the basis of central controls and supervision is misreading and oversimplification. Rhodes considers central-local government administrative relationship as a composite of controls and supervision on one hand and, a composite of several *ad hoc* interactions and measures like consultations and negotiations between central and LGAs on the other hand. He proposed a theory of power dependency model as a modification to agency and partnership theory. By this theory, Rhodes considers the central-local government administrative relationship as one of interdependency.⁹⁹

The degree of discretion and the relative power of the two levels of government depend on their resources and the rules that govern their relationship. For such reason, neither

⁹⁸ Rhodes, R.A.W. (1980). Myths in Central-Local Relations. *The Town Planning Review*, Vol. 51(3). pp.270-285.

⁹⁹ For detailed discussion of power dependency theory see item 2.3.4.2.3 in Chapter Two.

the central governments have monopoly of power nor are the local governments completely independent of the former.¹⁰⁰ He further argues that the problem in central-local government administrative relationship is not the controls and supervision but rather the ambiguity, confusion and complexity of the relationship. This makes the central-local government controls and supervision appear irritating and frustrating to LGAs because they are *ad hoc* and random.

Although Rhodes seems to suggest that certainty and consistency on the central-local government administrative relationship is a solution for local government autonomy, he also cautions that the clarification of the said relationship could be more painful than doing good. In his view, the non-clarification of the administrative relationship between central and local government authorities is both a source of constraints and opportunities. He views it better for the confusion and ambiguity in the said relationship to remain intact because the two levels of government can settle it through negotiation. Rhodes' views seem contradictory but his work is useful in this study in understanding the complexity of central-local government administrative relationship and the envisaged local government autonomy particularly in a unitary state. However, the author does not seem to give a clear meaning and the basis of central-local government administrative relationship. His work does not say how the law is responsible for shaping the said relationship and the implication of the same on local government autonomy.

Mwaikusa¹⁰¹ and Gaudioso¹⁰² also view central-local government relations as being perceived primarily in the context of central control and supervisions over LGAs, and that such control and supervision is founded on the constitution and some provisions of law. Gaudioso further argues that in this relationship, LGAs are legally subordinate to

¹⁰⁰ *Ibid.*

¹⁰¹ Mwaikusa J.T. (1985). *Op.cit.* pp.178-181.

¹⁰² Gaudioso, C. S.JR. (1986). Local Autonomy and Inter-Governmental Relations. *Philippines Law Journal*. Vol.61. pp. 428 &429.

the central government because the former are only *infrasovereign* subdivisions of one sovereign state and for such reason, LGAs are by definition and function subject to central control and supervision. He emphasises that the central government must oversee the performance of LGAs because the latter are integral part of the total government system, their interests are subordinate to the former, and are not free from central tutelage.

Mwaikusa and Gaudioso also consider central-local government controls and supervision as the major forms of central-local government administrative relationship. Furthermore, the authors briefly speak of the framework of the constitution and law as being the basis of central-local government administrative relationship. Although the authors could not discuss the implication of the legal framework on the autonomy of LGAs and what framework they consider more appropriate, their literature are important in this study as they provide some insight on the importance of the legal framework in shaping the central-local government administrative relationship.

William¹⁰³ considers central-local government relationship as consisting of legal, administrative and financial interactions between the central government and LGAs. By this, William (like Rhodes) seems to suggest that central-local government relationship is something which is complex because it consists of not only controls and supervision but a number of legal, administrative and financial interactions. The key focus of William was on local government and urban politics in the UK rather than the implication of the legal framework of central-local government relationship on local government autonomy. This literature does not therefore directly address the legal framework of central-local government administrative relationship and its implication on local government autonomy. It is however important in this study as it informs the meaning and scope of central-local government administrative relationship.

¹⁰³ William, H. (1987). *Local Government and Urban Politics*. London: Longman Publishers. pp.1, 164 &165.

The scope of central-local government relationship is also discussed by Liviga.¹⁰⁴ He views central-local government relationship as an issue which is complex and controversial, spinning from countries in which LGAs are highly autonomous and independent from central government control to countries in which LGAs are mere appendages (agents) of the central government. The author views history as the main basis of this relationship. By this he says, the degree of central control over LGAs is shaped by history and therefore, viewed from this angle, LGAs in Mainland Tanzania are semi-autonomous.

Although the focus of Liviga was on central-local government relationship from the historical and public administration perspective, he also points out the weaknesses in the legal framework in Mainland Tanzania in which the Minister responsible for local government affairs is vested with too much power to control and supervise LGAs. Liviga considers this legal framework to be a result of history. By this, he argues that throughout the colonial period and even after independence, there has never been a tradition of strong local government in Tanzania. In his view, Tanzania has always been administered as a single entity with authority flowing from the centre to the periphery. Local interests (local voices) have never ever been strong enough to question the might of the central government. This was even worse after six years of independence when Tanzania adopted and pursued the socialist ideology which was manifested under one political party state. Liviga also seems to have majored on controls and supervision as the major forms of central-local government relationship. Although his focus was on the historical evolution of local government system in Tanzania before the 1998-2014 LGRP, his work is useful in this study because it casts light on the weaknesses of the legal framework of central-local government administrative relationship in Mainland Tanzania.

¹⁰⁴ Liviga, A.J. (1992). *Op.cit.* pp.213-214.

Warioba¹⁰⁵ considers central-local government administrative relationship as the division of powers, duties and financial resources between the central government and LGAs in which the former lays down policy for the latter to execute. Also his work focused on the management of local government in Tanzania in the field of public administration. The author proposes for ideal central-local government administrative relationship and emphasises that, such relationship should involve consultation between the two levels of government rather than central imposition of policy without consultation which is likely to affect the relationship between the two levels of government. He argues that, where after consultation and discussion the central government finds it in the public interest to impose its wish, it must do so.

Warioba sees central interferences and directions over LGAs necessary because it is the central government which entrusts powers to LGAs and therefore it has the duty to see that such powers are properly exercised to attain results. However, he insists that such central interferences and directions over LGAs must as much as possible be minimum. He, therefore, considers central-local government administrative relationship as one of checks, controls and supervision in the forms of legislative, administrative, financial, judicial or political controls. He further opines that, the nature of such checks, controls and supervision is founded on the powers bestowed by the law on LGAs in the execution of specific duties and services. He attempts to be more elaborate on what constitutes central-local government administrative relationship by going beyond controls and supervisions. Therefore, although this work focused on public administration, it is useful in this study as it enlightens on the ideal central-local government administrative relationship and the implication of the legal framework on the autonomy of LGAs in Mainland Tanzania.

¹⁰⁵ Warioba, M.M.D.(1999). *Loc.cit.*

Reid¹⁰⁶ also sees central-local government relationship as a pattern of interactions between central government and LGAs in federal or unitary systems which include matters of establishment, structure, finance, functions and personnel. This work is silent on the implication of the legal framework of central-local government relationship on the autonomy of LGAs because its focus was on management of central-local government relationship in the field of public administration in New Zealand. Nonetheless, this work is useful in this study because it touches the issues of finance, functions and personnel affairs which are relevant in this study.

Enejo and Isa¹⁰⁷ in their article on the imperative of local government autonomy and intergovernmental relationship in Nigeria share similar views with Reid as they view central-local government relationship as a pattern of interactions in respect of structures, finance, functions and personnel between central and local governments. Unlike Reid, Enejo and Isa see the role of the legal framework as imperative in shaping the pattern of central-local government administrative relationship and local government autonomy. They argue that lack of local government autonomy over personnel and financial resources in LGAs is rooted in the constitution and other guidelines issued by the central government from time to time. Though their work is based in Nigeria, it provides some insights on the implication of the legal framework on the autonomy of LGAs. It has pointed out the negative aspects of the legal framework but does not say how the legal framework should be in order to ensure local government autonomy over personnel and financial resources.

Adeyemo¹⁰⁸ views central government and LGAs closely related and interdependent and, for such reason, there can never be absolute local government autonomy. He considers

¹⁰⁶ Reid, M. (2012). Managing Central-Local Government Relationships: the Case of New Zealand. *Commonwealth Journal of Local Governance*, Vol. 11. pp.1-32.

¹⁰⁷ Enejo, W. & Isa, A.(2014). *Loc.cit.*

¹⁰⁸ Adeyemo, D.O. (2005). Local Government Autonomy in Nigeria: A Historical Perspective. *Journal of Social Sciences*, Vol. 10(2).pp. 77-87.

local government autonomy as only relative independence of sub-national governments from central administrative controls which is determined by the nature and structure of central-local government interactions. He views complete local government autonomy within a sovereign state as impossible because if local governments were completely autonomous, they would be sovereign states. The author writes about the local government system of Nigeria but his work is important in this study as it shows the difficulty in talking about local government autonomy in a unitary state because in such states sovereignty is constitutionally vested in the central government only. By this, the author poses a challenge for this study on how the legal framework ought to be in order to strike a balance between the theory of unitary government (for the case of Tanzania) and the need for local government autonomy in service delivery.

Katorobo¹⁰⁹ says that the degree of local government autonomy depends on the nature and type of decentralisation and the legal framework. This view is also conceded by Fleurke and Willemse¹¹⁰ who find the heart of central-local government administrative relationship rooted in the theory of decentralisation. To them, the more the decentralisation the more is the local government autonomy and the vice versa. However, unlike Katorobo, Fleurke and Willemse do not say anything on how the legal framework of central-local government administrative relationship is responsible for shaping local government autonomy. Their focus was on measuring local government autonomy on the basis of decision making approach in the field of public administration. However, their work is important in this study as it provides theoretical knowledge on the correlation between decentralisation and local government autonomy.

¹⁰⁹ Katorobo, J. (2005May). "Decentralisation and Local Autonomy for Participatory Democracy. Paper presented at the 6th Global Forum on Reinventing Government". Seoul: Republic of Korea. pp. 9-10.

¹¹⁰ Fleurke, F. & Willemse, R. (2006). *Loc.cit.*

The concept of local government autonomy has also been considered by Chaligha.¹¹¹ He finds it difficult to talk of local government autonomy in a polity where LGAs derive their powers and authorities from central government legislation rather than from the Constitution. Chaligha argues that if LGAs derive their powers and authorities from central government legislation and not from the Constitution, their status will largely depend on their relationship with the central government. He contends that if LGAs are to be autonomous, both central and local government must have same status under the constitution. Although the focus of this work was not on the discipline of law, it is useful in this study as it gives insight on the ideal legal framework of central-local government administrative relationship.

Writing on the local government reforms after the first phase of the LGRP in Mainland Tanzania, Warioba and Leticia¹¹² noted also the role of the legal framework in upholding and fostering the central-local government relationship and local government autonomy as being imperative. In their analysis of the Constitution and the legal framework of central-local government relations in Mainland Tanzania, the authors view the powers vested in the central government [the Minister, the Regional Commissioner (RC), and the District Commissioner (DC)] over LGAs as being excessively control oriented, non-developmental and a threat to local government autonomy. Nonetheless, the focus of their work was also on public administration and for such reason, they could not provide a detailed discussion and say what needs to be done to improve the current legal framework of central-local government administrative relationship and pave a way for local government autonomy.

Let alone a few works which discuss the imperative of the legal framework of central-local government administrative relationship and local government autonomy, some few

¹¹¹ Chaligha, A. (2008). *Local Autonomy and Citizen Participation in Tanzania: From Local Government Reform Perspective*. REPOA. p.7

¹¹² Warioba, M.D.& Warioba, L. (2012). *Op.cit.* p. 61.

authors also have addressed the dimensions of local government autonomy. In this respect, Okoli¹¹³ points out three aspects critical in determining the autonomy of local government authorities. These aspects are authority, finance and personnel. By authority, the author views administrative devolution as the best in ensuring local government autonomy. About finance, Okoli asserts that local government autonomy depends on the local government possession of adequate sources of revenue and personnel for the initiation and execution of functions and services. Okoli gives more weight to the aspect of personnel. He argues that if local government autonomy is to be realised, local governments must be able to recruit and maintain their staff. In the view of Okoli, if LGAs depend on central government for personnel, they can, at best, be described as an extension of the latter because loyalties of the employees will most certainly go to the latter who have control over them. Okoli's work is very important in this study because it highlights on the focal dimensions of this study (transfer of power, finance and personnel management) in examining the implication of the present legal framework of central-local government administrative relationship on local government autonomy in Mainland Tanzania.

Unlike Okoli, Wunsch¹¹⁴ emphasises on finance as being crucial in determining local government autonomy. Wunsch perceives local government autonomy as the extent to which sub-national governments can undertake independent actions without the permission or control of the central government. It is determined by the financial ability of the respective LGAs. Wunsch's work is also useful to this study as it shades light on the imperative of financial autonomy for local government's independent decision making especially in determining their own priorities in local service delivery.

¹¹³ Okoli, F.C. (2013). The Autonomy of Local Government and the Place of 4th Tier Government (Community Government Councils) in the Nigeria's Vision 20:20:20 Project. *Mediterranean Journal of Social Sciences*, Vol. 4 (5). pp.89-97.

¹¹⁴ Wunsch, J.S. (2014). "Decentralisation: Theoretical, Conceptual, and Analytical Issues". In Dickovick, T.J. & Wunsch, J.S. (Eds). (2014). *Decentralisation in Africa: the Paradox of State Strength* (pp.1-22). Boulder, Colorado: Lynne Rienner Publishers. pp.1-2.

Besides Wunsch, Fatile and Ejalonibu¹¹⁵ also view local government autonomy as a function of responsibilities, resources (finance and personnel) and the discretion vested in the local authorities. However, Fatile and Ejalonibu do not discuss how such resources and discretion may be affected by the legal framework of central-local government administrative relationship because their focus was not on the legal framework but on the aspect of decentralisation and local government autonomy from public administration perspective. Nonetheless, they are not far away from Wunsch and Okoli in the view that the possession of power (authority) and functions, availability of sufficient and reliable financial resources and personnel are *conditio sine qua non* for local government autonomy.

The above reviewed literature provides a great deal of knowledge relevant to this study. Although there is no uniformity on what constitutes central-local government administrative relationship and local government autonomy, there seems to be some general understanding among several authors that central-local government administrative relationship is a complex pattern of legal, political, administrative and financial interactions (controls and supervisions) between the central and LGAs. There is also an agreement among many authors that the degree of local government autonomy depends on the transfer (decentralisation) of powers, responsibilities, and resources (finance and personnel) from the central government to LGAs.

Although some literature have shown the imperative of the constitutional set up and other provisions of law in the autonomy of LGAs, the researcher did not come across any specific literature which clearly addresses the implication of the legal framework of central-local government administrative relationship on local government autonomy in the field of law. The literature which address the implication of the legal framework of

¹¹⁵ Fatile, J.O & Ejalonibu (2015). Decentralisation and Local Government Autonomy: Quest for Quality Service Delivery in Nigeria. *British Journal of Economics, Management and Trade*, Vol. 10(2).pp. 1-21.

central-local government administrative relationship on local government autonomy are based on public administration and political sciences. For such reason, they do not give a thorough analysis of the law and its implication on the autonomy of LGAs in the exercise of their powers and discharge of their functions especially in managing their personnel, financial affairs and in determining their own priorities in local service delivery.

Therefore, from jurisprudential point of view, there is a knowledge gap on the manner the present legal framework of central-local government administrative relationship in Mainland Tanzania enhances the autonomy of LGAs in the exercise of their powers and discharge of their functions especially in managing their personnel, financial affairs and in determining their own priorities in local service delivery.

1.9 Justification for the Study

Literature reveals that meaningful local government autonomy can be realised where there is transfer by law (juridification of decentralisation and central-local government relationship) and other formal actions of responsibilities, resources and accountability from the centre to LGAs.¹¹⁶ However, from literature, one notes that, since 1990, the majority of African countries have initiated or increased the transfer of power and resources by law from central to sub-national governments. Nonetheless, the autonomy of sub-national governments has remained quite restricted due to several top-down forces, especially the controls exercised by state authorities.¹¹⁷ This seems to suggest that the assumption that juridification of administrative decentralisation leads to local government autonomy requires proof or investigation on the kind or ideal legal

¹¹⁶ See Olowu, D & Wunsch J. M. (2004). *Op.cit.* pp.4-5. Also see Warioba, M.D. & Warioba, L. (2012). *Loc.cit*; Bailey, S.H. (2004). *Loc.cit*; Chaligha, A. (2008). *Loc.cit*; Gaudioso, C. S.JR. (1986). *Loc.cit*; and Enejo, W. & Isa, A. (2014). *Loc.cit*.

¹¹⁷ See Dickovick, T.J. & Ried, B.R. (2010). *Op.cit.* pp.3, 13-14. Also see Wunsch, J.S. (2014). *Op.cit.* pp.1-2.

framework that may provide the necessary support to the desired local government autonomy.

The experience of central-local government administrative relationship and local government autonomy in Mainland Tanzania is not exceptional to other African states. For instance, from the middle of 1990s to early 2010s, the government of Tanzania has implemented a radical LGRP which was accompanied by several legal reforms aimed at, among other things, improving the autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities in local service delivery.¹¹⁸ Despite these reforms, literature seems to suggest that, local government autonomy has remained too restricted.¹¹⁹ This implies that something is wrong somewhere either in the law that govern the central-local government administrative relationship or in the implementation of the law.

There are several events that have taken place since the LGRP started and which are inconsistent with the notion of D by D and local government autonomy. Among the events which are seemingly paradoxical to D by D and local government autonomy include the abolition of the Dar es Salaam City Council by the Prime Minister in 2002;¹²⁰ the centralisation of the local government service by the Public Service Act;¹²¹ the abolition of several local taxes by the Ministry of finance in 2004;¹²² and the continued central directives and imposition of central policies without consultations with

¹¹⁸ See Government of the United Republic of Tanzania. (1998). *Op.cit.* pp.3-4 &15.

¹¹⁹ *Ibid.* pp.17-19. Also see Per Tidemand., Sola, N., Bofin, P. & Chaligha, A. (2010). *Comparative Assessment of Decentralisation in Africa: Tanzania in Country Assessment Report.* USAID. pp.37-39; and Per Tidemand & Sola, N.(2014). *Loc.cit.*

¹²⁰ Majira, 10th November, 2003. p.3.

¹²¹ Act No. 8 of 2002.

¹²² See Government of the United Republic of Tanzania. (2007). *Joint Government-Development Partner Evaluation Working Papers.* PMO-RALG.p.127; Per Tidemand and Sola, N. (2014). *Op.cit.*; p.216; Per Tidemand, Olsen, H.B., and Sola, N. (2008). *Local Level Service Delivery, Decentralisation and Governance: A Comparative Study of Uganda, Kenya and Tanzania Education, Health and Agriculture Sectors. Tanzania Case Report.* JICA. p.16; and Per Tidemand., Sola, N., Bofin, P. & Chaligha, A.(2010). *Op.cit.* p. 18; and Kunkuta, G.E.A. (2011). *Op.cit.* pp. 185 &196.

LGAs.¹²³ Such events raise some questions on the present legal framework of central-local government administrative relationship in Mainland Tanzania and whether the same is tailored to meet the desired strong and autonomous LGAs. Furthermore, given the lacunae in previous researches and scholarly works that address the implication of the legal framework of central-local government administrative relationship on local government autonomy in Mainland Tanzania, this study was thought imperative as it attempts to cover the existing knowledge gap by analysing the implication of the present legal framework of central-local government administrative relationship on the autonomy of LGAs particularly in the management of their personnel, financial affairs and in determining their own priorities in local service delivery in Mainland Tanzania.

1.10 Theoretical Basis of the Study

As noted from literature review, the administrative relationship between central government and LGAs is an aspect of internal institutional structure of the state and does not seem to raise wider constitutional or theoretical questions beyond the context of a given jurisdiction.¹²⁴ The use of theory in the legal analysis of central-local government administrative relationship is, therefore, uncommon and incompatible except where it is borrowed for specific context or specific area of decision making like housing, education and health services.¹²⁵

On understanding the difficult of theory in the legal analysis of central-local government relationship, this study adopted the theory of decentralisation, the principle of subsidiarity and the holistic principle from public administration and political sciences fields. But since this study is in the law discipline, the said theory and principles were used only in the explanation, interpretation and content analysis of the legal framework

¹²³ Examples of centrally imposed policies and directives include construction of ward secondary schools in 2004, construction of laboratories in every Ward secondary school in 2014 and procurement of desks for every primary school in 2016, just to mention but a few instances.

¹²⁴ See Mauthe, B. (2005). *Loc.cit.*

¹²⁵ *Ibid.*

of central-local government administrative relationship *vis-à-vis* the autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities. For such reason, the theory of decentralisation, the principle of subsidiarity and the holistic principle were not sufficient in themselves for the purpose of this study since they are not rooted in the discipline of law. It was necessary to integrate them in the methodology with legal theories of juridification and instrumental theory of law. The application of these theories and principles in this study is discussed in detail in item 2.2 in chapter two. The next item examines the methodology used in conducting this study.

1.11 Research Methodology

This study is both doctrinal and empirical. The approach and choice of methods used in this study depended on the nature of the study and the type of data required. Doctrinal research involved review of legal texts and other public and scholarly documents. Empirical research involved the collection of data from field respondents through in-depth interviews.¹²⁶

1.11.1 Research Design and Approach

This study used a cross-sectional survey design and qualitative approach.¹²⁷ Cross-sectional survey and qualitative approach were employed to collect, analyse and interpret primary and secondary data on the present legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in Mainland Tanzania. Primary data was collected through in-depth interviews and, secondary data were collected through documentary review as explained in items 1.11.5.1 and 1.11.5.2. Furthermore, through documentary review, the researcher

¹²⁶ Primary Sources for doctrinal legal research are statutory texts, treaties and general principles of law, customary law, binding precedents, and the like. See Hoercke, M.V. (2011). *Op.cit.* pp.10-11.

¹²⁷ Qualitative approach is applied when flexibility of approach is needed to allow the discovery of the unexpected and in depth investigation of a particular topic. It is concerned with subjective assessment of attitudes, opinions and behavior. See Kombo, D.K. (2006). *Proposal and Thesis Writing*. Nairobi: Pauline's Publications Africa. p.10. Also see Kothari, C.R (2004). *Research Methodology: Methods and Techniques*. New Delhi: New Age International Publishers. p.5.

examined the legal framework of central-local government administrative relationship in some few selected countries in Africa, Asia and Europe.¹²⁸ This was necessary for the purpose of identifying best practices from which some lessons and good practices can be borrowed for the improvement of the legal framework of central-local government administrative relationship in Mainland Tanzania.

1.11.2 Area of the study

This study was conducted in six selected councils in Mainland Tanzania, at the PO-RALG in Dodoma and at Mzumbe University in Morogoro. The six Councils selected were Dodoma Municipal Council in Dodoma Region; Kinondoni Municipal Council in Dar-es-Salaam Region; Morogoro Municipal Council in Morogoro Region; Kilosa and Mvomero District Councils in Morogoro Region; and Meru District Council in Arusha Region. The choice of these Councils was based on three major considerations: easy accessibility and reasonable cost, possibility of gathering data within reasonable time

¹²⁸ The selected foreign jurisdictions are The United Kingdom; the Philippines Republic; the Republic of South Africa; the Republic of Kenya; and the Republic of Uganda. The Philippines Republic and the Republic of South Africa were selected on the basis of being unitary states with LGAs and which, according to review of literature, have better practices in central-local government administrative relationship and local government autonomy. See Bonoan, M.B.(2010). *Two Decades of Journey to Local Autonomy in the Philippines*. Retrieved August 21, 2016 from the World Wide Web:<http://asiafoundation.org/2010/09/01/two-decades-of-journey-to-local-autonomy-in-the-philippines/>. Also see Malan, L. (2005). Intergovernmental Relations and Co-operative government in South Africa: The ten-Year Review. *Politeia*. Vol. 24(2).pp. 226-243. Also see Republic of South Africa. (2007).*The Implementation of the Intergovernmental Relations Framework Act: An Inaugural Report, 2005/2006-2006/2007*. Department of Provincial and Local Government (DPLG). pp.22-26; Republic of South Africa (2008). *Fifteen Year Review Report on the State of Intergovernmental Relations in South Africa*. Department of Provincial and Local Government (DPLG). pp. 18-24; and De Villiers, B.(2012) Codification of Intergovernmental Relations by Way of Legislation: the Experiences of South Africa and Potential Lessons for Young Multitiered Systems. *Zao RV*, Vol. (72).pp. 671-694. The United Kingdom, the Republic of Kenya and the Republic of Uganda were also selected on the basis of being unitary states with LGAs like Tanzania and on the basis of historical consideration. That is, Both Kenya and Uganda were colonized by Britain and their local government system is founded in the English Model.

and the need to acquire information from both District and Urban Councils in different zones of Mainland Tanzania.

The choice of Dodoma, Kinondoni and Morogoro Municipal Councils as well as Kilosa and Mvomero District Councils was based on easy accessibility, reasonable cost and possibility of gathering data within reasonable time. The choice of Meru District Council in addition to the above named Councils was based on the need to acquire information from both District and Urban Councils in different zones of Mainland Tanzania. The PO-RALG was selected in order to get information from the parent Ministry responsible for local government. Mzumbe University was selected because of availability of academic experts in local government administration at the SOPAM and availability of library resources at Mzumbe University Library. Other areas visited in search of documentary materials were Dar-es-Salaam University library, the Public Service Management Library and the Attorney General Law Chambers library in Dar-es-Salaam.

1.11.3 Study Population and Sample Size

In this study, the study population¹²⁹ involved eight (8) Directors of the PO-RALG Divisions; twelve (12) central government officers (RC/DAS and LGO) at the Regional Administration; eight (8) central government officers (DC/DAS) at the District Administration; twelve (12) Council Secretaries of sector Ministries (STSD and HS); twelve (12) Council Heads of Department in Human Resources and Finance; six (6) Council Chairpersons and Mayors; six(6) District and Municipal Executive Directors (DED/MED) and eight (8) academic experts in local government administration. Out of this population, a sample size¹³⁰ of fifty five (55) respondents was selected through purposive sampling techniques.

¹²⁹ A population is a group of individuals, objects or items from which samples are taken. It is the entire group of persons or large group of persons from which a sample is selected. See Kothari, C.R. (2004). *Op.cit.* p. 153. Also See Kombo, D.K. (2006) *Op.cit.* p.76.

¹³⁰Sample size means the number of items (persons) selected from the universe or study population to constitute a sample. On sample size see Kothari, C.R. (2004). *Op.cit.*p.56.

The selected sample included: three (3) Council Chairpersons; three (3) Mayors; three (3) District Executive Directors(DEDs); three (3) Municipal Executive Directors (MEDs); six (6) Council Heads of Department in human resources (HODs-HR); six (6) Council Heads of department(Finance, Planning, Monitoring and Evaluation Department); four (4) Regional Administrative Secretaries (RAS); six (6) District Administrative Secretaries (DAS); six (6) Secretaries of Teachers Service Department (STSD); six (6) Council Health Secretaries (HS); four (4) local government officers/Assistant Administrative Secretaries at the Regional Secretariats(LGO/AAS); one(1) Director of Local Government Division at the President's office Regional Administration and Local Government (DLGD-PO-RALG); and four (4) academic experts in local government (AELG). Table 1.1 below shows the summary and break down of the sample size involved in this study.

Table 1.1: Summary and Break Down of Sample Size

Category of Respondent	Name of study Area								Total
	Dodoma MC(Dodoma)	Kinondoni MC(DSM)	Morogoro MC	Kilosa Dist.C(Morogoro)	Mvomero Dist.C(Morogoro)	Meru Dist.C(Arusha)	PO-RALG	MU	
Chair Persons/Mayors	1	1	1	1	1	1			6
DED/MED	1	1	1	1	1	1			6
HoDs (HR& Finance)	2	2	2	2	2	2			12
RC/ RAS	1	1	1			1			4
DC/DAS	1	1	1	1	1	1			6
STSD	1	1	1	1	1	1			6
HS	1	1	1	1	1	1			6
LGO/AAS	1	1	1			1			4
DLGD-PO-RALG							1		1
AELG								4	4
Total									55

Key

Colour	Meaning
Green	Municipal Councils and respondents selected in the municipal council.
Yellow	District Councils and respondents selected in the District Council.
Blue	Regional Administration (RA) and respondents selected at the Regional Secretariats.
Red	District Administration and respondents selected at the District Administration.
Black	Not applicable/ absence of a category of respondents in an area of study.
Red	PO-RALG and respondents selected at the PO-RALG.
Purple	Academic experts in local government administration selected at Mzumbe University

Source: Study Population, 2015

1.11.4 Sources of Data

This study involved both primary and secondary sources of data. The primary sources of data were the field respondents in the selected Councils; at the PO-RALG; at the Regional Secretariats; at the District Administration; at SOPAM-Mzumbe University. Secondary sources of data involved various relevant documentary materials accessed from Mzumbe University library; Dar es salaam University library; the Public Service Management Library; and the Attorney General Law Chambers library in Dar-es-Salaam. Other materials in hard and soft copies were accessed from various government offices and retrieved from the internet as explained in item 1.11.5.1.

1.11.5 Methods of Data Collection

The methods of data collection in this study were documentary review and in-depth interviews. The use of these two methods started with documentary review and followed by in-depth interviews which were conducted in order to acquire practical and primary data. The detailed application of these methods in this study is explained hereunder.

1.11.5.1 Documentary Review

Documentary review involved review of the Constitution of the United Republic of Tanzania, 1977; review of principal and subsidiary legislation;¹³¹ review of judicial decisions; and review of official records including: council approved establishments, employment permits, schedules of approved emolument annual estimates, employment circular letters, budget guidelines and circular letters, budget files and local government policies.¹³² Updating and searching relevant legal texts was done by the aid of Index to the laws of Tanzania Mainland in force up to 18th June, 2011;¹³³ Index to the laws of Tanzania Mainland in force up to 31st December, 2016;¹³⁴ Index to subsidiary legislation, 1961-2016¹³⁵ and visit to official Website of the Parliament of the United Republic of Tanzania.¹³⁶ Updating and search of judicial decisions was done by perusing Index to the Law Reports of Tanzania¹³⁷ and Indexes to the Tanzania High Court

¹³¹ For details of selected list of principal and subsidiary legislation reviewed, see **Appendix IV**.

¹³² See **Appendix I**.

¹³³ See Juma, I.H. (2011). *Index to the Laws of Tanzania Mainland in Force Up to 18 June, 2011*. Dar-es Salaam: MPJ Publishers.

¹³⁴ See Juma, I.H. (2016). *Index to the Laws of Tanzania Mainland in Force Up to 31st December 2016* (2nd Ed). Dar-es Salaam: MPJ Publishers.

¹³⁵ See Juma, I.H. (2013). *Fifty Years of Subsidiary Law Making in Tanzania: 1961-2012*. Dar Es Salaam: MPJ Publishers. Also see Juma, I.H. (2016). *Fifty Five Years of Subsidiary Law Making in Tanzania: 1961-2016* (2nd Ed). Dar Es Salaam: MPJ Publishers.

¹³⁶ The official Parliament Websites visited were <http://www.parliament.go.tz/> or <http://www.bunge.go.tz/>; <http://www.parliament.go.tz/acts-list>; and <http://www.parliament.go.tz/publication/reports>. Other Websites visited were <http://www.bunge.go.tz/index.php/ministers/ministerslist/all/all/1/2010-2015>; <http://www.utumishi.go.tz/>; <http://www.utumishi.go.tz/index.php/docs>; <http://www.tamisemi.go.tz/>; http://www.tamisemi.go.tz/menu_data/Publications; and <http://www.tamisemi.go.tz/waziri/>.

¹³⁷ Government of the United Republic of Tanzania, *Tanzania Law Reports*, 1983-1997 and, Government of the United Republic of Tanzania, *Tanzania Law Reports*, 1999-2006.

Digest.¹³⁸ Review of scholarly works (journal articles and research reports) was also useful in collecting secondary data. A checklist of relevant documents was prepared for systematic review of documents.¹³⁹

Documentary review provided useful information on the present legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in Mainland Tanzania. The information obtained through documentary review was, however, not sufficient in itself. Therefore, documentary review had to be complemented by in-depth interviews as explained in the subsequent item.

1.11.5.2 In-depth Interviews

In-depth interviews involved face to face and telephone interviews which were conducted between the researcher and the interviewees between October 2015 and October 2016. Conducting in-depth interviews was necessary in order to get original and realistic view on the areas of central-local government administrative interactions and the implication of the present legal framework of central-local government administrative relationship on the autonomy of LGAs in Mainland Tanzania. In-depth interviews complemented the information obtained through documentary review. Face to face interviews were conducted in the offices of the respondents. Before conducting the interviews, the researcher requested research permits from the RAS, DAS and the Directors of Human Resources in the Councils and other study areas visited. After acquisition of the research permit and introductory letter, the researcher made appointments with the respondents and returned on the agreed dates for the interviews. Some of the respondents needed no appointment as they instantly consented to be interviewed at the time they were handed the introductory letter.

¹³⁸ See *Tanzania High Court Digest*, 1967-1968; *Tanzania High Court Digest*, 1969; *Tanzania High Court Digest* 1970; *Tanzania High Court Digest* 1971; and *Tanzania High Court Digest*, 1972.

¹³⁹ See **Appendix I**.

Some respondents were however not easily accessible for face to face interviews because of tight official schedules. Arrangements were made between the researcher and such respondents to interact through telephone interviews. Telephone interviews were also employed to get additional information after face to face interviews. In-depth interviews provided detailed information by probing the interviewees views, opinion, attitudes and experiences about the implication of the present legal framework of central-local government administrative relationship on local government autonomy in Mainland Tanzania.¹⁴⁰ The researcher was guided by a pre-determined interview guide that contained twenty four (24) open-ended questions.¹⁴¹ The interview process involved asking questions and systematic recording of responses in form of notes. Audio records through smart phone were also taken because it was not easy to take notes of everything at the time of interviews.

1.11.6 Data Analysis and Interpretation

Both secondary and primary data were qualitatively analysed and interpreted. Analysis of documentary data was done through content analysis. After gathering the relevant documents in the checklist,¹⁴² the researcher carefully examined the content of the selected documents to identify words and phrases (units of analysis) that denote central-local government interactions in respect of local government functions, finance and personnel. Recurring words and phrases were coded and then summarised by categorising them into themes. Literal and purposive rules of statutory interpretation were used in interpreting the provisions of legal texts. This was followed by analysis of primary data obtained through in-depth interview.

¹⁴⁰The primary advantage of in-depth interviews is that they provide much more detailed information than what is available through other data collection methods, such as surveys. See Boyce, C. (2006). *Conducting in-depth-interviews: A guide for Designing and Conducting In-depth-interviews for Evaluation Input*. Pathfinder International.p.3.

¹⁴¹ See Appendix II

¹⁴² See Appendix I.

In analysing primary data obtained through in-depth interview, the responses taken in form of notes and audio records were subsequently converted into write-ups and comprehensive notes against every question in the interview guide. A number of interrelated operations were thereby undertaken. These included data screening, summarisation and categorisation (sorting) of the screened data into manageable groups and themes and description of the sorted information. After all these processes, database was prepared and stored in the computer.

The analysed secondary and primary data were evaluated and interpreted according to the research objectives and research questions. Logic (inductive reasoning) was used to draw inferences on the proposition of both secondary and primary data on the implication of the legal framework of central-local government administrative relationship on the autonomy of LGAs in their exercise of statutory powers and discharge of their functions particularly in the management of their personnel, financial affairs and in determining their own priorities in local service delivery in Mainland Tanzania.

1.12 Ethical Consideration

This study was guided by ethical values. In documentary review, the researcher avoided plagiarism by ensuring that the sources of all the reviewed documents are referred to. Apart from documentary review, in in-depth interviews, confidentiality, freedom of anonymity and consent of the respondents were highly observed. In obtaining consent of the respondents, the researcher either verbally or through the introductory letter introduced the study and its objectives to every respondent. It was emphasised that the study is an academic research and the information collected would be used for academic purposes only. The respondents expressed their consent verbally and those who did not want their names to be disclosed were assured of

anonymity by non-disclosure of the informants. Only the respondents who consented to be interviewed were interviewed.

1.13 Limitations of the Study

There were several impediments for the smooth completion of this study. The most noticeable constraint was the source of information. In searching for appropriate documents, it appeared difficult to gather legislative materials because the laws governing central-local government relationship in Mainland Tanzania are scattered into different pieces of legislation. To overcome this constraint, the researcher made use of the Index to the laws of Tanzania Mainland in force up to 31st December, 2016¹⁴³ and visited the official Website of the Parliament of the United Republic of Tanzania and other websites.¹⁴⁴

It was even more difficult to access circulars, directives, guidelines, memoranda, budget files and employment files. Some officers when requested for such documents were reluctant to issue them on the ground that the documents were confidential. However, some few respondents agreed to provide copies of the documents requested and, with the help of the Public Service Management Library, the Attorney General Law Chambers' Library and other libraries, sufficient legal documents were obtained and these provided the required information.

Besides documentary sources, availability of respondents for interviews was equally difficult. Some key respondents were very reluctant to sit for face to face interviews. They claimed to be busy and that they had no time for the face to face interviews. In such circumstances, the researcher resorted to telephone interviews. At last, a total of fifty three respondents (58) out of fifty five (55) respondents which is equal to 96.4 % were interviewed. Notwithstanding the experienced difficulties, valid and reliable

¹⁴³ See Juma, I.H. (2016). *Loc.cit.*

¹⁴⁴ See Footnote 137 above.

information was obtained because sufficient relevant documents were obtained and more than half (96.4%) of the expected respondents were interviewed.

1.14 Conclusion

This chapter has provided the general introduction and background information of the study. Several aspects have been covered including the statement of problem, objectives of the study, research questions and literature review. In review of literature, it has been pointed out that the area of the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in Mainland Tanzania has not well been researched despite the fact that it is very important in determining the degree of local government autonomy and effective service delivery. This gap motivated this research so as to examine the legal framework of central-local government administrative relationship with a view to determining the central-local government administrative interactions and the implication of such framework on the Autonomy of LGAs in Mainland Tanzania.

Other important aspects covered include significance and justifications for the study, and the methodology used in carrying out this study. In this respect it has been pointed out that this study is important because it examines the aptness of the present legal framework, the challenges associated with central-local government administrative relationship and local government autonomy and, the way forward to improve the present legal framework of central-local government administrative relationship and local government autonomy. Also the chapter explained the methods used to conduct this study which includes documentary review and in-depth interviews. The next chapter covers the theoretical and conceptual framework of central-local government administrative relationship and local government autonomy in Mainland Tanzania.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF THE STUDY

2.1 Introduction

The study of legal framework of central-local government administrative relationship and its implication on the autonomy of local government authorities in Mainland Tanzania involves two major themes: central-local government administrative relationship and local government autonomy. These themes are on the one hand determined by the type of decentralisation and therefore governed by the theory of decentralisation, the principle of subsidiarity and holistic principle.¹⁴⁵ On the other hand, they are determined by the legal framework of central-local government administrative relationship and therefore governed by the theory of juridification and instrumental legal theory.

The study of the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs also involves several concepts which are relevant in assessing the implication of the said legal framework on local government autonomy. For such reasons, this chapter focuses on the discussion of the theories and principles governing this study and the key concepts relevant in the assessment of the implication of the legal framework of central-local government administrative relationship on the autonomy of LGAs in Mainland Tanzania. The chapter is organised into four major sections: introduction; theories and principles governing the study; central-local government administrative relationship and local government autonomy; and the conclusion of the chapter.

2.2 Theories and Principles Governing this Study

This study adopted from public administration and political sciences the theory of decentralisation, the principle of subsidiarity and the holistic principle as a guide in

¹⁴⁵ See for instance Government of the United Republic of Tanzania. (1998). *Op.cit.* pp.5, 14-15.

analysing the ideal content (provisions) of the legal framework of central-local government administrative relationship which is necessary and supportive of local government autonomy in Mainland Tanzania. Moreover, the analysis of the content of the law governing central-local government administrative relationship and its implication on local government autonomy is governed by juridification and instrumental legal theories. Therefore, before embarking on the discussion of the propositions of decentralisation theory, the principle of subsidiarity and the holistic principle, let us start our discussion by examining the juridification and instrumental legal theories as used in this study.

2.2.1 The Juridification Theory

The juridification theory simply means the use of law as an instrument of regulating central-local government relationship. The application of this theory in legal analysis of central-local government administrative relationship started with Martin Loughlin.¹⁴⁶ Martin Loughlin contended that during the 1980s, central-local government relationship in the UK went through a process of juridification by increasing reliance on law and courts instead of the traditional administrative negotiations and political culture based on broad consensus and norms of behaviour to regulate central-local government relationship.¹⁴⁷ This process involved a regulatory regime of central-local relations through legislation.¹⁴⁸

Loughlin's juridification theory was based on the analysis of judicial decisions and statutes' provisions only. In this study, the methodology used by Martin Loughlin was

¹⁴⁶ See See Loughlin, M. (1996). *Legality and Locality: the Role of Law in Central-local Government Relationship*. Oxford: Clarendon Press. Retrieved April 4, 2016 from the World Wide Web: https://books.google.co.tz/books?id=uyoRNDuojpwC&pg=PP4&lpg=PP4&dq=locality+and+legalitymartin+loughlin&source=bl&ots=if_bdfgrbh&sig=aPJ4zEkRoYRnxni4HgQjRCozGgs&hl=sw&sa=X&redir_esc=y#v=onepage&q=locality%20and%20legality-martin%20loughlin&f=false. See also Loughlin, M. (2000). "The Restructuring of Central-Local Relations". Quoted in In Jowell, J. & Olver, D. (Eds). *The Changing Constitution*. Oxford: Oxford University Press. p.137.

¹⁴⁷ See Loughlin, M. (1996). *Op.cit.* pp.365-386.

¹⁴⁸ *Ibid.*

adopted but with slight modification by including the analysis of the provisions of the Constitution and field interviews. Thus, in this study, juridification has been used to denote constitutionalisation and codification of central-local government administrative relationship. The inclusion of the Constitution was necessary because unlike the UK, Tanzania has a written Constitution which is the supreme law in the country. Loughlin's theory of juridification is closely related to the instrumental theory of law as it serves to study law as a means for restricting or promoting good central-local government administrative relationship and local government autonomy. The instrumental theory of law is expounded in the next item.

2.2.2 Instrumental Theory of Law

Legal instrumentalism is a theory in legal philosophy which considers law as an instrument of achieving a certain purpose or goal.¹⁴⁹ It postulates that law is created for a particular effect or purpose in mind which once not achieved, the legal rules and institutions so designed are regarded as ineffective.¹⁵⁰ This theory was promulgated by Rudolph Von Jhering in his book translated in English as *Law as a Means to an End*.¹⁵¹ Rudolph Von Jhering propounded that law is a means to an end in the sense that any law which is made has a purpose or a goal to achieve. Emphasising on purpose as the driving force of law, Rudolph Von Jhering states;-

*Without sufficient reason, a movement of the will is as unthinkable as a movement of matter. ...There is just as much need, therefore, of sufficient reason for the will as in the processes of material nature. ...the man who acts does so, not because of anything, but in order to attain something. ... As there can be no motion of the stone without a cause, so can there be no movement of the will without a purpose.*¹⁵²

¹⁴⁹ See Fortson, R.(1999). Three Roles for a Theory of Behaviour in a Theory of law: a Commentary on Talk by Lewis Kornhauser. *Stanford Journal of Legal Studies*, Vol.1(1).pp. 30-34.

¹⁵⁰ *Ibid.*

¹⁵¹ See Jhering, R.V.(1913). *Law as a Means to an End*. Boston: Boston Book Company.

¹⁵² *Ibid.* pp.1-2.

This theory was thought relevant in this study in order to examine the extent to which the present legal framework of central-local government administrative relationship (after the LGRP) supports the purpose and objectives of the LGRP. It was also used to examine the extent to which present legal framework of central-local government administrative relationship captures (juridifies) the basics of the theory of decentralisation (D by D), the principle of subsidiarity and the principle of holistic local government. According to the Local Government Reform Programme Policy Paper (LGRPPP), decentralisation by devolution, subsidiarity and holistic principles are the *conditio sine qua non* for local government autonomy especially in the management of their personnel, financial affairs and in determining their own priorities.¹⁵³

The above two legal theories have been jointly used in this study because of their intimate relationship in substance and methodology. In all, the substance and object of inquiry is law and the methodology common to all is doctrinal which involves review and logical interpretation of legal materials (statutory texts and judicial decisions). Having explained the meaning and application of the juridification and instrumental legal theories in this study, let us now turn to the basic assumptions of the theory of decentralisation, the principle of subsidiarity and the holistic principle as applied in this study.

2.2.3 The Decentralisation Theory

The decentralisation theorem was founded by Wallace Eugene Oates in his book entitled *Fiscal Federalism*.¹⁵⁴ Oates propounded that every public service should be provided by the jurisdiction having control over the minimum geographic area that would internalise

¹⁵³ See for instance Government of the United Republic of Tanzania.(1998). *Op.cit.* pp. 5, 14-15.

¹⁵⁴ See Oates, W. E. (1972). *Fiscal Federalism*. New York: Harcourt Brace Jovanovich. pp.35-63. Also see Oates, W. E (2004). "An Essay on Fiscal Federalism". In Baimbridge, M. & Whyman, P. (Eds). *Fiscal Federalism and European Economic Integration* (pp.13-47). New York: Routledge. pp. 14-16.

benefits and costs of such service provision.¹⁵⁵ Quoting his own 1972 decentralisation theorem in verbatim in 2006, Oates states;-

*For a public good, the consumption of which is defined over geographical subsets of the total population, and for which the costs of providing each level of output of the good in each jurisdiction are the same for the central or for the respective local government, it will always be more efficient (or at least as efficient) for local governments to provide the Pareto-efficient levels of output for their respective jurisdictions than for the central government to provide any specified and uniform level of output across all jurisdictions.*¹⁵⁶

Several reasons have been advanced in support of the decentralisation theory. Most of the reasons aired in support of decentralisation theory revolve around government efficiency, democracy and people's participation in decision making, cutting down the cost of service provision, elimination of unnecessary bureaucracy, and arousing inter-jurisdictional competition.¹⁵⁷

In respect of local government, the decentralisation theory advances from the assumptions that local governments understand better the concerns of local people than remote central government. For such reason, decentralisation of financial resources and decision making authority encourages financial accountability, efficiency in service delivery and responsiveness to the needs of the people. It is further theorized that decentralisation eliminates or minimises unnecessary layers of jurisdiction (bureaucracies) and encourages innovations through inter-jurisdictional competition.¹⁵⁸

¹⁵⁵ *Ibid.* As quoted in Shah, A. & Shah, S. (2006). *Loc.cit.*

¹⁵⁶ See Oates, W. E.(2006). *The Theory and Practice of Fiscal Decentralisation: IFIR Working Paper Series No.2006-05.* IFIR. pp.3-4.

¹⁵⁷ See Oates, W. E. (1993).The Role of Fiscal Decentralisation in Economic Growth. *National Tax Journal*, Vol. 46(2),pp. 237-243. Also see Oates, W. E (2004). *Loc.cit.*

¹⁵⁸ See Shah, A. & Shah, S. (2006). *Loc.cit.* Also see Agrawal, A. & Ribot, J.C.(2000). *Analysing Decentralisation: a Framework with South Asian and West African Environmental Cases.* Washington D.C: World Resources Institute. p.6; and Fatile, J.O. & Ejalonibu, G.L.(2015). *Loc.cit.*

Notwithstanding the above strong support for decentralisation theory, there are also several challenges which have been advanced against decentralisation. Decentralisation has been criticised on the ground that it encourages inequalities between rich and poor regions in the country; it undermines national unity and encourages or attracts ethnicity, tribalism and regionalism; it may result in misuse of resources or corruption within the local government; it may be hijacked by local elites; and may add pressure on scarce government resources.¹⁵⁹ Despite these criticisms, from the 20th Century, decentralisation has gained primacy as counter to inefficiencies of centralised government administration.¹⁶⁰

Therefore, in as far as central-local government administrative relationship and local government autonomy are concerned; decentralisation theorem presupposes the transfer (devolution) of power, responsibilities and resources from central government to LGAs.¹⁶¹ In this case, the decentralisation theory is, at one end connected to the principle of subsidiarity and, at the other end, to the holistic principle as discussed hereinafter.

2.2.4 The Subsidiarity Principle

Subsidiarity is a principle which requires that matters like decision making, taxing, spending, and regulatory functions or service delivery should be handled by the lowest competent authority except where there are compelling reasons for assigning them to higher levels of government.¹⁶² By subsidiarity, the central government assumes only subsidiary functions or tasks which cannot be performed effectively at a more immediate

¹⁵⁹ See Olsen, H.B. (2007). *Loc.cit.* Also see Devas, N.(2005June). *Loc.cit.*

¹⁶⁰ See Lambight, G. M.(2011). *Loc.cit.* Also see Mutahaba, E.R. & Kweyamba, A.B.(2010November). *Loc.cit.*; and Walker, D.B.(1991). *Loc.cit.*

¹⁶¹ See Rosenbaum, A. *Decentralisation, Local Government and Democratic Institutional Building*. Retrieved April 11, 2016 from the World Wide Web: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan048927.pdf>.

¹⁶² See Shah, A. & Shah, S. (2006). *Op cit.* p.4. Also see Oplas, N. (2008). *Loc.cit.*

or local level.¹⁶³ It is a typical opposite of the principle of residuality which is common in unitary states under which LGAs are assigned functions which the central government is unwilling or unable to perform.¹⁶⁴ The principle of subsidiarity requires the central government not to intervene where LGAs can adequately accomplish their aims unless the former is legally assigned to do so.¹⁶⁵

The origin of the principle of subsidiarity is associated with the catholic social teachings of Pope Leo XIII on individual autonomy as opposed to forceful socialist or communist ideology which favoured centralisation.¹⁶⁶ From Roman Catholic social teachings, the principle was transferred into political and constitutional theory under which it became a rule of democracy which requires power of decision making to be taken close to the citizen with great emphasis on citizen's participation and efficient decision making.¹⁶⁷

The principle was adopted by the Council of European Communities and the Commission of European Communities in the Treaty on European Union (Maastricht Treaty), 1992 as a principle governing the exercise of competences among European Union (EU) members. It became a binding principle through adoption of the EU Protocol No.2 on the application of the principles of subsidiarity and proportionality, 1992.¹⁶⁸ In 2007, the principle of subsidiarity was adopted and expressly declared by

¹⁶³ See the Oxford English Dictionary.

¹⁶⁴ See Shah, A. & Shah, S. (2006). *Loc.cit.*

¹⁶⁵ *Ibid.*

¹⁶⁶ See The Holy Sea. (1891 May). *Rerum Novarum Encyclical of Pope Leo XIII on Capital and Labour*. Retrieved April 10, 2016 from the World Wide Web: http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.

¹⁶⁷ See Keles, R.(2003). "The Principle of Subsidiarity in Service of Sustainable Development". In Camarda, D & Grassin, L.(Eds). (2003). *Local Resources and Global Trades: Environment and Agriculture in the Mediterranean*. Bari: CIHEAM. p.111.

¹⁶⁸ See Art.5(3) of the Treaty on European Union in Consolidated texts of the EU treaties, 2008 as amended by the treaty of LISBON. Retrieved April 10, 2016 from the World Wide Web: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228848/7310.pdf. Also See Chateau, C.(2016).*The Principle of Subsidiarity. EU Fact Sheets*. p.2. Retrieved April 10, 2016 from the World Wide Web: http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf.

the United Nations Organisation as forming the basis of decentralisation process.¹⁶⁹ In respect of local government, the overall object of subsidiarity principle is to guarantee some degree of autonomy to local government authorities in relation to the central government.¹⁷⁰

The principle of subsidiarity has turned out to be an element of argumentation in centralised *vis-à-vis* decentralised political systems.¹⁷¹ It entails the distribution of powers and competences at different levels of government.¹⁷² For instance, in respect of powers and functions of LGAs in Mainland Tanzania, the policy paper on Local Government Reform Programme states:-

*Public service provision must be brought as close as possible to the end user. The principle of subsidiarity involves a decentralisation of public service provision linked to devolution of political powers to lower levels as far as possible and feasible. This principle is to let local councils have discretionary powers when it comes to planning, budgeting, administration and organisation of service delivery. This requires a changed system of central-local relations with a system of local governments which are not administratively subordinated to central government.*¹⁷³

From the above quote, the LGRPPP emphasises that subsidiarity is not only the matter of decentralisation of public service delivery but also devolution of power and autonomy to LGAs in planning, budgeting, administration and organisation of service delivery. It also entails a changed central-local government relationship under which LGAs are not subordinate to the central government. The discussion of the subsidiary principle in this chapter shows that the principle of subsidiary and the theory of decentralisation are

¹⁶⁹ See the UN-HABITAT.(2007). *International Guidelines on Decentralisation and Strengthening of LGAs*. Retrieved April 10, 2016 from the World Wide Web: https://www.uclg.org/sites/default/files/guidelines_0.pdf.

¹⁷⁰ See Chateau, C.(2016). *Loc.cit*.

¹⁷¹ See Keles, R.(2003). *Loc.cit*.

¹⁷² See Chateau, C. (2016). *Loc.cit*.

¹⁷³See Government of the United Republic of Tanzania. (1998). *Op.cit*. p.15.

intertwined. The other principle closely related to the theory of decentralisation is the holistic principle. We can now briefly look at it.

2.2.5 The Holistic Principle

The holistic principle is related to the concept of holism which means the whole or entire system.¹⁷⁴ It includes the view that systems function as whole and that their functioning cannot be fully understood solely in terms of their component parts.¹⁷⁵ Thus, holistic local government denotes a system of local government under which LGAs are whole functional in all fields related to local government exercise of statutory powers and discharge of functions. The application of this principle in Mainland Tanzania is defined by the LGRPPP which requires LGAs in Mainland Tanzania to be holistic. The policy defines holistic LGAs to mean multi-sectoral and body corporate autonomous government units with general powers stipulated under the legal framework set by the national legislation. This involves central transfer of powers and resources (finance and personnel), the previously centralised or *deconcentrated* services and issues of national importance like education, health, water, roads and agriculture into LGAs that constitute a unitary governance system all over the country based on elected councils and committees, and professional administrations.¹⁷⁶

Thus, holistic local government system includes comprehensive process of decentralisation. The said LGRP policy paper states:

The holistic principle of local government implies that councils are the highest political authority within their jurisdiction within the national legal framework. Councils will have the over-all responsibility for: local government finance, local government administration and organisation,

¹⁷⁴ The online Cambridge English Dictionary defines the term holistic to mean dealing with the whole of and not just a part. Retrieved October 20, 2016 from the World Wide Web: <http://dictionary.cambridge.org/dictionary/english/holistic>.

¹⁷⁵ Retrieved April 11, 2016 from the World Wide Web: <https://en.wikipedia.org/wiki/Holism>.

¹⁷⁶ See Government of the United Republic of Tanzania. (1998). *Op.cit.* p.4, 14-15.

*and service delivery. Local councils are multi-sectoral. ...Decentralisation is thus a comprehensive process encompassing the political, the financial and the administrative levels of local government. Village councils and Ward committees will have functional responsibilities as delegated by higher level local authorities.*¹⁷⁷

In the light of the above quote and the preceding analysis, holistic principle presupposes the existence of four principles: body corporate local government authorities; autonomous local government authorities; comprehensive decentralisation of political authority, financial authority and administrative authority; and a supportive national legal framework (legal framework of central-local government administrative relationship). Ideally, these principles have to be included in the relevant local government legislation.¹⁷⁸

The decentralisation theorem, the subsidiarity and holistic principles discussed in this chapter enlighten this study on several concepts and aspects (themes) which the legal framework as the instrument of realising effective central-local government administrative relationship and local government autonomy ought to encompass. Thus, the discussion lays the basis and guide for the analysis and examination of the law governing central-local government administrative relationship and its implication on the autonomy of LGAs. The said concepts are discussed in the next item.

2.3 Central-Local Government Relationship and Local Government Autonomy

The analysis and discussion of central-local government relationship and local government autonomy involves several key concepts which relate to one another. These concepts include central government, local government, decentralisation, central-local government relationship, legal framework and local government autonomy. The concepts and their relationship are hereunder discussed.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

2.3.1 Central Government

The concept “central government” is on one hand related to the term government and on the other hand to the term governance.¹⁷⁹ Whereas the term government denotes the institution that makes and enforces decisions over the conduct of people in the society, the term governance means the process of making and enforcing decisions or the process of exercising power over a group of people.¹⁸⁰ The term central government denotes the national government or the area in a government system which is concerned with matters which affect the entire nation such as defence, international relations, taxation and trade.¹⁸¹ In this sense, the concept central government denotes the institution of governance which exercises power at the national level.

In unitary states, the central government is simply called the national government while in federal states; it is called the federal government.¹⁸² Both in unitary and federal states, the central government is concerned with areas that affect the entire nation, such as formulation of national policies, national security, establishment of minimum standards, regulation of foreign policy, regulation and monitoring of international trade, monitoring and supervision of industrial development and licensing, planning settlements and land use, formulation and execution of financial policy, constructions and maintenance of national infrastructures, protection and conservation of the environment, exploitation of natural resources and law making.¹⁸³

¹⁷⁹ See The World Book Encyclopaedia.(1994). *Op.cit.* p. 267.

¹⁸⁰ *Ibid.*

¹⁸¹ See Definition of Central Government. Retrieved April 12, 2016 from the World Wide Web: <http://www.dictionary.com/browse/central-government>. Also see The World Book Encyclopaedia. (1994). *Op.cit.* p.268.

¹⁸² Retrieved April 12, 2016 from the World Wide Web: <http://uk.answers.yahoo.com/question/index?qid=20081114150653AAPZljw> .

¹⁸³ *Ibid.* Also see The World Book Encyclopaedia (1994). *Loc.cit.*

In unitary states, the central government is usually very strong due to centralisation of administrative powers.¹⁸⁴ A unitary state like Tanzania is governed as one single unit, in which the central government is supreme over all sub-national units.¹⁸⁵ It is characterised by centralisation of powers under one sovereign political organ.¹⁸⁶ It is a system of political administration in countries with unitary Constitutions.¹⁸⁷ Unitary Constitutions provide for only one government which may be found at different levels like national, regional, district and divisional levels.¹⁸⁸ The Parliament of a unitary state (like that of UK) is usually supreme to the extent that it can make or repeal any law whatsoever, including the Constitution itself.¹⁸⁹ Consequently, in unitary states, local government and other sub-national units can be created and abolished by the central government. Likewise, their powers can be broadened or narrowed at the will of the central government.¹⁹⁰

Unlike unitary states, federal states (federation) have governments with sovereignty at the national level and at regional or state levels.¹⁹¹ In a federation, through the theory of federalism, the self-governing status of the component states is typically constitutionally entrenched and may not be altered by a unilateral decision of the central

¹⁸⁴ *Ibid.* Also see Bin, H. (2012February). "Distribution of Powers between Central Governments and Sub-national Governments". A Paper presented by the Committee of Experts on Public Administration, New York. p.5.

¹⁸⁵ See Jackson, R.M.(1967). *The Machinery of Local Government*. New York: Macmillan & Company Ltd. p.3

¹⁸⁶ See characteristics of unitary states. Retrieved July 23, 2013 from the World Wide Web: <http://saeed99.hubpages.com/hub/Unitary-form-of-Government>.

¹⁸⁷ Examples of Countries with unitary constitutions are Britain, France, Tanzania and most of African Countries.

¹⁸⁸ See Jackson, R.M.(1967).*Op.cit*.p.3. Also see Unitary Constitution. Retrieved July 23, 2013 from the World Wide Web: <http://www.studylecturenotes.com/social-sciences/law/428-unitary-form-of-government-definition-a-characteristics-of-unitary-state>.

¹⁸⁹ See Bailey, S.H.(1997).*Op.cit*.p.243. Also see *The Attorney General v Christopher Mtikila*, Civil Appeal No. 45 of 2009, Court of Appeal of Tanzania at Dar es Salaam (unreported). In this case the Court of Appeal emphasised the view that the Parliament of Tanzania can amend any provision of the Constitution.

¹⁹⁰ See Bin, H. (2012February). *Loc.cit*. Also See Rosenbaum, A. *Loc.cit*; and Bailey, S.H.(1997). *Loc.cit*.

¹⁹¹ See Humes, S. (1961). *The Structure of Local Government Throughout the World*. The Hague: Martinus Nijhoff. p.3.

government.¹⁹²The central government (federal government)¹⁹³ exercises power over matters affecting the people as a whole, such as regulation of external affairs, national and external trade, currency, and the national security and maintenance of armed forces.¹⁹⁴ Matters which do not affect people at the national level are constitutionally vested in the jurisdiction of state or regional governments.¹⁹⁵

The distribution of powers between the federal and state governments is usually clearly stated under a written Constitution and not allocated by mere ordinary legislation.¹⁹⁶ The central government and the state governments have equal constitutional protection to the extent that the former cannot interfere with the matters which are constitutionally vested in the jurisdiction of the latter. Therefore, every state (region) is, within its own jurisdiction, supreme and independent of the other.¹⁹⁷ In other words, the sovereignty of the central government is limited to only those matters constitutionally vested in the jurisdiction of the federal government. The question of local government is a matter of individual state government.¹⁹⁸

In Tanzania, the Constitution does not distinguish the central government from local government but defines the term government as the government of the United Republic, the revolutionary government of Zanzibar, or a District Council or Urban Authority, and any person exercising any power or authority on behalf of the government or local government authority (LGA).¹⁹⁹ Although the Constitution does not expressly define the

¹⁹² See Bin, H. (2012 February). *Op.cit.* p.2. Also see Blank, Y. (2009). Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance. *Fordham Urban Law Journal*, Vol.37(2).pp. 523-532.

¹⁹³ See Jackson, R.M.(1967). *Loc.cit.*

¹⁹⁴ See Bin, H. (2012 February). *Loc.cit.*

¹⁹⁵ See Humes, S. (1961). *Loc.cit.*

¹⁹⁶See the definition of unitary form of government. . Retrieved July 23, 2013 from the World Wide Web: <http://www.studylecturenotes.com/social-sciences/law/428-unitary-form-of-government-definition-a-characteristics-of-unitary-state>. Also see Blank, Y. (2009). *Loc.cit.*

¹⁹⁷ See Wheare. (1953). "Federal Government". As quoted in Humes, S. (1961). *Loc.cit.*

¹⁹⁸ *Ibid.* Also see Blank, Y. (2009). *Loc.cit.*

¹⁹⁹ See Arts. 6 &151, CAP. 2, R.E.2002.

central government, the same can be inferred from this definition i.e. the government of the United Republic in respect of Mainland Tanzania, and the revolutionary government of Zanzibar in respect of Zanzibar.

Furthermore, in Tanzania, the concept of central government is defined synonymous to the central executive of the union government under Article 34 as the government of the United Republic of Tanzania established under Article 34.²⁰⁰ It exercises authority over all union matters in the United Republic and over all non-union matters concerning Mainland Tanzania.²⁰¹ It is further concerned with the implementation and the upholding of the Constitution of the United Republic of Tanzania and all other matters over which the Parliament has power to legislate.²⁰² The authority of the central government is vested in the President of the United Republic who may personally exercise it or delegate the same to other persons holding office in the service of the United Republic.²⁰³ The President as the head of the government is vested with the power and authority to constitute and abolish any office in the service of the United Republic. Accordingly, the President is vested with the authority to appoint the Prime Minister and his cabinet, the Regional Commissioners and District Commissioners and other top executive officers who discharge administrative functions on behalf of the President.²⁰⁴

Therefore, in this study, the concept “central government” denotes the President’s Office, the Prime Minister’s office and the Cabinet (central and sector ministries), Directorates and Boards at the national level; the Regional Commissioner’s office (RC) and the Regional Secretariat (RS) at the regional level; the District Commissioner’s office (DC) at the district level; and the Divisional Secretary’s office at the divisional

²⁰⁰ CAP. 2, *loc.cit.*

²⁰¹ See Art.34, CAP. 2, *ibid.*

²⁰² *Ibid.*

²⁰³ See sub-Art (2-4), CAP. 2, *ibid.*

²⁰⁴ See Arts. 35, 36, 51, 54, 55 & 61, CAP.2, *ibid.* Also see s.5 (1) of the Ministers (Discharge of Ministerial Functions) Act, CAP. 299, R.E.2002.

level.²⁰⁵ It is also worth noting that the broad meaning of the term central government involves the Parliament and the Judiciary but the Parliament and the Judiciary lay beyond the scope of this study because the study is mainly concerned with central-local government administrative interactions in the process of the government. The next item examines the concept of local government.

2.3.2 Local Government

Like central government, the concept “local government” has no common and universally accepted meaning. Literature suggests that the definition of local government depends on the orientation and experience of the users.²⁰⁶ Hampton²⁰⁷ observes that the term local government presupposes two things: being a government and being a local institution. Both terms are difficult to conceptualise. He however defines local government to mean an institution large enough to provide several major services such as education, housing and environmental amenities. Nonetheless, he views it troublesome to define government in respect of “local” because local authorities are not sovereign. They are a creature of the Parliament which retains its sovereignty to change or repeal previous enacted statutes,²⁰⁸ and even though upon establishment local authorities become corporate bodies, their powers and functions are subject to *ultra vires* doctrine.²⁰⁹

According to Adeyemo²¹⁰ the concept “local government” means an autonomous non sovereign community which derives its existence and power from law enacted by a higher government. Its degree of autonomy is determined by the nature and structure of transactions or interactions with the central or higher government. Local government has

²⁰⁵ See ss.5, 10, 13 & 17, CAP. 97, R.E. 2002.

²⁰⁶ See Fatile, J.O. & Ejalonibu, G.L.(2015). *Loc.cit.* Also See Adeyemo, D.O. (2005). *Loc.cit.*

²⁰⁷ Hampton, W. (1987). *Loc.cit.*

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.* Also see Griffiths, A. (1976). *Local Government Administration*. Crayford: SHAW & SONS Ltd. p.9; and Loughlin, M. (1986). *Local Government in the Modern State*. London: Sweet & Maxwell. pp.2-4.

²¹⁰ Adeyemo, D.O. (2005). *Loc.cit.*

also been defined on the basis of its legitimacy or legal foundation. For instance, Shah²¹¹ defines local government to mean specific institutions or entities created by national or state constitutions, or created by statute to provide a range of specified services in a defined area of jurisdiction.

Fatile and Ejalonibu²¹² contends that “*whatever perspective or orientation we may have about its definition, local government is generally seen as the government at the local level.*”²¹³ In the view of Asaju,²¹⁴ the conceptualisation of local government presupposes four dimensions: legal personality, democratically elected officials, specific powers and functions assigned by law, and substantial autonomy.²¹⁵ Some of these dimensions have also been conceded by other authors. For instance, Humes²¹⁶ defines local government as infra-sovereign geographic sub-divisions of a sovereign nation or quasi-sovereign state with a defined area, a population, organisation, authority and responsibility to provide public service in a particular area.²¹⁷ Humes further explains that LGAs are differentiated from other government agencies through democratic representation, legal personality and defined physical structure, power to levy taxes, independent budget and power to provide varieties of public services at their respective areas of jurisdiction.²¹⁸

In Tanzania, the concept “local government” is defined under the Constitution as “the local government authorities established under Article 145 of the Constitution for the purpose of exercising people’s power.”²¹⁹ The Local Government (District Authorities) Act, 1982 and the Local Government (Urban Authorities) Act, 1982 define local

²¹¹ Shah, A. & Shah, S. (2006). *Op. cit.* p.1.

²¹² Fatile, J.O. & Ejalonibu (2015). *Loc.cit.*

²¹³ *Ibid.* p.4.

²¹⁴ Asaju, K. (2010). Local Government Autonomy in Nigeria: Politics and Challenges of the 1999 Constitution. *International Journal of Advances Legal Studies and Governance*, Vol.1(1).pp. 98-113.

²¹⁵ *Ibid.*

²¹⁶ Humes, S. (1961). *Loc.cit.*

²¹⁷ *Ibid.* p.2. According to Humes, S. (1961). *Loc.cit.*, the term *infra* means below or beneath in respect of status or conditions.

²¹⁸ *Ibid.* Also see Hampton, W. (1987). *Op.cit.* p.3.

²¹⁹ See Art.151, CAP. 2, *loc.cit.*

government as a District Authority or Urban Authority.²²⁰ The Acts further define District Authority to mean a District Council, a Township Authority, a Village Council or *Kitongoji*; and Urban Authority to mean a City Council, a Municipal Council or a Town Council.²²¹

In this study, whenever the concept “local government” or LGAs is used has (unless otherwise provided) the corresponding statutory meaning provided by the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act. Nevertheless, there is no way reference can be made to local government without regard to the concept “decentralisation”.²²² For such reason, the next discussion dwells on the concept of “decentralisation” and its facets as used in this study.

2.3.3 Decentralisation

Decentralisation is a concept which is frequently used with the concept local government autonomy in studies of central-local government relationship. According to Page and Goldsmith,²²³ Benz,²²⁴ Schneider²²⁵ and Adeyemo,²²⁶ there is no agreed meaning or interpretation of this concept.²²⁷ Among the popular interpretations ascribed to the concept of decentralisation include the transfer of authority and responsibility for

²²⁰ See s. 3, CAP. 287 and CAP. 288 respectively, *loc.cit.*

²²¹ *Ibid.*

²²² See the discussion of the theory and principles related to central-local government administrative relationship and local government autonomy in item 2.2 in this chapter above.

²²³ Page, E. & Goldsmith, M.J. (1985). Centralisation and Decentralisation: a Framework for Comparative Analysis. *Journal of Environment and Planning C: Government and Policy*, Vol. 3. p. 175.

²²⁴ See Benz, A. (1987). Decentralisation in the Federal Republic of Germany- a Case of Pragmatic Adaptation. *International Review of Administrative Science*, Vol.53(4),p. 467.

²²⁵ Schneider, A. (2003). Decentralisation: Conceptualization and Measurement. *Journal of Studies in Comparative International Development*, Vol.38 (3),p. 34.

²²⁶ Adeyemo, D.O. (2005). *Loc.cit.*

²²⁷ The term decentralisation has extensively been discussed by literature that discuss central-local government relationship but with different interpretations and connotations. Some of such literature includes Schneider, A. (2003). *Op.cit.* pp. 32-56; Fallet, T.G.(2004). *Op.cit.* pp.1-5; Kwame, B.A.B. (2010). Public Administration: Local Government and Decentralisation in Ghana. *Journal of African Studies and Development*, Vol.2(7),pp.166-175; Lambright, G. M. S. (2013). *Op.cit.* pp. 5-6; and Fatile, J.O. & Ejalonibu.(2015). *Loc.cit.*

public functions from the central government to intermediate and local governments or the transfer of political, administrative and financial authority from the central government to sub-national governments and authorities.²²⁸

According to Mawhood and Smith,²²⁹ decentralisation is any act in which the central government formally cedes powers to actors and institutions at lower levels in a political-administrative and territorial hierarchy. Kwame²³⁰ also defines it as an electoral devolution to enable citizens at the grassroots to elect their own leaders void of any direct input from the central government. It is also used to denote the transfer of decision-making power in administrative matters from central public authorities to local government authorities which enjoy autonomy and have decision making powers.²³¹

Notwithstanding the absence of shared interpretation, there appears to be an agreement among many authors that decentralisation is counter to centralisation of power and resources as it involves the transfer of power whether political, administrative or financial powers from the centre to sub-national or lower levels of government.²³²

Schneider correctly argues that;-

*Although there is disagreement about the meaning of decentralisation ...transferring power and resources to national governments is not decentralisation. ... Regardless of the recipient, decentralisation includes the transfer of power and resources away from the central government.*²³³

²²⁸ See World Bank. Quoted in Olsen, H.B. (2007). *Op.cit.* p.4. Also see Katorobo, J. (2005May). *Op.cit.* p.1.

²²⁹ Mawhood & Smith (1985). Quoted in Agrawal, A. & Ribort, J.(2000). *Analysing Decentralisation: a framework with South Asian and East African Environmental Cases (Working Papers Series No.1)*. World Resources Institute. p.5.

²³⁰ Kwame, B.A.B (2010). *Op.cit.* p.169.

²³¹ See Balan.(2008). Quoted in Zaharia, P. & Bilouseac, I.(2009). Decentralisation and Local Autonomy- Local Public Management Defining Principles. *Anneles Universitatis Apulensis Series Oeconomica*, Vol.11(2).p.807.

²³² See Olsen, H.B. (2007). *Loc.cit.* Also see Schneider, A. (2003). *Op.cit.* pp.36-40; Fallet, T.G (2004). *Op.cit.* pp.3-5; Wunsch, J.S.(2014). *Op.cit.* p.3; and Fatile, J.O. & Ejalonibu.(2015). *Op.cit.* pp. 3-5.

²³³ See Schneider, A. (2003). *Op.cit.* pp.33&35.

Despite the common agreement that decentralisation includes the transfer of power and resources away from the central government to sub-national government as a remedy to the inefficiencies of centralised administration and service delivery, there are controversies on the types and dimensions of decentralisation as well as the measures of decentralisation or centralisation. Literature considers three aspects as constituting decentralisation: political, administrative and financial dimensions.²³⁴ Decentralised systems of administration are those in which the central government plays a lesser role in any or all of these three dimensions.²³⁵

In contrast, Agrawal and Ribort²³⁶ present three dimensions: actors, powers, and accountability. In their view, a mixture of these dimensions characterises all political and administrative decentralisation. Financial powers considered by other authors as a separate dimension of decentralisation is, but constitutes only one of the types of power that may be devolved in administrative or political decentralisation.²³⁷ By actors, Agrawal and Ribort mean the appointed or elected officials who exercise powers over public resources in the local government arena. In this, the authors argue that the nature of decentralisation depends much upon the persons who exercise power, and the persons they are accountable to.

In respect of powers, the authors point out three broad powers of decision-making as being crucial to understanding decentralisation. These powers are legislative, executive and adjudicative powers. The transfer of these powers to lower-level actors creates decentralisation. The effectiveness of decentralisation hinges on the line or pattern of

²³⁴ See Government of the United Republic of Tanzania. (1998). *Op.cit.* p.5. Also see Ribot, J.C. (2002). *African Decentralisation: Local Actors Powers and Accountability*. UNRISD. p.ii; Fallet, T.G (2004). *Loc.cit*; and Schneider, A. (2003). *Op.cit.* p. 33.

²³⁵ *Ibid.*

²³⁶ Agrawal, A. & Ribort, J. (2000). *Op.cit.* pp.7-11.

²³⁷ *Ibid.*

accountability. Where powers are bestowed to actors who are accountable to the central government rather than their constituents or the local people, the objectives of decentralisation may hardly be realised.²³⁸ Even though Agrawal & Ribort consider their formulation as distinct from others, an assessment of what they call actors, powers and accountability seems not quite distinct from what others consider to be financial, administrative and political dimensions of decentralisation.

There is another school of thought proposed by Fallet²³⁹ on the dimensions and measurements of decentralisation. Like many others, Fallet supports the view that decentralisation is distinguishable between administrative, financial, and political dimensions. However, he suggests that such dimensions should be adopted in a sequence of political, financial and lastly administrative decentralisation. In his view, if political decentralisation takes place first, it will enhance the bargaining power of sub-national actors for financial decentralisation and at last administrative decentralisation. According to him, this sequence leads to higher degree of local government autonomy and the vice versa is also true.

Literature further suggests that the transfer of powers, responsibilities and resources from the central to sub-national governments can take the form of deconcentration, delegation or devolution; or a combination of more than one form of these dimensions.²⁴⁰ However, Schneider²⁴¹ views these categories as a continuum of administrative autonomy. Whereas deconcentration involves the least amount of local government autonomy, delegation involves slightly more amount of local government autonomy, and devolution involves the most amount of local government autonomy.

²³⁸ *Ibid.*

²³⁹ Fallet, T.G. (2004). *Op.cit.* p.2

²⁴⁰ See Katorobo, J. (2005 May). *Op.cit.* pp.4-6. Also see Kwame, B.A.B.(2010). *Op. cit.* pp. 169-171; Fatile, J.O. & Ejalonibu.(2105). *Loc.cit*; and Dickovick, T.J. & Ried, B.R. (2010). *Comparative Assessment of Decentralisation in Africa: Final Report and Summary of Findings*. USAID. pp.13-29.

²⁴¹ Schneider, A. (2003). *Op.cit.* pp.38&39.

This view is also conceded by many authors like Katorobo,²⁴² Olsen,²⁴³ Zaharia & Bilouseac,²⁴⁴ Dickovick & Ried,²⁴⁵ and Wunsch.²⁴⁶

According to Schneider what differentiates deconcentration, delegation and devolution is the relationship between the central government and the entity that receives power and resources. Under deconcentration the relationship between the two levels is bureaucratic or hierarchical relationship. Unlike deconcentration, delegation involves a contractual relationship; and devolution involves an arm's length relationship. The best way to analyse the differences among these categories is the examination of the degree of autonomy granted by the central government to the entity that receives the power and resources.²⁴⁷

Although devolution is supported by many advocates of greater local government autonomy, Wunsch²⁴⁸ sees all the three types alike. He contends that neither devolution nor delegation or deconcentration is better or the best in achieving the expected results. He argues that the use of these three general terms disguise the details of the decentralisation process. Alternatively, he proposes four dimensions: authority, autonomy, accountability and capacity (resources) as the best parameters of measuring decentralisation or centralisation. He further contends that a reasonable mixture of these dimensions is required because, notwithstanding the form or type of decentralisation, without authority, sub-national governments cannot lawfully act; without autonomy they become mere extensions of the central government; without accountability they become

²⁴² Katorobo, J. (2005May). *Op.cit.* pp.5-6 &17.

²⁴³ Olsen, H.B. (2007). *Op.cit.* pp.4-5.

²⁴⁴ Zaharia, P. and Bilouseac, I. (2009). *Op.cit.* p.3.

²⁴⁵ Dickovick, T.J. and Ried, B.R. (2010). *Op.cit.* pp. 9-15.

²⁴⁶ Wunsch, J.S. (2014).*Op. cit.* pp.810-811.

²⁴⁷ Schneider, A. (2003). *Loc.cit.*

²⁴⁸ Wunsch, J.S. (2014). *Op.cit.* pp.9-11.

powers in themselves and vulnerable to corruption; and without capacity to act, they become meaningless and irrelevant.²⁴⁹

Notwithstanding the different meanings and dimensions of the concept of decentralisation pointed out above, this study adopts the meaning and dimensions provided by Katorobo²⁵⁰ who sees decentralisation as the transfer of political, administrative and financial authority from the central government to sub-national governments and authorities. Each of these three dimensions of decentralisation is separately discussed and analysed hereunder.

2.3.3.1 Political Decentralisation

Political decentralisation denotes the transfer of powers and resources from the central government to LGAs which are representative of and accountable to the local people.²⁵¹ In Tanzania, political decentralisation is conceptualised to mean the creation of real, multi-functional governments at the local level within the national legal framework for the purpose of increasing public participation in local decision making.²⁵² Therefore, political decentralisation involves the creation of autonomous domains in which local representatives of the people are given powers to make decisions on behalf of the local people, public service delivery as well as mobilisation and use of public resources.²⁵³

2.3.3.2 Financial Decentralisation

Fiscal decentralisation refers to the transfer of financial resources, revenue-generating powers and expenditure from the centre to LGAs.²⁵⁴ In Tanzania, the LGRPPP defines financial decentralisation to mean giving financial discretionary powers to local

²⁴⁹ *Ibid.*

²⁵⁰ Katorobo, J. (2005May). *Op.cit.* p.4.

²⁵¹ See Ribot, J.C. (2002). *Op.cit.* p.3. Also see Fallet, T.G. (2004). *Op.cit.* p.4; and Olsen, H.B. (2007). *Loc.cit.*

²⁵² See Government of the United Republic of Tanzania.(1998). *Loc.cit.*

²⁵³ See Ribot, J.C. (2002). *Loc.cit.*

²⁵⁴ *Ibid.* Also see Fallet, T.G. (2004). *Loc.cit.*; and Olsen, H.B. (2007). *Loc.cit.*

Councils in levying local taxes, passing their own budgets pursuant to their priorities, expenditures and, central supply of adequate unconditional grants to LGAs (financial autonomy).²⁵⁵ Financial decentralisation involves the devolution of revenue sources and expenditure functions to lower tiers of government and financial policy making.²⁵⁶ That is ensuring greater local government autonomy in debt management, tax administration, and budget execution for effective public service delivery.²⁵⁷ Literature suggests that financial transfers or financial decentralisation is a cross-cutting element of both administrative and political decentralisation, rather than a separate category of decentralisation.²⁵⁸

2.3.3.3 Administrative Decentralisation

The concept of administrative decentralisation refers to reallocation of authority, responsibilities and resources among different levels of government.²⁵⁹ It is the transfer of responsibilities in planning, financing and management of certain public functions from the central government to field units of government agencies, subordinate levels of government or semi-autonomous public authorities.²⁶⁰ The LGRPPP defines administrative decentralisation as the de-linking of the local authority staff from their respective ministries and giving power to Councils to recruit their own personnel who are accountable to them.²⁶¹

From the conceptual meanings of political, financial and administrative decentralisation described above, in all, the key words are transfer of power and resources from central to

²⁵⁵ See Government of the United Republic of Tanzania. (1998). *Loc.cit.*

²⁵⁶ See De Mello, L.R.(2000). Fiscal Decentralisation and intergovernmental Relations: A Cross-Country Analysis. *World Development*, Vol. 28(2).p.365. Also see Fallet, T.G. (2004). *Loc.cit*; and Olsen, H.B. (2007). *Loc.cit*

²⁵⁷ *Ibid.*

²⁵⁸ See Ribot, J.C. (2002). *Loc.cit.* Also see Agrawal, A. & Ribort, J. (2000). *Loc.cit.*

²⁵⁹ *Ibid.* Also see Fallet, T.G. (2004). *Loc.cit*; and Olsen, H.B. (2007). *Loc.cit.*

²⁶⁰ See World Bank, *Administrative Decentralisation*. Retrieved August 17, 2014 from the World Wide Web: <http://www1.worldbank.org/publicsector/decentralisation/admin.htm>.

²⁶¹ See Government of the United Republic of Tanzania. (1998). *Op.cit.* pp.5, 14-15.

LGAs. For such reason, in this study, political and financial decentralisations are conceptually treated as integral components of the concept of administrative decentralisation which (as pointed out in the preceding discussion) can take the form of deconcentration, delegation or devolution of powers.²⁶² Each of these forms of administrative decentralisation attracts its own form of central-local government administrative relationship and varied degree of local government autonomy as clarified hereinafter.²⁶³

2.3.3.3.1 Deconcentration

Administrative deconcentration refers to the redistribution of decision making power, finance and managerial responsibilities among different levels of the central government.²⁶⁴ Deconcentration simply means the presence of the centre in the field rather than flow of power from the centre.²⁶⁵ It only involves the transfer of administrative functions and responsibilities within the central government networks from the national to lower levels or from national administrators to field staff and locations.²⁶⁶ Deconcentration is characterised by bureaucratic or hierarchical relationship between the central government and the entity that receives power and resources.²⁶⁷ It is a control oriented form of decentralisation most frequently used in unitary states. Under deconcentration, the field officers are directly accountable to the national government rather than the local people and it is characterised by the least local government autonomy.²⁶⁸

²⁶² See Katorobo, J. (2005May). *Loc.cit.* Also see Kwame, B.A.B. (2010).*Loc.cit.*; Fatile, J.O. & Ejalonibu.(2015). *Loc.cit.*; and Dickovick, T.J. & Ried, B.R. (2010). *Loc.cit.*

²⁶³ See Schneider, A. (2003). *Loc.cit.* Also see Katorobo, J. (2005May). *Loc.cit.*; Olsen, H.B. (2007). *Loc.cit.*; Zaharia, P. & Bilouseac, I. (2009). *Loc.cit.*; Dickovick, T.J. & Ried, B.R. (2010). *Loc.cit.*; and Wunsch, J.S. (2014). *Loc.cit.*

²⁶⁴ See World Bank. *Loc.cit.* Also see Olsen, H.B. (2007). *Loc.cit.*

²⁶⁵ *Ibid.* Also see Bosire, C.M. (2013). *Op.cit.* p. 17.

²⁶⁶ See Katorobo, J. (2005May). *Op.cit.* p.4. Also see Olsen, H.B. (2007). *Loc.cit.*

²⁶⁷ See Schneider, A. (2003). *Loc.cit.*

²⁶⁸ *Ibid.* Also see Olsen, H.B. (2007). *Loc.cit.*; Katorobo, J. (2005May). *Loc.cit.*; and World Bank. *Loc.cit.*

2.3.3.3.2 Delegation

Delegation is the transfer of power and responsibilities of defined functions to semi-autonomous sub-national government units or agencies in order to perform them on behalf of the central government.²⁶⁹ Unlike deconcentration, delegation involves a contractual relationship between the central government and the sub-national government units or agencies.²⁷⁰ The latter are not completely under central control but eventually accountable to it.²⁷¹ Delegation is not very distinct from deconcentration save under delegation, the sub-national governments or agencies are semi-autonomous.

2.3.3.3.3 Administrative Devolution

Administrative devolution denotes the transfer of power and authority of decision making, finance, and administration to LGAs with corporate status and which are manned by elected representatives of the people.²⁷² Devolution involves the creation of autonomous lower-level units like LGAs which are legally constituted as separate governance bodies which are outside the direct central control.²⁷³ The local units or institutions are accountable to the local people for service delivery and they are required to provide services which are responsive to the needs of the people.²⁷⁴ Devolution is viewed as the most genuine form of administrative decentralisation under which LGAs enjoy the highest degree of autonomy.²⁷⁵

According to the LGRPPP, the local government system of Mainland Tanzania is based on decentralisation by devolution under which the central-local government administrative relationship is characterised by consultations, negotiations and support

²⁶⁹ See Bosire, C.M. (2013). *Loc.cit.* Also see the UNDP. (1999).*Op.cit.* p.7. Also see Olsen, H.B. (2007). *Loc.cit.*; and Katorobo, J. (2005May). *Loc.cit.*

²⁷⁰ See Schneider, A. (2003). *Loc.cit.*

²⁷¹ See World Bank. *Loc.cit.* Also see the the UNDP. (1999). *Loc.cit.*; and Olsen, H.B. (2007). *Loc.cit.*

²⁷² See World Bank. *Ibid.* Also see the UNDP. (1999). *Ibid.* p.6; Olsen, H.B. (2007). *Ibid.* p.5; and Katorobo, J. (2005May). *Op.cit.*pp.5-6.

²⁷³ *Ibid.*

²⁷⁴ See Olowu, D & Wunsch J. M.(2004). *Op.cit.* pp. 5-6.

²⁷⁵ *Ibid.* Also see World Bank. *Loc.cit.*; and Schneider, A. (2003). *Loc.cit.*

from central and sector ministries as opposed to command relationship.²⁷⁶ Notwithstanding the government's initiatives and commitments in the policy paper, the reality might not be the case because literature reveals that sometimes bureaucrats tend to deliberately concentrate powers and resources at the national level and leave local governments as mere extensions of the centre.²⁷⁷ Thus, central-local government administrative relationship involves a dynamic discourse in the distribution of political and administrative powers between the central and LGAs.²⁷⁸ The next item examines the concept of central-local government relationship.

2.3.4 Central-Local Government Relationship

The understanding of the phrase central-local government relationship requires the understanding of the term relationship first. The term relationship denotes the way in which two or more things are connected, interact or work together.²⁷⁹ In this sense, central-local government relationship denotes the way or the manner in which the central government and LGAs are connected or the way they interact or work together. It involves a discourse of political and administrative power dimensions or distribution of political and administrative powers between central and local government. In other words, central-local government relationship refers to the horizontal and vertical power dynamics between the central and LGAs and the resultant degree of discretion and autonomy that the latter enjoys from the former's controls and directions.²⁸⁰

²⁷⁶ See Government of the United Republic of Tanzania. (1998). *Op.cit.* pp.3, 5, 14-14 &31.

²⁷⁷ See Chakunda, V.S.(2015).Central-Local Government Relations: Implication on the Autonomy and Discretion of Zimbabwe's Local Government. *Journal of Political Science and Public Affairs*, Vol.3(1).p.143.

²⁷⁸ *Ibid.* Also see Machingauta, N.(2010). "Supervision of Local Government". In De Visser, J., Steytler, N.,& Machingauta, N. (Eds). *Local Government Reforms in Zimbabwe: a Policy Dialogue* (pp.139-150). Western Cape: .*Local Government Reforms in Zimbabwe: a Policy Dialogue*. Community Law Centre. p.141; and Government of the United Republic of Tanzania. (1998). *Loc.cit.*

²⁷⁹See Hornby A.S. (2010). *Oxford Advanced Learner's Dictionary of Current English*. Oxford: Oxford University Press. p.1242.

²⁸⁰ See Chakunda, V.S.(2015). *Loc.cit.*

It is worthwhile noting that both central and local governments are concerned with public administration and delivery of public services to the people in the country. Whereas the former is concerned with the general administration and delivery of services in the entire territory, the latter is concerned with local administration and service delivery at the local level.²⁸¹ The central government policies and services are implemented at the local level through local governments but yet the local government is a sphere of government which has some autonomy and is not a controlled department of the central government. Thus, central-local government consultations on policy issues are inevitable but have to be made without affecting the power of LGAs to take independent decisions within the legal limits.²⁸²

As pointed out in the literature review, the central government has a duty to see to it that the powers it has entrusted to LGAs are properly exercised to attain results, and the LGAs have to make sure that they provide adequate services to the satisfaction of the people within their jurisdiction. However, the central government is not supposed to impose policy upon LGAs without consultations for the same can cause strains, conflicts and bad central-local relations in the total management of the government.²⁸³ For such reason, the underlying central-local government administrative relationship is one of checks, controls and supervision.²⁸⁴ The nature and structure of such interactions determines the degree of local government autonomy.²⁸⁵ The detailed analysis of central-local government administrative relationship follows next.

2.3.4.1 Central-Local Government Administrative Relationship

The phrase “central-local government administrative relationship” is not stated under the local government laws of Tanzania and policy papers. However, the meaning of central-

²⁸¹ See Art. 34 & 146, CAP.2, *loc.cit.*

²⁸² See Warioba, M.M.D.(1999). *Loc.cit.* Also see Adeyemo, D.O. (2005). *Op.cit.* p.71.

²⁸³ See Warioba, M.M.D.(1999). *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ See Adeyemo, D.O. (2005). *Op.cit.* p.77.

local government relationship has already been discussed in item 2.3.4 above. This section therefore is concerned with the meaning of the phrase administrative relationship with reference to central-local government co-existence.

The term “administrative” is an adjective of the noun “administration” which carries different connotations like: the performance of executive duties; the execution of public affairs; the process of managing the operation of the government and use of property; or a group of persons who exercise administrative powers like the executive, government agency or board.²⁸⁶ In this view, central-local government administrative relationship means the interaction between the central and local government in the performance of their statutory executive duties, public affairs or managing the operation of the government.

Central-local government administrative relationship may constitute a number of interactions. It may imply the hierarchical control and supervisory relationship between the central and LGAs aimed at ensuring compliance by the latter with the national policies and standards of service delivery.²⁸⁷ This may involve the establishment and regulation of the institutional framework of LGAs, central regulation and monitoring of local government functions as well as central control and supervision of local government finance and personnel management.²⁸⁸

Some countries are specific on the meaning of administrative relationship. In the Philippines, for instance, section 38 of the Philippine’s Administrative Code, 1987, states as follows;-

²⁸⁶ See definition of the term ‘administrative’. Retrieved February 2, 2015 from the World Wide Web: <http://www.merriam-webster.com/dictionary/administering>.

²⁸⁷ See Machingauta, N.(2010). *Op.cit.* p.140.

²⁸⁸ *Ibid.*

*...Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorised and defined as ...Supervision and Control... that shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programmes; and prescribe standards, guidelines, plans and programmes.*²⁸⁹

In the light of the above quote, central-local government administrative relationship may be taken to refer to a complex system or pattern of central-local government interactions which together constitute an aggregate of control and supervision of LGAs exercised by the central government. Therefore, in this study, whenever the phrase central-local government administrative relationship is used, it denotes (unless otherwise stated) the aggregate of central-local government controls and supervisions. On the basis of such controls and supervision, central-local government administrative relationship may take the form of agency model, partnership model or power dependency model as discussed in the subsequent sections hereunder.

2.3.4.2 Models of Central-Local Government Administrative Relationship

According to Griffith,²⁹⁰ central-local government administrative relationship is distinguishable between three forms: laissez-faire, regulatory and promotional. Under the laissez-faire form, there is very little central government interventions in LGAs save for the situations where it becomes necessary to fulfil departmental duties. Under the regulatory form, the central government imposes more interventions over LGAs through inspections and advices meant to ensure observation of statutory regulations. In contrast, under the promotional form, the central government creates national policies which the

²⁸⁹ See s.38 (1) of the Philippine's Administrative Code of 1987, Executive Order No. 292 of 1987. Retrieved October 30, 2015 from the World Wide Web: <http://www.gov.ph/1987/07/25/executive-order-no-292-book-ivchapter-7-administrative-relationships/>.

²⁹⁰ See Griffith J.A.G. (1966). "Central Departments and Local Authorities". Quoted in Hampton, W.(1987). *Op.cit.* p.177.

LGAs must execute under the control and direction of the Minister. The Minister provides advice, supervision and inspection over the public services provision with a view to maintaining and improving standards.²⁹¹ These forms of administrative relationship correspond to the agency and partnership traditional modes of central-local government administrative relationship and the recent power dependency model which are discussed at length hereunder.

2.3.4.2.1 Agency Model

Under the agency model, LGAs have very little autonomy.²⁹² Their task is only to implement duties delegated by the central government and they are under total central control as arms of the central government.²⁹³ This model is characterised by adversarial or antagonistic relationship because of struggle for power and resources between the two government tiers and ever increasing central control over LGAs.²⁹⁴ In this relationship model, the local government's power competence is under strict interpretation of the *ultra-vires* doctrine.²⁹⁵

2.3.4.2.2 Partnership Model

Unlike agency relationship, under partnership model, LGAs provide a variety of public services and there are complex interactions between the two government tiers.²⁹⁶ LGAs

²⁹¹ *Ibid.* Also see Central-local Relations at www.palgrave.com/.../13_CHA09.

²⁹² See Rhodes, R.A.W.(1980). Some Myths in Central-Local Relations. *The Town Planning Review*, 51(3). pp. 270-285. Retrieved June 26, 2014 from the World Wide Web: <http://www.jstor.org/page/info/about/policies/terms.jsp>. Also see Hampton, W.(1987). *Loc.cit*; Jones, P. V. (2002). Values and Purpose in Government: Central-Local Relations in Regulatory Perspective. *Journal of Law and Society*, Vol. 29(1).pp. 27-55; Walker, D.(2000). *Living with Ambiguity: the Relationship between Central and Local Government*. York: York Publishing Services Ltd. p.187.

²⁹³ *Ibid.* Also see Adeyemo, D.O. (2005). *Loc.cit*; and Loughlin, J & Martin, S.(2003). *International Lessons on Balance of Funding Issues: Initial Paper*. Centre for Local & Regional Government Research. p.4.

²⁹⁴ See Sevic, Z.(2001). Political Administrative Relationships in Small States. *Bank of Valletta Review*, Vol.23.p.66.

²⁹⁵ See Bailey, S.H.(1997).*Op.cit.* pp. 9-28.

²⁹⁶ See Rhodes, R.A.W.(1980). *Loc.cit.* Also see Hewison, G.(2008). *Effective Relationship and Collaborative Arrangements between Central and Local Government: a Report Prepared for the*

are not only executors of central policies but also have an influence on the determination of the same and exercise some considerable discretion in the performance of their local activities.²⁹⁷This model is characterised by village life or functional village life model under which both central and LGAs are part of the unified state, hence, they do not clash for power within the government structure.²⁹⁸ There is a considerable degree of integration and common interest between the central and local governments and are co-equals.²⁹⁹However, this model has been criticised in treating the central and local government as equal partners. Such relationship cannot be true in practice particularly in unitary states where LGAs are constitutionally subordinate to the central government. The criticisms on partnership mode gave rise to the power dependency model described next.

2.3.4.2.3 Power Dependency Model

The power dependency model is somewhat a recent model which is a modification and improvement of the partnership model developed by Rhodes in 1980s.³⁰⁰This model assumes that both central and local governments have legal, financial, political and informational resources which each can use against the other hence creating an interdependency relationship. The degree of discretion and the relative power of the two levels of government result from their resources and the rules that govern their relationship, values and the interests which support both the rules and distribution of

Waitakere City Council. Brook Fields Consultant Ltd. Retrieved April 14, 2016 from the World Wide Web: <http://www.waitakere.govt.nz/havsay/pdf/royalcommission/effective-relationships.pdf>.

²⁹⁷ *Ibid.* Also see Hampton, W.(1987). *Loc.cit*; Loughlin, J & Martin, S.(2003). *Loc.cit*; and Douglas, M.(2013). *Reflection on the Role of Local and Central Government in the Delivery of Social Services*. A Report for the New Zealand Treasury. p.8. Retrieved April 14, 2016 from the World Wide Web: <http://www.mdl.co.nz/site/mckinley/files/pdfs/Local-central-govt-socialservicedelivery-Dec13.pdf>.

²⁹⁸ See Sevic, Z.(2001). *Loc.cit*.

²⁹⁹ *Ibid.* Also see Rhodes, R.A.W.(1980). *Loc.cit*.

³⁰⁰ See Rhodes, R.A.W.(1980). *Loc.cit*. Also see Rhodes, R.A.W. (1981). "Control and Power in Central-local Government Relations". Quoted in Hampton, W. (1987). *Op.cit*. p.183.

resources between the two. Neither the central government has monopoly of power nor is the local governments completely independent of the former.³⁰¹

A critique of the three models of central-local government administrative relationship depicts a sequence of variation in local government autonomy associated with the distribution of powers, responsibilities and resources among the two tiers of government, and the central-local government controls and supervisions. But in this study it is contended that central-local government administrative relationship model depends on the government's political purpose or motive for the decentralisation policy. This purpose or motive is intrinsically expressed in the national legal framework of central-local government administrative relationship which must purposively be moulded to reflect such purpose and the degree of autonomy and discretion to be enjoyed by the LGAs. The next item expounds the phrase legal framework of central-local government administrative relationship as used in this study.

2.3.5 Legal Framework of Central-Local Government Administrative Relationship

The phrase legal framework of central-local government administrative relationship is not defined by the local government laws in Mainland Tanzania. However, in this study it is used to refer to the national legal framework (the Constitution and legislation) which regulates the central-local government administrative relationship in Mainland Tanzania. Since in this study the phrase “central-local government administrative relationship” is used to denote the aggregate of central-local government controls and supervisions, the phrase “legal framework of central-local government administrative relationship” is therefore used to refer to all laws which govern and regulate central-local government controls and supervision in Mainland Tanzania. The next item briefly examines the concept “local government autonomy”.

³⁰¹ *Ibid.*

2.3.6 Local Government Autonomy

The concept “local government autonomy” is used frequently in academics and discussions related to central-local government relations but without a common conceptual meaning.³⁰² Several meanings have been ascribed to it such as local government discretion;³⁰³ or the ability of LGAs to undertake independent actions without the permission or control of the central government;³⁰⁴ or the relative independence of local government in relation to central government determined by the nature and structure of relationship between the two tiers of governance.³⁰⁵ According to Hogue *et al.*³⁰⁶ local government autonomy is determined by the degree of relaxed central interventions like monitoring, inspections, directions and dictations of targets and freedom to tailor services according to perceived needs of the local communities.³⁰⁷

Local government autonomy has also been defined in relation to power and resource capacity of LGAs. For instance, Wolman and Mcmanmon³⁰⁸ define local government autonomy as a system of local government in which local government units have important role to play and have discretion in determining what to do without undue constraint from higher levels of government; and have the means or capacity to do so. By this definition Wolman and Mcmanmon point out three important prerequisites for local government autonomy: role which means responsibilities or functions; discretion in determining what to do which means freedom to set their own priorities; and means or capacity which means resources (finance and personnel).

³⁰² See Adeyemo, D.O. (2005). *Loc.cit.*

³⁰³ See Page, E. & Goldsmith, M.J. (1985). *Op.cit.* pp.178-180.

³⁰⁴ See Wunsch, J.S. (2014). *Op.cit.* p.10.

³⁰⁵ See Adeyemo, D.O. (2005). *Loc.cit.*

³⁰⁶ Hogue *et al.* (2004). Quoted in Kunkuta, G.E.A. (2011). *Op.cit.* pp.158-161.

³⁰⁷ *Ibid.*

³⁰⁸ See Wolman, H. & Mcmanmon, R. (2008). *Comparing Local Government Autonomy Across States: GWIPP Working Paper.* Washington University. p.5.

The prerequisites of local government autonomy designated by Wolman and Mcmanmon also appear in Fatile and Ejalonibu³⁰⁹ and Okoli.³¹⁰ Fatile and Ejalonibu consider local government autonomy as a function of responsibilities, resources and discretion vested in the local authorities. Okoli also points out authority, finance and personnel as important factors in determining local government autonomy.³¹¹ Furthermore, the United States Advisory Commission on Intergovernmental Relations (A.C.I.R)³¹² sums all the above variables into four areas of local government discretion: structural, functional, financial and personnel management as explained hereunder:-

- a) Structural discretion refers to the discretion of LGAs to determine their own form of government and internal organisation.
- b) Functional discretion refers to the discretion of LGAs to choose functions to perform (determining their own priorities).
- c) Financial discretion refers to the discretion of LGAs to raise revenue, borrow, and spend; and
- d) Discretion over personnel management refers to the discretion of LGAs to fix the number, types, and employment conditions of their employees.

Therefore, from the above discussion on local government autonomy, the working definition of local government autonomy in this study is the discretion or freedom of LGAs in managing their personnel, financial affairs and in determining their own

³⁰⁹ See Fatile, J.O. & Ejalonibu (2015). *Loc. cit.*

³¹⁰ See Okoli, F.C. (2013). *Loc. cit.*

³¹¹ *Ibid.* Also see Wunsch, J.S. (2014). *Loc. cit.*

³¹² See U.S.A.C.I.R. (1993). *Local Government Autonomy: Needs for State Constitutional, Statutory and Judicial Clarification*. U.S.A.C.I.R. P.1. Retrieved April 15, 2016 from the World Wide Web:<http://www.library.unt.edu/gpo/acir/Reports/policy/a-127.pdf>. Also see Libonat, M.E. (2001). Local Government Autonomy. *Louisiana Law Review*, Vol.62 (10):97.

priorities. This includes the discretion and freedom of LGAs to determine the number, types, and employment conditions of their employees; the discretion and freedom of LGAs to raise, borrow and spend money; and the discretion and freedom of LGAs to make independent decisions in budgeting, determining and implementing their own priorities in local service delivery. All these must be seen from the framework of the law which governs and regulates central-local government administrative relationship in Mainland Tanzania.

2.4 Conclusion

This chapter has attempted to analyse and discuss the theoretical and conceptual framework of this study. It has been noted in this chapter that decentralisation and local government autonomy rest at the heart of central-local government administrative relationship. At one end, the degree of local government autonomy is determined by the distribution of power, responsibilities and resources between the two levels of governments. At the other end, local government autonomy is determined by the degree of central-local government controls and supervisions. In all, the distribution of power, responsibilities and resources among the two levels of government and, the degree of central-local government controls and supervision depend on the legal framework which is purposively shaped to reflect the purpose of having LGAs. The next chapter examines the evolution of central-local government administrative relationship and local government autonomy in Mainland Tanzania.

CHAPTER THREE
EVOLUTION OF THE LEGAL FRAMEWORK OF CENTRAL-LOCAL
GOVERNMENT ADMINISTRATIVE RELATIONSHIP IN MAINLAND
TANZANIA

3.1 Introduction

The present central-local government administrative relationship and the degree of local government autonomy in Mainland Tanzania is, to a large extent, a result of the past political, economic and administrative policies taken by the colonial government shortly before independence and by the independent governments shortly after independence and thereafter to the present. These policies have contributed to the development and evolution of the present central-local government administrative relations and the degree of local government autonomy in Mainland Tanzania as may be noted in the discussion of this chapter. History reveals that at independence, most Anglophone African states (including Tanganyika) had common political, economic and administrative challenges inherited from the colonial economy and administration.

Such challenges weakened not only the national unity and stability of the newly independent states, but also their political and economic base.³¹³The post-colonial government of Tanganyika had to make several political, economic and administrative policy attempts including the adoption of one-party state; adoption of the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance; and reducing the LGAs from institutions of local self-rule to mere administrative agents of

³¹³ See Keller, E.J. (1995). "Decolonization, Independence and the Failure of Politics". In Martin P.M. & Meara, P.O. (Eds).(1995). *Africa*. Bloomington: Indiana University Press. pp.156-171. Retrieved April 17, 2016 from the World Wide Web:<http://www.sscnet.ucla.edu/polisci/faculty/keller/papers/SelectedPub/decolonization.PDF>.

the central government.³¹⁴ Such attempts taken shortly after independence and those taken later in the 1970s, 1980s and in the 1990s had great impact on the country's system of administration. Consequently, the national legal framework governing LGAs and their relationship with the central government had also to continually be modified in order to fit and accommodate the government policy changes and decisions.

The political, economic and administrative policy attempts taken by the government after independence had also an impact on the development and evolution of central-local government administrative relationship and the degree of local government autonomy in Mainland Tanzania. For instance, the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance strengthened the central government on the one hand, and weakened the local government on the other hand because of centralisation of planning and decision making.³¹⁵ Furthermore, the decentralisation policy of 1972 which was implemented through the Decentralisation of Government Administration (Interim Provisions) Act, 1972³¹⁶ replaced the District and Urban Councils by District Development Committees and Regional and Development Committees.³¹⁷ This resulted into deconcentration of administrative powers and restriction of local government autonomy contrary to the theory of decentralisation (D by D), the principle of subsidiarity and the holistic principle.

The proper understanding of the present legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in Mainland Tanzania cannot therefore be exhaustive without reference to the history behind such framework. It is this purpose that this chapter is intended to serve as discussed

³¹⁴ See Keller, E.J. (1995). *Ibid.* Also see Liviga, A.J. (1992). *Op.cit.* p.211; and Carbone, G.M. (2007). Political Parties and Party Systems in Africa: Themes and Research Perspectives. *World Political Science Review*, vol. 3(3). pp.1-29.

³¹⁵ Liviga, A.J. (1992). *Op.cit.* pp.213-214.

³¹⁶ Act No. 27 of 1972.

³¹⁷ *Ibid.* Also see Max, J.A.O.(1991). *Op.cit.*p.83

hereinafter. The chapter is organised into six sections: introduction; the road to independence and democratisation of LGAs in 1950s -1960s; independence and thereafter; revival and constitutionalisation of LGAs; the 1998-2014 LGRP; and the chapter conclusion.

3.2 The Road to Independence and Democratisation of LGAs in the 1950s-1960s

The road to independence commenced with nationalism movement after the World War II (1939-1945). The Second World War has been earmarked as the turning point in the development and democratisation of LGAs in British colonies (including Tanganyika) as observed by Max that;-

*There is light even behind the blackest cloud; the outbreak of World War II became the turning point for the future political development of Tanganyika. ... Between 1939 and 1945, the number of Europeans in different government services was reduced considerably. ...in 1947, the British Secretary of State for the Colonies, Mr. A. Creech-Jones, issued what was termed as a strong worded dispatch instructing the British Colonies to see to it that a democratic and efficient system of Local Government was setup. Faced with these new political developments the Colonial Government had no alternative but to comply.*³¹⁸

The observation by Max seems to be correct because after World War II, the British colonial government made substantial attempts to decentralise and make local government system in Tanganyika full representative like the English Model.³¹⁹ These local government reforms were part of the several developments meant to prepare the colony towards self-rule.³²⁰ Several developments and legal reforms were introduced in order to bring about decentralisation by devolution and local government autonomy. These developments and legal reforms included: enactment of the Municipalities Ordinance, 1946³²¹ which established the then Dar es Salaam Municipality in 1949;

³¹⁸ See Max, J.A.O., (1991). *Op.cit.* p.14.

³¹⁹ See Dryden, S.(1966). "Local Administration in Tanzania". Unpublished Master's Dissertation, University of East Africa. pp. 1-43, 208-209.

³²⁰ See Max, J.A.O. (1991). *Op.cit.* pp.13-14.

³²¹ CAP. 105.

amendment of the Native Authorities Ordinance, 1926³²² in 1942 to give corporate status to some Native Authorities specified by order of the Governor published in the gazette;³²³ enactment of the Local Government Ordinance, 1953;³²⁴ and the establishment of the local government school at Umzumbe–Morogoro in 1953.³²⁵ These developments were in themselves a positive step towards decentralisation and strengthening of LGAs.

One year after enactment of the Local Government Ordinance, 1953, the Tanganyika African National Union (TANU) was registered as a political party in 1954.³²⁶ The enactment of the Local Government Ordinance in 1953 and the registration of TANU in 1954 were crucial in the development and evolution of central-local government administrative relationship and local government autonomy in Tanganyika. For such reason, it is important that something is said about these two developments in this chapter as hereunder.

3.2.1 Enactment of the Local Government Ordinance

The enactment of the Local Government Ordinance, 1953 was a response to the instructions of the British Secretary of State Mr. A. Creech-Jones who instructed the British Colonies to establish a democratic and efficient system of local government.³²⁷ The Local Government Ordinance, 1953 created Township (Urban Councils) and District Councils (Rural Councils) which had power over all persons within their respective areas of jurisdiction contrary to the Native Authorities Ordinance, 1926 which even after its amendment in 1942 still provided for Native authorities which were not only un-autonomous, but also non-representative and had no jurisdiction over non-

³²² CAP. 72.

³²³ See Max, J.A.O. (1991). *Loc.cit.* Also See Government of the United Republic of Tanzania, *the History of Local Government in Tanzania. Op.cit.* p.7.

³²⁴ CAP. 333.

³²⁵ See Max, J.A.O. (1991). *Op.cit.*p.17.

³²⁶ *Ibid.* Also See Warioba, M.M.D. (1999). *Op.cit.* pp.5-6.

³²⁷ See Max, J.A.O. (1991). *Loc.cit.* Also see Dryden, S.(1966). *Loc.cit.*

Africans residing in their areas of jurisdiction.³²⁸ The Districts which were initially affected by the Local Government Ordinance, 1953 were Newala, Mafia, Mtwara, Masasi, Tunduru, Nzega and later Lindi.³²⁹

Notwithstanding the colonial government desire to establish the envisaged democratic and efficient local government system in the colony, the composition of District Councils was odd and inconsistent with the features of democracy and local government autonomy. There were no elected representatives of the local people but only *liwalis* and members appointed either by the District Commissioner or by the Minister Responsible for Regional Administration and Local Government.³³⁰ The presence of elected representatives is a *conditio sine qua non* for local government autonomy and one of the key requirements of the theory of decentralisation and the principle of subsidiarity.³³¹ This feature was completely absent in the constitution of District Authorities.

Urban Councils were treated different because of the presence of a big number of businessmen and European officials in them. Areas like Arusha, Tanga, Mwanza; and later Iringa, Dodoma, Mbeya, Morogoro, Moshi, Tabora and Bukoba were given township status and therefore, in addition to appointed members, they had a few elected representatives elected under the Local Government Election (Urban Areas) Ordinance.³³² However, even in the Urban Councils, there was no true democratic representation because the Local Government Ordinance, 1953 provided for tripartite voting system based on racism.³³³

³²⁸ See Max, J.A.O. (1991). *Ibid.* pp. 17-19. Also see Government of the United Republic of Tanzania, *the History of Local Government in Tanzania. Loc.cit.*

³²⁹ See Max, J.A.O. (1991). *Ibid.*

³³⁰ See Max, J.A.O. (1991). *Ibid.*

³³¹ For details about the theory of decentralisation and the principle of subsidiarity see items 2.2.3 and 2.2.4 in chapter two above.

³³² CAP. 379. Also see Max, J.A.O. (1991). *Ibid.* pp.18-21.

³³³ See Max, J.A.O. (1991). *Ibid.*

The enactment of the Local Government Ordinance 1953 marked the beginning of decentralisation by devolution and democratisation of local government system during the last eight years of British rule in Tanganyika, let alone the above noted shortfalls. Although the content of the Local Government Ordinance, 1953 did not fully capture all the basic features of decentralisation theory and the subsidiarity principle, it was a positive development in the evolution of central-local government administrative relationship and local government autonomy. For instance, the Local Government Ordinance, 1953 gave some powers to LGAs to hire and fire clerks and other officers or employees whose salaries did not exceed 3,000 per year and, it required the central government to pay District and Town Councils annual contributions and grants to finance local services.³³⁴

The legacy of the Local Government Ordinance, 1953 is notable in the present local government setup which to date consists of both Rural and Urban Councils consisting of members elected by the people and those appointed by the Minister and the President. The move towards decentralisation by devolution and democratisation of local government initiated by the Local Government Ordinance, 1953 was advanced by the registration of TANU in 1954 as discussed in the next item.

3.2.2 Registration of TANU and Its Role in Democratic Development of LGAs

The registration of TANU as a political party in 1954 was among the remarkable events towards the development of decentralisation by devolution and democratic local government System in Tanganyika. As pointed out in the preceding item, the Local Government Ordinance, 1953 had restricted people's participation in the local government elections because it provided for a tripartite voting system which was based on racism. The successor of Sir David Cameron, Sir Edward Twining was determined to introduce a tripartite voting system under which every eligible voter in the election

³³⁴ See ss. 76-77, CAP. 333, *loc.cit.*

would be required to cast three votes: one for a European, one for an Asian and one for an African. This idea was rejected by TANU.³³⁵

When Sir Edward Twining and his regime appeared rigid to change the system, TANU opted to comply with the law but campaigned and requested their people to ensure that only those people from the minority groups who had been vetted by TANU were to be elected by TANU supporters.³³⁶ Furthermore, TANU continuously insisted on one man, one vote system for both council and parliamentary representatives.³³⁷ Although the opposition to TANU was stiff, the pressure exerted by TANU forced the British government to make several amendments to the Local Government Ordinance, 1953 in order to accommodate TANU's demands for the establishment of genuine representative LGAs. By independence, there were only eight (8) authorities out of the fifty eight (58) Rural Councils and twelve (12) Urban Councils which were forced to adopt tripartite voting system.³³⁸

Immediately after independence, the government of Tanganyika under TANU made amendments to the undemocratic colonial Ordinances to allow the people to exercise their democratic right of one man, one vote electoral system and, in 1962, LGAs became fully representative. Thereafter, the government adopted several political, administrative and economic policies-some of which had serious consequences on the development and evolution of central-local government administrative relationship and local government autonomy as may be noted in the discussion of the subsequent items in this chapter.

3.3 Independence and Thereafter

The attainment of political independence in 1961 had several implications in the development and evolution of central-local government administrative relationship and

³³⁵ See Max, J.A.O. (1991). *Loc.cit.* Also see Dryden, S. (1966). *Op.cit.* pp.138-140.

³³⁶ See Max, J.A.O. (1991). *Ibid.*

³³⁷ *Ibid.*

³³⁸ *Ibid.* p.24.

local government autonomy in Tanganyika. As pointed out under item 3.1 above, several political, administrative and economic policy changes and decisions were made by the independent government in her efforts to foster national unity and establish a strong economic base for the people to realise the fruits of independence. They included the abolition of African traditional chiefs; adoption of one-party state and party supremacy; and adoption of the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance as discussed hereinafter.

3.3.1 Abolition of Native Authorities

Tribalism was among the major challenges that the post-colonial government of Tanganyika experienced at independence.³³⁹ Tribalism was built on the British administrative system of indirect rule and consolidated under the Native Authorities Ordinance, 1926 which created Native Authorities based on African tribal local chiefs.³⁴⁰ This was among the barriers to national unity, stability and strong political base which the post-colonial government of Tanganyika had to make good before it deepened and make harm to the newly formed independent national government.³⁴¹ For such reason, to start with, the government repealed the Native Authorities Ordinance, 1926 by the Native Authority Ordinance (Repeal) Act, 1963³⁴² and replaced all African local chiefs by democratically elected representatives in 1962.³⁴³ This was on one hand a positive development towards strengthening decentralisation by devolution which presupposes the existence of democratic representative LGAs but on the other hand, it worn out the strong pre-existing local voices for local self-rule in Mainland Tanzania. The abolition of Native Authorities and the African local chiefs was followed by the adoption of the democratic one-party state discussed in the next item.

³³⁹ See Keller, E.J. (1995). *Loc.cit.*

³⁴⁰ See Max, J.A.O. (1991). *Loc.cit.*

³⁴¹ See Dryden, S. (1966). *Op.cit.* pp.44-45 & 205-206.

³⁴² Act No. 14 of 1963.

³⁴³ See Dryden, S. (1966). *Op.cit.* pp.205-206. See also Government of the United Republic of Tanzania, *the History of Local Government in Tanzania. Op.cit.* p.9.

3.3.2 The Adoption of One-Party State and Its Consequences on Local Government Autonomy

At the time of attaining political independence, Tanganyika had multiparty democracy. Besides TANU, there were other political parties including the United Tanganyika Party (UTP),³⁴⁴ the African National Congress (ANC)³⁴⁵ and the All Muslim National Unity of Tanganyika (AMNUT).³⁴⁶ Nonetheless, TANU had strong support of majority members than other political parties and for this reason, it succeeded to move Tanganyika from the British domination to independent Tanganyika in 1961.³⁴⁷ In 1962, Tanganyika became a republican state with Mwl. Julius K. Nyerere as her first republican president.

Since Tanganyika became a republican state, the country was governed as a *de facto* one-party state. After the 1964 Zanzibar revolution and the subsequent union between Tanganyika and the People's Republic of Zanzibar on April 26th 1964, the Interim Constitution was amended on 5th February, 1965 to officially abolish multiparty democracy and declare Tanzania a *de jure* one-party state.³⁴⁸ In 1975, Article 3 of the interim Constitution, 1965 was further amended to establish a socialist democratic one-

³⁴⁴ This party was mainly composed of white settlers.

³⁴⁵ This was the most strong TANU opposition party formed by Zuberi Mtemvu the then TANU Publicity Secretary in 1958 who descended with other TANU members following his misunderstanding with the other TANU members on the TANU participation in the 1958 election.

³⁴⁶ It was mainly composed by Muslims in 1958 to counteract TANU on the mistaken belief that there was a conspiracy of a concerted effort by Christians to dominate TANU, and the government after independence; and also partly out of disillusionment with TANU's decision to participate in the forthcoming election that year. See Martin, F. O. (2010). "Low Voter Turnout in Tanzania: Causes and remedies. The Case of Multiparty General Elections and Parliamentary By-elections". Unpublished Maters Dissertation in Maters of Arts in Development Studies of the International Institute of Social Studies, the Hague: Netherlands. p.2.

³⁴⁷ See the Nations Encyclopedia at <http://www.nationsencyclopedia.com/Africa/Tanzania-POLITICAL-PARTIES.html>. Site visited on August 10th 2015. Also see Martin, F. O. (2010). *Loc.cit*. See also Chege, M. (2007). *Political Parties in East Africa: Diverse in Political Party Systems. Report prepared for the International IDEA as Part of Its Global Programmes on Research and Dialogue with Political Parties*. Stockholm: International IDEA. p.31.

³⁴⁸ See Art. 3 of the Interim Constitution, 1965.

party state.³⁴⁹ On 5th February, 1977, TANU merged with Afro Shiraz Party (ASP) and formed Chama cha Mapinduzi (CCM).³⁵⁰ The 1975 constitutional amendments were adopted *mutatis mutandis* under Article 3 of the 1977 permanent Constitution which provided;-

*...(1) the United Republic is a democratic and socialist state with one political party...(2) the party shall, subject to this Constitution and Party Constitution, be the final authority in respect of all matters in the United Republic and ... (3) Chama cha Mapinduzi, otherwise referred to in brief as "CCM" is the sole political party in the United Republic.*³⁵¹

As the above quoted Article provides, the operation of *de jure* one-party state in Tanzania made CCM the final authority in respect of all matters in the United Republic. The authority of the Party was further stipulated under Article 10 of the Constitution which also provided;-

*... (1) All political activity within and concerning the United Republic shall be conducted by, or under the auspices and control of, the party. ..(2) Subject to this Constitution, all activities of all public institutions in the United Republic shall be conducted under the auspices and control of the party... (3) The party shall have the duty to ensure that all organs and institutions entrusted with the discharge of public functions carry out those functions in strict adherence of this Constitution and the laws of the land.*³⁵²

The implication of the above quoted provision was the amalgamation of the authority and functions of the LGAs and that of the Party. The party being supreme over all government institutions, LGAs also became subordinate to the party because LGAs as institutions entrusted with the discharge of public functions had to comply with the

³⁴⁹ See Art. 3 of the interim Constitution, 1965 as amended by the Constitutional Amendment Act No. 8 of 1975.

³⁵⁰ See Msekwa, P. (2011). Democratic Practices in Tanzania. *Ceta Journal*, Vol.9. p. 24. Also see Martin, F. O. (2010). *Op.cit.* p. 13.

³⁵¹ See Art. 3 of the Constitution of the United Republic of Tanzania, 1977, as amended in October, 1990.

³⁵² See Art. 10. *Ibid.*

Constitution and the laws of the land. The subordination of LGAs to the party restricted the autonomy of LGAs and turned them to mere agents of the central government through party supremacy contrary to the theory of decentralisation and the principle of subsidiarity which require LGAs to be autonomous institutions.³⁵³ Subordination of LGAs to the party and the central government was not a myth but worked in practice from the inception of party supremacy in Tanganyika as exemplified hereunder.

In December, 1964, the executive officer of Mingoyo division of Lindi district in Mtwara region wrote to the chairman of Mingoyo TANU branch requiring the TANU branch secretary to inform him about any meeting that TANU officials intended to hold within his division. The TANU chairman replied in writing as follows;-

*I advise you that you had better understand that TANU leaders today have more authority in matters of government than you who are servants appointed and that as servants of government you have been given duties as required by TANU in order that you may carry them out. You must always please remember that TANU is, in fact, the government and that its leaders and no others are the heads and leaders of government, and if you do not get this into your head, you will be lost.*³⁵⁴

Along similar incident, the secretary of Mingoyo TANU branch wrote to inform the local divisional executive officer about the decision taken by his branch committee about strangers that;-

*The Mingoyo branch of TANU has resolved that any stranger, no matter who he is, who comes to Mingoyo division with the intention of staying here for a period exceeding one day, must first apply for permission to the Mingoyo branch of TANU. ...you are requested to inform all of your executive assistants to conform on this matter. I think you have understood all this and that you will carry it out.*³⁵⁵

³⁵³ See Government of the United Republic of Tanzania.(1998. *Loc.cit.*

³⁵⁴ As quoted in Dryden, S.(1966). *Op.cit.* p.249.

³⁵⁵ *Ibid.* p.251.

The one-party state and party supremacy completely took away the little autonomy that LGAs had during British rule and soon after independence. Incidents that depict the erosion of the autonomy of LGAs to mere agents of the party were many. According to Liviga, after independence, LGAs went through two processes: legal and administrative processes. Whereas the former process changed the status of LGAs from relatively more autonomous institutions to mere administrative arms of the central government, the latter resulted in weakening the capacity of LGAs in carrying out their mandated functions.³⁵⁶

The original intention of the independent government to merge the institution of TANU (as party institution) and TANU (as government institution) was meant to consolidate and enhance the ability of the newly independent government to fight against poverty, ignorance and diseases (the three national enemies) because TANU seemed to be well organised, coordinated and with national image and experienced leadership.³⁵⁷ Notwithstanding such good intention, the legal framework of central-local government administrative relationship could not support the desired local government autonomy. The Local Government Ordinance, 1953³⁵⁸ had conferred upon the Minister responsible for local government the power to approve urban council's annual estimates of revenue and expenditures; and the regional commissioner the power to approve district council's estimates of revenue and expenditures.³⁵⁹

The Local Government Ordinance also empowered the Minister to approve council by-laws; to issue standing orders and prescribe local government rates; to give directions in respect of loans, contracts and investments; and to give instructions by way of financial memoranda and ministerial circulars.³⁶⁰ The Minister was the proper officer for Urban Councils, while the RC was the assistant proper officer for Urban Councils and the

³⁵⁶ See Liviga, A.J. (1992). *Op.cit.* pp.211-212

³⁵⁷ See Dryden, S.(1966). *Op.cit.* pp.140-141.

³⁵⁸ As amended in 1961 by the Local Government Ordinance (Amendment) Act No.4 of 1962.

³⁵⁹ See ss.76 & 77, CAP.333, *loc.cit.*

³⁶⁰ See ss.59-69, CAP. 333, *ibid.*

proper officer for District Councils assisted by the DC.³⁶¹ Both the proper and assistant proper officers being political officials, the merging of the Party and the government institutions and, the advent of party supremacy placed LGAs under the control of the party which practically represented the central government through the proper and the assistant proper officers. The merging of the Party and the government institutions, as afore said, completely weathered away the little autonomy that LGAs in Tanganyika had before and soon after independence.³⁶²

It is also important to note at this point that, merging the party and the government institutions was not something completely new in the 1970s. At the national, regional and District levels of administration, this was forged earlier long before independence by introducing ministerial system under which leaders of the party were appointed to be heads of the civil service departments.³⁶³ It was consolidated after independence when the government enacted the Regions and Regional Commissioners Act, 1962³⁶⁴ and the Area Commissioners Act, 1962³⁶⁵ which provided for appointment of political officers to hold positions of the former colonial regional and area commissioners.³⁶⁶ At the local government level, it was done after independence by constituting a commission which was appointed in 1964 to consider the changes required in the Constitution of Tanganyika and the Constitution of TANU to officially establish a democratic one-party state.³⁶⁷

The Commission in that respect reported that, the executive committee of TANU should be incorporated in every locality within the structure of local government; members of the District Committees of TANU and urban areas to be ex-officio members of District

³⁶¹ See ss.76 & 77, CAP. 333, *ibid.*

³⁶² See Liviga, A.J. (1992). *Loc.cit.*

³⁶³ See Dryden, S.(1966). *Loc.cit.*

³⁶⁴ Act No. 2 of 1962.

³⁶⁵ Act No.18 of 1962.

³⁶⁶ See s.4 Act No. 2 of 1962 and s.3 Act No.18 of 1962. Respectively.

³⁶⁷ See Max, J.A.O. (1991). *Op.cit.* pp.63-65. Also See Dryden, S. (1966). *Op.cit.* pp.142-145.

and Urban Councils; and all candidates for local government election should be members of TANU and their pre-selection should be done through the Party.³⁶⁸ This was thought to be a remedy for the chronic problems of poor financial resources, ignorant councillors and unqualified personnel which hampered LGAs since the period of British colonial administration.³⁶⁹ Instead of making LGAs more autonomous, robust and efficient institutions in service delivery, the reverse became the case. Merging the party and the government institutions resulted into curtailment and weakening of local government autonomy. This was exacerbated by the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance to which we now turn our discussion hereunder.

3.3.3 The Arusha Declaration

Given the economic problems inherited from colonialism, at independence, the government was heavily concerned with the creation of strong economic base and proving to the world that independence brought development to the people.³⁷⁰ The popular adage used to mobilise the people and support this government effort was TANU (CCM) built the Nation “TANU yajenga Nchi”.³⁷¹ It has been said that, at independence, it was not clear on the development ideology that Tanzania would follow.³⁷² For instance, in the first five years of her independence, Tanzania concentrated on building an independent nation but the economy continued to be mainly on the hands of the white people: the British and Asians who owned most of the industries, plantation, mines and other larger commercial activities.³⁷³

³⁶⁸ See Dryden, S. (1966). *Ibid.*

³⁶⁹ *Ibid.*

³⁷⁰ See Max, J.A.O. (1991). *Op.cit.* p. 66.

³⁷¹ *Ibid.*

³⁷² See Msekwa, P. (2011). *Op.cit.* p. 24.

³⁷³ See Ngowi, H.P. (2009). Economic Development and Change in Tanzania since Independence: the Political Leadership Factor. *African Journal of Political Science and International Relations*, vol.3(4). p. 262.

In her first five year development plan, Tanzania put emphasis on the Africanisation of the bureaucracy, villagisation of the agrarian sector and overhauling of the manufacturing industries on mixed economy basis.³⁷⁴ By this it means, at independence, the government decision was to continue with capitalist mode of production inherited from the colonial masters.³⁷⁵ The economy continued to be basically market oriented economy and dominated by the private sector.³⁷⁶ As it was the case with the characteristics of private ownership of the major means of production and market economy, several imbalances and market failures were noticed in the mid of 1960s as the state did not intervene in the economy.³⁷⁷

The government made several efforts to remove such economic imbalances by, among other things, issuing several presidential circulars which emphasised on buying Tanzanian products and restricting importation of foreign goods as well as Africanisation of the Tanzania economy.³⁷⁸ Nonetheless, the expected benefits of independence were not realised by the majority of the people. This necessitated the government to adopt the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance.³⁷⁹

The Arusha Declaration established an egalitarian society and emphasised on self-reliance as opposed to dependence on foreign aid.³⁸⁰ The declaration brought in the policy of Ujamaa which centralised all major means of production and important

³⁷⁴ See Msekwa, P. (2011). *Loc.cit.*

³⁷⁵ See Ngowi, H.P.(2009). *Loc.cit.*

³⁷⁶ See Ngowi, H.P.(2007September). "Political and Managerial Leadership for Change and Development in Africa". Paper Presented to African Association for Public Administration and Management 29th AAPAM Annual Roundtable Conference, MBABANE, Swaziland. p.9.

³⁷⁷ *Ibid.*

³⁷⁸ See the Presidential Circular No.1 of 19th January, 1965 and the Presidential Circular No. 2 of 9th February, 1965, respectively.

³⁷⁹ See Ngowi, H.P.(2007September). *Loc.cit.*

³⁸⁰ See Msekwa, P. (2011). *Op.cit.* p.25.

services.³⁸¹ All industries, companies, plantations, banks, mines, services and other privately owned properties were nationalised and became Parastatal organisations under the state ownership and control.³⁸² The policy of Ujamaa emphasised on strong family solidarity found in the traditional African societies. Mwl. Julius Nyerere strived to unite Tanzania through Ujamaa villages.³⁸³ He issued different presidential circulars which emphasised on self-reliance through self-help schemes and building collective villages.³⁸⁴ The policy was entrenched into the Permanent Constitution of the United Republic of Tanzania which provided;-

*...the objective of this Constitution is to facilitate the building up of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the Policy of Ujamaa and Self-reliance which is the creative application of socialist principles to the conditions prevailing within the United Republic. Consequently, the state authority and all its agencies are required to direct all their policy and business towards securing... (d) the promotion of a centrally planned and balanced development of the national economy; ... (j) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means production and exchange in the hands of few individuals, and that the government owns or controls the major means of production; (k) the country is governed in compliance with the principles of democracy and socialism.*³⁸⁵

The constitutionalisation and operation of Ujamaa and the party supremacy noted above had far reaching impacts on the development and evolution of central-local government administrative relationship and the autonomy and ability of LGAs in public service

³⁸¹ *Ibid.*

³⁸² See Ngowi, H.P. (2009). *Op.cit.* p.263. Also see Ngowi, H.P. (2007 September). *Op.cit.* p.10.

³⁸³ See Msekwa, P. (2011). *Loc.cit.*

³⁸⁴ See for instance the Presidential Circular No.2 of 24th August, 1968 which emphasised on self-reliance through self-help schemes by empowering village development committees to declare a self-help scheme any project which appeared beneficial to the community and Presidential Circular No.1 of 20 March, 1969 which directed building of collective villages in the rural areas to foster economic development and ease the provision of social services like water, education and health care.

³⁸⁵ See Art.9 (1) of the then October 1st 1990 Constitutional Amendment Edition.

delivery. Just to mention but a few instances: first, several projects which did not require technical support from the central government were launched locally. Local authorities were required to provide building materials such as roofing sheets, timber, cement etc. Mobilisation of these projects was sometimes done without proper planning and consultations.³⁸⁶ In most cases LGAs were involved after planning and structural work had begun or was at advanced stage. Moreover, central financial assistance to supplement the people's efforts was limited and, even where it was made available, processing by the respective ministries was too bureaucratic that it usually arrived late.³⁸⁷

Second, LGAs were over burdened with many projects to carry out despite their poor economic base. The Local Government Ordinance³⁸⁸ required the central government to provide with LGAs annual grants to finance a variety of services but the former failed to honour its obligation.³⁸⁹ Centralisation and firm central control over local government finance was ensured in the operation of Ujamaa and self-reliance. For instance, central government's grants, capital investment funds and trading were kept in separate bank accounts to avoid misallocation.³⁹⁰ Centralisation further eroded the local government revenue base by abolition of the local personal rates and all produce tax in 1969 and, transfer of the control of licensing and selling of liquor from LGAs to a central government board chaired by the Area Commissioner.³⁹¹

Third, the government further diffused the functions of LGAs by creating other central competing agencies like the National Housing Corporation, the Urban Water Authority and the District Development Corporations which, unlike the LGAs, were adequately

³⁸⁶ See Max, J.A.O. (1991). *Op.cit.* pp.66 & 67.

³⁸⁷ *Ibid.*

³⁸⁸ CAP.333, *loc.cit.*

³⁸⁹ See s.76, CAP.333, *ibid.* Also see Max, J.A.O. (1991). *Op.cit.* p.75.

³⁹⁰ See Liviga, A.J. (1992). *Op.cit.* p.213.

³⁹¹ *Ibid.*

funded by the central government.³⁹²The Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance strengthened the central government control over LGAs finance and services. This completely turned LGAs into administrative agents of the central government contrary to the theory of decentralisation, the principle of subsidiarity and the holistic principle. Following the recommendations by McKinsey and Co. Inc. consultancy report on how to achieve the Arusha Declaration and rural development policies, the government evoked the decentralisation scheme of 1972 which led to the abolition of District Councils and Urban Authorities in 1972 and in 1973 respectively.³⁹³ An examination of the implementation of the decentralisation policy and its implication on the development and evolution of central-local government administrative relationship and local government autonomy comes henceforth.

3.3.4 The Decentralisation Policy and Abolition of LGAs in the 1970s

The ever increasing central control of LGAs in pursuit of the Arusha Declaration and its accompanying policy of socialism and self-reliance under one-party state weakened LGAs and made them fail to perform as they were expected of. Early in the 1970s, the government evoked the 1972 decentralisation scheme which was promulgated by the Decentralisation Policy, 1972 and implemented by the Decentralisation of Government Administration (Interim Provisions) Act, 1972.³⁹⁴

The decentralisation scheme aimed at giving the people decision making powers on matters affecting their welfare and of local importance and giving them the necessary personnel and finance for their implementation.³⁹⁵The government wanted to have an administrative structure and planning system that would ensure rapid socio-economic

³⁹² *Ibid.* p.214.

³⁹³ *Ibid.* p. 213. Also see Max, J.A.O. (1991). *Op.cit.* p.76.

³⁹⁴ See Act No. 27 of 1972 and Presidential Circular No.8 of 1972.

³⁹⁵ See also Max, J.A.O. (1991). *Op.cit.* p.82.

development in the rural areas and the entire country.³⁹⁶ The decentralisation scheme was meant to ensure central coordination and management of rural development at the district and regional levels and more involvement of the people in the development process than before and, to ensure that rural development was effectively planned and controlled.³⁹⁷

Although the scheme was named after “decentralisation,” its implementation was in fact contrary to the theory of decentralisation and the principle of subsidiarity. The operationalisation of the decentralisation scheme by enactment of the Decentralisation of Government Administration (Interim Provisions) Act³⁹⁸ ultimately resulted into the abolition of all District Authorities in 1972 and all Urban Authorities in 1973. The Decentralisation of Government Administration (Interim Provisions) Act deconcentrated the authorities and functions of planning, implementation and managing local government development programmes in the District Development Council (DDC) at the District level and the Regional Development Committee (RDC) at the Regional level.³⁹⁹

The Act further created a new cadre of administrative staff in the districts: the District Personnel Officer, the District Planning Officer and the District Financial Controller.⁴⁰⁰ At the centre was the President of the United Republic assisted by ministers responsible for sector ministries as was the case before decentralisation. Besides sector ministries, there was the Prime Minister’s Office which, among other things, had to take charge of the overall coordination and supervision of the rural development.⁴⁰¹ Below the Prime Minister was the Regional Commissioners who worked under the assistance of the

³⁹⁶ See Moses, M.D. Warioba. (1999). *Op.cit.* p.43.

³⁹⁷ See also Max, J.A.O. (1991). *Loc.cit.*

³⁹⁸ Act No. 27 of 1972.

³⁹⁹ See ss.4-8, 10-11 Act No. 27 of 1972. Also see Liviga, A.J. (1992). *Loc.cit.*; and Moses, M.M.D. (1999). *Op.cit.* pp.45&46.

⁴⁰⁰ See s. 3 & 4(3)(a)-(c), Act No. 27 of 1972, *loc.cit.*

⁴⁰¹ See s.5 &6, Act No. 27 of 1972, *ibid.*

Regional Development Director (RDD) and District Development Director (DDD) at their respective regions and districts respectively.⁴⁰²

The Decentralisation of Government Administration (Interim Provisions) Act also provided for the establishment of Development Councils and Development and Planning Committees in every administrative district as statutory bodies that replaced District Councils, and Regional Development Committees in every region.⁴⁰³ The District Development Councils were composed of the chairman (TANU district Chairman), the DC, a parliamentary member from the district, all elected councilors of the defunct District Council, the District Planning Officer (DPLO), the District Personnel Officer (DPO), the District Financial Controller (DFC), District Functional Managers; and the District Development Director (DDD) secretary.⁴⁰⁴ The Presidential Circular⁴⁰⁵ further provided for the procedure of filling vacancies in case the number of the elected councilors of the defunct District Council was reduced for any reason.⁴⁰⁶

In 1975, the government enacted the District Development Council (Elections) Act⁴⁰⁷ which provided for elections of members of the District Development Councils.⁴⁰⁸ The District Development and Planning Committees (DDPC) were mainly dominated by ex-officio members rather than elected representatives.⁴⁰⁹ The (DDPC) was the executive arm of the DDC. It consisted of the chairman (Area Commissioner), a parliamentary member for the District, one quarter of former District Council elected representatives, all functional managers, the DPLO, DPO and DFC and the District Development

⁴⁰² *Ibid.*

⁴⁰³ See ss. 6 &7, Act No. 27 of 1972, *ibid.*

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Circular No.8 of 1972. *Loc.cit.*

⁴⁰⁶ See s. 18, Act No.8 of 1972, *ibid.* See also Max, J.A.O. (1991). *Op.cit.* p.87; and Warioba, M.M.D. (1999). *Op.cit.* p.47.

⁴⁰⁷ No.24 of 1975.

⁴⁰⁸ See ss.3-5, Act No. 24 of 1975, *ibid.*

⁴⁰⁹ See s. 12(1)&(2), Act No. 27 of 1972, *loc.cit.*

Director Secretary.⁴¹⁰ At the regional level, the RDC had no elected representatives. Instead it was composed of the Chairman (RC), a member of the national executive, TANU regional chairman, TANU regional secretary, all TANU district chair men, all Area Commissioners, all members of parliament in the region, Regional Development Team, and the Regional Development Director Secretary.⁴¹¹

By the above changes, local government and central government responsibilities were merged. This resulted in a strong central government organisation for supervision and coordination of rural development from the national down to the village level. It is also important to note that, in 1975, the Parliament had enacted the Villages and Ujamaa Villages (Registration, Designation and Administration) Act.⁴¹² This Act established the villages as the basic unit of power, legal, political and economic entities that would fully participate in the planning and implementation of rural development through the village government.⁴¹³ This was paradoxical expectation which remained in vain because, in a real sense, the said villages had completely no autonomous decision making power.

All powers in decision making and implementation of rural development programmes were centralised at the regions and districts. The decision making power was vested in the Prime Minister's Office (PMO), the Ministry of Finance and sector ministries at the national level; the RC and the RDD at the regional level; and the Area Commissioner and the DDD at the District level.⁴¹⁴ The centralisation of decision making powers was contrary to the decentralisation theory and the principle of subsidiarity which require matters like decision making, taxing, spending, and regulatory functions or service delivery to be handled by the lowest competent authority save where there are compelling reasons for assigning them to higher levels of government.

⁴¹⁰ *Ibid.*

⁴¹¹ See s.6 (2), Act No. 27 of 1972, *ibid.*

⁴¹² Act No. 21 of 1975.

⁴¹³ See ss. 4, 5, 12, 16-17, 18 & 20, Act No. 21 of 1975, *ibid.*

⁴¹⁴ Moses, M.D. Warioba (1999). *Op.cit.* pp. 51 & 52.

Although some experts in public administration have praised the decentralisation scheme as having succeeded in ensuring effective planning, mobilisation and coordination of the people in economic development, the scheme had a number of weaknesses that culminated in its failure.⁴¹⁵ The Decentralisation Policy resulted in deconcentration rather than devolution of powers and resources. Instead of decentralising decision making power to the people, it took away even the little power they had prior to the abolition of the local government system. The scheme strengthened field officials at the expense of the local institutions and the decision making power was hijacked by the elite bureaucrats at the regions and districts, a thing that seriously affected the peoples participation in the rural development.⁴¹⁶ Thus, the expected outcomes of the decentralisation scheme were not realised.⁴¹⁷ This necessitated the revival of Urban Councils in 1978 and District Councils two years later as may be noted in the next item.

3.4 Revival and Constitutionalisation of LGAs

The government expectation that the decentralisation scheme would bring rapid socio-economic rural development and ensure effective participation of the people in decision making on matters of their welfare and of local importance failed. The outcome of the operationalisation of the decentralisation scheme was the opposite of the government expectation.⁴¹⁸ Urban economy and essential services were seriously deteriorated during the six years of the implementation of the decentralisation scheme. For instance, there was an outbreak of cholera epidemic in 1976 which spread very fast in Urban areas; primary schools ran shortage of text books and other essential materials; drainage and

⁴¹⁵ See for instance Moses, M.D. Warioba (1999). *Ibid.* pp.49&50.

⁴¹⁶ *Ibid.* pp.53 & 54. Also see Government of the United Republic of Tanzania, *the History of Local Government in Tanzania. Loc.cit;* and Liviga, A.J. (1992). *Loc.cit.*

⁴¹⁷ See Max, J.A.O. (1991). *Op.cit.* p. 90.

⁴¹⁸ See Liviga, A.J. (1992). *Op.cit.* pp.214-215.

sewage systems were blocked; dilapidated roads were left unrepaired; and dispensaries and clinics had no drugs.⁴¹⁹

The government found itself unable to continue with the scheme. The Prime Minister's office and the UN special Technical advisor Mr. Green James submitted reports which strongly recommended for the reinstatement of Urban Councils to take over the responsibilities that were allocated to the Districts and Regional Directorates under the Decentralisation Policy.⁴²⁰ In April 1978, the Parliament enacted the Urban Councils (Interim Provisions) Act⁴²¹ which gave power to the Minister of State and Commissioner for Urban Authorities in the Prime Minister's Office to re-establish Town and Municipal Councils effectively by July 1st, 1978.⁴²²

The re-established Urban Authorities were given functions which were previously vested in the previous Urban Authorities under the Municipalities Ordinance⁴²³ and the Local Government Ordinance.⁴²⁴ They were however not given power to raise revenue contrary to the decentralisation theory, the subsidiarity and the holistic principles.⁴²⁵ Scholars have also argued that the re-established Urban Councils were not autonomous because of serious shortage of qualified personnel and shortage of funds.⁴²⁶ As a result, in 1980, Chama cha Mapinduzi (CCM) promised under clause six (6) of its election manifesto to revive a democratic local government system in Mainland Tanzania.

⁴¹⁹ See Max, J.A.O. (1991). *Loc.cit.* Also see Government of the United Republic of Tanzania, *the History of Local Government in Tanzania. Op.cit.*p.12.

⁴²⁰ See Max, J.A.O. (1991).*Ibid.*

⁴²¹ Act No.11 of 1978.

⁴²² See ss. 4-5, Act No.11 of 1978, *ibid.*

⁴²³ CAP.105.

⁴²⁴ *Loc.cit.*

⁴²⁵ See s. 8, Act No.11 of 1978.

⁴²⁶ See Max, J.A.O. (1991). *Op.cit.* pp. 91 & 92. Also see Warioba, M.D & Warioba, L. (2012). *Op.cit.* p.38.

The promise by CCM was effected by the enactment of a number of legislation in 1982 (some of which are still in force).⁴²⁷ Also the Constitution of the United Republic of Tanzania, 1977 was amended in 1984 by adding two Articles which provide for the establishment, the purpose and general powers of LGAs in Mainland Tanzania.⁴²⁸ It was for the first time LGAs were constitutionalised in the history of Mainland Tanzania. The constitutionalisation of LGAs was aimed at ensuring full devolution of powers, responsibilities and resources and protection of LGAs from unwarranted abolition as it was the case in 1970s. It has been argued that it was easy to abolish LGAs in 1970s because they lacked constitutional protection.⁴²⁹ Therefore, the constitutionalisation of LGAs was one of the remarkable developments towards local government autonomy in Mainland Tanzania consistent with the decentralisation theorem and the principle of subsidiarity.

The local government Acts enacted in 1982 established the Urban and District Authorities which are body corporate and constituted by elected representatives of the local people as they appear in the present framework of local government system in Mainland Tanzania. Moreover, a brief examination of the 1982 re-established LGAs is required in this chapter in order to learn their weaknesses which necessitated the adoption of the Local Government Reform Programme (LGRP) in the late 1990s to early 2014.

⁴²⁷See Government of the United Republic of Tanzania, *the History of Local Government in Tanzania. Loc.cit*; and Warioba, M.D & Warioba, L. (2012). *Op.cit.* pp.38& 39. Among the Acts passed in 1982 to fully re-establish Local Government Authorities in Mainland Tanzania included the Local Government (District Authorities) Act, Act No.7 of 1982; the Local Government (Urban Authorities) Act No.8 of 1982; the Local Government Finances Act, Act No.9 of 1982; the Local Government Service Act, Act No.10 of 1982; the Local Government Negotiating Machinery Act, Act No. 11 of 1982; the Decentralisation of Government Administration (Interim provisions Amendment) Act, Act No.12 of 1982; the Urban Authorities Rating Act, Act No. 2 of 1983; the Local Authorities (Elections Amendment) Act, Act No. 3 of 1983; and the Human Resources Deployment Act, Act No.6 of 1983.

⁴²⁸ See Arts. 145 & 146, CAP.2, *loc.cit.*

⁴²⁹ See REPOA(2008). *Op.cit.* p.13.

3.4.1 The 1982 Revived District Authorities

Local Government District Authorities were established by the Local Government (District Authorities) Act.⁴³⁰ The Local Government (District Authorities) Act was enacted to provide better provisions related to LGAs, repeal the Local Government Ordinance⁴³¹ and other written laws; and to provide for other matters related to the organisation of local government in Mainland Tanzania.⁴³² The Act provided for the establishment, composition as well as the functions of District Authorities (District Councils, Township Authorities and Village Councils).⁴³³ The Local Government (District Authorities) Act established corporate District Authorities manned by elected representatives.

The revived District Authorities were vested with a number of functions including: the maintenance and facilitation of the maintenance of peace, order and good government within their respective areas of jurisdiction; promotion of the social welfare and economic well-being of all persons within their areas of jurisdiction; and furthering the social and economic development of its area of jurisdiction subject to the National Policy and plans for rural and urban development.⁴³⁴ They were further mandated to take all such measures necessary, desirable, conducive or expedient for suppression of crime, the maintenance of peace and good order and the protection of public and private property lawfully acquired.⁴³⁵

The new District Authorities were also mandated to take such measures necessary for the control and improvement of agriculture, trade, commerce and industry; furtherance and enhancement of health, education, social, culture and recreational life of the

⁴³⁰ Act No. 7 of 1982.

⁴³¹ The Local Government Ordinance was still in force following the revival of Town and Municipal Councils in 1978.

⁴³² See the long title to Act No. 7 of 1982.

⁴³³ See ss. 5, 13, 22, 25, 117, 118, 131,132, 141 &142, Act No. 7 of 1982. *ibid.*

⁴³⁴ See s.111, Act No. 7 of 1982, *ibid.*

⁴³⁵ See s.111 (2), Act No. 7 of 1982, *ibid.*

people.⁴³⁶ They could also take any measure for the relief of poverty and distress, and for the assistance and amelioration of life for the young, the aged and the disabled or infirm; and for the development, mobilisation and application of productive forces to the war on poverty disease and ignorance.⁴³⁷

Furthermore, every revived District Authority was vested with the authority to formulate, coordinate and supervise the implementation of all the economic, commercial, industrial and social developments in its area of jurisdiction; to monitor and control the performance of duties and functions by the council and its department officers and staff; and to ensure the collection and proper utilisation of revenues of the council.⁴³⁸ Besides, every District Authority was given authority to make bylaws applicable throughout its area of jurisdiction; to consider and approve by laws made by Village Councils within its area of jurisdiction; and to consider, regulate and coordinate development plans, projects and programmes of villages and township authorities within its area of jurisdiction.⁴³⁹

Every District Council was within its area of jurisdiction given the power to take all necessary measures for prevention of soil erosion and protection of crops; prohibiting or regulating the cultivation of crops or a category of crops; prohibiting or regulating the cultivation or possession of poisonous or noxious plants, drugs or poisons; and prohibiting or regulating the use of any agricultural land.⁴⁴⁰ A district Authority had also power to prescribe steps to be taken by the occupier of any agricultural land for the purpose of maintaining and improving its productivity and preserving soil fertility; and make provisions for the prohibition or regulation of livestock husbandry; etc.⁴⁴¹ Like

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid.*

⁴³⁸ See s.118 (1)(a)- (c), Act No. 7 of 1982, *ibid.*

⁴³⁹ See ss.118 (1)(d)-(f), 156 & 164, Act No. 7 of 1982, *ibid.*

⁴⁴⁰ See s. 118 (2), Act No. 7 of 1982, *ibid.*

⁴⁴¹ *Ibid.*

district councils, Township Authorities also were given legislative powers subject to approval of the proper officer. Likewise, village governments were vested with legislative authority subject to approval by the district council.⁴⁴²

The Local Government (District Authorities) Act also empowered every LGA to do any act or thing in relation to service or matters provided for or regulated by any written law subject to only compliance with administrative directions or legislative procedures issued by the Minister or other competent authority concerned after consultation with and approval of the Minister.⁴⁴³ The Act also vested upon all District authorities the power to acquire any land or right over or the right to use any land within or outside its area, subject to approval by the Minister.⁴⁴⁴ Furthermore, subject to the Act and any other written laws in force in relation to acquisition and use and disposition of land at the time, any LGA with approval of the Minister, was given power to sell, exchange, let, mortgage or charge any land or premise in its ownership or disposition; charge rent or fees in respect of the occupation, and use or hire of any such land or premises.⁴⁴⁵ The Minister was also empowered by the Act to make regulations specifying the powers and duties to be exercised by District Authorities.⁴⁴⁶

The list of powers and functions of District Authorities under the Local Government (District Authorities) Act were many and cannot easily be enumerated here, rest we reproduce the Act. These powers and functions reflect the important role of LGAs in service delivery. In respect of transfer of powers and functions, the Local Government (District Authorities) Act vested in LGAs sufficient powers and responsibilities consistent with the decentralisation theory and the subsidiarity principle. Had these powers and responsibilities been transferred with discretion in mobilisation of funds and

⁴⁴² See ss. 155, 156, 163 & 164, Act No. 7 of 1982. *ibid.*

⁴⁴³ See s.113 (2), Act No. 7 of 1982, *ibid.*

⁴⁴⁴ See s. 114(1), Act No. 7 of 1982, *ibid.*

⁴⁴⁵ See s.115, Act No. 7 of 1982, *ibid.*

⁴⁴⁶ See s.112, Act No. 7 of 1982, *ibid.*

expenditure, discretion in personnel management and, without strict central control, the said LGAs would doubtlessly have been very robust and vibrant institutions in service delivery. But this was not the case as explained hereunder.

The Local Government (District Authorities) Act vested in the central government overwhelming powers to control and supervise District Authorities. For instance, apart from the general guiding and supervisory roles of the Minister, the Local Government (District Authorities) Act vested in him the mandate to issue circulars and directives to explain new legislation or issue new policies or technical guidance to District Authorities.⁴⁴⁷ The Act further vested in the Minister the power to establish and vary the areas of District Councils; power to enforce performance; power to transfer functions of LGAs; and the power to dissolve councils in default.⁴⁴⁸

The Local Government (District Authorities) Act further vested in the Minister the power to appoint some members of the District Councils; power to approve local government by-laws; power to approve annual recurrent and development budgets; power to approve rates for District Councils.⁴⁴⁹ The Minister was also the spokesman of District Authorities in the Parliament; he controlled their borrowing and the audit of their accounts through the controller and auditor general; and he had powers to make orders, impose rules and regulations upon District Authorities.⁴⁵⁰ At the regional level, the RC was designated as the proper officer for each District Authority within his region and assistant proper officer for each Town and Municipal Council within his region. As the proper officer, the RC had powers to approve council by-laws and power to approve levy or tax rates of District Councils.

⁴⁴⁷ See s. 4, Act No. 7 of 1982, *ibid.*

⁴⁴⁸ See ss. 5, 13, 18, 186, 171 & 172, Act No 7 of 1982, *ibid.*

⁴⁴⁹ See ss. 14 A & 20A, 148 & 149, Act No. 7 of 1982, *ibid.* Also see ss. 10, 13, 33(1) & 34, Act No.9 of 1982, *loc.cit.*

⁴⁵⁰ See ss. 147, 148, 157, 158 & 165, Act No. 7 of 1982, *ibid.* Also see 11, 12, 31, 33, 34, 44, 45 & 48, Act No.9 of 1982, *ibid.*

The District Commissioner was designated as the assistant proper officer for every District Council, Township Authority and Village Councils established in his area of jurisdiction.⁴⁵¹ Besides the proper and assistant proper officers, central and sector ministries were directly involved in the control of local government exercise of powers and discharge of statutory functions related to those sector ministries. The administrative relationship between the central government and District Authorities was top-down command driven- a typical feature of agency model of central-local government administrative relationship. Having examined the 1982 revived District Authorities under the Local Government (District Authorities) Act, the next item briefly examines the Urban Authorities established in 1982 in Mainland Tanzania.

3.4.2 The 1982 Revived Urban Authorities

The 1982 Urban Authorities were established by the Local Government (Urban Authorities) Act.⁴⁵² The Act replaced the Local Government Urban (Interim Provisions) Act which provided for the reinstatement, power and functions of Urban Authorities in Mainland Tanzania. The Local Government (Urban Authorities) Act provided for the establishment of three Urban Authorities which are body corporate and constituted by elected representatives (councillors). They included Town Councils, Municipal Councils and City Councils.⁴⁵³ Like the District Authorities, Urban Authorities were vested with several powers and charged with a number of functions. Every Urban Authority was charged with the duty to maintain and facilitate the maintenance of peace, order and good government within its area of jurisdiction; to promote the social welfare and economic well-being of all persons within its area of jurisdiction; and subject to the

⁴⁵¹ See ss. 12, 33 & 34, Act No.9 of 1982, *ibid.*

⁴⁵² Act No. 8 of 1982, *loc.cit.*

⁴⁵³ See s. 5, Act No. 8 of 1982, *ibid.*

National Policy and plans for rural and urban development, to further the social and economic development of its area of jurisdiction.⁴⁵⁴

Every Urban Authority was also mandated to take all such measures as in its opinion were necessary, desirable, conducive or expedite for suppression of crime, the maintenance of peace and good order and the protection of public and private property lawfully acquired.⁴⁵⁵ Every Urban Authority was further given power to take measures for the control and improvement of agriculture, trade, commerce and industry; for the furtherance and enhancement of health, education and the social, culture and recreational life of the people; for the relief of poverty and distress, and for the assistance and amelioration of life for the young, the aged and the disabled or infirm; and for the development, mobilisation and application of productive forces to the war on poverty disease and ignorance.⁴⁵⁶

The Local Government (Urban Authorities) Act also vested in every Urban Authority the duty to establish and maintain offices and buildings for the purpose of transacting the business of the authority and for public meetings and assemblies and the duty to take and require the taking of measures for the conservation of natural resources, the prevention of soil erosion and the prohibition and control of cultivation.⁴⁵⁷ Also every Urban Authority had the duty to prevent or control the keeping, movement and sale of livestock, animals and birds to prevent public nuisance or injurious to health; to provide for the treatment of congested area, for the closure and demolition of buildings or parts of buildings unfit for human or other habitation; and to provide for the inspection of all meat, fish, vegetables and all other foodstuffs of whatever kind or nature and liquids intended for human consumption.⁴⁵⁸

⁴⁵⁴ See s. 54 (1), Act No. 8 of 1982, *ibid.*

⁴⁵⁵ See s. 54 (2), Act No. 8 of 1982, *ibid.*

⁴⁵⁶ *Ibid*

⁴⁵⁷ See s. 55, Act No.8 of 1982, *ibid.*

⁴⁵⁸ *Ibid.*

It was also the duty of every Urban Authority to provide, maintain, supervise and control public markets and pounds, cold storage depots, mineral water factories, public and private slaughter houses, and impose fees, rents and tolls in respect of use of public markets, pounds or slaughter houses by any person.⁴⁵⁹ Urban Authorities were further supposed to keep and maintain in good order and repair all public latrines, urinals, cesspits, dustbins and other receptacles and provide for the disposal of sewage from all premises and houses in its area; and to provide for and maintain supply of electric lighting of streets and trunk roads; and to provide for the prevention and abatement of public nuisances.⁴⁶⁰

Moreover, every Urban Authority was charged with the duty to regulate any trade or business which might be noxious or injurious to the public health; to regulate the use and conduct of public vehicles plying for hire and their fares; and to regulate routs and parking places.⁴⁶¹ They were also supposed to undertake all other works, matters and services necessary for or conducive to public safety, health or convenience as it would think fit or which the Minister might from time to time declare to be the function of the Urban Authority.⁴⁶² The Local Government (District Authorities) Act further vested in the Urban Authorities the discretion to perform any of the functions specified in the schedule to the Act and vested in the Minister the power to make regulations specifying the powers and duties to be exercised by any Urban Authority.⁴⁶³

The functions and responsibilities of Urban Authorities were vast and they cannot be enumerated in this chapter. Besides functions, the Local Government (Urban Authorities) Act also vested in Urban Authorities several powers including the power to

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

⁴⁶¹ *Ibid.*

⁴⁶² *Ibid.*

⁴⁶³ *Ibid.*

acquire any land or the right over the use of any land within or outside its area of jurisdiction subject to prior approval of the Minister; power to exchange, let, mortgage or charge any land or premises under its ownership or disposition; and power to charge rent or fees in respect of occupation, use, or hire of any land or premises subject to prior approval of the Minister.⁴⁶⁴ They had also power to hold and administer any gift or property for any purpose or for the benefit of the inhabitants of the area or any part of it and were allowed to execute any works incidental or consequential on the exercise of their powers.⁴⁶⁵

The Act further empowered every Urban Authority, subject to approval of the proper officer and subject to the standing orders made by the Minister or proper officer, to enter into any contract necessary or desirable for the discharge of its functions; to write off irrecoverable debts and deficiencies of cash or stores; to charge fees for services, license or permit issued by it; and to authorise the remission of any fees or other charges imposed under the Act if there was good cause.⁴⁶⁶ Above all, every Urban Authority was vested with quasi-legislative powers whereby every Urban Authority could make bylaws with the force of law to enable it implement its plans and projects in discharge of its functions.⁴⁶⁷

The Local Government (Urban Authorities) Act transferred many powers and functions to LGAs which seem to be consistent with the theory of decentralisation and the principle of subsidiarity. Nevertheless, the Act vested in the central government substantial control and supervisory powers over Urban Authorities in the same way like the District Authorities noted under item 3.4.1. For instance, the Act vested in the Minister the power to establish and vary the area of any Urban Authority; power to enforce performance by Urban Authorities and power to dissolve councils in default;

⁴⁶⁴ See s.61, Act No.8 of 1982, *ibid.*

⁴⁶⁵ See s.62, Act No.8 of 1982, *ibid.*

⁴⁶⁶ See ss.63, 64, 65 & 66, Act No.8 of 1982, *ibid.*

⁴⁶⁷ See ss. 79-81, Act No 8 of 1982, *ibid.*

power to approve local government by-laws; power to approve annual recurrent and development budgets; power to approve the local government rates; power to control Urban Authorities borrowing and audit of their accounts through the controller and auditor general; and powers to make orders, impose rules and regulations upon LGAs.⁴⁶⁸

Therefore, like the Local Government (District Authorities) Act, the framework established under the Local Government (Urban Authorities) Act did not provide for central-local government administrative relationship which is necessary and supportive of the desired local government autonomy in Mainland Tanzania. The next item examines the aspects of local government finance under the Local Government Finance Act before the LGRP.

3.4.3 Local Government Finance before the LGRP

Since independence, LGAs were seriously plagued by scarcity of financial resources due to financial mismanagement and unreliable sources of revenue.⁴⁶⁹ LGAs were, since independence, permitted by the central government to administer a number of services but were limited by the ability to finance them.⁴⁷⁰ This made LGAs perpetually dependent to the centre for financing their service delivery and yet there was a great disparity in financial distribution between Urban and Rural Authorities. Financial difficulties were worsened by the overwhelming transfer of responsibilities from the central government to LGAs without sufficient transfer of finance.⁴⁷¹

The situation was the same even after the revival of Urban Authorities in 1978. For instance, as afore noted, the Urban Authorities revived in 1978 had no power to raise and determine expenditure of revenue. In attempt to enable LGAs manage their own

⁴⁶⁸ See ss.5, 10, 71, 75, 76, 80, 81, 82 & 83, Act No.8 of 1982, *ibid.* Also see ss. 10, 11, 12, 13, 31, 33, 34, 44, 45 & 48, Act No.9 of 1982, *loc.cit.*

⁴⁶⁹ See Dryden, S. (1966). *Op.cit.* pp.196-202.

⁴⁷⁰ *Ibid.* p. 211.

⁴⁷¹ *Ibid.* p. 203.

resources and make them able to finance their functions, the government enacted the Local Government Finance Act.⁴⁷² Among other things, the Act vested all the assets and liabilities which were vested on the former Urban and District Councils before the abolition of the Urban and District Authorities on the newly established Urban and District councils established in the area of the previous Urban and District Development Councils respectively.⁴⁷³

In respect of District Councils established in the area of the previous District Development Council, the Local Government Finance Act vested in the new District Councils all sums of money, roads, open places, lands, buildings, waterworks, bridges, piers, ferries, vehicles, goods and all other property of any kind vested in the defunct District Development Council, or held by the government for or on behalf of that District Development Council.⁴⁷⁴ Also, the Local Government Finance Act vested in the re-established District Councils all the assets which were transferred to the government from the former local authority by the Decentralisation Act, and which were subsisting immediately before the commencement of the Act.⁴⁷⁵

Every District Council was further given the discretion (subject to the directions given by the Minister) to transfer some of assets to any Township Authority established within its area of jurisdiction.⁴⁷⁶ Likewise, in respect of Village Councils, the Local Government Finance Act vested in the new Village Councils established or deemed to have been established in the area of the former Village Councils all assets and liabilities which were vested in the former Village Councils immediately before, and subsisting on, the commencement of the Act.⁴⁷⁷

⁴⁷² Act No. 9 of 1982, *loc.cit.*

⁴⁷³ See s. 5(1), Act No. 9 of 1982, *ibid.*

⁴⁷⁴ See s. 5(2), Act No. 9 of 1982, *ibid.*

⁴⁷⁵ *Ibid.*

⁴⁷⁶ See s. 5(7), Act No. 9 of 1982, *ibid.*

⁴⁷⁷ *Ibid.*

Apart from vesting assets and liabilities in the re-established LGAs, the Local Government Finance Act also spelt out the sources of revenue of both Urban and District Authorities.⁴⁷⁸ The Act enumerated a number of revenue sources but in all they can be summarised as all the assets of the respective LGA; all moneys derived from trade, industry, works, services or other undertaking carried on or owned by the respective council; different types of fees and moneys from different fines; moneys collected from rents, taxes, sales or disposition of assets; twenty percent (20%) of rent collected by the central government; all moneys collected from agricultural cess; and any public funds lawfully assigned to respective local government authority.⁴⁷⁹

The Act further imposed upon the central government the duty to provide such amount of annual grants to LGAs subject to general or specific conditions issued by the government; and subject to the directions and guidelines determined by the Minister in consultation with the Minister of finance.⁴⁸⁰ These grants were payable from the public revenue to cover the cost incurred by the Urban or District Authorities in provision of essential social services particularly education, health, water, roads and agriculture.⁴⁸¹ The power to determine the amount of such grants was vested in the Minister in consultation with the Minister of finance.⁴⁸²

Besides central grants, LGAs were also given power to raise funds through loans and taxes subject to approval of the Minister in consultation with the Minister for finance or subject to rules made by the Minister. Also LGAs were empowered to obtain advances from banks by overdraft upon credit of the authority subject to approval of the proper

⁴⁷⁸ See ss. 6-9, Act No.9 of 1982, *ibid.*

⁴⁷⁹ *Ibid.*

⁴⁸⁰ See s. 10, Act No. 9 of 1982, *ibid.*

⁴⁸¹ *Ibid.*

⁴⁸² *Ibid.*

officer.⁴⁸³ The government also enacted the Urban Authorities (Rating) Act, 1983⁴⁸⁴ to enable Urban Authorities and Township Authorities to impose and collect rates.⁴⁸⁵ In the management of local government finance, the Minister was the proper officer for all Urban Authorities.⁴⁸⁶ The RC was the proper officer for each District Authority in his region and assistant proper officer for each Town and Municipal Council within his region.⁴⁸⁷ The Area Commissioner was designated as assistant proper officer for each District Council and for each Township Authority and Village Councils established within his district.⁴⁸⁸ The Director of every Council was the accounting officer and chief executive officer of the respective Council.⁴⁸⁹

The analysis of the provisions of the Local Government Finance Act shows that, in large extent, the Act addressed the question of local government finance. It also appears from this analysis that, the Act vested in LGAs such sources of revenue which are difficult to collect and not reliable. Furthermore, it appears that, the Act vested in the proper officer and in the assistant proper officer too much power to control the local government finance. This curtailed the discretion and the autonomy of LGAs in managing their financial affairs and in determining their own priorities in service delivery. The central-local government administrative relationship was more of agency model than partnership model. The curtailed autonomy of LGAs and several other factors made the government evoke the 1998-2014 LGRP which, among other things, aimed at improving the autonomy of LGAs in managing their financial affairs and determining their own priorities in local service delivery. The next item briefly examines the aspect of local government personnel management in the 1982 resuscitated LGAs before the 1990s LGRP.

⁴⁸³ See ss. 11, 12 & 31, Act No. 9 of 1982, *ibid.*

⁴⁸⁴ Act No.2 of 1983.

⁴⁸⁵ See ss.16-32, Act No.2 of 1983.

⁴⁸⁶ See ss.33 (1) & 34, Act No. 9 of 1982, *loc.cit.*

⁴⁸⁷ See s. 33 (2), Act No. 9 of 1982, *ibid.*

⁴⁸⁸ *Ibid.*

⁴⁸⁹ See 33 (3) & (4), Act No. 9 of 1982, *ibid.*

3.4.4 Local Government Personnel before the LGRP

Among the serious problems that haunted LGAs in Tanzania since or even before the attainment of political independence was lack of sufficient and qualified personnel (human resources) because the local government service had no terms which appeared to attract educated personnel.⁴⁹⁰ The eight years implementation of the decentralisation policy of 1972 worsened the situation because many qualified and experienced local government personnel were either diffused in the central government service or resigned the public service.⁴⁹¹ Upon revival of LGAs, the government enacted the Local Government Service Act, 1982⁴⁹² and the Local Government Negotiating Machinery Act, 1982.⁴⁹³ The former Act established a unified local government service under the Local Government Service Commission (LGSC) and the latter Act repealed the Local Government Service (Negotiating Machinery) Act of 1963 and provided for better mechanisms for workers participation in settlement of disputes in the local government service.⁴⁹⁴

The Local Government Service Commission (the Commission) was established under section four (4) of the Local Government Service Act and all its members were central appointees appointed either by the President or the Minister responsible for local government.⁴⁹⁵ The tenure and terms of service of the members of the Commission would be as determined by the Local Government Service Scheme (the Scheme) made by the Minister responsible for local government.⁴⁹⁶ Nevertheless, such schemes were also subject to amendment, revocation and directives by the President.⁴⁹⁷

⁴⁹⁰ See Dryden, S. (1966). *Op.cit.* pp. 211-214.

⁴⁹¹ See Max, J.A.O. (1991). *Op.cit.* pp. 182-186.

⁴⁹² Act No.10 of 1982.

⁴⁹³ Act No. 11 of 1982.

⁴⁹⁴ See the long title to the two Acts.

⁴⁹⁵ See s.4 (1)-(3), Act No.10 of 1982.

⁴⁹⁶ See ss.4 (4); 5 & 6, Act No.10 of 1982, *ibid.*

⁴⁹⁷ See s. 6, Act No.10 of 1982, *ibid.*

The President was also vested with powers to appoint all City and Municipal Directors while Township Executive Directors and other officers in the District Council were appointed by the Commission.⁴⁹⁸ The Commission was vested with the power to employ and promote local government officers within the category of LGGS five (5) up to ten (10); to act as a disciplinary authority in respect of officers it employed; to deal with allegations against a director and report to the Minister on the disciplinary action to be taken; and to administer local government service examinations.⁴⁹⁹ The Commission was further delegated all the powers of the President in respect of constituting and abolishing offices in the local government service; and making appointments of officers in the local government service, transfer, promotion, termination of appointment, dismissal; and the disciplinary control of persons appointed by any of those offices.⁵⁰⁰

Apart from the Commission, the Act also provided for the powers of the Minister and the Council in respect of the local government service.⁵⁰¹ Thus, apart from the powers to make the Local Government Service Scheme and to appoint some members of the Commission, the Minister was also vested with the power to transfer Directors of District Councils and Urban Councils.⁵⁰² Also the Minister had authority to appoint heads of departments of District and Urban Councils; to transfer heads of departments and staff employed by the Commission; and to act as the disciplinary authority for all Directors and appellate disciplinary authority for officers employed by the Commission.⁵⁰³ He was also responsible for training of local government staff in consultation with the Commission; prescribing the code of conduct for employees of the LGAs; and appointment of District Executive Directors.⁵⁰⁴

⁴⁹⁸ See ss.23-33A, Act No.10 of 1982, *ibid.*

⁴⁹⁹ See s.14B, Act No.10 of 1982, *ibid.*

⁵⁰⁰ See s. 7, Act No.10 of 1982, *ibid.*

⁵⁰¹ See s. 14A, Act No.10 of 1982, *ibid.*

⁵⁰² *Ibid.*

⁵⁰³ See ss.14A & 20A, Act No.10 of 1982, *ibid.*

⁵⁰⁴ *Ibid.*

Under the Local Government Service Act, Council powers over local government personnel were highly restricted. Councils were given powers to employ only such employees other than those appointed by the President, the Commission or the Minister. Councils had disciplinary authority over only the employees employed by them and yet the RC was the final disciplinary appellate authority in that respect.⁵⁰⁵ Council powers over personnel management were further restricted by specification of salary increments by the Commission. The Act expressly provided that Councils had no powers to appoint or to dismiss an officer or employee whose monthly salary exceeded such sum as the Commission would from time to time specify for the LGA.⁵⁰⁶ Therefore, it appears from this discussion that, the 1982 legislative framework had to a great extent centralised the local government service contrary to the decentralisation theory and the subsidiarity principle.

Despite the amendment of the Constitution of the United Republic of Tanzania, 1977 and the enactment of several local government Acts, the central-local government administrative relationship was not properly juridified. None-juridification of central-local government administrative relationship suggests that the purpose of the 1982 legislative framework was not to give autonomy to LGAs through D by D. The purpose of this legislative framework was to subordinate LGAs under the auspices of CCM political Party and consolidate central decision making under socialism. This purpose was clearly reflected under provisions of the Constitution of the United Republic of Tanzania 1977.⁵⁰⁷

The socialist economy had gone following the Zanzibar Resolution of 1986 and party supremacy weathered with introduction of multiparty in Tanzania in 1992. The national

⁵⁰⁵ See s.14C, Act No.10 of 1982, *ibid.*

⁵⁰⁶ See s.8 (2), Act No.10 of 1982, *ibid.*

⁵⁰⁷ See Arts. 3 & 10 of the Constitution of the United Republic of Tanzania, 1977, *loc.cit.*

legal framework had also to be reviewed to reflect these changes. It was of such reasons that the Government evoked the 1998-2014 LGRP in order to, among other things, improve the autonomy of LGAs in the exercise of their statutory powers and discharge of functions. The next item covers the discussion of the 1998-2014 LGRP.

3.5 The 1998-2014 Local Government Reform Programme

Under the discussion of the preceding items, it has been pointed out that the legal framework of central-local government administrative relationship introduced in 1982 did not bring substantial improvements in the autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities in service delivery. The administrative relationship between the two tiers of government remained not only ambiguous and fragmented but also it as control oriented and had many overlaps between the ruling party and LGAs administration.⁵⁰⁸ The 1982 legal framework remained a barrier to local government autonomy and effective local service delivery because it was control-oriented, ambiguous and fragmented.

The government evoked the 1998-2014 LGRP in order to, among other things, improve the capacity of LGAs in service delivery by making LGAs highly autonomous in personnel management, financial affairs and in determining their own priorities in local service delivery.⁵⁰⁹ The plan to undertake the LGRP was spelt out in the CCM election manifesto of 1995 and immediately after the general election, the third phase government adopted the Local Government Reform Agenda, 1996-2000. Subsequent to the adoption of the Local Government Reform Agenda, 1996-2000, the government enacted the Regional Administration Act⁵¹⁰ to make provisions for restructuring the regional administration for the purpose of strengthening and promoting the local

⁵⁰⁸ See Government of the United Republic of Tanzania. (1998). *Loc.cit.*

⁵⁰⁹ On the central objectives of the LGRP see also item 1.2 in Chapter One.

⁵¹⁰ Act No.19 of 1997, *Loc.cit.*

government system in Mainland Tanzania. After the enactment of the Regional Administration Act, the government adopted the LGRPPP I, 1998-2008.

The 1998-2014 LGRP was a continuation of the broad Civil Service Reforms (CSR) and Sector reforms (SR) which started way back in 1993.⁵¹¹ Both the CSR and LGRP had a common vision to change the role of central and sector ministries into policy making, regulatory, monitoring and performance assessment bodies.⁵¹² Central and sector ministries would intervene only where LGAs default in public service delivery. The actual policy implementation would thus be transferred from the central government to LGAs, Executive Agencies and NGOs.⁵¹³ To meet the overall objective of the LGRP in improving public service delivery by making LGAs more democratic and autonomous institutions, the policy paper pointed out four policy areas which required serious reforms: political decentralisation, financial decentralisation, administrative decentralisation and changed central-local government relationship.⁵¹⁴

The four areas of the LGRP would involve: central transfer of power and creation of real multi-functional local councils; central transfer of unconditional grants and giving LGAs financial discretionary powers, freedom to levy local taxes and to make their own budgets that reflect local priorities.⁵¹⁵ It would also involve de-linking local government staff from their respective ministries and giving the councils power and freedom to hire and fire their employees and abolish the previous command driven central-local government administrative relationship in place of central-local government consultations, negotiations and support from central ministries.⁵¹⁶

⁵¹¹ See Government of the United Republic of Tanzania (1996). *Op.cit.*p.1. Also see Government of the United Republic of Tanzania (1998). *Op.cit.* p.6.

⁵¹² *Ibid.*

⁵¹³ *Ibid.*

⁵¹⁴ See the Government of the United Republic of Tanzania. (1998). *Ibid.* pp.14-15.

⁵¹⁵ *Ibid.*

⁵¹⁶ *Ibid.*

The LGRPPP I, 1998-2008 emphasised that, the new local governments would operate under the principles of subsidiarity and holistic local government system. Consequently, the legal framework as the instrument towards achieving the policy objectives and vision would also undergo reforms in order to take aboard the envisaged reforms. The policy paper made it plain that such legal reforms would not be possible by amending the existing legislative framework but through thorough review of the existing legislation and enactment of a comprehensive local government legislation; harmonisation of central and sector legislation; and amendment of the Constitution in order to properly enshrine decentralisation by devolution.⁵¹⁷

The LGRP was, as pointed out under item 1.2 in Chapter one, implemented in two major phases. The first phase started in 1998 and ended in 2008. The second phase started in 2009 and ended in 2014. In the first phase of the LGRP, 1998-2008, the local government legislation and other relevant legislation were amended twice, in 1999 and in 2006.⁵¹⁸ In the first amendment made in 1999, the Local Government Laws (Miscellaneous Amendments) Act,⁵¹⁹ amended all the local government Acts enacted in 1982 and the Regional Administration Act, 1997.⁵²⁰ In this amendment, the Local Government Laws (Miscellaneous Amendments) Act re-defined the role of the Minister responsible for local government and the role of the central government in relation to local government powers and functions as follows.

In re-defined the role of the Minister responsible for local government, the Local Government Laws (Miscellaneous Amendments) Act provided that, the role of the

⁵¹⁷ *Ibid.* pp.9&10.

⁵¹⁸ Amended by Act No.6 of 1999. *Loc.cit.*; and Act No.13 of 2006. *Loc.cit.*

⁵¹⁹ Act No.6 of 1999. *Loc.cit.*

⁵²⁰ The local government Acts which were amended in 1999 by the Local Government (Miscellaneous Amendments) Act, Act No. 6 of 1999 include: the Local Government (District Authorities) Act, Act No.7 of 1982; the Local Government (Urban Authorities) Act No.8 of 1982; the Local Government Finances Act, Act No.9 of 1982; the Local Government Service Act, Act No.10 of 1982; the Local Government Negotiating Machinery Act, Act No. 11 of 1982; and the Urban Authorities Rating Act, Act No. 2 of 1983.

Minister would be to promote decentralisation and devolution of powers and functions from the central government to LGAs and within the local government system from the District Councils level to lower level; to ensure availability of adequate financial resources and other resources for effective and efficient development of local government; to ensure adequate supply of trained, skilled and qualified personnel; and to ensure LGAs are strong, effective and more and more autonomous institutions in managing their affairs.⁵²¹ The role of the Central Government would be: to facilitate autonomous exercise of powers and discharge of functions by LGAs; to formulate national policies and regulatory framework for LGAs; to coordinate and monitor the performance of LGAs; to provide necessary technical support and assistance to LGAs; and to assist the implementation of Council decisions and resolutions.⁵²²

The Local Government Laws (Miscellaneous Amendments) Act also replaced the proper officer and assistant proper officer for the Minister, the Regional Commissioner (RC) and the District Commissioner (DC) as pointed out in item 1.2 in Chapter one.⁵²³ Also, this Act amended the Local Government Service Act⁵²⁴ to, among other things, transfer to LGAs the power to appoint, remunerate, promote, develop, discipline and dismiss their own employees.⁵²⁵ Amendment of the Local Government Service Act had a positive implication on the autonomy of LGAs in managing their personnel affairs. These changes in the local government service lived no longer than they were reversed by the enactment of the Public Service Act, 2002⁵²⁶ which repealed the Local Government Service Act.⁵²⁷

⁵²¹ See ss.4 & 40, Act No. 6 of 1999. *Loc.cit.*

⁵²² See ss.35 & 53, Act No. 6 of 1999, *ibid.*

⁵²³ See s. 3(d), Act No. 6 of 1999, *ibid.*

⁵²⁴ Act No. 10 of 1982. *Loc.cit.*

⁵²⁵ See s. 87, Act No. 6 of 1999, *loc.cit.*

⁵²⁶ CAP. 298, R.E.2002.

⁵²⁷ See s.35(c), CAP. 298, *ibid.* Also for detailed discussion on the local government service see item 5.2 in Chapter Five.

The Local Government Laws (Miscellaneous Amendments) Act also amended the the Local Government Finance Act by (among other things) deleting the term proper officer and imposing obligation on the Central Government to provide LGAs with annual block grants to foot the cost incurred by LGAs in development and provision of essential services as well as equalisation grants.⁵²⁸ The amendment of the Local Government Finance Act was intended to increase the capacity and autonomy of LGAs in managing their financial affairs in order to meet the overall objective of the LGRP-to improve the capacity of LGAs in service delivery.

In the second amendment made in 2006, the Local Government Laws (Miscellaneous Amendment) Act⁵²⁹ among other things, elaborated further the role of the central government, sector ministries, the RC and the DC in relation to the powers and functions of LGAs.⁵³⁰ This amendment added three more roles of the central government in relation to local government powers and functions, i.e. to provide and secure enabling environment for the successful performance by LGAs of their duties; to ensure compliance by LGAs with government decisions and guidelines in relation to local government system; and to do such acts or things as shall facilitate or secure effective and efficient lawful execution by LGAs of their statutory or incidental functions.⁵³¹ The same roles have concurrently been vested in the RC and the DC.⁵³²

The Local Government Laws (Miscellaneous Amendment) Act also added a new subsection which defines the role of sector ministries in relation to local government powers and functions.⁵³³ The new provision provides that, sector ministries shall, in relation to LGAs, perform the following functions: to supervise professionalism of sector personnel

⁵²⁸ See ss. 65(c) & 68 of Act No. 6 of 1999. *Loc.cit.*

⁵²⁹ Act No.13 of 2006. *Loc.cit.*

⁵³⁰ See ss. 9, 10 & 20, Act No.13 of 2006.

⁵³¹ See s.10 (b) & 20 (b), Act No.13 of 2006, *ibid.*

⁵³² See s.26, Act No.13 of 2006, *ibid.*

⁵³³ See s. 10 (c), Act No.13 of 2006. *ibid.*

in LGAs; to ensure quality assurance in performance of technical personnel; to undertake monitoring and evaluation of performance of technical personnel; to ensure all posts are filled as required by establishment; to ensure human resources development; and to ensure availability of equipment, human resources and funds for implementation of sector programmers in LGAs.⁵³⁴

The Local Government Laws (Miscellaneous Amendment) Act also imposed a duty on LGAs to prepare and submit to the RC and DC quarterly progress report of implementation of their development plans or such other report as may be required by RC and the DC in relation to the latter's functions under the Regional Administration Act.⁵³⁵ Furthermore, this amendment re-defined the role of the RS in relation to LGAs and established the District Consultative Committee (DCC) in every district and states their function in relation to LGAs in Mainland Tanzania.⁵³⁶ Another important provision brought by the Local Government Laws (Miscellaneous Amendment) Act was the establishment of the office of the Divisional Secretary and his functions at the divisional level.⁵³⁷

The second phase, 2009-2014 was, as noted under item 1.2 in chapter one, a continuation of the first phase. The second phase of the LGRP was mainly meant to consolidate decentralisation by devolution (D by D).⁵³⁸ In this phase, the local government legislation was further amended in 2009.⁵³⁹ In the 2009 amendment of local government legislation, only two local government legislations were amended: the Local Government (Urban Authorities) Act and the Local Government (District Authorities)

⁵³⁴ *Ibid.*

⁵³⁵ See ss.9 (b) &21(b), Act No.13 of 2006, *ibid.*

⁵³⁶ See ss. 29 & 30, Act No.13 of 2006, *ibid.* For detailed discussion on the role of the RS in relation to LGAs and the District Consultative Committee (DCC), see item 4.3.1 in Chapter Four.

⁵³⁷ See s.31, Act No.13 of 2006, *ibid.*

⁵³⁸ See the Government of the United Republic of Tanzania. (2009). *Op.cit.*pp.1-3 & 47-48.

⁵³⁹ Amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2009, Act No.17 of 2009.

Act. The Written Laws (Miscellaneous Amendments) Act⁵⁴⁰ mainly strengthened the Village, *Kitongoji* and *Mtaa* governments in order to consolidate devolution of powers and functions from the higher local government levels to lower levels of Local Government Authorities.⁵⁴¹ It provided for (among other things) the establishment and composition of the Village Council;⁵⁴² the role of the Village Assembly;⁵⁴³ and election and composition of *Mtaa* and *kitongoji* governments.⁵⁴⁴ Therefore, the 2009 amendment of local government legislation had little to do with the central-local government administrative relationship.

Besides the above three major amendments of the local government Acts and other relevant legislation made in the two phases of the 1998-2014 LGRP, review of the Local Government Reform Programme Policy Paper II shows that by the end of the first phase of the LGRP in 2008, the legal harmonisation Task force had also started reviewing sector laws and policies⁵⁴⁵ and the 1982 Local Government Acts were under review since 2004. By 2008 the review of the 1982 local government Acts was at the stage of preliminary study for a comprehensive Local Government law.⁵⁴⁶

In 2012, the President appointed the Warioba Commission of constitutional review. The Commission submitted its draft Constitution of the proposed Constitution in October, 2014 but by the time of concluding this study, the proposed Constitution was still pending referendum. Therefore, notwithstanding all the efforts made by the government to review the local government legislation and other legislation as well as review of the Constitution of the United Republic of Tanzania, by the end of the second phase of the LGRP in 2014 and up to the time of completing this study in June, 2016, the envisaged

⁵⁴⁰ Act No.2 of 2009, *ibid.*

⁵⁴¹ See for instance ss.4-7, 10 &13, Act No.2 of 2009, *ibid.*

⁵⁴² See ss.5 &6, Act No.2 of 2009, *ibid.*

⁵⁴³ See s.7, Act No.2 of 2009, *ibid.*

⁵⁴⁴ See ss.10, 12 & 13, Act No.2 of 2009, *ibid.*

⁵⁴⁵ See Government of the United Republic of Tanzania. (2009). *Op.cit.* p.12.

⁵⁴⁶ *Ibid.*

enactment of a comprehensive uniform local government Act, harmonisation of central and sector laws and the envisaged amendment of the Constitution to embrace decentralisation by devolution were yet in place.

The law governing the present central-local government administrative relationship discussed in the subsequent chapter is therefore mainly based on the Constitution of the United Republic of Tanzania as amended in 1984; the 1982 local government Acts as amended in the two phases of the LGRP: in 1999, 2006 and in 2009, and other relevant central and sector legislation enacted before and after commencement of the 1998-2014 LGRP. It is this constitutional and legislative framework which constitutes the present legal framework of central local government administrative relationship which is examined in the subsequent two chapters.

3.6 Conclusion

This chapter made an attempt to examine the historical development and evolution of central-local government administrative relationship and local government autonomy in Mainland Tanzania. In this endeavour, the chapter covered a discussion of the major political, administrative and economic policy changes and decisions since the 1950s to the present which have in one way or other shaped the present legal framework of central-local government administrative relationship in Mainland Tanzania. It has been pointed out in this chapter that in the last eight years of the British rule, the British administration tried to democratise and establish a local government system based on decentralisation by devolution and the subsidiarity principle. Although the legal framework did not provide for true democracy as election to the Councils were characterised by racism, there were some improvements in the autonomy of LGAs in management of personnel and financial affairs.

The British system of local government introduced in the 1950s was inherited by the government of Tanganyika (now Mainland Tanzania) at independence, save the Native Authorities and the racial electoral system which were abolished soon after independence. As an endeavour to strengthen national unity, stability, and create a strong political and economic base, the government also changed from multiparty political system to one-party system soon after independence. The adoption and implementation of one-party political system had the effect of placing the party supreme over all government institutions (including LGAs). The supremacy of the party was manifested under the Constitution and its legacy, notwithstanding the shift to multiparty democracy in the 1990s, survives to date.

The Adoption of one-party state was followed by the adoption of the Arusha Declaration of 1967 and its accompanying policy of socialism and self-reliance. The operation of the one-party state and the Arusha Declaration of 1967 grabbed even the little autonomy that LGAs had soon before and after independence. This reduced LGAs to mere appendages of the Party and the central government. Consequently, LGAs failed and were ultimately abolished in 1972 through the decentralisation policy. The decentralisation policy which was thought to transfer decision making powers to the people was in itself inconsistent with the theory of decentralisation and the principle of subsidiarity because, instead of devolving administrative powers to the people, it resulted into deconcentration of administrative powers and decision making at the regions and districts levels in addition to the central and sector ministries level. The decentralisation scheme failed and LGAs were reinstated. Urban Authorities were reinstated in 1978 and the full local government system in 1982. The reinstated LGAs were still not autonomous in managing their personnel, financial affairs and in determining their own priorities. It was for such reasons the government invoked the 1998-2014 LGRP. The review and amendment of local government legislation and other relevant legislation during the 1998-2014 LGRP

resulted into the present legal framework of central-local government administrative relationship discussed in the next chapter.

CHAPTER FOUR
THE LEGAL FRAMEWORK OF CENTRAL-LOCAL GOVERNMENT
ADMINISTRATIVE RELATIONSHIP IN MAINLAND TANZANIA

4.1 Introduction

This chapter examines the present legal framework of central-local government administrative relationship. An attempt is made to analyse the provisions of the Constitution of the United Republic of Tanzania, 1977, the provisions of principal and subsidiary legislation and some judicial decisions relating to central-local government administrative relationship. The purpose of the chapter is to test the application of the juridification and instrumental legal theory in view to examining the manner the present legal framework of central-local government administrative relationship encompasses the features of D by D, the subsidiarity and holistic principles which are the *conditio sine qua non* for local government autonomy.

In analysis of the provisions of the Constitution, the chapter examines the provisions of the Constitution relating to the establishment of LGAs, powers and functions LGAs, sources of local government revenue, local government personnel management and those related to central-local government administrative relationship and local government autonomy. In the analysis of the legislative framework an attempt is made to examine the provisions of various principal and subsidiary legislation relating to central-local government administrative relationship and local government autonomy especially those provisions related to the establishment of LGAs, the powers and functions of LGAs, the sources of local government revenue and the management of local government personnel.

The chapter is organised into four sections: introduction; the Constitutional framework of central-local government administrative relationship; the legislative framework of central-local government administrative relationship; and the chapter conclusion. The chapter discussion starts by examining the constitutional framework of central-local government relationship as hereunder.

4.2 The Constitutional Framework of Central-Local Government Relationship

A fundamental feature of the government of the United Republic of Tanzania is its unitary written Constitution which establishes one state sovereign republic.⁵⁴⁷ Throughout history, government administration in Tanzania has been exercised by the national and LGAs. Government powers and functions and, in particular, the delivery of public services have been shared by both central government and LGAs but without constitutionalisation of the latter until 1984 when for the first time, they were partially constitutionalised through the Fifth Constitutional Amendment Act, 1984.⁵⁴⁸ Before this, LGAs were only recognised and established by ordinary Acts of Parliament.⁵⁴⁹

Being a creature of statutes and not of the Constitution, it was easy for the government to modify or to repeal the local government Acts in order to change the structure, powers and functions of LGAs. Unconstitutionalisation of LGAs was said to be one of the reasons why LGAs were easily abolished in 1972 even without consultation with the LGAs themselves and their representative associations like the Association of Local Authorities of Tanganyika (ALAT), the Association of Rural Local Authorities of Tanganyika (ARLAT) and the Federation of the Associations of Local Authorities of Tanganyika (FALAT).⁵⁵⁰ This reflects the argument by Bailey who in analysing the

⁵⁴⁷ See Arts.1, CAP. 2, R.E.2002.

⁵⁴⁸ Act No.15 of 1984.

⁵⁴⁹ For more detail on the constitutionalisation of LGAs in Mainland Tanzania see item 3.4 in the preceding chapter.

⁵⁵⁰ See Max, J.A.O.(1991). *Op.cit.* pp.63-66.

constitutional status of LGAs in UK states that, in the UK, LGAs are wholly subject to central control because the Parliament can allocate functions to local bodies or take them away. The Parliament can also prescribe how local government powers and functions shall be carried out or can change the structure and composition of LGAs as it chooses.⁵⁵¹ Such relationship is true for the UK's local government system because her LGAs are not constitutionalised in a written Constitution.

Following the fifth constitutional amendment of 1984, LGAs in Mainland Tanzania were entrenched under the Constitution of the United Republic of Tanzania, 1977 and they acquired a constitutional status.⁵⁵² Consequently, the constitutional definition and interpretation of the term government under Article 6 and Article 151 included LGAs. For instance, Article 6 of the Constitution defines government to include LGAs and Article 151 includes LGAs in the meaning of the term government as it provides, "*in this Constitution unless the context otherwise requires, the government includes...a District Council or Urban Authority and any person exercising any power or authority on behalf of ... or local government authority.*"⁵⁵³

Besides the inclusion of LGAs in the definition of government, further analysis of the provisions of the Constitution of the United Republic of Tanzania shows several other provisions relating to central-local government administrative relationship and local government autonomy in Mainland Tanzania.⁵⁵⁴ Basically, such provisions are those relating to the nature of the government of the United Republic of Tanzania;⁵⁵⁵ the powers of the President in relation to the administrative functions of the government and the public service;⁵⁵⁶ the powers of the Public Service Commission and other executives

⁵⁵¹ See Bailey, S.H.(1997). *Op.cit.* p.243.

⁵⁵² See Art.145 (1)-(2), CAP.2, *loc.cit.*

⁵⁵³ See Art. 151. *Ibid.*

⁵⁵⁴ See the constitutional provisions relating to central-local government administrative relationship under **Appendix III.**

⁵⁵⁵ See Art. 1, CAP. 2, *loc.cit.*

⁵⁵⁶ See Art. Arts. 33-36, CAP. 2, *ibid.*

in the public service;⁵⁵⁷ the establishment, powers and functions of LGAs;⁵⁵⁸ and the powers of the Controller and Auditor General (CAG) in relation to government accounts (including local government accounts) in Mainland Tanzania.⁵⁵⁹ Notwithstanding the fact that these provisions do not directly address central-local government administrative relationship and local government autonomy, they are in one way or other important in understanding the present central-local government administrative relationship and the degree of local government autonomy in Mainland Tanzania.

Just to start with the provisions of Article 1 of the Constitution; Article 1 of the Constitution of the United Republic of Tanzania declares the United Republic of Tanzania a unitary sovereign state. According to Shivji, I.G., the term state is often used interchangeably with the term government though in strict sense the two are not the same. Whereas the term government in a strict sense denotes the executive arm of the state, the term state means more than the executive. It means the central organ in the society in which political power is ultimately concentrated which includes the legislature and the judiciary.⁵⁶⁰ Nonetheless, this study focused on the executive arm of the state which constitutes the government.

In the light of Article 1 of the Constitution of the United Republic of Tanzania, sovereignty in Mainland Tanzania resides in a single entity (the Central Government). Under a unitary state, there is no constitutional sharing of powers between the national and sub-national governments. This constitutional setup implies that, powers and functions of LGAs depend on the Central Government. Unless the Constitution states otherwise, in Mainland Tanzania, LGAs only exercise those powers and functions which the Central Government wishes to delegate to them or does not wish to perform. This

⁵⁵⁷ See Art. 36(3), CAP. 2, *ibid.*

⁵⁵⁸ See Arts. 145 & 146, CAP. 2, *ibid.*

⁵⁵⁹ See Art. 143 (2) & (3), CAP. 2, *ibid.*

⁵⁶⁰ See Shivji, I.G. (Ed). (2004). *Constitutional and Legal System of Tanzania: A Civic Source Book*. Dar-Es-Salaam: Mkuki na Nyota Publishers Ltd. pp.33-38.

view is also supported by some scholarly works.⁵⁶¹ Authors argue that in unitary states, LGAs exercise only subsidiary functions or functions which the central government does not want to perform or wishes to delegate to sub national governments.⁵⁶² Tanzania being a unitary state, the powers and functions of LGAs may therefore be widened or narrowed at the desire of the central government because the former are by necessary implication subordinate to the latter. The nature of the Government of Mainland Tanzania is also stated under the LGRPPP which states:-

*Tanzania (Mainland) is a unitary state. LGAs operate with discretionary powers within a national context of legislation and regulations enacted by Parliament and guidelines issued by Government (Central Government). LGAs are obliged to follow national priorities as expressed in national legislation and development plans. Areas of national importance, including national policy making, law and order, national institutions and foreign relations, are the sole responsibility of Central Government.*⁵⁶³

The above quoted policy statement shows that, in Tanzania, LGAs are subordinate to the Central Government. The discretion of LGAs is limited not only by the law enacted by the Parliament but also by various guidelines, directives and priorities of the Central Government. The LGRPPP was made in 1998, twenty one (21) years after the Constitution of the United Republic of Tanzania was made in 1977. The LGRPPP had therefore to align with the setup of the Constitution which establishes a unitary state of Tanzania. The impact of such constitutional setup is that, LGAs function as administrative agents of the Central Government in service delivery.⁵⁶⁴ In a unitary state LGAs cannot stand independently from central government tutelage.

⁵⁶¹ See for instance Shah, A. & Shah, S. (2006). *Op.cit.* p.4.

⁵⁶² *Ibid.*

⁵⁶³ See Government of the United Republic of Tanzania. (1998). *Op.cit.* p.13.

⁵⁶⁴ See for instance, Vincent CS. (2015). *Loc.cit.* Also see Shah, A. & Shah, S. (2006). *Loc.cit.* For more detail on the implication of the present legal framework of central-local government administrative relationship on the autonomy of LGAs in Mainland Tanzania see items 5.2 and 5.4 in Chapter Five.

The relevance of the provision of Article 1 of the Constitution in relation to central-local government administrative relationship and local government autonomy in Mainland Tanzania may be noted under Articles 33-36 of the Constitution which relate to the powers of the President of the United Republic of Tanzania. In the light of Article 1 of the Constitution, the provisions of Article 33(2) and Article 34 (3) of the Constitution which vest all authority of the government in the President as head of both the state and the government extends to the functions of LGAs.

Extension of the authority of the President to the functions of LGAs is cemented by the provisions of Article 35(1)-(2) of the Constitution which provide that all executive functions discharged by officers of the government shall be so done on behalf of the President and that the President has authority to issue orders and directives in respect of all such executive functions discharged by officers of the government in Mainland Tanzania. Provided that the definition of government under Article 6 and Article 151 of the Constitution includes LGAs and any person exercising powers on that behalf, all the executive functions discharged by LGAs are also discharged on behalf of the President. For such reason, the constitutional powers of the President to issue orders and directives in respect of all executive functions discharged by officers of the government extends to the local government level.

The other constitutional powers of the President which extends to the local government level are those provided under Article 36 (1) which vests in the President the authority to constitute or abolish any office in the service of the government. Also, Article 36(2) vests in the President the authority to appoint leaders and chief executives in the service of the government and Article 36(4) vests in the President the authority to discipline any public servant in the service of the government. These constitutional provisions have in several times been invoked by the President in respect of local government affairs. For instance, although the authority for the appointment of District and Municipal Directors

under the Public Service Act, 2002⁵⁶⁵ is vested in the Minister responsible for local government,⁵⁶⁶ in July 2016, the President appointed all Council Directors including five (5) City Council Directors, twenty one (21) Municipal Council Directors, twenty two (22) Town Council Directors and one hundred thirty seven (137) District Council Directors in Mainland Tanzania.⁵⁶⁷

Furthermore, although the law vests in the Chief Secretary the disciplinary authority of City Directors and in the Minister responsible for local government the disciplinary authority of District and Municipal Directors;⁵⁶⁸ on 19th April, 2016, the President suspended the City Director of Dar es Salaam City Council and on 30th July, 2016, the President sacked the Council Director of Bagamoyo District Council.⁵⁶⁹ Under the Public Service Act, the President is the final disciplinary authority but he directly invoked disciplinary measures over Council Directors skipping their immediate and relevant disciplinary authorities.⁵⁷⁰ Such usurp of powers by the President appears right in the light of the provisions of Article 36(2) and Article 36(4) of the Constitution of the United Republic of Tanzania which vest in the President the authority to appoint leaders and discipline any public servant in the service of the government. Nonetheless, the authority vested in the President under these Articles does not mean that the President

⁵⁶⁵ CAP. 298, R.E.2002.

⁵⁶⁶ See s.5(1)(a)(iii), CAP. 298, *ibid.* Also see Clause 6.2.3 of the Public Service Recruitment Code of Good Practice, 2007, G.N. No.54 of 2007.

⁵⁶⁷ See MWANANCHI, 7th July, 2016. Retrieved August 12, 2016 from the World Wide Web: <http://www.mwananchi.co.tz/habari/JPM-ateua-wakurugenzi--halmashauri-za-majiji--wilaya-/1597578-3283900-ru9sol/index.html>. Website visited on 12th August, 2016. Also see IPP media. Available at <http://ippmedia.com/en/news/magufuli-names-new-district-executive-directors>.

⁵⁶⁸ See ss.4 (3)(d) & 5 (a) (iii), CAP. 298, *loc.cit.* Also see Reg.35 (2)(a) & (b) of the Public Service Regulations, 2003, G.N. No.168 of 2003; Clause 7 (2)&(3)of the Public Service Scheme, 2003, G.N. No.169 of 2003; Clause 7.2.2 & 7.3 of the Public Service Disciplinary Code of Good Practice, 2007, G.N.No.53 of 2007; and Clause 6 (2) & 7(1) (e) of the Local Government Service Scheme, 2008, G.N. No.146 of 2008.

⁵⁶⁹ See the DAILY NEWS, 19th April, 2016. Retrieved August 12, 2016 from the World Wide Web:<http://www.dailynews.co.tz/index.php/home-news/48983-magufuli-revokes-dar-city-director-appointment>. Also MWANANCHI, 1st August, 2016.

⁵⁷⁰ See s.25 (1) (a) & (d), CAP. 298, *loc.cit.* Also see Reg.60 (1)&(5), G.N. No.168 of 2003, *loc.cit.*; Clause 48(1), G.N. No.169 of 2003, *loc.cit.*; Clause 25.1, G.N.No.53 of 2007, *loc.cit.*; and Clause 66(1), G.N. No.146 of 2008, *loc.cit.*

has the power to violate specific legislation such as the Public Service Act, 2002 which is meant to enrich the relevant constitutional provisions.

Apart from the constitutional provisions on the powers and functions of the President relating to LGAs, the Constitution also vests in the Public Service Commission the authority to appoint, to promote and to discipline non-leaders or non-chief executives in the service of the government.⁵⁷¹ Furthermore, the Constitution vests in the CAG the power and responsibility of ensuring all the moneys authorized by the law enacted by the Parliament (including LGAs) are spent and applied in accordance with the purposes for which such moneys were authorised.⁵⁷² The constitutional powers vested in the CAG involves the right of any government employee authorized by the him to examine books, records, statements of accounts, reports and all other documents concerning local government accounts in every year.⁵⁷³

The Constitution further empowers the President to appoint RCs for every region in Mainland Tanzania. It imposes on every RC the duty to supervise the discharge of all the duties and functions of the government in the region assigned to him and discharge all duties and functions specified under any written law as being functions of the RC and all such powers specified by any law enacted by the Parliament.⁵⁷⁴ Although the provisions of Article 61 do not specifically mention LGAs, the fact that the Constitution defines the term government to include LGAs,⁵⁷⁵ the duty of the RC to supervise the discharge of all the duties and functions of the government under the Constitution extends by necessary

⁵⁷¹ See Art.36 (3), CAP.2, *loc.cit.*

⁵⁷² See Art.143 (2) (b), CAP.2, *ibid.*

⁵⁷³ See Art.143 (2)(c) & Art.143 (2) & (3), CAP.2, *ibid.*

⁵⁷⁴ See Art. 61(1), (2) & (4), CAP. 2, *ibid.*

⁵⁷⁵ See Art.6 &51, CAP. 2, *loc.cit.*

implication to LGAs. The role of the RC is therefore vital in the LGAs' exercise of power and discharge of their functions.⁵⁷⁶

The provisions of Article 145 and Article 146 which provide for the establishment, rationale, powers and functions of LGAs in Mainland Tanzania are also worth of being examined in this chapter though in brief. These provisions are important in understanding the present central-local government administrative relationship and the degree of local government autonomy in Mainland Tanzania. On one hand, the provisions of Article 145(1)-(2) of the Constitution provide for the establishment of LGAs in Mainland Tanzania and require the Parliament to enact a law providing for the establishment of LGAs, their structure, composition, sources of revenue and procedures for conducting their business.

Article 145(1)-(2) makes the establishment of LGAs in Mainland Tanzania a mandatory requirement. On the other hand, the provisions of Article 146(1) stipulate the purpose of LGAs to be the transfer of power to the people and that LGAs shall have the right and power to participate and involve the people in planning and implementation of development programmes within their areas. LGAs are also obliged under Article 146(2) of the Constitution to perform the functions of local government in its area; to ensure enforcement of law and public safety of the people; and to consolidate democracy and apply it to accelerate development of the people in conformity with the provisions of the law establishing them.

The provisions of both Article 145 and 146 are vital particularly on the constitutional status of LGAs. The obligation imposed on the Parliament to establish LGAs in Mainland Tanzania and the mandatory general functions of LGAs have the meaning that

⁵⁷⁶ For detailed discussion on the role of the RC and the CAG in LGAs' exercise of power, LGAs' discharge of functions and management of local government finance see item 4.3.1 in this chapter and item 5.3 in chapter five.

LGAs are constitutionally protected. The constitutional status of LGAs in Mainland Tanzania stands far better than that of the UK. The UK, having unwritten Constitution, implies that her LGAs are typically a creature of Parliamentary Acts and, as argued by Bailey, they are wholly subject to central control.⁵⁷⁷ The constitutionalisation of LGAs in Mainland Tanzania is a positive move towards the protection of local government and local government autonomy because LGAs cannot easily be abolished today as was the case in 1972.

Nonetheless, compared to the UN guidelines on decentralisation and strengthening of LGAs, the provisions of the Constitution of the United Republic of Tanzania relating to the establishment, powers, functions and resources of LGAs *vis-a-vis* the central government seem to be somewhat wanting.⁵⁷⁸ For instance, the UN guidelines on decentralisation and strengthening of LGAs requires LGAs to be recognised in the Constitution as legally autonomous and their establishment, powers, functions as well as the demarcation of responsibilities between them and the upper spheres of government (central government) to be stated under the Constitution. In view of these guidelines, the recognition of LGAs in the national Constitution may not be enough for effective central-local government administrative relationship and local government autonomy.

In addition to establishing local government, the Constitution ought to be specific on the local government powers and functions, the sources of local government revenue and the power competences between the central and LGAs. Viewed in this way, the provisions of Articles 145 and 146 of the Constitution of the United Republic of Tanzania seem to

⁵⁷⁷ See Bailey, S.H.(1997). *Loc.cit.*

⁵⁷⁸ The UN guidelines on decentralisation and strengthening of LGAs were made by the United Nations to provide for a guide on the power and responsibilities of LGA and their administrative relationship with other spheres of government. These guidelines are important devise or benchmark in assessing the suitability of the legal framework of central-local government administrative relationship across nations. For detail, see the UN-HABITA.(2007). *International Guidelines on Decentralisation and Strengthening of Local Government Authorities*. Retrieved April 10, 2016 from the World Wide Web: https://www.uclg.org/sites/default/files/guidelines_0.pdf.

be lacking some important information which is vital in the protection and realisation of local government autonomy as required by, not only the UN guidelines on decentralisation and strengthening of LGAs, but also the decentralisation theory and the subsidiarity principle. For instance, Article 145 provides;-

There shall be established local government authorities in each region, district, urban area and village in the United Republic, which shall be of the type and designation prescribed by law to be enacted by Parliament or by House of Representatives. ...Parliament or House of Representatives, as the case may be, shall enact a law providing for the establishment of local government authorities, their structure and composition, sources of revenue and procedure for the conduct of their business.⁵⁷⁹

By the above quotation it appears that, the actual establishment and designation of the types of LGAs, their powers and functions, their sources of revenue and the mode of conducting their business (including their relationship with the central government) are dependent on Acts of Parliament. The provisions of Article 146 attempt to define the powers and functions of LGAs as follows;-

The purpose of having Local Government Authorities is to transfer authority to the people. Local Government Authorities shall have the right and power to participate, and to involve the people, in the planning and implementation of development programmes within their respective areas and generally throughout the country. ...a Local Government Authority, in conformity with the provisions of the law establishing it shall have the following functions: to perform the functions of local government within its area; to ensure the enforcement of law and public safety of the people; and to consolidate democracy within its area and to apply it to accelerate the development of the people.⁵⁸⁰

The above quoted provisions of the Constitution seem to embody the concept of decentralisation under the Constitution of the United Republic of Tanzania by stating the purpose of having local government authorities is to transfer authority to the people.

⁵⁷⁹ See Art. 145(1) &(2), CAP. 2, *loc.cit.*

⁵⁸⁰ See Art. 146(1) & (2), CAP. 2, *ibid.*

However, the powers and functions of LGAs stated under the provisions of Article 146 (2) of the Constitution are not specific on the concrete powers and functions of LGAs. In view of the UN guidelines on decentralisation and strengthening of LGAs, the Constitution should have laid down the framework and basic principles from which the Parliament would proceed enacting the said Acts to provide for the specific powers, functions, sources of revenue like the case in some selected countries for this study discussed hereinafter.⁵⁸¹ Having regard to the theory of Juridification and the Instrumental theory of law, the provisions of the Constitution of the United Republic of Tanzania regarding LGAs and their administrative relationship with the Central Government do not reflect the features of D by D and the subsidiarity principle. If the purpose of the Constitution were to effect D by D and establish autonomous LGAs in Mainland Tanzania, in the light of the Instrumental theory of law, the provisions of the Constitution fail to meet that end.

It has also been pointed out in the preceding chapter that the Warioba Commission on constitutional review submitted its draft of the proposed Constitution in October, 2014. The proposed draft Constitution contains Articles which provide for establishment of LGAs, purpose of LGAs, powers of LGAs and leadership in LGAs.⁵⁸² Article 124(1) rephrases the provisions of Article 145(1) of the current Constitution. It provides: *there shall be Local Government in every region, municipality, district, town and village in the United Republic which shall be of types and names specified by an Act of Parliament or by the Council of Representatives.*⁵⁸³ The provisions of this article are the same as the provisions of Article 145(1) of the current Constitution in force. The only slight difference is that Article 124(1) of the proposed Constitution uses the term “municipality” in place of the term ‘Urban Area’ used under Article 145(1) of the Constitution in force.

⁵⁸¹ Also see the discussion on the Constitutional framework *vis-à-vis* the UN guidelines on decentralisation and strengthening of LGAs under item 5.2 in Chapter Five.

⁵⁸² Articles 124, 125 & 126 of the Proposed Constitution, 2014.

⁵⁸³ See Art. 124(1) of the Proposed Constitution of the United Republic of Tanzania, 2014.

The proposed Constitution adds immediately after sub-Article (1) of Article 124 sub-Article (2) which provides for the purpose of having LGAs. Sub-Article (2) provide that, *the purpose of the existence of Local Government is to devolve power to the people to give them the right and authority to participate in the planning and implementation of development activities in their area and across the country as a whole.*⁵⁸⁴ If closely examined, one notes that the content of Article 124 (2) is a replica of Article 146(1) of the Constitution in force. The only difference is on the use of the phrase ‘devolve power’ instead of the phrase ‘transfer power’ which is used in the Constitution in force. Furthermore, in the proposed draft Constitution the focus of ‘*the right and authority to participate in the planning and implementation of development activities*’ is on the people while under the Constitution in force the focus is on the LGAs as having the right to participate and involve the people in planning and implementation of development activities.⁵⁸⁵

In addition to the purpose of LGAs, Article 124(3) commits the Parliament to enact laws to create the structures, membership, election procedures, powers, duties and functions of LGAs. The proviso to Article 124(3) of the proposed draft constitution runs *mutatis mutandis* with the proviso to 145(2) of the Constitution in force. The slight difference is that, the proposed Article 124(3) adds ‘election procedures,’ ‘duties and functions of LGAs’ and is silent on the sources of revenue and procedure for the LGAs in conducting their business, matters which are provided under Article 145(2) of the Constitution in force .

In respect of powers and functions of LGAs, Article125 of the proposed Constitution provides:

⁵⁸⁴ See Art.124(2)

⁵⁸⁵ See 146(1), CAP.2, *loc.cit.*

Without prejudice to the provisions of this Constitution, Local Government, in conformity with the provisions of national law shall have the authority to execute the following functions: (a) ensure the protection and security of citizens and their property in their areas; (b) provide better service to the citizens of the area; (c) involve citizens in planning, decision making and implementing their development plans; and (d) strengthening and using democracy for the accelerated development of the country.

This Article enumerates four general powers and functions of LGAs. The powers are almost similar to the general powers and functions of LGAs provided under Article 146(2) of the Constitution in force. The only difference is that, the provisions of the said Article¹²⁵ are clearer than the provisions of Article 146(2) (a) of the Constitution in force. Article 126 provides for the manner leadership in LGAs shall be obtained. In this respect, the proposed Constitution states that *leadership in Local Government will represent the citizens, and Local Government officials shall assume office through the process of election or appointment under an Act of Parliament...*⁵⁸⁶ This is completely a new provision of which purpose is to ensure that LGAs are manned by democratically elected representatives to represent the interests of their people.

In view of the UN guidelines on decentralisation and strengthening of LGAs, the above analysed provisions of the proposed Constitution pending referendum do not cover the features of D by D and the subsidiarity principle which would guarantee good central-local government administrative relationship and give autonomy to LGAs in the exercise of their powers and in discharging their functions. The proposed draft Constitution does not state the types of LGAs, the authority for the establishment and dissolution of LGAs, the specific powers and functions of LGAs, the sources of local government revenue, management of local government personnel, the authority to deal with intergovernmental disputes and the administrative relationship between the two levels of government.

⁵⁸⁶ See Article 126 of the Proposed Constitution, *ibid*.

In view of the theory of Juridification and the Instrumental theory of law, the provisions of the proposed draft Constitution of the United Republic of Tanzania regarding LGAs do not reflect the features of D by D and the subsidiarity principle. Even if the proposed draft Constitution will come into force, it has no provisions for clear central-local government administrative relationship and local government autonomy proposed under the UN guidelines on decentralisation and strengthening of LGAs, and under the LGRPPP in Mainland Tanzania.

Review of the Constitutions of some selected countries (the United Kingdom, the Philippines Republic, the Republic of South Africa, the Republic of Kenya and the Republic of Uganda) provides some good practices that reflect most of the UN guidelines on decentralisation and strengthening of LGAs. The first Constitution which encompasses most of the UN guidelines on decentralisation and strengthening of LGAs is the Constitution of the Republic of Philippines. The Philippines Republic is among the Asian Countries with a strong local government system and well elaborated administrative relationship between the central and LGAs.⁵⁸⁷ The Republic of Philippines is a sovereign and unitary democratic republic with decentralised system of administration.⁵⁸⁸ It is constitutionally decentralised into regions and LGAs which include Provinces, Cities, Municipalities and Barangays.⁵⁸⁹

The territories and political subdivisions of LGAs are constitutionally declared autonomous.⁵⁹⁰ Also the Constitution vests in each local government unit the power to create its own sources of revenues and levy taxes, fees, and charges.⁵⁹¹ Although these powers are subject to guidelines and limitations provided by the Congress, the

⁵⁸⁷ See Bonoan, M.B. (2010). *Loc. cit.*

⁵⁸⁸ See Article I & s. 1 of Article II of the Constitution of the Republic of Philippines, 1987.

⁵⁸⁹ See s.1 of Article X, *ibid.*

⁵⁹⁰ See ss. 1, 2, 15, 16, 17 & 18 of Article X, *ibid.*

⁵⁹¹ See s. 5 of Article X, *ibid.*

Constitution requires such guidelines and limitations set by the Congress to be consistent with the basic policy of local government autonomy and that all the taxes, fees, and charges should accrue exclusively to the respective local governments.⁵⁹² The Constitution of Philippines further entitles local government units a just share in the national taxes which are automatically released to them and, all local governments are entitled to an equitable share in the proceeds of the utilisation and development of the national wealth within their respective areas.⁵⁹³

Administratively, the Constitution of the Philippines vests in the President of the Philippines the general power of supervision over LGAs.⁵⁹⁴ Unlike in Tanzania where the Minister (as discussed below) can vary the area of LGAs, transfer the functions of LGAs or dissolve the LGAs, the Constitution of the Republic of Philippines restricts the variation of the areas of jurisdiction or abolition of LGAs save by an Act of the Congress made after consultation with the respective authority.⁵⁹⁵ In this respect, the Constitution of the Philippines Republic expressly provides;-

*...no Province, City, Municipality, or Barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.*⁵⁹⁶

The Constitution of the Philippines vests in the Congress the power to enact a local government code to allocate among the different local government units the powers, responsibilities and resources; to provide for qualifications and election of local government members; to provide for appointment, removal, terms and salaries of local government personnel; and to provide for all other matters relating to the organisation

⁵⁹² *Ibid.*

⁵⁹³ See ss. 6-7 of Article X, *ibid.*

⁵⁹⁴ See s. 4 of Article X, *ibid.*

⁵⁹⁵ See s. 10 of Article X, *ibid.*

⁵⁹⁶ *Ibid.*

and operation of the local units.⁵⁹⁷ The Constitution of Philippines seems to be better compliant with the UN guidelines by providing for the establishment of LGAs, declaring LGAs autonomous entities, stating the sources of local government revenue and the distribution of national income between LGAs and central government, stating the authority with general supervisory powers over local government and by restricting the variation and dissolution of LGAs without consultation with the respective LGAs.

The second Constitution which demonstrates good practices in central-local government administrative relationship and local government autonomy is the Constitution of the Republic of South Africa. Under this Constitution, the government is constituted as national, provincial and local government (municipalities) spheres.⁵⁹⁸ The Constitution declares these three tiers of government distinctive and autonomous but interdependent and interrelated.⁵⁹⁹ The local government sphere is the lowest level but not subordinate to either level because all the three spheres are constitutionally declared distinctively autonomous though interdependent and interrelated.⁶⁰⁰ The Constitution requires the three spheres of government to exercise their powers and discharge their functions in a manner that does not encroach on the geographical; functional or institutional integrity of another; to cooperate with one another in mutual trust and good faith; to assist and support one another; to inform and consult one another on matters of common interest; to coordinate their actions and legislation with one another; to adhere to agreed procedures; and to avoid legal proceedings against one another.⁶⁰¹

The Constitution clearly defines the chain of control and supervision between the national, provincial and municipal (LGAs) spheres of government. In this respect, the national executive supervises provincial government and may intervene only when a

⁵⁹⁷ See ss. 3 & 4 of Article X, *ibid.*

⁵⁹⁸ See s. 40(1) of the Constitution of the Republic of South Africa, 1996.

⁵⁹⁹ *Ibid.*

⁶⁰⁰ See s. 40(1), *ibid.*

⁶⁰¹ See s. 41(1) (h), *ibid.*

province cannot or does not fulfil its executive obligations under legislation or the Constitution.⁶⁰² The provincial government supervises municipal councils (LGAs) and may only intervene when a municipality cannot or does not fulfil its executive obligation under legislation or the Constitution.⁶⁰³ Furthermore, the Constitution of South Africa vests in every municipality the right to govern on its own initiatives the affairs of its community and restricts the national or provincial government to compromise or impede municipality's ability or right to exercise its powers or perform its functions.⁶⁰⁴

The Constitution of the Republic of South Africa also states a number of powers and functions of municipalities within their respective areas of jurisdiction. Some of these are those listed under Part B of the fourth and fifth schedules to the Constitution; matters assigned by national or provincial legislation; and the powers to make and administer by-laws.⁶⁰⁵ Therefore, the Constitution of the Republic of South Africa provides a good example for Tanzania by clearly defining the powers and functions of LGAs and the administrative relationship between central and LGAs. The provisions of section 41(1)-(2) on cooperative government which declares the three tiers of government distinctively autonomous but interdependent and interrelated is crucial for local government autonomy and denotes a true partnership model of central-local government administrative relationship.

The third Constitution which demonstrates some good practices in central-local government administrative relationship and local government autonomy is the Constitution of the Republic of Kenya. The Constitution of the Republic of Kenya establishes two levels of government: national and county governments (local government).⁶⁰⁶ It divides the territory of Kenya into forty seven (47)

⁶⁰² See s. 100(1) & (2), *ibid.*

⁶⁰³ See s. 139(1), *ibid.*

⁶⁰⁴ See s. 151(2)-(4), *ibid.*

⁶⁰⁵ See s. 165 (1), (2) & (4), *ibid.*

⁶⁰⁶ See Art. 6(1) of the Constitution of Kenya, 2010.

counties.⁶⁰⁷ Besides the counties specified in the First Schedule to the Constitution, it also recognises all LGAs established under the Local Government Act, 1963⁶⁰⁸ and which were in existence immediately prior to the commencement of the Constitution of the Republic of Kenya, 2010.⁶⁰⁹ The LGAs established under the Local Government Act are Municipal, Count, Town and Urban Councils.⁶¹⁰

The Constitution of Kenya expressly provides for administrative devolution.⁶¹¹ It defines the membership, election and qualification for election to the county governments; the distribution of powers and responsibilities between the National and LGAs; the boundaries of LGAs; the administrative relationships between the two tiers of government and amongst count governments; and defines the manner and procedures for suspension or abolition of LGAs.⁶¹²

The Constitution of Kenya declares the National and County governments (local government) distinct and interdependent. It requires them to conduct their mutual relations on the basis of consultation and cooperation.⁶¹³ The Constitution further requires each level of government to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of the other level and respect the constitutional status and institutions of government of the other level and within the county level.⁶¹⁴ Moreover, each level of government is required to assist, support, consult (as appropriate) and implement the legislation of the other level of government and to liaise with government at the other level for the purpose of

⁶⁰⁷ *Ibid.* For details see the First Schedule to the said Constitution.

⁶⁰⁸ CAP.265 revised 2012.

⁶⁰⁹ See Art. 18 of the Constitution of Kenya, 2010, *loc.cit.*

⁶¹⁰ See ss. 12 (1)-(3); 28(1)-(3) and 41(1)-(3) of CAP.265 revised in 2012.

⁶¹¹ See Art. 174 -175, Part I of CHAPTER ELEVEN of the Constitution of Kenya, 2010. *Loc.cit.*

⁶¹² See Arts. 176, 177, 192, 193, 186, 188, 189-191, and 197, *ibid.*

⁶¹³ See Art.6 (2), *ibid.*

⁶¹⁴ See Art.189(1), *ibid.*

exchanging information, coordinating policies on administration and enhancing capacity.⁶¹⁵

The Constitution of Kenya vests in the High Court the jurisdiction to determine intergovernmental disputes arising from constitutional interpretation on matters relating to constitutional powers of State organs in respect of county governments; matters relating to constitutional relationship between the two government levels; and questions relating to conflict of laws between national and county legislation in matters falling within the concurrent jurisdiction of both levels of government.⁶¹⁶ The Constitution further requires intergovernmental disputes to be resolved amicably through alternative dispute resolution mechanisms.⁶¹⁷

The fourth Constitution with some good practices relating to central-local government administrative relationship and local government autonomy is the Constitution of the Republic of Uganda. The local government system in the Republic of Uganda is based on the District as a unit under which there are local governments and administrative units including District Councils, Urban Councils, Sub-County Councils and other units as may be specified by a law made by the Parliament.⁶¹⁸ The Constitution states seven principles which are pertinent and vital in central-local government administrative relationship and local government autonomy in Uganda. Such principles include: devolution of powers and responsibilities from central to local government units; application of the principle of decentralisation to all levels of local government; establishment of sound financial base and reliable sources of local government revenue; enabling LGAs to plan and implement policies in all matters affecting the people; LGAs

⁶¹⁵ *Ibid.*

⁶¹⁶ See Arts.165 (3)(d)(iii) – (iv) and 191(1), *ibid.*

⁶¹⁷ See Art.189 (3)-(4), *ibid.*

⁶¹⁸ See Art. 176(1) and Art.177 of the Constitution of the Republic of Uganda as amended by the Constitution (Amendment) Act, Act No. 11/2005 and the Constitution (Amendment) (No.2) Act, 21/2005.

to employ their own personnel; and central monitoring and supervision of service delivery by LGAs.⁶¹⁹

Apart from the above principles of local government system, the Constitution of Uganda specifically stipulates the functions and responsibilities of regional governments,⁶²⁰ the boundaries of local government units,⁶²¹ and the distribution of powers and functions between local government councils and the central government.⁶²² The Constitution further defines the financial powers of LGAs including the power to impose and collect tax, taking loans and the central government obligation to provide grants to LGAs.⁶²³ The Constitution requires the Parliament to enact a law that shall require each local government to make a detailed list of all its internal revenue sources and prescribe the financial control and accountability of local revenue.⁶²⁴

The Constitution of Uganda also requires part of the revenue collected from local taxes to be paid into the consolidated funds.⁶²⁵ In respect of local government personnel, the Constitution establishes the District Service Commission which is responsible for appointment of persons in the service of the District, Confirmation of their appointments, disciplinary control and their removal.⁶²⁶ The District Service Commission is also responsible for appointment of persons to hold or act in the office of town clerk and in the service of a city or a municipality. The District Service Commission is further responsible for confirmation, disciplinary control and removal of persons appointed in the office of town clerk and in the service of a city or a municipality.⁶²⁷

⁶¹⁹ See 176(2) (a)-(g), *ibid.*

⁶²⁰ See Art.178, *ibid.*

⁶²¹ See Art. 179, *ibid.*

⁶²² See Arts. 189(1) and 189(2) & (3), *ibid.*

⁶²³ See Arts.192-197, *ibid.*

⁶²⁴ See Art. 196, *ibid.*

⁶²⁵ See Art. 192, *ibid.*

⁶²⁶ See Arts. 188, 189 & 2000, *ibid.*

⁶²⁷ *Ibid.*

The analysed constitutions of the selected countries for this study provide some good practices which are useful and supportive of local government autonomy in the light of the decentralisation theory and the principle of subsidiarity as required by the UN guidelines on decentralisation and strengthening of LGAs. These constitutions provide for several aspects of local government affairs including personnel affairs, financial affairs, establishment of LGAs, powers and functions of LGAs, and the relationship between the LGAs and the higher level governments. The next item examines the legislative framework of central-local government administrative relationship in Mainland Tanzania.

4.3 The Legislative Framework of Central-local Government Relationship

The LGRP was concluded in 2014 without successful enactment of the comprehensive local government legislation and harmonisation of sector legislation envisaged by the LGRP.⁶²⁸ The present legislative framework of central-local government administrative relationship is constituted by multiple pieces of scattered parliamentary Acts and subsidiary legislation.⁶²⁹ They include the Ministers (Discharge of Ministerial Functions) Act, 1980;⁶³⁰ the Local Government (District Authorities) Act, 1982;⁶³¹ the Local Government (Urban Authorities) Act, 1982;⁶³² the Local Government Finance Act, 1982;⁶³³ the Regional Administration Act, 1997;⁶³⁴ the Public Service Act, 2002;⁶³⁵ the Public Service Regulations, 2003;⁶³⁶ the Public Service Scheme, 2003;⁶³⁷ the Public Service Recruitment Code of Good Practice, 2007;⁶³⁸ the Public Service Disciplinary

⁶²⁸ See item 3.5 in chapter three.

⁶²⁹ See a list of selected principal and subsidiary legislation governing central-local government administrative relationship under **Appendix IV**.

⁶³⁰ CAP.299, R.E. 2002.

⁶³¹ CAP.287, R.E. 2002.

⁶³² CAP.287, R.E. 2002.

⁶³³ CAP.290, R.E. 2002.

⁶³⁴ CAP 97, R.E. 2002.

⁶³⁵ CAP.298. *Loc.cit.*

⁶³⁶ G.N.No.168 of 2003, *loc.cit.*

⁶³⁷ G.N.No.169 of 2003, *loc.cit.*

⁶³⁸ G.N. No.54 of 2007, *loc.cit.*

Code of Good Practice, 2007;⁶³⁹ the Local Government Service Scheme, 2008;⁶⁴⁰ Presidential Circular No.1 of 1998;⁶⁴¹ and the Ministers (Assignment of Ministerial Functions) Notice, 2016.⁶⁴²

There are also several other central and sector legislation like the Public Finance Act, 2001;⁶⁴³ the Public Audit Act, 2008;⁶⁴⁴ the Public Procurement Act, 2004;⁶⁴⁵ the Public Health Act, 2009;⁶⁴⁶ the Public Health (Sewage and Drainage) Act, 1955;⁶⁴⁷ the Land Act, 1999;⁶⁴⁸ the Land (Allocation Committees) Regulations, 2001;⁶⁴⁹ the Village Land Act, 1999;⁶⁵⁰ the Urban Planning Act, 2007;⁶⁵¹ the Land Use Planning Act, 2007;⁶⁵² the Courts (Land Dispute settlement) Act;⁶⁵³ and several circulars, orders, regulations and guidelines issued and which may be issued by the Central Government. Because of this multiplicity of the legislative framework of central-local government administrative relationship, this chapter hereunder examines only the provisions of the Regional Administration Act, the Local Government (District Authorities) Act, the Local Government (Urban Authorities) Act, the Local Government Finance Act and the Public Service Act, 2002 and its instruments; the Land Act, the Land (Allocation Committees) Regulations, the Village Land Act, the Urban Planning Act, 2007; the Land Use Planning Act and the Courts (Land Dispute settlement) Act.

⁶³⁹ G.N. No.53 of 2007, *loc.cit.*

⁶⁴⁰ G.N. No. 146 of 2008, *loc.cit.*

⁶⁴¹ Reference No. SHC/.180/1/99 of March 10th, 1998 and Circular Letter No.BC.46/97/03/18 of October 16th, 1998.

⁶⁴² G.N. No.144 of 2016, *loc.cit.*

⁶⁴³ CAP. 348, R.E.2002.

⁶⁴⁴ Act No.11 of 2008.

⁶⁴⁵ CAP. 410, R.E.2002.

⁶⁴⁶ Act No.1 of 2009.

⁶⁴⁷ CAP. 333, R.E.2002.

⁶⁴⁸ CAP. 113, R.E.2002.

⁶⁴⁹ G. N. No 72 of 2001.

⁶⁵⁰ CAP. 114, R.E.2002.

⁶⁵¹ Act No.8 of 2007.

⁶⁵² Act No.6 of 2007.

⁶⁵³ Act No.2 of 2002.

4.3.1 Regional Administration Act

The Regional Administration Act was enacted one year after adoption of the local government reform agenda 1996-2000 in order to make provisions for restructuring the regional administration for the purpose of strengthening and promoting local government system in Mainland Tanzania.⁶⁵⁴ The Act repealed the Regions and the Regional Commissioners Act, 1962, the Area Commissioners Act, 1962 and the Decentralisation of Government Administration (Interim Provisions) Act, 1972.⁶⁵⁵ It makes provisions for central government administration and its administrative relationship with LGAs at the Regional, District and divisional levels.⁶⁵⁶ The Regional Administration Act was amended in 1999 and in 2006 in the course of implementation of the LGRP.

In line with the provisions of Article 36(2) and Article 61(1)-(2) of the Constitution which vests in the President the power and authority to appoint RCs, the Regional Administration Act establishes the office of the RC as a government leader charged with the duty to supervise the discharge of all the duties and functions of the government in the region.⁶⁵⁷ The Act provides the detail of the appointment, powers and functions of the RC.⁶⁵⁸ In this regard, the Act provides that, the RC is the principal representative of the central government and, all the executive functions of the government in the region are exercised by or through him.⁶⁵⁹ He is responsible for securing the maintenance of law and order in the region and determining the specific direction of the efforts made in implementing government policies in the region.⁶⁶⁰

⁶⁵⁴ See long title to CAP.97, R.E. 2002.

⁶⁵⁵ See s.22 (1)-(3) CAP.97, *ibid.*

⁶⁵⁶ See ss. 4, 13 &17, CAP.97, *ibid.*

⁶⁵⁷ See 4, CAP. 97, *ibid.*

⁶⁵⁸ See ss. 4-8, CAP.97, *ibid.*

⁶⁵⁹ See s.5 (1)-(2), CAP.97, *ibid.*

⁶⁶⁰ *Ibid.*

The Act permits the President under his writing to delegate any of his functions to the RC or to require at any time the RC to discharge any task or exercise any function related to the discharge of executive functions of the government.⁶⁶¹ There seems to be a close relationship between the powers and functions of the RC and the autonomy of LGAs in exercise of their statutory powers and discharge of their statutory functions in the region. The constitutional powers and functions of the President related to executive functions of the government and the public service may, by virtue of the Regional Administration Act, be delegated to the RC and, provided that LGAs discharge executive functions at the local level, the overall control and supervisory powers of the President over the executive functions of the government (including LGAs) may be delegated to the RC.⁶⁶² For such reason, all executive powers and functions of LGAs are by necessary implication under the control and supervision of the RC within the region.

The Regional Administration Act also requires the RC to facilitate and assist LGAs to undertake and discharge their responsibilities in the region by providing and securing the enabling environment for successful performance by them of their duties and functions; ensuring compliance by all persons and authorities with appropriate government decisions, guidelines and regulations in relation to the promotion of the local government system; and doing all such acts and things as shall facilitate or secure the effective, efficient and lawful execution by the local authorities of their statutory or incidental functions.⁶⁶³ These provisions relating to the facilitative role of the RC in relation to the powers and functions of LGAs in the region were brought in 2006 following the second amendments to the legal framework of central-local government relationship made in the first phase of the LGRP.⁶⁶⁴

⁶⁶¹ See s.6 (1)-(3), CAP. 97, *ibid.*

⁶⁶² See Art.34 (4), CAP.2, *loc.cit.*

⁶⁶³ See s.5 (3), CAP.97, *ibid.*, as amended by s.26 of Act No.13 of 2006, *loc.cit.*

⁶⁶⁴ See s.26 of Act No.13 of 2006, *loc.cit.*

Such amendments were meant to change the previous role of the RC from control as proper and assistant proper officer to facilitative and provision of assistance in order to improve the autonomy of LGAs in pursuit of the LGRP. Nonetheless, the provisions of section 5(3) as amended by section 26 of the Local Government Laws (Miscellaneous Amendments) Act, 2006 seem to be broad and unclear on what constitutes an enabling environment for the successful local government discharge of their functions. The provisions do not also state how the RC shall ensure compliance by all persons and authorities with government decisions, guidelines and regulations without affecting local government autonomy. The provision ‘doing all such acts and things as shall facilitate or secure the effective, efficient and lawful execution by the local authorities of their statutory or incidental functions’ appears too broad unless there were criteria set forth to determine which acts and things are facilitative and secure effective and efficient execution of LGAs statutory and incidental functions.

The Regional Administration Act also establishes the office of the Regional administrative secretary (RAS) who is the head and chief executive officer of the Regional Secretariat (RS), principle advisor of the RC in the discharge and exercise of his powers and functions in the region and the head of all personnel administration in the region(including local government personnel).⁶⁶⁵The Act further provides for the establishment of two other important organs at the regional level: the Regional Consultative Committee (RCC) and the Regional Secretariat (RS).⁶⁶⁶ The RCC consists of the RC as the chair person; the RAS as the secretary; all DCs within the region; all chief executive officer of Dist.Cs and Urban Authorities within the region; all Council chair Person and Mayors within the region; and all members of Parliament(elected, appointed and special seats).⁶⁶⁷ The membership of the RCC does not include

⁶⁶⁵ See s.12 (1)-(3), CAP.97, *ibid.* Also see PO-PSM Circular NO.1 of 1998, Ref. No.CAC/44/245/01/6 on Job Descriptions in the New Organisational Structure at the Regional Administration in Mainland Tanzania.

⁶⁶⁶ See ss. 8 &10, CAP.97, *loc.cit.*

⁶⁶⁷ See s.8 (2) CAP.97, *loc.cit.*

representatives of the lower level LGAs. The RCC is, among other things, charged with the duty to consider and provide advice to LGAs regarding their development plans, to monitor and ensure the coordination of the overall economic development in the region, and to receive and consider reports from the District Consultative Committee (DCC).⁶⁶⁸

The RS is, among other things, charged with the duty to monitor sector trends; to provide technical and administrative assistance to LGAs; to offer policy interpretation to LGAs; to monitor quality and standards of service delivery by LGAs; and to carry out delegated development programmes of ministries in relation to regional administration and local government.⁶⁶⁹ Furthermore, the RS provides backstopping expertise to LGAs; carries out monitoring and evaluation of performance of LGAs; provides capacity building of LGAs in service delivery; advises and facilitates LGAs' management of finance, personnel, preparation of budget and expenditures; and takes part in the routine inspection of LGAs.⁶⁷⁰

At the district level, the Regional Administration Act establishes the office of the District Commissioner (DC) appointed by the President.⁶⁷¹ The DC is the principal representative of the central government and, all the executive functions of government in the district are exercised by or through him.⁶⁷² He is responsible for securing the maintenance of law and order in the district and determining the specific direction of the efforts made by the government in executing government policies in the district. The Act further requires the DC to facilitate, assist and provide an enabling environment for LGAs' discharge of their statutory and incidental functions; to ensure compliance by all persons and authorities with appropriate government decisions, guidelines and

⁶⁶⁸ See s.9 (a), (e)-(f), CAP.97, as amended by s.28 of Act No.13 of 2006, *loc.cit.*

⁶⁶⁹ See s.11, CAP.97, as amended by s.29 of Act No.13 of 2006, *ibid.* Also see Government of the United Republic of Tanzania. (2011).*The Functions and Organisational structure of the Regional Secretariat.* PO-PSM. pp.6-20; and the PO-PSM Circular NO.1 of 1998. *Loc.cit.*

⁶⁷⁰ See Government of the United Republic of Tanzania. (2011). *Ibid.*

⁶⁷¹ See s.13 (1)-(2), CAP.97, *loc.cit.*

⁶⁷² See ss.13 and 14, CAP.97, *ibid.* Also see the PO-PSM Circular NO.1 of 1998, *loc.cit.*

regulations in relation to the promotion of the local government system; and to do all such acts and things as shall facilitate or secure the effective, efficient and lawful execution by the local authorities of their statutory or incidental functions.⁶⁷³

Like the powers and functions of the RC in relation to LGAs, the powers of the DC over LGAs also appear too broad and general. The DC is required to discharge his functions under the directions, guidance and instructions of the RC of the region in which his district is situated.⁶⁷⁴ The DC is assisted by the District Administrative Secretary (DAS) appointed by the President.⁶⁷⁵ Also, the Act provides for the establishment of the District Consultative Committee(s) (DCC) in every District.⁶⁷⁶ The DCC consists of the DC as the chair person; Chairman of the Dist.C or Urban authority within the District; member(s) of parliament (elected, appointed and special seats); divisional secretaries in the district; Ward executive officers; chairmen and secretaries of registered political parties within the district; co-opted members; and the DED who serves as secretary to the DCC. The membership of the DCC does not include representatives of the lower level LGAs

The DCC is charged with (among other things) the duty to receive reports on development programmes and give advice to LGAs on effective implementation of such plans and, to ensure LGAs execute and implement their development activities as mandated in the development plans. The DCC is further charged with the duty to ensure effective implementation of the Council decisions and to manage natural disasters and coordinate disaster relief within the District.⁶⁷⁷

⁶⁷³ See s.14 (3), CAP.97, *ibid.*

⁶⁷⁴ See s. 13(3), CAP.97, *ibid.*

⁶⁷⁵ See s.16 (1)-(2), CAP.97, *ibid.*

⁶⁷⁶ See s.15A (1), CAP.97, *ibid.*, as amended by s.30 of Act No.13 of 2006, *loc.cit.*

⁶⁷⁷ See s. 15B, CAP.97, as amended by s.30 of Act No.13 of 2006, *ibid.*

At the divisional level, the Regional Administration Act establishes the office of the Divisional Secretary which is held by the Divisional Secretary appointed by the appointing authority under the Public Service Act, 2002.⁶⁷⁸ The functions of the Divisional secretary are twofold: those related to defence and security and those related to divisional development. In performing defence and security functions the Divisional secretary is accountable to the DAS and in performing developmental functions he is accountable to the District Executive Director.⁶⁷⁹

Specifically, the Divisional secretary is, among other things, charged with the duty to represent and assist the DC in the implementation of central government activities in the Division; to oversee the implementation of the decisions and policies of the central government within the Division; to be a liaison between the central government and the residents within the Division; to prepare implementation report in the Division and submit to the District Commissioner; and to do any other function or duty as may be assigned to him by the District Commissioner.⁶⁸⁰

Examination of the content of the Regional Administration Act reveals that the Act has to a greater extent incorporated the objectives of the LGRP which intended to have changed central-local government administrative relationship (from command to consultative, facilitative and assistance) between the Central Government and LGAs. It has been pointed out that the Regional Administration Act requires the the RC and DC to facilitate, assist and provide an enabling environment for LGAs' discharge of their statutory and incidental functions. Furthermore, the Act changes the role of the RCC, RS and DCC from control and direct involvement into the routine actives of LGAs to facilitative, capacity building and advisory role. These new roles of the RC, DC, RCC, RS and DCC are meant to enhance local government autonomy.

⁶⁷⁸ See s.17 (1), CAP.97, as amended by s.31 (a) of Act No.13 of 2006, *ibid*.

⁶⁷⁹ See Subsection 3 (a) & (b), *ibid*.

⁶⁸⁰ See s. 17A, CAP.97, as amended by s.31(c) of Act No.13 of 2006, *ibid*.

Notwithstanding the new roles of the RC, DC, RCC, RS and DCC, the provisions of the Regional Administration Act do not clearly provide the administrative relationship between the RC, DC and LGAs. The provisions of the Act regarding the role of the RC and DC in relation to LGAs are too broad. Also, the provisions of the Act regarding the role of RCC, RS and DCC in relations to LGAs are also very broad. For instance, words like: to monitor quality and standards, to give advice to LGAs, to ensure LGAs execute and implement their development activities are not specific. It is not clear on how monitoring is to be done; whether LGAs are obliged to comply with the advice; and how to ensure execution by LGAs of their development plans. In the light of the juridification theory, the administrative relationship between the regional administration, district administration and LGAs seem to be not properly juridified. Therefore, the provisions of the Regional Administration Act do not match with the purpose of the LGRP to have highly autonomous LGAs in Mainland Tanzania. The next item examines the provisions of the Local Government (District Authorities) Act.

4.3.2 The Local Government (District Authorities) Act

The Local Government (District Authorities) Act was enacted in 1982 and amended thrice: in 1999; 2006; and in 2009 in the course of implementation of the 1998-2014 LGRP. The Act provides for the establishment, structure, powers and functions of present District Authorities and their administrative relationship with the central government as described hereinafter.

4.3.2.1 Establishment, Composition and Incorporation of District Authorities

The Authorities established by the Local Government (District Authorities) Act include: District Councils, Township Authorities, Village Councils and Kitongoji.⁶⁸¹ District Councils are established by the Minister responsible for local government by order

⁶⁸¹ See s. 2, CAP.287, *loc.cit.*

published in the Gazette after consultation with the President.⁶⁸² The Minister also may vary the area of a District Council or divide the area of all or any District Council into Divisions and Wards.⁶⁸³ Every District Council consists of elected councillors (one from each ward in the area of the district council) and all members of Parliament within its area.⁶⁸⁴ Other members include women (not less than one third of all members) proposed by the political parties represented in the Council in proportional to the members of those parties in the Council and not more than three members appointed by the Minister in respect of specific groups.⁶⁸⁵ The District Council is headed by a chairman and vice chairman elected by members from amongst the elected members of the District Council.⁶⁸⁶

The Local Government (District Authorities) Act requires every District Council to establish three standing committees: finance, administration and planning; education, health and water; and economic affairs, works and environment. The Act further allows every District Council to establish other standing committees not more than three and sub-committees for proper discharge of its functions.⁶⁸⁷ However, the Act allows the Minister to prescribe the limit of committees that may be established by a District Council and the limit of annual cost of meetings of a Council or of its committees and sub-committees.⁶⁸⁸ Standing committees have neither political decision making power nor administrative authority but they are important organs in overseeing the implementation of Council decisions by making follow-ups of the work of Council administrative departments.⁶⁸⁹ Standing committees usually meet regularly once in every

⁶⁸² See ss.5& 7, CAP.287, *ibid.*

⁶⁸³ See ss.10, 29-30, CAP.287, *ibid.*

⁶⁸⁴ See s. 35(1), CAP.287, *ibid.*, as amended by s.8 of Act No. 6 of 1999, *loc.cit.*; and s.5 of Act No.13 of 2006, *loc.cit.*

⁶⁸⁵ *Ibid.*

⁶⁸⁶ See s.36, CAP.287, *ibid.*

⁶⁸⁷ See s.74 (1), *ibid.*, as amended by s.13 of Act No. 6 of 1999, *loc.cit.* Also see s. 79, CAP.287, *ibid.*

⁶⁸⁸ See s. 74(3), *ibid.*

⁶⁸⁹ See REPOA(2008). *Op.cit.* p.28.

three months and, before submission to the full Council, all departmental plans are required to pass through the respective standing committees.

The Local Government (District Authorities) Act also empowers the Minister upon approval by the President to divide the area of every District Council into such number and size of Wards which consist of villages as may be specified by his order published in the Gazette.⁶⁹⁰ The Act provides for the establishment of a Ward Development Committee (WDC) in every Ward.⁶⁹¹ The WDC is not among the LGAs with executive and legislative authority but it is responsible for supervising the implementation of the decisions and policies of the District Council and development schemes which relate to the ward. It is responsible for coordination of development activities and planning in the Ward and liaises with the district level.⁶⁹²

The other important District Authorities established under the Local Government (District Authorities) Act are Township Authorities. Township Authorities are also established by the Minister responsible for local government through an order published in the *Gazette*. The Act vests in the Minister the discretion to establish such authorities in places or areas where he sees it desirable for the purposes of establishing, promoting, developing and maintaining an effective and efficient system of local government.⁶⁹³ The Minister may also vary the boundaries of any Township Authority after consultation with the respective District.⁶⁹⁴ The area of jurisdiction of a Township Authority is divided into such number of *Vitongoji* as the Township Authority may determine and, every *kitongoji* must have a chairperson elected in accordance with section 30(4) of the Local Government (District Authorities) Act.⁶⁹⁵

⁶⁹⁰ See s.30 (1)-(2), CAP 287, *ibid*.

⁶⁹¹ See s. 31(1)-(2), CAP 287, *ibid*.

⁶⁹² *Ibid*. Also see REPOA (2008). *Op.cit*. p.27.

⁶⁹³ See s. 13(1), CAP.287, *loc.cit*.

⁶⁹⁴ See ss.15 & 18, CAP.287, *ibid*.

⁶⁹⁵ See s.13 (3) & (4), CAP.287, *ibid*.

Every Township Authority consists of a Chairman elected by the Township Authority from amongst the chairmen of the *vitongoji* within the area of the Township Authority; the chairmen of the *vitongoji* within the area of the Township Authority; and not more than three other members appointed by the District Council within whose area of jurisdiction the Township Authority is situated.⁶⁹⁶ Other members are the Member of Parliament representing the constituency within which the Township Authority is established and women members proposed by the political parties represented in the Township Authority in such number proportional to the number of members of the parties elected to the Township Authority.⁶⁹⁷ Like District Councils, Township Authorities have three standing committees: finance, administration and planning; education, health and water; economic affairs, works and environment. A township Authority may establish two other standing committees.⁶⁹⁸

The lowest District Authorities with executive and legislative powers is the village government. Villages are established by the registrar of villages subject to any directions in that behalf by the Minister.⁶⁹⁹ The Registrar of villages is appointed by the Minister and the Director of the District Council within whose area the village is established is the assistant registrar in that behalf.⁷⁰⁰ In every village, the Local Government (District Authorities) Act establishes two important decision making authorities: the Village Assembly and the Village Council.⁷⁰¹ The Village Assembly is constituted by all members who have attained the apparent age of eighteen years and who reside within the area of jurisdiction of the respective village.⁷⁰² It is the Village Assembly which is a supreme authority in all matters of general policy making in relation to affairs of the

⁶⁹⁶ See s. 45, CAP.287, *ibid.*

⁶⁹⁷ *Ibid.*

⁶⁹⁸ See s.96, CAP.287, *ibid.*, as amended by s.16 of Act No. 6 of 1999, *loc.cit*

⁶⁹⁹ See s. 22(1), CAP.287, *ibid.*

⁷⁰⁰ See s.23, CAP.287, *ibid.*

⁷⁰¹ See ss. 24, 25, 56 & 57 CAP.287, *ibid.*

⁷⁰² See s. 55, CAP.287, *ibid.*

village.⁷⁰³ It elects the Village Council and the chairperson of the Village Council after every five years and it can remove from the Council any member who fails to fulfil his responsibilities.⁷⁰⁴

The Village Council is the organ vested with all executive powers in respect of all affairs and business of the village and it is composed of the chairman elected by the Village Assembly; the chairmen of all the *vitongoji* within the village; such other members elected by the Village Assembly of whom not less than one third of the total number of all members of the council must be women; and the village executive officer as the secretary to council.⁷⁰⁵ Below the village government there is *kitongoji* but since *kitongoji* has no executive and legislative powers of its own, it is not discussed in this study.

It is important to note at this point that, the composition of all District Authorities consists of mainly elected members except a few members appointed to the District Council by the President and the Minister. The presence of elected members is one of the important features of decentralisation by devolution and a positive development towards local government autonomy. However, the presence of central appointed members is somewhat unpalatable to the electoral democracy and local government autonomy. Although this might have been intended to balance local interest and the central government interest, the same might result into increased central influence in the process of local government decision making. For instance, the presence of three members appointed by the Minister to the District Council might be meant to increase the influence of the Minister in the council decisions. The presence of such appointed members is likely to limit the autonomy of LGAs in decision making process.

⁷⁰³ See s. 146(1), CAP.287, *ibid*, as amended by s.7 of Act No.2 of 2009, *loc.cit*.

⁷⁰⁴ See ss. 56(1), 57 & 146, CAP.287, as amended by ss.5, 6 & 7 of Act No.2 of 2009, *ibid*.

⁷⁰⁵ See ss. 56(1) & (2) and 142(2), CAP.287, as amended by ss.5 of Act No.2 of 2009, *ibid*.

Moreover, under the Local Government (District Authorities) Act, District Authorities become body corporate upon establishment and receipt of a certificate of establishment.⁷⁰⁶ Corporate status is an important feature of the holistic principle and a positive development towards local government autonomy in Mainland Tanzania. As body corporate, every District Authority acquires: perpetual succession and official seal; ability to acquire and dispose of any movable and immovable property; and ability to sue or to be sued.⁷⁰⁷ Furthermore, by incorporation the members of a District Authority acquire legal immunity from personal liability arising from actions or omissions made in bona fide execution of their functions. This immunity does not however extend to personal acts or omission made by a council member outside the scope of his or her powers and functions related to the Council.⁷⁰⁸

Another important legal consequence of incorporation is the application of the doctrine of *ultra vires*. By this it means, a District Authority cannot act beyond its statutory powers and functions or act in contravention of the mandatory laid down procedures in its exercise of statutory powers or discharge of its statutory functions.⁷⁰⁹ Therefore, the corporate status of District Authorities seems to have both negative and positive implication on the autonomy of the said authorities. After having looked at the establishment, composition and the incorporation of District Authorities, the next item examines the power and functions of District Authorities under the District Authorities Act.

⁷⁰⁶ See ss. 5, 7, 12(1), 19 & 26, CAP.287, *ibid*.

⁷⁰⁷ *Ibid*. Also see for instance, *The City Council of Dar es Salaam v. Taj Mohamed* [1986] No.247 HCD.

⁷⁰⁸ See s.116, CAP. 287. *Loc.cit*. Also see *Salomon v. Salomon and Co Ltd* [1897] AC. 22; and *Anderson Chale v. Abubakari Sakapara*, Civil Appeal No.121 of 2004, and High Court of Tanzania at Dar es Salaam (unreported).

⁷⁰⁹ See for instance *Baroness Wenlock v. River Dee Co* [1885] AC. 354; *Cullimore v. Lyme Regis Corporation* [1962] 1Q.B.718; *Bradbury v. Enfield London Borough Council*[1967] 1W.L.R.1311; *London & Clydeside Estates Ltd.v.Aberdeen District Council* [1980] 1W.L.R.182; *Agricultural, Horticultural & Forestry Industry Training Board v. Aylesbury Mushrooms Ltd.*[1972]1W.L.R.190; *Noble v. Inner London Education Authority*[1983] 82 L.G.R.291; and *Sheffield City Council v. Graingers Wines Ltd.*[1977]75L.G.R.743.

4.3.2.2 Power and Functions of District Authorities

The Local Government (District Authorities) Act provides three basic and general functions of District Authorities.⁷¹⁰ The three functions are to maintain and facilitate the maintenance of peace, order and good government within its area of jurisdiction; to promote the social welfare and economic well-being of all persons within its area of jurisdiction; and to further the social and economic development of its area of jurisdiction subject to the national policy and plans for rural and urban development.⁷¹¹ These functions are more or less similar to the three general functions of LGAs provided under Article 146 (2) of the Constitution of the United Republic of Tanzania.

There are several other functions which are associated with these general functions that District Authorities can discharge such as taking necessary or desirable measures for: suppression of crime, maintenance of peace and order; protection of lawfully acquired properties; control and improvement of agriculture; control and improvement of trade, commerce and industry; and the furtherance and enhancement of health, education, social, cultural and recreational life of the people.⁷¹²

Besides the general functions provided under section 111 of the Local Government (District Authorities) Act, LGAs may also perform any function which is not the exclusive responsibility of the central government.⁷¹³ In this regard the Minister is empowered from time to time, to specify by Order published in the Gazette matters which are the exclusive responsibility of the central government and those of various levels of the LGAs.⁷¹⁴ The Local Government (District Authorities) Act also provides for

⁷¹⁰ Note that according to section 3 of the Local Government (District Authorities) Act, 1982, the term functions is defined to include powers and responsibilities of LGAs.

⁷¹¹ See ss. 111(1), CAP.287, *loc.cit.*

⁷¹² See s.111 (2), CAP.287, *ibid.*

⁷¹³ See s.111A (3), *ibid.*, as amended by s.17 of Act No.6 of 1999, *loc.cit.*

⁷¹⁴ See s. 111A (4), CAP.287, *ibid.*

specific mandatory and discretionary functions of District Councils, Township Authorities, and Village Councils.⁷¹⁵

The list of such specific functions of every District Authority is vast and multi-sectoral. They cannot be analysed one after another in this chapter. Besides functions, the Local Government (District Authorities) Act vests in District Authorities considerable powers connected to their discharge of statutory functions. They include: the power to acquire land; power to sell, let and mortgage land; power to charge rents; power to accept, hold and administer any gift for public purpose; power to enter into contract with any person in order to perform their functions; power to ensure against risk; power to write off arrears of revenue, cash and stores; power to charge fees for any service or facility, licence or permits issued by them; power to levy taxes; and power to make by-laws.⁷¹⁶

The Local Government (District Authorities) Act also defines the role of central and sector (line) ministries in relations to the powers and functions of District Authorities. Following the amendments of the Local Government (District Authorities) Act made in 1999 and in 2006, the Act limits the role and responsibility of the central government to: formulation of policy and regulatory framework, facilitation of local government's exercise of power and functions in a manner that gives due recognition to local government autonomy, provision of necessary technical support or assistance, assisting the implementation of council decisions and resolutions and providing and securing enabling environment for LGAs' discharge of their functions.⁷¹⁷ Sector ministries are required to: supervise professionalism and quality assurance in performance of sector employees, monitor and evaluate technical personnel's performance of their functions, ensure all posts are filled by required professionals, ensure human resources

⁷¹⁵ See s. 118 (1) & (4), 132(1) & 142(2), CAP.287, *ibid.*

⁷¹⁶ See ss.114, 115, 118 (2), 124, 125, 126, 127, 128, 134, 135, 136, 137, 138, 148, 163&164, CAP.287, *ibid.*

⁷¹⁷ See ss.174A (1), CAP.287, *ibid.*, as amended by s. 35 of Act No. 6 of 1999, *loc.cit.*; and s.10 of Act No.13 of 2006, *loc.cit.*

development and, to ensure availability of equipment, human resources and funds for implementation of sector programmes in District Authorities.⁷¹⁸

The Local Government (District Authorities) Act also defines the role of the Minister responsible for local government in relation to local government powers and functions. The Act requires the Minister responsible for local government to promote decentralisation and devolution of powers and functions from the central government to LGAs and within the local government system from the District Councils level to lower level; to ensure availability of adequate financial resources and other resources for effective and efficient development of local government; to ensure adequate supply of trained, skilled and qualified personnel; and to ensure LGAs are strong, effective and more and more autonomous institutions in managing their affairs;⁷¹⁹ to enforce performance by LGAs; and to take other appropriate actions in accordance with the powers vested in him including the power to transfer functions, power to dissolve LGAs and the power to require information from any local government authority in relation to his functions.⁷²⁰ These powers may be exercised by the Minister in person or through delegation of the same to any person by notice published in the Gazette.⁷²¹

Besides the Minister, the Local Government (District Authorities) Act vests in the RC the power to approve and prescribe the amount that District Council may write off;⁷²² power to comment on bylaws made by District Councils before submission to the Minister responsible for local government;⁷²³ and power to consent to bylaws made by Township Authorities.⁷²⁴ Also the Local Government (District Authorities) Act, 1982 imposes a duty on every District Authority to furnish the RC and the DC with quarterly

⁷¹⁸ See ss.174A (2), CAP.287, *ibid.*, as amended by s.10 of Act No.13 of 2006, *ibid.*

⁷¹⁹ See s. 4(4) & (5), CAP.287, *ibid.*, as amended by s.4 of Act No. 6 of 1999, *loc.cit.*

⁷²⁰ See ss. 129 & 169, CAP.287, *ibid.*

⁷²¹ See ss. 169-174, CAP.287, *ibid.*

⁷²² See ss.127 (2) & (4), CAP.287, *ibid.*

⁷²³ See s. 150(3), CAP.287, *ibid.*

⁷²⁴ See 156(3) & (4), CAP.287, *ibid.*

reports and other information that may be required by the RC or DC in relation to his functions under the Regional Administration Act.⁷²⁵

Analysis of the provisions of the Local Government (District Authorities) Act show that the Act transfers substantial powers and functions to District Authorities as required by D by D and the subsidiarity principle. Also, the Act consists some provisions which suggest changed role of the central and sector ministries in relation to powers and functions of LGAs (from direct involvement to policy making and regulatory bodies, facilitative and quality assurance bodies and provision of assistance). In the right of the Instrumental theory of law, these features reveal the purpose of having LGAs provided under Article 146(1) of the Constitution and the objectives of the LGRP to have highly autonomous LGAs.

Despite the positive features that suggest compliance by the Local Government (District Authorities) Act to the theory of decentralisation and the subsidiarity principle, the provisions of the Act regarding the role and powers of the Minister in relation to LGAs restrict the discretion and autonomy of LGAs in their exercise of powers and discharge of functions. As pointed out in the analysis of the provisions of the Local Government (District Authorities) Act, the Minister is vested with not only facilitative and promotional role but also with the powers to enforce performance by LGAs; the power to transfer functions; and power to dissolve LGAs. These powers and the roles of the Minister in relations to LGAs are contradictory and self-defeating. The same person cannot act as a facilitator of LGAs and at the same time enforces performance or dissolve the authorities. The concentration of facilitative, promotional, control and supervisory powers in the hand of the Minister is inconsistent with the decentralisation theory and the subsidiarity principle. After examination of the provisions of the District

⁷²⁵ See s. 174(2), CAP.287, *ibid*, as amended by s.9 of Act No. 13 of 2006, *loc.cit*.

Authorities Act, the following item examines the provisions of the Local Government (Urban Authorities) Act.

4.3.3 The Local Government (Urban Authorities) Act

The Local Government (Urban Authorities) Act was enacted in 1982. The Act has been amended four times: in 1999;⁷²⁶ 2006;⁷²⁷ 2009⁷²⁸ and in 2011⁷²⁹ in pursuit of the 1998-2014 LGRP. The Act provides for the establishment, the composition, powers and functions of Urban Authorities and their relationship with the central government in Mainland Tanzania. The Act establishes three main types of Urban Authorities which are Town Councils, Municipal Councils and City Councils as explained hereafter.⁷³⁰

4.3.3.1 The Establishment, Composition and Incorporation of Urban Authorities

Urban Authorities are established under the discretion of the Minister responsible for local government. The Local Government (Urban Authorities) Act vests in the Minister the power and authority to establish Urban Authorities by order published in the Gazette in any area of Mainland Tanzania to be respectively known as a Town, Municipality and City.⁷³¹ In the exercise of such powers, the Minister is only required to comply with the national policy on the development of urban areas and in that respect, he may establish such authorities in such areas as he may deem necessary for the purpose of establishment, promotion, development and maintenance of effective and efficient system of local government.⁷³²

The composition of Urban Authorities is almost the same as District Councils and Township Authorities in the sense that they all constitute councillors (elected and special

⁷²⁶ Amended by Act No. 6 of 1999, *loc.cit.*

⁷²⁷ Amended by Act No. 13 of 2006, *loc.cit*

⁷²⁸ Amended by Act No. 17 of 2009, *loc.cit*

⁷²⁹ Amended by Written Laws (Miscellaneous Amendments) Act, 2011, Act No. 3 of 2011.

⁷³⁰ Sees.5 (4), CAP.288, *loc.cit.*

⁷³¹ See Subsection 1 and 4, *ibid.*

⁷³² See Subsection 2, *ibid.*

seats); members of parliament (elected, special seats and presidential appointees); and not more than three members appointed by the Minister.⁷³³ However, a City Council established within an area or areas of an Urban Authority or Urban Authorities consists of a Mayor and Depute Mayor elected by and from councillors of the Urban Authorities within the area of the City council; all constituency members of Parliament and at least two women members elected from special seats; three councillors from each Urban Authority; and the Mayor of each Urban Authority.⁷³⁴

Urban Authorities are also required to establish three standing committees and sub-committees: finance and administration; economic affairs, health and education; and urban planning and environment.⁷³⁵ They may further establish such other standing committees not exceeding three or sub-committees as may be necessary for proper discharge of their functions.⁷³⁶ Nevertheless, the Local Government (Urban Authorities) Act empowers the Minister responsible for local government to prescribe by order published in the Gazette the limit of the number of committees that may be established by Urban Authorities and the limit of annual cost of meetings of each council, its committees and sub-committees.⁷³⁷ The meetings of Urban Authorities are chaired by the chairman or vice- chairman in respect of Town Councils and the Mayor or Deputy Mayor in respect of Municipal and City Councils.⁷³⁸

The Local Government (Urban Authorities) Act vests in the Minister the power to divide the area of any Urban Authority into Wards of such number and size as he may deem necessary and desirable and, upon consultation with the respective Urban Authorities he may vary the boundaries of the Ward, reduce or increase the number of Wards within

⁷³³ See s.19 (1)-(3), CAP.288, *ibid.*

⁷³⁴ See Subsection 4, *ibid.*, as amended by s.48 of Act No.6 of 1999, *loc.cit.*

⁷³⁵ See s.42 (1) (a)-(c), CAP.288, *ibid.*, as amended by s.50 of Act No.6 of 1999, *ibid.*; and s.17 of Act No.13 of 2006, *loc.cit.*

⁷³⁶ See Subsection 2, *ibid.*

⁷³⁷ *Ibid.*

⁷³⁸ See s. 2, CAP.288, *ibid.*

the area of the Urban Authority.⁷³⁹ Every Ward is headed by Ward Executive Officer who also serves as the Secretary to Ward Development Committee.⁷⁴⁰ The composition and functions of the Ward Development Committees in the Urban Authorities are almost the same as those Ward Development Committees in District Councils noted under item 4.3.2.1 above.⁷⁴¹

The Act further provides for the division of the area of every Ward into *Mtaa* consisting of a number of households as the Urban Authority may determine. Each *Mtaa* has a Chairman elected by all adult members of the *Mtaa*.⁷⁴² In every *Mtaa* there is a Mtaa Committee headed by the *Mtaa* Executive Officer appointed by the Urban Authority.⁷⁴³ The *Mtaa* Committee is responsible for implementation of Councils' policies, to advise the Councils on matters relating to development plans and activities of the *Mtaa*, advising the WDC on matters relating to peace and security of the *Mtaa*, to keep proper records of the residents of the *Mtaa* and doing other things conferred upon it by the WDC.⁷⁴⁴

Upon establishment and receipt of a certificate of establishment, Urban Authorities become body corporate and acquires perpetual succession and official seal; ability to sue and the possibility of being sued; and the ability to acquire and dispose of any movable and immovable property.⁷⁴⁵ Furthermore, by incorporation, the members of Urban Authorities acquire legal immunity from personal liability arising from actions or omissions made in bona fide execution of their functions except for personal acts or

⁷³⁹ See s.14 (1) & (2), CAP.288, *ibid*.

⁷⁴⁰ See s 15A (1) & (2), CAP.288, *ibid*, as amended by s.46 of Act No.6 of 1999, *loc.cit*; and s.16 of Act No 13 of 2006, *loc.cit*.

⁷⁴¹ See ss.15 &16, CAP 288, *ibid*, as amended by s.46 of Act No.6 of 1999, *ibid*.

⁷⁴² See s.14 (3), CAP 288, *ibid*. Also see s.16 (4), CAP 288 as amended by s.10 of Act No. 17 of 2009, *loc.cit*.

⁷⁴³ See s.14A (1), CAP 288, *ibid*, as amended by s.45 of Act No.6 of 1999, *loc.cit*; and s.15 of Act No 13 of 2006, *loc.cit*.

⁷⁴⁴ See s.14A (1)-(3), CAP.288, *ibid*.

⁷⁴⁵ See s. 12, CAP.288, *ibid*.

omission made by a Council member outside the scope of his or her powers and functions related to the council.⁷⁴⁶ Also by incorporation, Urban Authorities become bound by the doctrine of *ultra vires* which entails that, an Urban Authority (as a corporate body) cannot act beyond its statutory powers or act in contravention of the mandatory laid down statutory procedures in the exercise of its statutory powers and in the discharge of its statutory functions.⁷⁴⁷ The next item examines the powers and functions of Urban Authorities.

4.3.3.2 Powers and Functions of Urban Authorities

The Local Government (Urban Authorities) Act vests in the Urban Authorities a number of functions and responsibilities.⁷⁴⁸ The key responsibilities which are stated in form of objectives include the duty to: maintain and facilitate the maintenance of peace, order, and good governance; promote social welfare and economic well-being of the people; protect the environment; promote and ensure democratic participation of the people in decision making; and to establish and maintain reliable sources of revenue and other sources.⁷⁴⁹ Besides, the Local Government (Urban Authorities) Act also enumerates a list of fifteen (15) mandatory duties of every Urban Authority and, in addition to the said mandatory duties, the Act vests in every Urban Authority the discretion to perform any function specified in the schedule to the Act and any other function which is not the exclusive responsibility of the central government.⁷⁵⁰ However, the Act vests in the Minister the discretion to specify by order published in the Gazette or by regulations any

⁷⁴⁶ See s. 58, CAP.288, *ibid.* Also see *Salomon v. Salomon And Co Ltd* (supra) and *Anderson Chale V. Abubakari Sakapara* (supra).

⁷⁴⁷ See *Baroness Wenlock v. River Dee Co*(supra); *Cullimore v. Lyme Regis Corporation* (supra); *Bradbury v. Enfield London Borough Council*(supra); *London & Clydeside Estates Ltd.v. Aberdeen District Council*(supra); *Agricultural, Horticultural & Forestry Industry Training Board v. Aylesbury Mushrooms Ltd.*(supra); *Noble v. Inner London Education Authority*(supra); and *Sheffield City Council v. Graingers Wines Ltd.*(supra).

⁷⁴⁸ See ss.54, 55(1), 59 & 69A, CAP.288, *ibid.*

⁷⁴⁹ See s. 54(1) (a)-(g), CAP.288, *ibid.*, as amended by s.52 of Act No.6 of 1999, *loc.cit.*

⁷⁵⁰ See ss. 54(3), 55(1) (a)-(o) & 55(2), CAP.288, *ibid.*

matters which are the exclusive responsibility of the central government and those of Urban Authorities or any other local government authority.⁷⁵¹

The Local Government (Urban Authorities) Act further provides for the powers of Urban Authorities related to the exercise of their statutory duties and responsibilities.⁷⁵² The said powers are many but the most important ones include: the power to acquire land; the power to sell, let or mortgage land; the power to charge rent; the power to accept gifts; the power to inter into contract with any person; the power to ensure against risk of any type; the power to write off arrears of revenue, cash and stores; the power to charge fees for any service or facility, licence or permit issued by an Urban Authority; and the power to make by-laws for the purpose of execution of its functions.⁷⁵³ Most of these powers, like the powers of District Authorities, are subject to central control and supervision especially through approval by the Minister and by the RC as may be noted in the subsequent discussion.

The Local Government (Urban Authorities) Act prescribes the role of central and sector (line) ministries in relations to statutory powers and functions of Urban Authorities. Following the 1999 and 2006 amendments to the Local Government (Urban Authorities) Act, the present role of the central government in relation to the powers and functions of Urban Authorities include: formulation of policy and regulatory framework; facilitation of local government's exercise of power and functions in a manner that gives due recognition to local government autonomy; provision of necessary technical support or assistance; assisting the implementation of Council decisions and resolutions; and providing and securing enabling environment for LGAs' discharge of their functions.⁷⁵⁴ The Act further defines the role of sector ministries in relation to the powers

⁷⁵¹ See ss. 54(4) & 56, CAP.288, *ibid*, as amended by s.53 of Act No.6 of 1999, *loc.cit*; and s.20 of Act No.13 of 2006, *loc.cit*.

⁷⁵² See ss.59-66, CAP.288, *ibid*.

⁷⁵³ See ss. 64-66, 60-63, 79& 80, CAP. 288, *ibid*.

⁷⁵⁴ See ss.54A (1), CAP. 288, *ibid*.

and functions of Urban Authorities to include: supervision of professionalism and quality assurance in the performance of sector employees; monitoring and evaluation of technical personnel's performance of their functions; ensuring all posts are filled by required professionals; ensuring human resources development; and ensuring availability of equipment, human resources and funds for implementation of sector programmes in the Urban Authorities.⁷⁵⁵

The Local Government (Urban Authorities) Act also vests substantial facilitative, control and supervisory powers and responsibilities in the Minister responsible for local government. The Act requires the Minister responsible for local government to promote decentralisation and devolution of powers and functions from the central government to LGAs and within the local government system from the District Councils level to lower level; to ensure availability of adequate financial resources and other resources for effective and efficient development of local government; to ensure adequate supply of trained, skilled and qualified personnel; and to ensure LGAs are strong, effective and more and more autonomous institutions in managing their affairs.⁷⁵⁶

The Local Government (Urban Authorities) Act further vests in the Minister responsible for local Government the power and responsibility of enforcing performance by LGAs and take other appropriate actions in accordance with the powers vested in him.⁷⁵⁷ Such appropriate actions that the Minister may invoke include: the power to transfer functions of Urban Authorities, the power to dissolve Urban Authorities and the power to require information from any local government authority in relation to his functions.⁷⁵⁸ These powers may be exercised by the Minister in person or through delegation by notice published in the Gazette to any person.⁷⁵⁹

⁷⁵⁵ See ss.54A (2), CAP.288, *ibid.*

⁷⁵⁶ See s. 4(3), CAP.288, *ibid.*, as amended by s.40 of Act No.6 of 1999, *loc.cit.*

⁷⁵⁷ See s. 71, CAP.288, *ibid.*

⁷⁵⁸ See ss.73, 75, 76 &78(1), CAP.288, *ibid.*

⁷⁵⁹ See s. 77, CAP.288, *ibid.*

The Local Government (Urban Authorities) Act vests in the RC and the DC some supervisory and control powers and responsibilities over Urban Authorities. The Act requires the Urban Authorities to furnish the RCs and DCs with quarterly progress report about their development plans or such other information as may be required by the DC or the RC in relation to his functions under the Regional Administration Act.⁷⁶⁰ Also it vests in the RC an investigative role to investigate the legality of actions and decisions taken by Urban Authorities when called in question.⁷⁶¹ The Act further vests in the RC the power to approve the exercise of the power to write off areas or remit any fees or other charges by an Urban Authority.⁷⁶²

The discretion of Urban Authorities in the exercise of their statutory powers and in discharge of their statutory functions is limited by strict central supervision and control. As pointed out in the discussion of this section, notwithstanding the provisions of the Local Government (Urban Authorities) Act which transfers substantial powers and functions to Urban Authorities and the provisions on the changed role of the central and sector ministries, the Act vests in the Minister and other central government officers too much control and supervisory powers over Urban Authorities. For instance, the power vested in the Minister to enforcing performance by Urban Authorities; to transfer functions of Urban Authorities; and the power to dissolve Urban Authorities might have a negative implication on the autonomy of LGAs.

Apart from the powers and role of the Minister, the investigative role of the RC over the legality of the decisions and actions taken by Urban Authorities looks similar to the former role of the RC and proper officer Dist.Cs and assistant proper officer of Urban Authorities. The powers and roles of the Minister and the RC in relation to Urban

⁷⁶⁰ See s. 78 (2), CAP.288, *ibid*, as amended by s.21 of Act No.13 of 2006, *loc.cit*.

⁷⁶¹ See s. 78A, CAP.288, *ibid*, as amended by s.57 of Act No.6 of 1999, *loc.cit*.

⁷⁶² See ss.65 (2), (4) & 66(2), CAP.288, *ibid*.

Authorities are, let alone other central executives, inconsistent with the purpose of the LGRP to have highly autonomous LGAs in Mainland Tanzania. Having examined the provisions of the Local Government (Urban Authorities) Act, the next item briefly examines the provisions of the Local Government Finance Act.

4.3.4 The Local Government Finance Act

One of the key determinants of local government autonomy in the light of the decentralisation theory, the subsidiarity principle and the holistic principle is the devolution of financial resources and the discretion of LGAs in raising and spending moneys. The main law which provides for the framework of local government finance in Mainland Tanzania is the Local Government Finances Act.⁷⁶³ Like the other local government Acts enacted in 1982, the Local Government Finances Act was reviewed and amended in 1999 as an endeavour by the government to improve the autonomy of LGAs managing their financial affairs and determining their own priorities in service delivery. The Act provides for the local government sources of revenue, management of local government funds and other matters connected thereto or incidental to the securing of proper collection and sound management of local government finances.⁷⁶⁴

The Local Government Finances Act vests in the present LGAs all the assets and liabilities of the preceding LGAs before the enactment of the Act.⁷⁶⁵ It further enumerates the sources of revenue of the LGAs to include but not limited to all asserts; all moneys derived from trade, industry, works, services or other undertakings; all moneys derived from registration of taxi cubs and buses; and moneys derived from fees for licenses granted within the area.⁷⁶⁶ Other sources are moneys derived from fines imposed by the authority and things forfeited; moneys derived from the rents of the houses owned by the LGAs; moneys derived from the sale or other disposition of

⁷⁶³ CAP.290, *loc.cit.*

⁷⁶⁴ As per long title to CAP. 290, R.E.2002.

⁷⁶⁵ See s .5, CAP. 290, *ibid.*

⁷⁶⁶See ss.6, 7, 8 &9, CAP. 290, *ibid*

properties of the LGA; and twenty per cent of all moneys collected by the central government as land rent.⁷⁶⁷

The Local Government Finances Act also gives LGAs the power to borrow moneys and impose taxes and rates.⁷⁶⁸ The power to borrow and impose taxes and rates must be exercised with approval of the Minister responsible for local government in consultation with the Minister for finance and, in accordance with the rules made by the Minister responsible for local government.⁷⁶⁹ For Urban Authorities and Township Authorities, the power to impose and collect rates is also regulated by the Urban Authorities (rating) Act, 1983.⁷⁷⁰ Moreover, the Local Government Finances Act empowers LGAs to take advances from banks by overdrafts upon approval by the Minister responsible for local government.⁷⁷¹ The other important source of local government revenue is intergovernmental transfers. The Local Government Finance Act obliges the central government to annually pay LGAs such amount of moneys in form of block grants from the public revenue in order to finance local government development and service delivery.⁷⁷²

The Local Government Finance Act seems to vest in LGAs considerable financial powers and sources of revenue as required by the decentralisation theory, the principle of subsidiarity and the holistic principle. Nevertheless, in most cases the exercise of such powers and dealing with the said financial resources is subject to control by the Minister and other central government authorities like the case before the LGRP.⁷⁷³ For instance, besides the duty to facilitate the acquisition of funds for the operation of LGAs and to promote the timely preparation of local government annual budgets, the Local

⁷⁶⁷ *Ibid.*

⁷⁶⁸ See ss.11, 13, 14 &16, CAP. 290, *ibid.*

⁷⁶⁹ *Ibid.*

⁷⁷⁰ CAP. 289, R.E. 2002.

⁷⁷¹ See s.12, CAP. 290, *loc.cit.*

⁷⁷² See s. 10A, CAP.290, *ibid.*

⁷⁷³ See s. 9A, CAP.290, *ibid.*

Government Finance Act vests in the Minister the discretion (upon consultation with various stakeholders) to decide on the distribution of sources of revenue among various levels of Councils and to vary by order published in the Gazette the commencement of any local government financial year.⁷⁷⁴ The Act requires the Minister to ensure proper management of local government finances and vests in him the power to make various rules, regulations and guidelines in relation to local government power of levying and rating and the power to issue written instructions for control and management of local government finance.⁷⁷⁵

To give effect to the provisions of Article 143(2)(c) and (3) of the Constitution of the United Republic of Tanzania, the Local Government Finance Act also requires the Controller and Auditor General (CAG) to audit all local government accounts and report to the Minister, the RC and the respective Council Directors.⁷⁷⁶ The role and powers of the CAG in the control and management of local government finance is also notable under the Public Audit Act, 2008⁷⁷⁷ which requires the accounts of every District Council and of every Urban Authority to be externally audited by the Controller and Auditor-General.⁷⁷⁸ The Local Government Finance Act further empowers the RC to receive reports on tenements exempted by the Council from rates; to issue orders applying to a particular LGA in respect of rates and rating procedures; to authorise any person to access and inspect local government accounts; and to receive audit reports from the CAG.⁷⁷⁹

The discretion of LGAs in raising and spending moneys seems to be affected due to strict control and supervision by the Minister and other central government authorities.

⁷⁷⁴ See ss. 9A & 41, CAP. 290, *ibid*

⁷⁷⁵ See ss.13, 31, 34 & 42, CAP.290, *ibid*.

⁷⁷⁶ See s.45, CAP.290, *ibid*.

⁷⁷⁷ Act No.11 of 2008.

⁷⁷⁸ See s.10 Act No.11 of 2008, *ibid*.

⁷⁷⁹ See ss. 15, 31(2), 44 &45, CAP.290, *loc.cit*.

Although such control and supervision might be intended to ensure accountability and proper management of local government finance, the same contradicts with the theory of decentralisation, the subsidiarity principle which requires LGAs to be given the discretion to raise and spend money.⁷⁸⁰ Strict central control and supervision of local government finance defeats the desired autonomy of LGAs in the management of their financial affairs and in determining their priorities. Therefore, in the right of the Instrumental theory of law, the Local Government Finance Act, as an instrument for achieving local government financial autonomy is inadequate to bring such outcomes. The next item examines the provisions of the Public Service Act, 2002 and its instruments related to local government personnel management.

4.3.5 The Public Service Act, 2002

Before the enactment of the Public Service Act, 2002, the local government service was governed by the Local Government Service Act⁷⁸¹ which was amended in 1999 to give LGAs the power to appoint, remunerate, promote, develop, discipline and dismiss their own employees in a view to improving the autonomy of LGAs in managing their personnel affairs.⁷⁸² Nonetheless, the Local Government Service Act was repealed by the Public Service Act, 2002. Since then, in Mainland Tanzania, the local government service became an integral part of the public service governed by the Public Service Act, 2002 and its instruments.

The Public Service Act, 2002 establishes a unified public service under the Public Service Commission.⁷⁸³ The Commission comprises of various departments including the Local Government Service Department.⁷⁸⁴ The Act vests in the Commission the duty

⁷⁸⁰ The discussion on the implication of the present legal framework of central-local government relationship on local government financial autonomy see item 5.4.2 in the next chapter.

⁷⁸¹ Act No. 10 of 1982, *loc.cit.*

⁷⁸² See s. 87, Act No. 6 of 1999, *loc.cit.*

⁷⁸³ See s.9 (1), CAP.298, *loc.cit.*

⁷⁸⁴ See Subsection (3) (i)-(vii), *ibid.*

to advise the President in the exercise of his powers over the public service under Article 36 of the Constitution; to issue guidance, monitor, facilitate and to conduct merit based recruitments in the public service (including the local government service); to facilitate appointments in the public service; and to receive and act on appeals from other delegates or disciplinary authorities including the Local Government Service Department.⁷⁸⁵

The Public Service Act, 2002 establishes different other central and local government executives to regulate the public service (including the local government service) in Mainland Tanzania. Among the authorities so established include the President of the United Republic of Tanzania, the Chief Secretary in the President's office, the Minister responsible for local government, Permanent Secretaries, Heads of Extra Ministerial Departments, Regional Administrative Secretaries and Directors of LGAs.⁷⁸⁶ In line with the provisions of Article 36 of the Constitution of the United Republic of Tanzania, the Public Service Act vests in the President the power and authority to appoint the Directors of City Council and Local Government Commissioners;⁷⁸⁷ to promote, dismiss or remove any public servant in the local government service;⁷⁸⁸ and to exercise the final disciplinary authority in the local government service.⁷⁸⁹

In the exercise of his powers and discharge of his functions related to the public service, the President is assisted by the Chief Secretary as the head and chief executive officer of

⁷⁸⁵ See ss.10 (1) & 29(1), (4) & (6), CAP.298, *ibid*. Also see Reg. 25(1) (b) &(c), G.N.No.168 of 2003, *loc.cit*; Clause 15(b) & 21(1) (c), G.N. No.169 of 2003, *loc.cit*; Clause 7.4, G.N. No.53 of 2007, *loc.cit*; Clause 6.3, G.N. No.54 of 2007, *loc.cit*; and Clause 10(a)-(e), G.N. No.146 of 2008, *loc.cit*.

⁷⁸⁶ See ss. 4-5,CAP.298, *ibid*.

⁷⁸⁷ See Art.36, CAP.2, *loc.cit*. Also see s.5 (1)-(3), CAP.298, *ibid*; Reg. 5(1), G.N.No.168 of 2003, *ibid*; Clause 4(4), G.N. No.169 of 2003, *ibid*; Clause 7.1.1, G.N.No.53 of 2007, *ibid*; Clause 6.1-(4), G.N. No.54 of 2007, *ibid*; and Clause 4, G.N. No.146 of 2008, *ibid*.

⁷⁸⁸ See Art.36, CAP. 2, *ibid*. Also see s.24 (1),CAP.298, *ibid*; Reg.29,G.N.No.168 of 2003, *ibid*; Clause 45(1) (a), G.N. No.169 of 2003, *ibid*; Clause 7.1.2, G.N.No.53 of 2007, *ibid*; and Clause 36(1) (a), G.N. No.146 of 2008, *ibid*.

⁷⁸⁹ See s.25 (1) (a) & (d),CAP.298, *ibid*. Also see Reg.60 (1) & (5), G.N.No.168 of 2003, *ibid*; Clause 48(1), G.N. No.169 of 2003, *ibid*; Clause 25.1, G.N.No.53of 2007, *ibid*; and Clause 66(1), G.N. No.146 of 2008, *ibid*.

the public service and the local government service.⁷⁹⁰ The Act vests in the Chief Secretary the responsibility for: providing leadership, direction and image to the public service (including the local government service); administration and ordering terms and conditions of employees in the local government service; confirmation and discipline of City Directors and Local Government Commissioners; issuing employment permits through the Permanent Secretary (establishments) for new employments or filling in vacancies in the local government service; and exercising appellate disciplinary authority for local government personnel.⁷⁹¹

Besides the Chief Secretary, there are the Minister of state (PO-PSM) and the Permanent Secretary (PO-PSM). The Minister of State (PO-PSM) is responsible for making and implementation of all policies on administration, human resources development and planning, payroll management and public service performance improvements.⁷⁹² The Permanent Secretary (Establishments) is the principal assistant of the Chief Secretary. He is responsible for: facilitating labour mobility, issuing circulars, informing the Chief Secretary on vacancies and providing recommendations after consultation with the Minister on transfers, promotions and appointments by the President.⁷⁹³

The Public Service Act, 2002 also vests in the Minister of state (PO-RALG) the responsibility of performance improvement and human resources development in the local government service, the teacher's service commission and in the primary and secondary school administration.⁷⁹⁴ He is also given under the Public Service Act the

⁷⁹⁰ See s. 4(1),CAP.298, *ibid*. Also see Clause 5(1), G.N. No.146 of 2008, *ibid*.

⁷⁹¹ See s.4,CAP.298, *ibid*. Also see Reg.6 (3), 35(2) (a), G.N.No.168 of 2003, *loc.cit*; Clause 6 and 7, G.N. No.169 of 2003, *loc.cit*; Clause 7.3 and 25.1, G.N.No.53 of 2007, *loc.cit*; and Clause 5 and 6, G.N. No.146 of 2008, *ibid*; and Presidential Circular No.1 of 1998 and Circular Letter No.BC.46/97/03/18, *loc.cit*.

⁷⁹² See G.N.No.144 of 2016, *loc.cit*; Clause 5(1), G.N. No.169 of 2003, *ibid*; Clause 7.2.1, G.N.No.53 of 2007, *ibid*; Clause 6.2.1, G.N.No.54 of 2007, *loc.cit*; and Clause 9, G.N. No.146 2008, *ibid*.

⁷⁹³ See s. 8(2) & 3(f)-(g),CAP.298, *loc.cit*. Also see Reg.5 (2) & 7(1)-(3), G.N.No.168 of 2003, *loc.cit*; Clause 13(1)(a)-(l), G.N.No.169 of 2003, *loc.cit*; Clause 6.1.3, G.N.No.54 of 2007, *ibid*; and Clausen 9 and 29(1)(b),G.N. No.146 of 2008, *ibid*.

⁷⁹⁴ See G.N. No.144 of 2016, *loc.cit*.

authority for appointment, promotion and discipline of Directors of LGAs other than those appointed by the President.⁷⁹⁵ The Act further requires the Minister to ensure adequate finances and other resources in the service; to coordinate central-local relations; to coordinate and monitor performance of local government personnel; and to facilitate labour mobility in the service.⁷⁹⁶

The Public Service Act, 2002 further vests in the Permanent Secretary (PO-RALG) the duty to notifying the Chief Secretary through the Permanent Secretary (Establishments) on vacancies in local government service after consultation with the Minister of state (PO-RALG).⁷⁹⁷ Like the Local Government(District Authorities) Act and the Local Government(Urban Authorities) Act, the Public Service Act, 2002 imposes on other ministers and their permanent secretaries(line ministries) the responsibility for providing technical assistance, guidance and quality assurance on various matters related to sector employees in the local government service whose professions or duties are related to those ministries.⁷⁹⁸

Besides the central government, the Public Service Act, 2002 also vests in every LGA the authority for appointment, confirmation, staff development, promotion, remuneration and discipline of its employees within the LGA concerned.⁷⁹⁹ These powers are also inconsistently vested in the Directors of LGAs under the Public Service Regulations, 2003.⁸⁰⁰ The Public Service Regulations, 2003 provides that powers of appointment, confirmation of appointments and promotion of public servants other than those appointed by the president are vested in the Director of a LGA in respect of the LGA

⁷⁹⁵ See s.5 (a) (iii), CAP.298, *loc.cit.* Also see Reg.6 (f) & 35(2) (b), G.N.No.168 of 2003, *loc.cit.*; Clause 7.2.2, G.N.No.53 of 2007, *loc.cit.*; Clause 6.2.3, G.N.No.54 of 2007, *loc.cit.*; and Clause 7(1)(e), G.N. No.146 of 2008, *loc.cit.*

⁷⁹⁶ See Clause 7(1) (a)-(f), G.N. No.146 of 2008, *ibid.*

⁷⁹⁷ See Reg.7 (1)-(2), G.N.No.168 of 2003, *loc.cit.* Also see Clause 29(1)(a), G.N. No.146 of 2008, *ibid.*

⁷⁹⁸ See Clause 8, G.N. No.146 of 2008, *ibid.* Also see s. 174A, CAP. 287, *loc.cit.*; & s. 54A, CAP.288, *loc.cit.*

⁷⁹⁹ See s.6 (6), CAP.298,*loc.cit.* Also see Clause 11,G.N.No.146 of 2008, *ibid.*

⁸⁰⁰ G.N.No.168 of 2003, *loc.cit.*

concerned.⁸⁰¹ The Public Service Act, 2002 further makes every Director of LGAs the in charge of the administration of public servants in the LGA and the supervisor of local government servants under him.

The Public Service Act, 2002 also vests in the Director the duty to give advice, recommendation and suggestions on appointments, confirmations, promotions and discipline of local government servants in the LGA concerned and the responsibility of maintaining mutual relationship between councillors and employees in the respective LGA.⁸⁰² Some of these powers and responsibilities vested in the Director are concurrently vested in the Minister responsible for local government, permanent secretaries, the RAS(s), heads of departments, units and sections and in the teachers' service department.⁸⁰³ For instance, the Public Service Scheme and the Local Government Service Scheme provide that heads of department, units or sections in the LGA shall be the supervisor in respect of employees in the particular department, unit or section and the disciplinary authority for public servants in the operational service, employees engaged on agreement or contract basis as well as the temporary and daily employees.⁸⁰⁴

From our discussion under this section, it may be concluded that the law governing local government service is diverse and complex. For instance, one may note that besides the the management of local government personnel being under Public Service Act, 2002 and the instruments made under it, it is also regulated by the Constitution of the United Republic of Tanzania, 1977,⁸⁰⁵ the Local Government (District Authorities) Act,⁸⁰⁶ the Local Government (Urban Authorities) Act,⁸⁰⁷ the Ministers (Assignment of Ministerial

⁸⁰¹ See Reg.6 (g), G.N.No.168 of 2003, *ibid*.

⁸⁰² See Clause 8(3), G.N. No.169 of 2003, *loc.cit*. Also see Clause 12, G.N. No.146 of 2008, *ibid*.

⁸⁰³ See ss.6 (3) & (6), CAP.298, *loc.cit*. Also see Reg.35 (2)(b), G.N. No.168 of 2003, *loc.cit*.

⁸⁰⁴ See Clause 10, G.N. No.169 of 2003, *loc.cit*. Also see Clause14, G.N. No.146 of 2008, *loc.cit*.

⁸⁰⁵ CAP.2, *loc.cit*.

⁸⁰⁶ CAP. 287, *loc.cit*.

⁸⁰⁷ CAP.288, *loc.cit*.

Functions) Notice,⁸⁰⁸ the Employment and Labour Relations Act,⁸⁰⁹ the Employment and Labour Relations (Code of Good Practice) Rules,⁸¹⁰ the Labour Institutions Act,⁸¹¹ the Labour Institutions (Mediation and Arbitration) Rules,⁸¹² and the Public service (Negotiating Machinery) Act.⁸¹³ The analysis of the Public Service Act, 2002 also shows that the management of the local government personnel is vested in several authorities including the President; the Public Service Commission; the Chief Secretary; the Permanent Secretary PO-PSM; the Minister, PO-RAG, the Permanent Secretary PO-RAG; the RAS and the LGAs.

Besides multiple legislation and vesting the management of local government service in multiple authorities, the analysis of the Public Service Act, 2002 and its instruments also reveals that the present law governing the local government service has almost centralised most of the aspects of the local government personnel administration including the setting of conditions of employment, payroll management, fixing the number of employees, appointment of top executives and recruitment of local government officers.⁸¹⁴ The provisions of the Public Service Act, 2002 are inconsistent with the theory of decentralisation and the principle of subsidiarity. Therefore, the Public Service Act, 2002 cannot serve as an instrument to meet the desired autonomy of LGAs in personnel management.

There are also some sector Ministerial legislations worth of analysis. They include the Land Act⁸¹⁵ and the Land (Allocation Committees) Regulations,⁸¹⁶ the Village Land

⁸⁰⁸ G.N. No.144 of 2016, *loc.cit.*

⁸⁰⁹ Act No.6 of 2004.

⁸¹⁰ G.N. No. 42 of 2007.

⁸¹¹ Act No.7 of 2004.

⁸¹² G.N. No. 64 of 2007.

⁸¹³ Act No.19 of 2003.

⁸¹⁴ See for instance ss.4, 5(1)(iii) & 10, CAP.298,R.E.2002.

⁸¹⁵ CAP.113, *loc.cit.*

⁸¹⁶ G.N.No.72, *loc.cit.*

Act,⁸¹⁷ the Urban Planning Act,⁸¹⁸ the Land Use Planning Act⁸¹⁹ and the Courts (Land Dispute settlement) Act.⁸²⁰ The land Act was enacted in 1999 in order to provide for the basic law in relation to land other than the village land, the management of land, settlement of disputes and related matters.⁸²¹

The Land Act concentrates the authority and responsibility of land administration in the hands of the Minister responsible for land and the Commissioner for land appointed by the President under the provisions of section 9 of the Land Act.⁸²² The Act restricts LGAs from making an offer to grant the right of occupancy unless it is specifically provided for under the Act or regulation made under the authority of the Act.⁸²³ Where a local government authority receives an application for grant of the right of occupancy, it is required to forward the same to the commissioner for land with comments and recommendations where appropriate and the Commissioner is required to have regard to the comments and recommendations made by the local government authority.⁸²⁴

Notwithstanding the restriction imposed by the Land Act on the LGAs' power in the administration of land, the same Act empowers any LGAs to make representation in writing or orally to the Commissioner for land on matters concerning the administration of land situated in its area of jurisdiction and the Commissioner for land is bound to have regard to such representation.⁸²⁵ The Act further compels the Commissioner for land to ensure that all LGAs and associations of LGAs are consulted and kept informed

⁸¹⁷ CAP. 114, *loc.cit.*

⁸¹⁸ Act No. 8, *Loc.cit.*

⁸¹⁹ Act No. 5, *Loc.cit.*

⁸²⁰ Act No. 2, *Loc.cit.*

⁸²¹ See long title to the Land Act, CAP.113, *loc.cit.*

⁸²² See ss. 8-10, CAP.113, *ibid.*

⁸²³ See s.14 (1), CAP.113, *ibid.*

⁸²⁴ See s.14 (5), CAP.113, *ibid.*

⁸²⁵ See s.14 (3), CAP.113, *ibid.*

about the administration of land under the Act and any other laws concerned with administration of land.⁸²⁶

The Land Act also empowers the Minister responsible for land to establish land Allocation Committees at the central, Urban and District Authorities.⁸²⁷ The functions of the said land allocation committees is to advise the Commissioner for land on the exercise of his powers to determine applications for rights of occupancy.⁸²⁸ In pursuance of the provisions of section 12 and section 179 which empower the minister to make regulations for proper administration of the Land Act, the Minister made the Land (Allocation Committees) Regulations, 2001 which establish at every District Authority and Urban Authority a land allocation committee.⁸²⁹ These land allocation committees are given substantial powers and freedom to allocate land for various purposes including land for central or local government offices; land for residential and commercial purposes; land for hotels, heavy and light industries; land for farms not exceeding 500 acres; and land for farms exceeding 500 acres subject to approval by the Minister responsible for land.⁸³⁰ The committees are also given power to approve or disapprove an application for a right of occupancy but subject to the provisions of the land Act.⁸³¹

It is important to note that the Land Act classifies land into three classes which include general land, village land and reserved land.⁸³² The administration of village land is vested in the village council and is governed by the Village Land Act.⁸³³ The Village Land Act was enacted in 1999 to provide for the management and administration of land

⁸²⁶ See s.14 (3), CAP.113, *ibid.*

⁸²⁷ See s.12 (1), CAP.113, *ibid.*

⁸²⁸ See s.12 (3), CAP.113, *ibid.*

⁸²⁹ See Reg.3 of the the Land (Allocation Committees) Regulations, 2001, G.N.No.72 of 2001.

⁸³⁰ See Reg.9, G.N.No.72, *ibid.*

⁸³¹ See Reg.11, G.N.No.72, *ibid.*

⁸³² See s. 4(4), CAP.113, *loc.cit.*

⁸³³ CAP.114, *loc.cit.*

and related matters in villages.⁸³⁴ The village land Act clearly provides that the management of village land is vested in the Village Council.⁸³⁵ The Village council is given the power to allocate land and grant customary right of occupancy subject to approval by the Village Assembly.⁸³⁶ Besides the requirement for approval by the Village Assembly, the Village Council is also required to report to the Village Assembly at the ordinary meeting about the management and administration of the village land and brief the Ward Development Committee and the District Council having jurisdiction in the area about the management of the village land.⁸³⁷

The Village Land Act vests arm length freedom to the Village Council to manage the village land consistent with the theory of decentralisation and the principle of subsidiary. Nonetheless, the Act vests in the Commissioner for land the discretionary powers to give general or specific advice to LGAs which he considers necessary or desirable for the management of village land. The Village Council(s) to which the advice is given is bound to have regard to that advice.⁸³⁸ As pointed out above in this section, the Urban Planning Act and the Land Use Planning Act are among the sector legislations which provide substantial freedom of action to LGAs in Mainland Tanzania.

The Urban Planning Act provides that every City Council, Municipal Council, Town council and Township Authority shall be a planning authority in respect of its area of jurisdiction.⁸³⁹ These Urban Authorities are given wide powers and freedom of action including the power to employ qualified town planner(s); to give or withhold consent for development of land; to control land use; to make by-laws to regulate land use; to consider and approve applications for development of land; to ensure proper execution

⁸³⁴ See long title to the Village Land Act, CAP.114, R.E.2002.

⁸³⁵ See s.8 (1), CAP.114, *ibid.*

⁸³⁶ See s.8 (5), CAP.114, *ibid.*

⁸³⁷ See s.8 (6), CAP.114, *ibid.*

⁸³⁸ See s.8 (7), CAP.114, *ibid.*

⁸³⁹ See s.7 (1) of the Planning Act, 2007, Act No. 8 of 2007.

of approved planning schemes; and to maintain all planned land for residence, agriculture and for commercial purposes.⁸⁴⁰ However, mandate for establishment, conferment of status and expansion of boundaries of City Councils, Municipal Councils, Town Councils and Township Authorities is vested in the Minister responsible for local government.⁸⁴¹ Also, the planning scheme developed by either Urban Authority is subject to deliberation and approval by the Regional Secretariat and the Director of Urban planning.⁸⁴²

The Land Use Planning Act provides that planning authorities shall include Village Council and a District Council.⁸⁴³ The Act further provides that a District Council shall be the land use planning authority in the district and that every Village Council shall be the village land use planning authority for the respective village.⁸⁴⁴ Every planning authority is responsible for policy implementation and direction; setting appropriate objectives at all land use planning levels; and determine appropriate criteria for protection of the Environment and sustainable use of natural resources.⁸⁴⁵

The other important sector legislation is the Courts (Land Dispute settlement) Act.⁸⁴⁶ This Act was enacted in 2002 for the purpose of establishing land disputes settlement machinery and for matters incidental thereto.⁸⁴⁷ The Act establishes the Village Land Council and the Ward Tribunal as courts having jurisdiction to entertain land disputes.⁸⁴⁸ These quasi-judicial bodies are given substantial powers and freedom to mediate land disputes within their respective areas without any central government influence.⁸⁴⁹ If a

⁸⁴⁰ See s. 28, Act No. 8, *ibid.*

⁸⁴¹ See s.7 (2), Act No. 8, *ibid.*

⁸⁴² See ss.17 &39 Act No. 8, *ibid.*

⁸⁴³ See s.18 of the Land Use Planning Act, 2007, Act No.6 of 2007.

⁸⁴⁴ See ss. 21 &22, Act No.6, *ibid.*

⁸⁴⁵ See s.23 Act No.6, *ibid.*

⁸⁴⁶ Act No.2, *loc.cit.*

⁸⁴⁷ See long title to the Courts (Land Dispute settlement) Act, 2002, *loc.cit.*

⁸⁴⁸ See ss. 3 (1-2) & 10, Act No. 2, *ibid.*

⁸⁴⁹ See ss. 7 & 13, Act No. 2, *ibid.*

person is aggrieved by the decision of the Village Land Council, he may refer the matter to the Ward Tribunal and if a person is aggrieved by the decision of the Ward Tribunal, he may appeal to the District Land and Housing Tribunal.⁸⁵⁰

From the above selected sector legislation, it may be noted that some of the sector legislations especially the Village Land Act, the Land (Allocation Committees) Regulations, the Urban Planning Act, the Land Use Planning Act and the Courts (Land Dispute settlement) Act provide substantial powers and freedom to LGAs to deal with land matters in their respective areas of jurisdiction according to D by D and the subsidiarity principle. However, the land Act concentrates powers relating to administration of land in the Minister and the Commissioner for land contrary to D by D and the subsidiarity principle. Therefore, one may note that within the Ministry of land itself, there is disharmony of legislation governing the same subject matter. Such a legislative setup may not lead to effective central-local government administrative relationship which guarantees local government autonomy. It may further be noted that within the same sector, there are many pieces of legislation which regulate the same subject matter. This multiplicity of legislation makes the legal framework of central-local government administrative relationship complex and therefore not easy to monitor the way it helps the development and growth of local government autonomy in Mainland Tanzania.

The multiplicity in Mainland Tanzania is not only notable in sector ministries in relation to LGAs. There is multiplicity of legislation in all aspects of local government affairs including the areas of local government personnel and local government finances. In order to determine the types of LGAs, their statutory powers and functions, their sources of revenue, their personnel affairs and the manner they administratively interact with the central government, one must scan through several parliamentary Acts and subsidiary

⁸⁵⁰ See ss.9 &19, Act No. 2, *ibid.*

legislation. Notwithstanding such multiplicity legislation, there is no any legislation which precisely states the central-local government administrative relationship and there is no an intergovernmental relationship Act to provide for the institutional framework of central-local government administrative relationship like the case in some selected countries for this study.

The study and analysis of the legislative framework of central-local government administrative relationship in the selected countries (Philippines republic, South Africa, Kenya and Uganda) revealed several good practices that Mainland Tanzania could learn. For instance, in the Republic of Philippines, all aspects of local government and central-local government administrative relationship are governed by the Constitution and only one uniform code- the Local Government Code.⁸⁵¹ This Code provides for all matters concerning local government powers and responsibilities;⁸⁵² local government finance;⁸⁵³ local government personnel and the central-local government administrative relationship as provided under the Constitution.⁸⁵⁴

In the Republic of South Africa, local government powers and functions, sources of revenue and other related matters are provided under the Constitution and the Local Government (Municipalities Structure) Act, 1998.⁸⁵⁵ Also, in the Republic of South Africa there is a specific Act-the Intergovernmental Relations Framework Act, 2005⁸⁵⁶ which governs the central-local government administrative relationship.

The Intergovernmental Relations Framework Act, 2005 establishes a framework for the national government, provincial governments and local governments in order to

⁸⁵¹ See the Local Government Code of 1991, Act No. 7160 of 1991.

⁸⁵² See ss. 16, 17 & 18, Act No. 7160, *ibid.*

⁸⁵³ See 18, Act No. 7160, *ibid.*

⁸⁵⁴ *Ibid.*

⁸⁵⁵ Act No. 117 of 1998.

⁸⁵⁶ Act No.13 of 2005.

facilitate intergovernmental relations and provide for mechanisms and procedures for settlement of intergovernmental disputes and other matters connected therewith.⁸⁵⁷ The Act establishes a number of forums including the Presidential Coordination Council which comprises the national President, provincial premiers and local government representatives to discuss matters of national concern.⁸⁵⁸

The Intergovernmental Relations Framework Act further establishes the National Intergovernmental Forum;⁸⁵⁹ the Premier's Intergovernmental Forum;⁸⁶⁰ the District Intergovernmental Forum;⁸⁶¹ and the Inter-Municipality Forums.⁸⁶² These intergovernmental forums provide avenue for intergovernmental consultations and negotiations between the three tiers of government on matters of policy formulation and implementation and on other intergovernmental issues. The Intergovernmental Relations Framework Act further defines the procedures for settling intergovernmental disputes.⁸⁶³ This has been said to be one of the important lessons for other countries in Africa.⁸⁶⁴

Another good practice can be seen from the Republic of Kenya which apart from the Constitution has one comprehensive local government Act-the Local Government Act, 1963.⁸⁶⁵ The Act provides for the establishment and composition of LGAs,⁸⁶⁶ qualification and election of members in LGAs, powers and functions of LGAs⁸⁶⁷ and all other matters including local government finance.⁸⁶⁸ The Republic of

⁸⁵⁷ See s. 4 and the long title to Act No.13 of 2005, *ibid.*

⁸⁵⁸ See ss.6-8, Act No.13 of 2005, *ibid.*

⁸⁵⁹ See ss.9-15, Act No.13 of 2005, *ibid.*

⁸⁶⁰ See ss. 16-23, Act No.13 of 2005, *ibid.*

⁸⁶¹ See ss. 24-27, Act No.13 of 2005, *ibid.*

⁸⁶² See ss. 28-29, Act No.13 of 2005, *ibid.*

⁸⁶³ See ss. 39-44, Act No.13 of 2005, *ibid.*

⁸⁶⁴ See Malan, L. (2005). *Loc.cit.* Also see Republic of South Africa. (2007). *Loc.cit*; Republic of South Africa. (2008).*Loc. cit*; and De Villiers, B. (2012). *Loc. cit.*

⁸⁶⁵ The Local Government Act, 1963 CAP 265 revised in 2012.

⁸⁶⁶ See ss. 12, 13, 14, 26 and 27, 28, 29, 38, 41 and 46, CAP.265, *loc.cit.*

⁸⁶⁷ See ss. 53, 53A, 53B, 144, 145, 148, 150 and 150A, CAP.265, *ibid.*

Kenya has also an Inter-Governmental Relations Act, 2012⁸⁶⁹ which specifically defines the central-local government (National-county) administrative relationship. The Act establishes different institutions for consultations, negotiation, mediation and arbitration between the national and county levels of government. These institutions include the National and County Government Co-ordination Summit,⁸⁷⁰ the Intergovernmental Relations Technical Committee,⁸⁷¹ the Intergovernmental Relations Secretariat,⁸⁷² and the Council of County Governors.⁸⁷³

The Inter-Governmental Relations Act provides for amicable resolution of intergovernmental disputes through alternative dispute resolution mechanisms.⁸⁷⁴ Only after all efforts of resolving a dispute amicably fail that a party to the dispute may submit the matter for arbitration or institute judicial proceedings in the High Court which is vested under the Constitution the jurisdiction over intergovernmental disputes.⁸⁷⁵ The case of Uganda is almost similar to Kenya. Although there is no an intergovernmental relationship Act, all aspects of local government powers and functions, local government finance, personnel and central-local government administrative relationship are in Uganda governed by the Constitution and only one comprehensive local government Act- the Local Governments Act, 1997.⁸⁷⁶

Having a comprehensive local government Act reduces complexity and the chances of duplication of control and supervisory authorities over LGAs. This was one of the concerns of the LGRP which promised to review the pre-existing legislative framework and to enact comprehensive local government legislation, harmonise sector legislation

⁸⁶⁸ See Arts. 6(1), 174 & 175 of the Constitution of Kenya, *loc.cit.*

⁸⁶⁹ CAP. 5G, R.E.2012.

⁸⁷⁰ See s. 7, CAP.5G, *ibid.*

⁸⁷¹ See s.11 CAP.5G, *ibid.*

⁸⁷² See s. 15 CAP.5G, *ibid.*

⁸⁷³ See s.19 CAP.5G, *ibid.*

⁸⁷⁴ See the long title and s.31 (b), CAP.5G, *ibid.*

⁸⁷⁵ See s.35, CAP.5G, *ibid.*

⁸⁷⁶ CAP. 243 of 1997.

and amend the Constitution in order to properly enshrine decentralisation by devolution in Mainland Tanzania.⁸⁷⁷ Nonetheless, the LGRP ended without successful enactment of the comprehensive local government Act and, the envisaged constitutional amendment and harmonisation of sector laws is yet in place. As may be noted in item 5.2 in the next chapter, the multiplicity of legislation and the absence of an intergovernmental relationship Act aggravate the complexity and vagueness of the legal framework of central-local government administrative relationship in Mainland Tanzania. The next item provides the conclusion of this chapter.

4.4 Conclusion

This chapter examined the legal and institutional framework of central-local government administrative relationship in Mainland Tanzania. The analysis of the provisions of the Constitution of the United Republic of Tanzania and national legislation revealed that the law governing the present local government system in Mainland Tanzania encompasses several important features of the decentralisation theory, the subsidiarity principle and holistic Principle which are necessary and supportive of local government autonomy. These features include the presence of elected representatives and corporate LGAs, the transfer of substantial powers and functions to LGAs, the transfer of some financial powers and resources to LGAs and the transfer of some powers over personnel management to LGAs.

Moreover, this chapter pointed out that the provisions of the Constitution of the United Republic of Tanzania and the provisions of the legislation related to LGAs may not ensure local government autonomy because, among other things, the Constitution does not specify the sources of local government revenue and the central-local government administrative relationship. It has also been pointed out in this chapter that unlike the legislative framework of central-local government administrative relationship in the

⁸⁷⁷See Government of the United Republic of Tanzania (1998). *Op.cit.* pp.9&10. On the key objectives of the LGRP and its implementation see item 3.5 in the Chapter Three.

selected countries for this study, in Mainland Tanzania, there are much principal and subsidiary legislation which govern local government and its administrative relationship with the central government. However, none of the said legislation states with precision the central-local government administrative relationship and there is no an intergovernmental relationship Act which defines the institutional framework of central-local government administrative relationship. Lack of legislation which states with precision the central-local government administrative relationship makes the present legal framework of central-local government administrative relationship appear blur and uncertain.

It has further been pointed out in this chapter that, the law governing the present local government and its administrative relationship with the central government vests in the Minister and several other central government authorities some enormous control and supervisory powers over LGAs. The vesting in the Minister and other central government authorities enormous control and supervisory powers over LGAs is contrary to the theory of decentralisation and the subsidiarity principle and may affect the autonomy of LGAs. The next chapter examines the findings of this study on the present legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in Mainland Tanzania.

CHAPTER FIVE

RESEARCH FINDINGS

5.1 Introduction

This chapter discusses the findings of this study. The discussion is organised on the basis of the findings obtained on the three research questions which guided this study. The three research questions were essentially meant to find out the legal framework of central-local government administrative relationship in Mainland Tanzania; the areas of administrative interaction between the central government and LGAs in the LGAs' exercise and discharge of their statutory power and functions; and the way the present legal framework of central-local government administrative relationship affects the autonomy of LGAs in Mainland Tanzania.

From documentary review and in-depth interviews, the data obtained suggests three major findings. First, the present legal framework of central-local government administrative relationship in Mainland Tanzania is complex, uncertain and control-oriented which reflects more of agency than partnership model of relationship. Second, under this legal framework, there are mainly three areas of administrative interaction between the central and LGAs which include control and supervision of local government powers and functions, management of local government finance and, management of local government personnel. Third, to a large extent, the present legal framework of central-local government administrative relationship in Mainland Tanzania has a negative implication on the autonomy of LGAs in the management of personnel, financial affairs and in determining priorities in service delivery. LGAs in Mainland Tanzania are therefore semi-autonomous. These findings are discussed under three headings: the legal framework; areas of central-local government administrative interactions; and implication of the present legal framework on the autonomy of LGAs in Mainland Tanzania.

5.2 The Legal Framework

In the discussion of the legal and institutional framework of central-local government administrative relationship in the previous chapter, it has been noted that the present central-local government administrative relationship in Mainland Tanzania is on one hand founded on the Constitution of the United Republic of Tanzania and, on the other hand, on several scattered pieces of legislation. For such reason, this chapter only examines briefly the key provisions of the Constitution and other laws which regulate the central-local government administrative relationship in Mainland Tanzania because the detailed analysis and discussion of the same has been made in the preceding chapter.

The analysis of the provisions of the Constitution of the United Republic of Tanzania shows that, there are several constitutional provisions which imply central-local government relationship but do not directly provide for and define the central-local government administrative relationship in Mainland Tanzania.⁸⁷⁸ The only provisions which seem to be relevant in central-local government administrative relationship are those relating to the nature of the government of the United Republic of Tanzania;⁸⁷⁹ the powers of the President in relation to administrative functions of the government;⁸⁸⁰ the establishment, powers and functions of LGAs in Mainland Tanzania;⁸⁸¹ and the powers of the CAG in relation to government accounts.⁸⁸²

The provision of Article 1 of the Constitution of the United Republic of Tanzania vests sovereignty in a single entity- the central government. As pointed out in the preceding chapter, in a unitary state, the powers and functions of LGAs depend on the central

⁸⁷⁸For detailed Constitutional provisions relevant in central-local government administrative relationship see item 4.2 in Chapter Four above and table 5.1 in **Appendix III**.

⁸⁷⁹ See Art. 1, CAP. 2, *loc.cit.*

⁸⁸⁰ See Arts.34-36, CAP. 2, *ibid.*

⁸⁸¹ See Arts. 145& 146, CAP. 2, *ibid.*

⁸⁸² See Art.143, CAP.2, *ibid.*

government and for this reason, the former only exercises those powers and functions which the latter wishes to delegate to them or does not wish to perform. In light of the provisions of Article 1 of the Constitution of the United Republic of Tanzania, the powers and functions of LGAs may be widened or narrowed at the desire of the central government because the former are, by necessary implication, subordinate to the latter.

The implication of Article 1 of the Constitution of the United Republic of Tanzania on central-local government administrative relationship and local government autonomy may also be seen in relation to the powers and functions of the President under Articles 33-36 of the Constitution of the United Republic of Tanzania. In the light of Article 1 of the Constitution, the provisions of Articles 33(2) and 34 (3) of the Constitution which vest all authority of the government in the President extends to LGAs. Again, Article 35(1)-(2) of the Constitution of the United Republic of Tanzania provides that all executive functions discharged by officers of the government are so done on behalf of the President and therefore, the President has authority to issue orders and directives in respect of all such functions. The provisions of Articles 36(1), 36(2) and 36(4) vest in the President the authority to constitute or abolish any office in the service of the government; the authority to appoint leaders and chief executives in the service of the government; and the authority to discipline any public servant in the service of the government.

In the light of Article 1 of the Constitution of the United Republic of Tanzania and, Articles 6 and 151 of the Constitution which define government to include LGAs and any person exercising powers on that behalf, all the executive functions discharged by LGAs are also discharged on behalf of the President and for this reason, the constitutional powers of the President to issue orders and directives in respect of all executive functions discharged by officers of the government extends to include LGAs. The implication of Articles 1, 6 and 151 also extends to the powers and functions of the

CAG and other central government leaders (executives) such as the Prime Minister and Regional Commissioners. This means, in the light of Articles 1, 6 and 151 of the Constitution, the powers and functions of the CAG under Article 143; the Prime Minister under Article 52; and the powers and functions of RCs under Article 61(4) of the Constitution extend to the local government level.

The other important constitutional provisions are the provisions of Articles 145 and 146 which provide for the establishment, rationale, powers and functions of LGAs in Mainland Tanzania. Article 145(1)-(2) provides for the establishment of LGAs all over Mainland Tanzania and requires the Parliament to enact a law providing for the establishment, structure, composition, sources of revenue of LGAs and procedures for the LGAs to conduct their business. Although the Provisions of Article 145 make the establishment of LGAs in Mainland Tanzania a mandatory requirement, the same do not actually establish any authority or state the manner in which such authorities are to be established or abolished. The provisions of Article 146(1)-(2) also stipulate the purpose of LGAs, powers and functions of LGAs in Mainland Tanzania. However, this Article only states the powers and functions of LGAs in very general and broad terms and does not confer any specific power or function to a local authority.

The provisions of Articles 145 and 146 of the Constitution of the United Republic of Tanzania have several deficiencies in respect of central-local government relationship and the desired local government autonomy in Mainland Tanzania. These provisions are silent on the authority for the establishment, variation and abolition of LGAs; the specific powers and functions of LGAs; the sources of local government revenue and the distribution of the national income between the two government tiers; the power competences between the central government and LGAs; the authority to deal with intergovernmental disputes; and the authority to deal with local government personnel affairs. All have been left to the Parliament to determine through enactments. The

central-local government administrative relationship in Mainland Tanzania is therefore not properly constitutionalised. In a constitutional framework like this, local government powers, functions and resources are less secure because the Acts of Parliament providing for the powers, functions, and sources of revenue and personnel affairs can easily and frequently be changed by the Parliament or the central executives. This can be exemplified by the situation after the 1990s local government reforms.

In 1999, the Local Government Service Act was amended to allow specified LGAs to appoint, remunerate, promote, develop, discipline and dismiss their own employees.⁸⁸³ In 2002, the Local Government Service Act was repealed by the Public Service Act⁸⁸⁴ which created a unified public service and *deconcentrated* staff management to Permanent Secretaries and regions in addition to LGAs; and made the PO-PSM the in charge of staff management in local government service.⁸⁸⁵ Nevertheless, the Public Service Act made the LGAs responsible for appointment, confirmation, promotion and discipline of all local government staff other than those appointed by the President.⁸⁸⁶ This section was immediately removed by subsequent amendment to the Public Service Act in 2003 whereby the Directors of LGAs were made the appointing, confirmation, promotion and disciplinary authority of all local government staff other than those appointed by the President.⁸⁸⁷ Despite this amendment some sector employees like the Health staff and teachers were exempted by the PO-PSM from the decentralised and merit recruitment procedures. In 2004, the Act was again amended to make the LGAs the appointing, confirmation, promotion and disciplinary authority for all local government staff other than those appointed by the President or the Minister.⁸⁸⁸

⁸⁸³ See s. 87 of the Local Government Laws (Miscellaneous Amendment) Act No.6 of 1999.

⁸⁸⁴ CAP.298, *loc.cit.*

⁸⁸⁵ See ss. 4, 5, 6, 8, 9 & 15, CAP.298, *ibid.* Also see Reg. 5, 6 & 18, G.N.No.168 of 2003, *loc.cit.*

⁸⁸⁶ See s.6 (6), CAP.298, *ibid.*

⁸⁸⁷ See s.2 of the Written Laws (Miscellaneous Amendments) Act, Act No.25 of 2002.

⁸⁸⁸ See s.2 of Written Laws (Miscellaneous Amendments) Act, Act No.19 of 2002.

In 2006, the PO-PSM issued a circular on superlative staff which instructed Council Directors to exclude all heads of departments from the provisions of the Public Service Staff Regulations regarding open and decentralised recruitments as stipulated in the Regulations.⁸⁸⁹ In 2007, the Public Service Act was again amended to establish the Public Service Recruitment Secretariat.⁸⁹⁰ This amendment completely centralised the recruitment of all local government employees under the Secretariat.⁸⁹¹ In 2013, the Public Service Act was further amended to allow the Secretary of the Secretariat to delegate to any Chief Executive Officer or Council the functions and powers of the Secretariat to conduct recruitments.⁸⁹² In 2014, the Secretary issued the Public Service (Delegation of Functions and Powers of the Secretariat to Conduct Recruitment Process) Notice, 2014⁸⁹³ which delegated the recruitment of twenty two (22) cadres of non-officer grade (operational service) to local government Councils.⁸⁹⁴

Yet in January 2016, the Permanent Secretary, PO-PSM issued a Circular letter⁸⁹⁵ to all Council Directors threatening to take away the powers of recruitment of the twenty two (22) Cadres if councillors interfered with the process of recruitment of employees in the Councils. The circular letter further directed that in every recruitment process of the twenty two cadres there must be a representative of the secretariat. Interviews with the heads of human resources department in the Councils visited and the Director of local government at the PO-RALG in 2015 revealed that, in all these personnel management reforms, LGAs were not consulted. The failure by the central government to consult the LGAs in such important reforms implies that the central government can do anything in respect of the local government service without consultation with the local government.

⁸⁸⁹ See Government of the United Republic of Tanzania. (2007). *Op.cit.*p.81.

⁸⁹⁰ See the Public Service (Amendment) Act, Act No. 18 of 2007.

⁸⁹¹ See s.29 of Act No 8 of 2002 as amended by s.11 of Act No.18 of 2007.

⁸⁹² See s.29A of Act No 8 of 2002 as amended by s.13 of the Written Laws (Miscellaneous Amendment) Act No.2 of 2013.

⁸⁹³ G.N. No. 70 of 2014.

⁸⁹⁴ See Clause 2. *Ibid.*

⁸⁹⁵ No. CCD.129/215/01/40.

That has also been the case in regard to local government finance.⁸⁹⁶ Nonetheless, LGAs could not sue for interference or *ultra-vires* acts because there is no constitutional demarcation of powers, responsibilities, financial and personnel resources between the central government and LGAs.

Besides the Constitution of the United Republic of Tanzania, there are several pieces of legislation which signify central-local government administrative relationship and which may also have an impact on the autonomy of LGAs in Mainland Tanzania.⁸⁹⁷ However, there is no specific legislation which specifically articulates central-local government administrative relationship in Mainland Tanzania. For instance, table 5.2 displays six Parliamentary Acts which contain provisions suggesting central-local government administrative relationship but none of them directly addresses the same.⁸⁹⁸

There are yet several other sector legislations such as in the education, finance and the health sectors which have not been included in this study. Leave alone these legislation, the study also revealed the existence of several subsidiary legislation which regulate central-local government administrative relationship as shown in Table 5.2 below.⁸⁹⁹ These subsidiary legislations are only those related to the principal legislation presented in the same table. There are several other subsidiary legislation and guidelines related to sector legislation which are also not included in this study.

Close examination of the legal and institutional framework of central-local government administrative relationship reveals that, the legal framework of central-local government administrative relationship in Mainland Tanzania is found in diverse pieces of legislation. Among the concerns of the LGRP was to enact a comprehensive local

⁸⁹⁶ See the discussion of local government autonomy in financial affairs under item 5.4.2 below.

⁸⁹⁷ See the analysis of the legislative framework of central-local government administrative relationship under item 4.3 in the preceding chapter and also see table 5.2 under **Appendix IV**.

⁸⁹⁸ See table 5.2 under **Appendix IV**.

⁸⁹⁹ *Ibid.*

government legislation and harmonise sector legislation in order to embrace D by D and remove the complexity and ambiguities in central-local government administrative relationship in Mainland Tanzania. It appears from the findings of this study that, the LGRP ended without successful enactment of a comprehensive local government Act and without harmonisation of sector legislation. One may ask why this has been the case. Review of LGRPPP II shows that the progress on efforts to harmonise central and sector legislation since 1999 has been relatively slow. Constraints on this front have included reluctance and lack of enthusiasm in central government and sectors.⁹⁰⁰

Interviews with the Director of Local Government Division at the PO-RALG revealed that, the central and sector ministries have been unwilling to devolve powers to LGAs and harmonise their central and sector legislation in fear of what the proposed changes will entail (fear of the unknown). The said Ministries are uncertain of the outcomes of devolving their powers and resources to LGAs. This reluctance of central and sector ministries to harmonise their legislation and devolve powers to LGAs is explainable under the Instrumental theory of law. As the Instrumental theory of law provides, law is made to meet a particular purpose or will. Therefore, for the central and sector ministries to harmonise their legislation and policies in order to transfer powers and resources to autonomous LGAs in absence of such political will is unthinkable. Lack of political will stands to be the main constraint towards preparing and bringing into effect a comprehensive Local Government Act, amending the Constitution to enshrine the D by D policy and harmonisation of central, and sector legislation.

It follows therefore, in order to determine the manner in which the central government interacts administratively with LGAs in Mainland Tanzania, one has to scan through several parliamentary legislation and subsidiary legislation which suggest central-local government administrative relationship. This multiplicity of legislation, absence of

⁹⁰⁰ See Government of the United Republic of Tanzania.(2009). *Local Government reform Programme Policy Paper II*, *Op.cit.* p.19.

specific provisions addressing central-local government administrative relationship directly and the absence of an intergovernmental relationship Act make the legal framework of central-local government administrative relationship in Mainland Tanzania complex and ambiguous compared to what has been noted in a few selected countries for this study (the Philippines Republic, South Africa, Kenya and Uganda).

Notwithstanding the complexity of the present legal framework of central-local government administrative relationship in Mainland Tanzania, the analysis of the provisions of the Constitution of the United Republic of Tanzania and statutory provisions also suggests that the legal framework of central-local government administrative relationship in Mainland Tanzania is control-oriented. The constitutional and statutory provisions displayed in Table 5.1 and Table 5.2 shows that, the Constitution and other relevant statutory provisions vest in several central government authorities vast control and supervisory powers over LGAs.⁹⁰¹ The control central-local government administrative relationship under the present legal framework is a reflection of the purpose of the constitution which is well provided under Article 1 of the Constitution. Article 1 of the Constitution established a unitary state which entails centralisation of powers into a single entity (central government). This constitutional setup makes central controls over LGAs inevitable.

One of the central government authorities vested with decisive control and supervisory powers over LGAs is the Minister responsible for local government. As shown in Table 5.2, most of the legislation mention the Minister (PO-RALG).⁹⁰² For instance, the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act vest in the Minister (among other things) the power to ensure effective execution by LGAs of national policies on local government through his guidance, control and directions; power to enforce performance; power to require information from LGAs; the

⁹⁰¹ See **Appendix III and IV.**

⁹⁰² See **Appendix IV.**

power to transfer functions of LGAs and the power to dissolve councils prematurely or councils in default.⁹⁰³ The Minister is also bestowed power to approve local government by laws; power to approve LGAs acquisition and mortgaging of land and the power to give directions to LGAs' exercise of power to contract;⁹⁰⁴ power to decide on the distribution of sources of revenue among various levels of councils; power to vary the commencement of any local government financial year;⁹⁰⁵ power to ensure proper management of the finances of LGAs and to promote the timely preparation of local government annual budget;⁹⁰⁶ power to make various rules, regulations and guidelines in relation to local government levies and rates; and the power to issue written instructions for control and management of local government finance.⁹⁰⁷

This study found no independent institution in place to adjudge the justification for the minister's exercise of power to enforce performance, transfer functions or dissolve a council. The power to enforce performance and to order inquiry before invoking such powers is vested in the very Minister and, there are no clearly stated conditions to be satisfied by the Minister in order to invoke his powers.⁹⁰⁸ This seems to be inconsistent with the UN guidelines on decentralisation and strengthening LGAs which requires the conditions for suspension or dissolution of LGAs or local executives to be specified in the constitution or national legislation and that there should be an independent institution like administrative courts to oversee the suspension or dissolution of LGAs.

Under the present legal framework of central-local government administrative relationship, the whole life of LGAs in Mainland Tanzania seems to be in the hands of the Minister. The Minister is involved in all aspects of LGAs including the

⁹⁰³ See ss. 4, 169, 170A, 171 & 172, CAP. 287, *loc.cit.* Also see ss.4, 71-78, CAP. 288, *loc.cit.*

⁹⁰⁴ See ss. 110, 111A (4) 112, 147, 149, 150, 155, 157,158, 152, 163, 165, CAP. 287, *ibid.* Also see ss. 54, 56, 59(g)-(h), 60, 61& 66(2), CAP.288, *ibid.*

⁹⁰⁵ See ss. 9A & 41, CAP.290, *loc.cit.*

⁹⁰⁶ See s. 34, CAP.290, *ibid.*

⁹⁰⁷ See ss.13, 31& 42, CAP.290, *ibid.*

⁹⁰⁸ See ss.129 &130, CAP.287, *loc.cit.* Also see ss.71 &72, CAP.288, *loc.cit.*

establishment, supervision of powers and functions, management of personnel, management of finance and in dissolution of LGAs. Even the position of local government itself seems to be inconsistent with the theory of decentralisation and the subsidiarity principle. As pointed out elsewhere in this thesis, the constitutional setup and the legislative framework of central-local government administrative relationship reflects the purpose of the Constitution to establish a unitary state whose powers are not constitutionally shared between the national and sub-national government entities. Thus, in mainland Tanzania, the local government does not exist as an independent institution of local self-rule. It is placed under the President's office in the Ministry of Regional Administration and Local Government (PO-RALG).⁹⁰⁹ This position of the local government makes it easier for the Central government to exercise administrative controls over LGAs. In the light of Article 1 of the Constitution of the United Republic of Tanzania, local government is a department of the central government or an extension of the Ministry of Regional Administration and Local Government.

The Minister holds overwhelming powers and may influence the operation of LGAs. This makes the central-local government administrative relationship in Mainland Tanzania more of agency rather than partnership model. As pointed out in the conceptual framework of this study, unlike in the partnership model where there is very little central government intervention in the affairs of LGAs, under the agency model, the central government makes more interventions over LGAs affairs through inspections and advice meant to ensure observation of statutory Regulations. Again, the central government creates national policies which the LGAs must execute under the control and direction of the Minister.

This discussion therefore suggests that, the present legal framework of central-local government administrative relationship in Mainland Tanzania is complex and more of

⁹⁰⁹ See G.N. No.144 of 2016, *loc.cit.*

agency than partnership model. The detailed discussion on the implication of this framework on the Autonomy of LGAs in Mainland Tanzania is made under item 5.4 below. The next item addresses the findings on how the central government interacts administratively with LGAs in the latter's exercise and discharge of their statutory powers and functions respectively, in Mainland Tanzania.

5.3 Areas of Central-Local Government Administrative Interactions

It has been pointed out in the conceptual framework that, central-local government administrative relationship refers to a pattern of central-local government interactions which together constitute an aggregate of control and supervision of LGAs exercised by the central government.⁹¹⁰ Also in the analysis and discussion of the provisions of the Constitution of the United Republic of Tanzania in the preceding chapter, it has been pointed out that the Constitution of the United Republic of Tanzania under Articles 34-36 vests in the President of the United Republic of Tanzania control and supervisory powers over the government and LGAs. These powers include the power to give executive directives; power to constitute and abolish offices in the service of the government; and the power to appoint, promote, remove or dismiss any person in the service of the government.

Besides the President, the Constitution vests in the CAG powers to audit local government accounts and, in the RCs the general supervisory powers over government functions.⁹¹¹ There are also several other central government authorities vested with substantial control and supervisory powers over LGAs under different pieces of legislation as displayed under table 5.2.⁹¹² These central government authorities include, the Chief Secretary, the Public Service Commission, the Minister in the PO-RALG and

⁹¹⁰ On the conceptual framework of central- local government administrative relationship see item 2.3.4.1 of chapter two.

⁹¹¹ See Arts 61 and 143, CAP. 2, R.E.002. Also see **Appendix III**.

⁹¹² See **Appendix IV**.

his Permanent secretary, line ministers and their permanent secretaries, the CAG, RCs, RCCs, the RS, DCs, and the DCCs.⁹¹³

The central government authorities vested with control and supervisory powers over LGAs may be examined at three main levels in the administrative structure of the government: national, regional and district levels. Each of these levels of central government interacts administratively with LGAs in various ways. Such interactions fall under three major areas of central-local government administrative relationship: control and supervision of local government functions; control and management of local government finance; and management of local government personnel.

Furthermore, the powers of the President to appoint, promote, remove or dismiss public servants under Article 36(2) and (4) and the power of the Chief Secretary to issue employment permits under Presidential Circular No. 1 of 1998 fall under management of local government personnel. The powers of the CAG to audit local government accounts under Article 143 of the Constitution and under section 10 of the Public Audit Act⁹¹⁴ fall under management of local government finance. The Powers of the Minister to enforce performance by LGAs under section 129 of the Local Government (District Authorities) Act and section 71 of the Local Government (Urban Authorities) Act fall under control and supervisions of local government functions.

In-depth interviews were also conducted with various stake holders in order to get more information on the manner the central government interacts administratively with LGAs under the framework of the law in the latter's exercise of power and discharge of functions. A total of fifty three (53) out of fifty five (55) respondents which is equal to 96.4% were interviewed.⁹¹⁵ Table 5.3 shows the major areas of central-local government

⁹¹³ *Ibid.*

⁹¹⁴ Act No.11 of 2008, *loc.cit.*

⁹¹⁵ See the summary and breakdown of the sample size in table 1.1 in Chapter one above.

administrative interactions which were frequently mentioned in the interviews.⁹¹⁶ For instance, among the areas of administrative interaction between the President and LGAs which were frequently mentioned by respondents (indicated in number and percentage out of fifty five 55 respondents) include: exercise of final disciplinary authority 45(81.8%); ensuring good governance 38(69.1%); appointment of City Directors and Commissioners of LGAs 45(81.8%); and issuing administrative orders and instructions 46(83.6%). The areas of administrative interaction between the Minister responsible for local government and LGAs which were frequently mentioned by respondents include: policy making and regulatory framework 46(83.6%); supervision of policy implementation 41(74.5%); monitoring and supervision of local government provision of services 46(83.6%); appointment of DEDs 45(81.8%); discipline of DEDs 45(81.8%); transfer of DEDs and Heads of Department 46(83.6%); and control of local government finance 45(81.9%).

If examined, the areas of administrative interaction between the President and the Minister and the LGAs mentioned by the interview respondents suggest three main areas of central-local government administrative interactions. These areas are control and supervision of local government functions; control and management of local government finance; and management of local government personnel. The findings on the areas of central-local government administrative interactions obtained from in-depth interviews agree with the provisions of the Constitution and other relevant legislation. Each of these areas of administrative interactions between the central and LGAs are discussed one after another hereinafter.

5.3.1 Control and Supervision of Local Government Functions

Review of the provisions of the Constitution and other relevant legislation shows that, the control and supervision of local government statutory powers and functions is vested

⁹¹⁶ See **Appendix V**.

in several central government authorities including the President, line ministers, the Minister responsible for local government, the RS, the RCC, the RCs, the DCs, the DCC and the Division Secretary.⁹¹⁷

Of all the central government authorities, the Minister responsible for local government seems to be the most influential central authority responsible for control and supervision of local government powers and functions.⁹¹⁸ To enable the Minister to effectively discharge his responsibilities related to control and supervision of local government powers and functions, the Ministry (PO-RALG) is organised into nine (9) divisions and six (6) units.⁹¹⁹ The nine divisions are Administration and Human Resources division; Policy and Planning Division; Regional Administration Division; Local Government Division; Basic Education Division; Organisation Development Division; Legal Service Division; Information and Communication Technology Division; and the Urban Development Division.⁹²⁰ The six units are Finance and Accounts Unit; Procurement and Management Unit; Sector Coordination Unit; Infrastructure Development Unit; Government Communication Unit; and Internal Audit Unit.⁹²¹

All the divisions and units of the PO-RALG are relevant in the control and supervision of local government functions. However, the Local Government Division is the one which is more involved in the control and supervision of local government powers and functions. This division is responsible for the capacity building of LGAs in providing quality public services through coordination and monitoring of local governance and inspection of LGAs performance in public service delivery.⁹²² The other important

⁹¹⁷ See **Appendices III & IV**

⁹¹⁸ For clarity see the discussions under item 4.3 of chapter four and item 5.2 of this chapter above.

⁹¹⁹ See Government of the United Republic of Tanzania. (2011). *The Functions and Organisational structure of the Prime Minister's Office, Regional Administration and Local Government (PMO-RALG)*. PMO-RALG. p.6.

⁹²⁰ *Ibid.* p.10.

⁹²¹ *Ibid.*

⁹²² See Government of the United Republic of Tanzania. (2011). *Op.cit.* p.14.

divisions are the Urban Development Division which is responsible for coordination, advising, supervision and monitoring the implementation of urban development policies, guidelines and standards by Urban Authorities;⁹²³ and the Legal Services Division which is responsible for undertaking litigation, prosecution and legal drafting in liaison with the Minister on one end and the LGAs on the other end.

The Legal Services Division participates in the preparation of proposed Bills and bylaws; gives advice to LGAs in drafting bylaws and scrutinises the bylaws before they are presented to the Minister for ministerial consideration. Furthermore, in liaison with the Attorney General Chambers, the Legal Services division also prepares, reviews and monitors enforcement of law and regulations related to LGAs.⁹²⁴ The Legal Services Division is also responsible for providing information and liaises with the Attorney General Chambers on court proceedings and provides legal opinion and assistance to LGAs' solicitors to prosecute cases against LGAs in courts. For instance, in *Meatu District Council v. Weons Tanzania Ltd*,⁹²⁵ Meatu District Council was represented by Mr. Luanda, State Attorney in the Prime Minister's Office and, Mr. Mwita, State Attorney from the Ministry of Regional Administration and Local Government.

The Legal Services Division is further responsible for providing legal advice to LGAs on cases, legal proceedings and other legal issues. It also facilitates disciplinary proceedings and their outcomes, and provides sound advice to LGAs where appropriate.⁹²⁶ Close examination of the role played by these divisions of the PO-RALG in the supervision of local government functions seems to be more facilitative and promotional rather than control oriented. Nonetheless, this might have a negative implication on the autonomy of LGAs because, through the very facilitative and

⁹²³ *Ibid.* p. 23.

⁹²⁴ *Ibid.*

⁹²⁵ Commercial Case No.53 of 2008, High Court of Tanzania (Commercial Division) at Dar es Salaam (unreported).

⁹²⁶ See Government of the United Republic of Tanzania. (2011). *Loc.cit.*

promotional responsibilities of the said divisions, the influence of the Minister may imperceptibly extend to the local government's exercise of power and discharge of their functions because of overdependence by the latter on the assistance and advice from the former.

Review of statutory texts and in-depth interviews with respondents also revealed that line ministries are among the important actors in the control and supervision of local government powers and functions in Mainland Tanzania.⁹²⁷ Sector ministries are required to supervise professionalism and quality assurance in the performance of sector employees and to monitor and evaluate the performance of technical employees.⁹²⁸ For instance, the Ministry of Health, Community Development, Gender, the Elderly and Children is, among other things, responsible for supervision of medical supplies in LGAs; inspection of health services provided by LGAs; and improvement of the performance of health personnel in the LGAs.⁹²⁹

The Ministry works in collaboration with the PO-RALG to provide technical assistance, guidance and quality assurance on matters related to health services.⁹³⁰ It further collaborates with the Regional Health Management Team and the Social Service Section at the regional administration and the District Health Service Boards and local government Councils to provide advice and ensure proper implementation of health policies by LGAs and proper administration of health services.⁹³¹ Thus, the role of line ministries is very important in the effective local government service delivery. However, the same may affect the autonomy of LGAs especially where they are directly involved in the day to day operation of LGAs as discussed under item 5.4 below.

⁹²⁷ See table 5.2 and table 5.3 under **Appendix IV and V**.

⁹²⁸ See ss.174A (2), CAP. 287, *loc.cit.* Also see s.54A (2), CAP.288, *loc.cit.*

⁹²⁹ See the second schedule to the Ministers (Assignment of Ministerial Functions) Notice, 2016, *loc.cit.*

⁹³⁰ See s. 174A (2), CAP.287, *loc.cit.*; and s.54A (2), CAP.288, *loc.cit.* Also see Frumence, G. Nyamhanga, T., *et al.* (2013). Challenges to the Implementation of Health Sector Decentralisation in Tanzania: Experiences from Kongwa District Council. *Global Health Action*, 6 (10). p.3402.

⁹³¹ *Ibid.*

The analysis of statutory provisions and in-depth interviews with the respondents as shown in Table 5.2 and Table 5.3⁹³² also revealed that, the RCs and the DCs are among the important players involved in the control and supervision of LGAs powers and functions. Under the Local Government (Urban Authorities) Act, the RC is required to investigate the legality of actions and decisions of LGAs and both District and Urban Authorities are bound to furnish the RCs and DCs with quarterly progress report about their development plans.⁹³³

Furthermore, the RC acts as an appellate body for complaints within a local authority, intervenes where unlawful decisions are made by councils or by local administration; reports to the Minister in case of illegal behaviour by any actor within LGAs; receives complaints from citizens, organisations and private contractors dealing with the local government; and conducts inspections over local government bylaws and development plans.⁹³⁴ Although the Regional Administration Act also requires the RC to facilitate, assist and secure LGAs an enabling environment for successful performance of their duties, the role of the RC seems to be more control-oriented than facilitative. This may adversely affect the autonomy of LGAs in the exercise of their statutory powers and discharge of their functions.

Interviews with field respondents⁹³⁵ also show that, there are several other ways through which the RC and DC exercise control and supervision over local government functions.⁹³⁶ They include giving orders and directives to LGAs to perform or abstain from performing certain activities, implementation of orders and directives of the

⁹³² See **Appendix IV and V**.

⁹³³ See s. 78A (1) & (2), CAP. 288. *loc.cit.* Also see s. 174(2), CAP.287, *loc.cit.*; and s.78, CAP. 288, *loc.cit.*

⁹³⁴ See Government of the United Republic of Tanzania (1998). *Op.cit.*pp.29-30.

⁹³⁵ For categories of interview respondents, see table 1.1 in Chapter One.

⁹³⁶ See table 5.3 in **Appendix V**.

President over LGAs and conducting physical inspection or assessment of LG activities. This suggests that the RCs and the DCs are also directly involved in the day to day control and supervision of local government exercise of powers and discharge of functions. This may affect the autonomy of LGAs because as it was said by forty one (41) out of fifty five (55) respondents which is equal to 74.5%, most of the RCs' and DCs' directives, visits, inspections and interventions are political rather than legal or administrative. However, twelve (12) respondents which is equal to 21.8% were of the view that the RC's control and supervision of LGAs powers and functions has no negative implication on the autonomy of LGAs because the RC is not directly involved in the operation of LGAs. Two (2) respondents in the sample were not interviewed. Both views by the 74.5% and the 21.8% might be correct because the law seems to be not very clear on the administrative relationship between the RC and the LGAs within the region.⁹³⁷

Interviews with field respondents also revealed several ways through which the RC's control and supervisory powers imperceptibly find their way into the local government powers and functions.⁹³⁸ In this respect, there are three important forums that the RC uses to extend his control and supervisory influence over local government powers and functions. These forums are the Regional Security Committee (RSC), the RS and the RCC. As a chairperson of the RSC, the RC gives directives to the RAS and the RAS communicates the same to the DASs down to the Directors of LGAs. Likewise, through the RS, directives of the RC are communicated by the RAS to members of the RS, down to the LGAs. Also interviews revealed that the RS through its LGAs' Management Services Section gives instructions to LGAs and takes part in routine inspections of local government performance and conducts *ad hoc* inspections of LGAs.

⁹³⁷ The detailed discussion on the implication of the RC's administrative interactions with the LGAs is covered under item 5.4 in this Chapter below.

⁹³⁸ For categories of interview respondents, see table 1.1 in Chapter One

It was also noted from interviews with field respondents that, in case the RC has anything to do in the supervision of local government functions, he may sometimes communicate the same through the RAS who is his principal advisor⁹³⁹ and the latter channels the same through the LGAs' Management Services Section to respective LGAs.⁹⁴⁰ The RCC was also one of the forums which were mentioned by forty six (46) out of fifty five (55) respondents which is equal to 83.6% that the RC may employ to issue orders to LGAs. Seven (7) respondents which equals to 12.7% were silent in this aspect and therefore nothing can be said about them.

Through the RCC, the RC hears reports from LGAs presented by Directors and where applicable, the RC gives direct orders and directives to the Directors and Council Chairpersons. Thereafter, the RAS writes official letters to DASs and directors of LGAs about what was actually discussed in the RCC for record and follow-up purposes. On advice by the RAS or *suo moto*, the RC may pay physical visits to the Councils to inspect the implementation of his orders and directives. Sometimes, the RC instructs the DCs within his region to make follow-up in the District within the jurisdiction of his region. Also the RAS commits the DASs within the jurisdiction of the region to make follow-ups with Directors of LGAs on the implementation of the orders and directives issued by the RC. Therefore, the mechanisms through which the RC may exercise supervision and control over LGAs are manifold.

Interview with field respondents further revealed that, besides the RC, the DC also exercises control and supervision over local government powers and functions through *ad hoc* inspections or assessment of LGAs activities and may require and receive quarterly and annual development reports on the implementation of local government

⁹³⁹ See s.12 (1)-(3), CAP. 97, *loc.cit.* Also see PO-PSM Circular NO.1 of 1998, *loc.cit.*

⁹⁴⁰ For details on the powers and functions of the RAS see s.12 (1)-(3), CAP. 97, *loc.cit.*; and the PO-PSM Circular NO.1 of 1998, *loc.cit.*

plans in the district.⁹⁴¹ He also issues orders to LGAs through the DCC and the district security committee. In discharging his responsibilities in relation to LGAs, the DC is assisted by the DAS, the District Security Committee (DSC), the District Consultative Committee (DCC) and the Divisional Secretary. Thus from this discussion, it is clear that, control and supervision of local government powers and functions is vested in multiple central government authorities. This, as shall be noted in the subsequent items, may have adversely implication on the autonomy of LGAs. The next item discusses central control and management of local government finance as one of the areas of administrative interactions between the central government and LGAs in Mainland Tanzania.

5.3.2 Control and Management of Local Government Finance

One of the areas of central-local government administrative relationship which may have serious negative implication on the autonomy of LGAs in their exercise of powers and discharge of their functions is management of financial affairs. The control and management of local government finance is mainly done by the Minister responsible for local government and the Minister for Finance. However, documentary review and interview responses shown in Table 5.2 and Table 5.3 indicate that, the control and management of local government finance involves several actors in the central government including the President, the CAG, line ministries, the RS, the RC and the DC.⁹⁴²

The President as the head of state and overall in charge of the government also has the responsibility of ensuring proper management of funds by all public authorities including the local government. As mentioned by thirty eight (38) which is equal to 69.1% respondents, one of the responsibilities of the President is to ensure good

⁹⁴¹On the areas of administrative interactions between the DC and LGAs, see table 5.3 in **Appendix V**.

⁹⁴² On the central government authorities involved in the control and management of local government finance see Appendix IV & V.

governance in the local government. Although this was not mentioned by fifteen (15) which is equal to (27.2%) respondents and that two (2) which equals to 3.6% of the 55 respondents were not interviewed, the view of the 69.1% seems to be valid. This may be supported by the presidential directive of March, 2016 which directed all RCs and Council Directors to make payroll audit to detect ghost employees in local government councils in order to ensure proper management of public funds.⁹⁴³ Also, on 19th April, 2016, the President fired the Chief Executive Officer of Dar es Salaam City Council on allegation of abuse of office which had occasioned loss of three (3) billion shillings per year to the government.⁹⁴⁴

Review and analysis of the Constitutional and statutory provisions revealed that the CAG is also one of the central government authorities with vital role in the management of local government finance.⁹⁴⁵ The provisions of Article 143 of the Constitution of the United Republic of Tanzania read together with section 10 of the Public Audit Act and section 45 (1) of Local Government Finance Act require the CAG at least once every year to audit and give an audit report in respect of all accounts of the government (including LGAs). For instance, the Annual Report of the CAG on the financial statements of LGAs for the financial year which ended on 30th June, 2015 shows that about 52% of capital development grants in the 2014/ 2015 financial year were not released by the central government.⁹⁴⁶ The role of the CAG in the management of local government finance and its implication on the autonomy of LGAs is closely connected

⁹⁴³ See the Daily News, 16 March. Available at <http://dailynews.co.tz/index.php/home-news/47969-magufuli-expel-ghost-workers>. Webside3 visited on 17th March, 2016.

⁹⁴⁴ See Rais Magufuli Amsimamisha Kazi Mkurugenzi wa Jiji la Dar es Salaam, Wilson Kabwe. Available at <http://www.mpekuzihuru.com/2016/04/breaking-news-rais-magufuli-amsimamisha.html> . Site visited on 2nd May, 2016.

⁹⁴⁵ As discussed under items 4.2 and 4.3 of chapter four.

⁹⁴⁶ See Government of the United Republic of Tanzania.(2015). *Annual General Report of the Controller and Auditor General on the Financial Statements of Local Government Authorities for the Financial Year Ended 30th June, 2015*. Dar es Salaam: National Audit Office. pp.50-52, 316-318.

to the role of the Minister for finance and the Minister responsible for local government.⁹⁴⁷

Documentary review and interviews with field respondents show that line ministries are also important actors in the control and management of local government finance.⁹⁴⁸ The most important line ministry in the management of local government finance is the Ministry of Finance. According to the Ministers (Assignment of Ministerial Functions) Notice,⁹⁴⁹ the Ministry of Finance and Planning is, among other things, responsible for financial control, taxation, public procurement, loans and credit policies, preparation of government budget and budget guidelines, execution of government budget and internal and external audit of government accounts.⁹⁵⁰ The preparation of local government budget depends on the budget guidelines prepared by the Ministry of Finance and Planning and all the local government grants and other cash flow from the central government are determined by the Minister responsible for local government in consultation with the Minister for Finance.⁹⁵¹ Even the local governments' power of borrowing requires the approval of both the Minister responsible for local government and the Minister for finance.⁹⁵²

Besides the Ministry of Finance, the PO-RALG is also vital in the control and management of local government finance. As shown in Table 5.3, forty five (45) out of fifty five (55) respondents which is equal to 81.8% revealed that, among the key areas of administrative interaction between the PO-RALG and LGAs is the control of local government finance through issuing rules and regulation, budget guidelines, budget

⁹⁴⁷ The role of the the Minister for finance and the Minister responsible for local government in management of local government finance and its implication on the autonomy of LGAs is discussed under item 5.4 below.

⁹⁴⁸ See table 5.2 and table 5.3 in appendices IV & V.

⁹⁴⁹ G.N.No.144 of 2016, *loc.cit.*

⁹⁵⁰ See the second schedule to the Ministers (Assignment of Ministerial Functions) Notice, 2016, *loc.cit.*

⁹⁵¹ See ss.10 (1) & 10A, CAP.290, *loc.cit.*

⁹⁵² See ss. 11(1) & 13(2), CAP.290, *ibid.*

ceiling and financial directives. Eight (8) respondents which equals to 14.5% were silent on this aspect and two (2) which equals to 3.6% were not reached for interviews. The view by the 81.8% seems to be valid because it matches with the provisions of the Local Government Finance Act which requires the Minister responsible for local government to ensure proper management of local government finances. The Act further empowers the Minister to make rules, regulations and guidelines to regulate and manage local government finance including the LGAs' power of taxation, charging rates and borrowing.⁹⁵³

The Minister (PO-RALG) discharges his responsibility related to control and management of local government finance through the Local Government Division of the PO-RALG. The local government division through its Local Government Finance Section provides inputs in budget guidelines and advises the LGAs in their implementation. Local Government Finance Section also tracks disbursement of funds to LGAs in liaison with the Ministry of Finance; makes assessment of LGAs capital investments; scrutinises reports of the CAG; and monitors the preparation of LGAs' revenue enhancement plans and negotiation with the Ministry of Finance on revenue sources for LGAs.⁹⁵⁴ The role of Local Government Finance Section seems to be vital in facilitation and capacity building of LGAs in the management of local government finance.

There are yet other important central authorities in the control and management of local government finance at the regional and district levels including the RCs, the RS and the DCs. Their role in the control and management of local government finance is not

⁹⁵³ See ss. 9A, 11, 12, 13, 14, 16, 31 & 34 CAP.290, *ibid*.

⁹⁵⁴ See Government of the United Republic of Tanzania. (2011). *Op.cit*. p.15.

without effect on the autonomy of LGAs.⁹⁵⁵ The next item discusses the aspect of management of local government personnel.

5.3.3 Management of Local Government Personnel

Like the case of local government finance, management of local government personnel involves a number of central government authorities. Analysis of the provisions of the Constitution and the Public Service Act, 2002 and its instruments shows that, management of local government personnel involves the President, the Chief Secretary, the Public Service Commission, the PO-PSM, the PO-RALG and the RS.⁹⁵⁶ The President has the power to appoint City Directors and local government commissioners and authority to promote, remove or dismiss any public servant in the local government service.⁹⁵⁷ The Chief Secretary provides leadership, direction and image to the local government service and is responsible for administration and ordering terms and conditions of employees in the local government service. He is further responsible for confirmation and discipline of City Directors and commissioners, issuing employment permits and is the highest ranking disciplinary authority in the local government service.⁹⁵⁸

Besides the Chief Secretary, the Ministers (Assignment of Ministerial Functions) Notice⁹⁵⁹ vests in the Minister of State (PO-PSM) the responsibility for all policies on administrative, human resources development and planning and payroll management. The Permanent Secretary (PO-PSM) facilitates labour mobility, issues circulars and

⁹⁵⁵ The role of these other central government authorities in the management of local government finance is discussed under item 5.4 below.

⁹⁵⁶ For details on the central government authorities involved in the management of local government personnel, see items 4.2 and 4.3 of chapter four and **Appendices III and IV**.

⁹⁵⁷ See Art.36 (4), CAP.2, *loc.cit*. Also see s.5 (1)-(3), CAP.298, *loc.cit*; Reg. 5(1), G.N.No.168 of 2003, *loc.cit*; Clause 4(4), G.N. No.169of 2003, *loc.cit* ; Clause 7.1.1, G.N.No.53 of 2007, *loc.cit*; Clause 6.1-4, G.N. No.54 of 2007, *loc.cit*; and Clause 4, G.N. No.146 of 2008, *loc.cit*.

⁹⁵⁸ See s.4, CAP.298, *Ibid*. Also see Reg.6 (3) & 35(2) (a), G.N.No.168 of 2003, *ibid*; Clause 6 and 7, G.N. No.169 of 2003, *ibid*; Clause7.3 and 25.1, G.N.No.53 of 2007, *ibid*; and Clause 5 and 6, G.N. No.146 of 2008, *ibid*; Presidential Circular No.1 of 1998 and Circular Letter No.BC.46/97/03/18, *loc.cit*.

⁹⁵⁹ G.N.No.144 of 2016, *loc.cit*.

notifies the Chief Secretary on vacancies and provides recommendations on transfers, promotions or appointments by the President in the local government service.⁹⁶⁰ The other important actor is the Public Service Commission. As shown in Tables 5.2 and 5.3,⁹⁶¹ the Commission provides guidance, monitoring, facilitation and conducts merit based recruitments through the public service recruitment secretariat in the local government service. It further facilitates appointments in the service and receives and acts on appeals from other delegates or disciplinary authorities through the local government service department.⁹⁶²

The Minister of State (PO-RALG) and his Permanent Secretary are responsible for performance and human resources development in the local government service as well as appointment, promotion and discipline of Council Directors other than those appointed by the President.⁹⁶³ The Local Government Human Resources Management Section of the Local Government Division (PO-RALG) facilitates orientation programmes, capacity building and local government human resources development plans.⁹⁶⁴ Also the section facilitates the appointments, confirmation, transfers and disciplinary actions of Directors, Heads of Departments and handles other local government human resources issues.⁹⁶⁵

The Public Service Act, 2002 also vests in other ministers and their permanent secretaries the responsibility for providing technical assistance, guidance and quality

⁹⁶⁰ See s. 8(2) & (3) (f)-(g), CAP.298, *loc.cit.* Also see Reg.5 (2) & 7(1)-(3), G.N.No.168 of 2003, *loc.cit.*; Clause 13(1)(a)-(l), G.N.No.169 of 2003, *loc.cit.*; Clause 6.1.3, G.N.No.54 of 2007, *loc.cit.*; and Clausen 9 and 29(1)(b), G.N. No.146 of 2008, *loc.cit.*

⁹⁶¹ See **Appendix IV**.

⁹⁶² See ss.10 (1) and 29(1, 4 &6), CAP.298, *loc.cit.* Also see Reg. 25(1) (b) &(c), G.N.No.168 of 2003, *loc.cit.*; Clause 15(b) and 21(1)(c), G.N. No.169 of 2003, *loc.cit.*; Clause 7.4, G.N. No.53 of 2007, *loc.cit.*; Clause 6.3, G.N. No.54 of 2007, *Loc.cit.*; and Clause 10(a)-(e), G.N. No.146 of 2008, *loc.cit.*

⁹⁶³ See **Appendices IV and V**. Also see s.5 (a) (iii), CAP.298, *ibid.* Also see Reg.6 (f) & 35(2) (b), G.N.No.168 of 2003, *ibid.*; Clause 7.2.2, G.N.No.53 of 2007, *ibid.*; Clause 6.2.3, G.N.No.54 of 2007, *ibid.*; and Clause 7(1)(e), G.N. No.146 of 2008, *ibid.*

⁹⁶⁴ See Government of the United Republic of Tanzania. (2011). *Loc.cit.*

⁹⁶⁵ *Ibid.*

assurance on various matters related to employees in the service whose professions or duties are related to those ministries. The Permanent secretaries of line ministries do provide technical input and liaise with the ministers on matters relating to the local government scheme and other schemes of service in those professions or duties related to such ministries.⁹⁶⁶The Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act also require line ministries to ensure all posts are filled with professionals as required by establishments in the respective profession.⁹⁶⁷ Interview responses displayed in Table 5.5 show that, in some sector ministries like the education and health sectors, employees like teachers and health staff are directly posted to LGAs by the respective sector ministries or departments.⁹⁶⁸

At the regional level there is the RS. As presented in Table 5.3, interview results show that the RS stands as a link between the LGAs and the central government particularly the PO-RALG and other line Ministries.⁹⁶⁹ The most important authority in respect of local government personnel is the RAS who is responsible for all administrative issues within the region.⁹⁷⁰ As discussed in the subsequent items, interview responses revealed that, the RAS may transfer local government employees within the region after consultation with the Permanent Secretary (PO-RALG) and all the DEDs within the region are accountable to him. Review of the Public Service standing Orders, 2009 shows that all administrative communications on personnel matters from ministries to LGAs must be copied to the RAS.⁹⁷¹

The discussion on the areas of administrative interactions between the central and LGAs in the management of local government personnel shows that, the central government

⁹⁶⁶ See Clause 8, G.N. No.146. *loc.cit.*

⁹⁶⁷ See s.174A (2), CAP.287, *loc.cit.* Also see s.54A (2), CAP.288, *loc.cit.*

⁹⁶⁸ See **Appendix VIII**.

⁹⁶⁹ See **Appendix V**.

⁹⁷⁰ See s.12 (1)-(3), CAP. 97, *loc.cit.* Also see PO-PSM's Circular No.1 of 1998, *loc.cit.*

⁹⁷¹ See s.B7 of the Standing Orders for the Public Service, 2009, G.N.No.493 of 2009.

plays an active role in the management of local government personnel. The implication of such framework on the autonomy of LGAs is discussed in the next item.

5.4 Implication of the Present Legal Framework on the Autonomy of LGAs

The findings obtained from documentary review and in-depth interviews conducted with various stake holders in the areas surveyed suggest that, the present legal framework of central-local government administrative relationship has a negative implication on the autonomy of LGAs in the management of personnel, financial affairs and in determining their own priorities in service delivery. The manner in which the said legal framework negatively affects the autonomy of LGAs in Mainland Tanzania is discussed in this item under three subheadings: local government autonomy in personnel Management; local government autonomy in financial affairs; and local government autonomy in setting priorities in service delivery.

5.4.1 Local Government Autonomy in Personnel Management

Personnel management involves a matrix of interrelated processes and aspects. According to Shapiro,⁹⁷² administration of personnel involves human resources need assessment (planning), recruitment and selection of employees, posting of selected employees into working stations, remuneration, career development, promotion, transfers and discipline of employees. The decentralisation theory (D by D) requires all these processes to be devolved to LGAs. As pointed out in the conceptual framework of this study, devolution of personnel management is a necessary condition for local government autonomy.⁹⁷³ For LGAs to be autonomous in personnel management, they must have the power and discretion to fix the number, types and employment conditions of their employees.

⁹⁷² Shapiro, J.C. *et al.*(2013). *Human Resources Management*. University of London International Programmes. p.12.

⁹⁷³ See Okoli, F.C. (2013). *Loc.cit.*

Review and analysis of the provisions of the Public Service Act and its instruments revealed that, management of local government personnel is almost centralised.⁹⁷⁴ Except for the twenty two (22) cadres in the operational service, all other local government employees are recruited by the Public Service Commission through the Secretariat.⁹⁷⁵ The terms and conditions of employment are fixed by the Chief Secretary and, the approved establishments and employment permits for new employments or filling in vacancies are issued by the Chief Secretary through the Permanent Secretary (PO-PSM).⁹⁷⁶ The top chief executives of LGAs (Directors) are appointed by the President⁹⁷⁷ and the Minister in the PO-RALG.⁹⁷⁸ Although the Public Service Act also vests in the LGAs the authority for appointment, confirmation, staff development, promotion, remuneration and discipline of their employees other than those appointed by the President,⁹⁷⁹ the role of LGAs in other personnel affairs seems to be restricted as explained hereunder.

Interviews with the field respondents show that the role of LGAs in the administration of their personnel is mainly limited to need assessment, recruitment of a few employees in the operational service, posting of selected employees into working stations, and discipline of junior local government staff.⁹⁸⁰ Forty one (41) out of fifty five (55) respondents which is equal to 74.5% were of the view that under the present legal

⁹⁷⁴ See the analysis of the provisions of the Public Service Act, 2002 and its instruments in item 4.3 of Chapter Four and **Appendix IV**.

⁹⁷⁵ See ss. 10(1) & 29(1), (4) & (6), CAP.298, *loc.cit.* Also see Reg. 25(1) (b) &(c), G.N.No.168 of 2003, *loc.cit.*; Clause 15(b) and 21(1)(c), G.N. No.169 of 2003, *loc.cit.*; Clause 7.4, G.N. No.53 of 2007, *loc.cit.*; Clause 6.3, G.N. No.54 of 2007, *loc.cit.*; and Clause 10(a)-(e), G.N. No.146 of 2008, *loc.cit.*

⁹⁷⁶ See s.4, CAP.298, *ibid.* Also see Reg.6 (3) & 35(2) (a), G.N.No.168 of 2003, *ibid.*; Clause 6 &7, G.N. No.169 of 2003, *ibid.*; Clause 7.3 & 25.1, G.N.No.53 of 2007, *ibid.*; and Clause 5, 6 & 28(1), G.N. No.146 of 2008, *ibid.*; and Presidential Circular No.1 of 1998 and Circular Letter No.BC.46/97/03/18, *loc.cit.*

⁹⁷⁷ See Art.36, CAP.2, *loc.cit.* Also see s.5 (1)-(3), CAP.298, *ibid.*; Reg. 5(1), G.N.No.168 of 2003, *ibid.*; Clause 4(4), G.N. No.169 of 2003, *ibid.*; Clause 7.1.1, G.N.No.53 of 2007, *ibid.*; Clause 6.1-4, G.N. No.54 of 2007, *loc.cit.*; and Clause 4, G.N. No.146 of 2008, *ibid.*

⁹⁷⁸ See s.5 (a) (iii), CAP.298, *ibid.* Also see Reg.6 (f) & 35(2) (b), G.N.No.168 of 2003, *ibid.*; Clause 7.2.2, G.N.No.53 of 2007, *ibid.*; Clause 6.2.3, G.N.No.54 of 2007, *ibid.*; and Clause 7(1)(e), G.N. No.146 of 2008, *ibid.*

⁹⁷⁹ See s.6 (6), CAP.298, *ibid.* Also see Clause 11, G.N.No.146 of 2008, *ibid.*

⁹⁸⁰ See the interview responses as shown in tables 5.4 and 5.5 in **Appendices VII & VIII**.

framework, LGAs have no discretion in selection and fixing the number of their employees. It was said that, though LGAs take part in needs assessment (planning), establishments are approved and released by the PO-PSM. Even where the same are approved and released, LGAs cannot proceed with employment process unless they secure employment permits from the Chief Secretary through the Permanent Secretary (PO-PSM).

Apart from this, twelve (12) respondents which is equal to 21.8% were of the view that, the discretion of LGAs selection and fixing the number of their employees is not restricted because the procedures applicable in the recruitment of local government staff are the same in the entire public service. This view is true in the sense that hiring of public servants in the public service requires approval by the PO-PSM of the establishments and employment permits in the entire public service. However, this was not the purpose intended by the LGRP. The LGRP intended that all matters concerning the local government service to be handled by the LGAs themselves. For instance, the LGRPPP I states;-

...Councils will be fully responsible for the planning, recruiting, rewarding, promoting, disciplining, development and firing of their personnel. The councils will be the appointing authorities and employers for all local government personnel, including teachers, health staff, and agricultural staff...recruitment of lower grade departmental staff will be the responsibility of the HODs and the Council Director.⁹⁸¹

The above quoted policy statement demonstrates the spirit of the LGRP as it was implemented by amendment of the Local Government Service Act in 1999 before it was repealed by the Public Service Act in 2002.

It was further found from documentary review that, the approved establishments and employment permits are usually released late and do not match with the exact number of

⁹⁸¹ See Government of the United Republic of Tanzania.(1998). *Local Government Reform Programmed I, op.cit.* p.25.

employees and professionals requested. The delay in release of approved establishments and employment permits was evidenced by a review of some approved establishments and employment permits of some Councils as shown hereinafter. In determining the trend in the number and the time taken for Councils to get establishments' approval and employment permits, some Councils approved establishments and employment permits were reviewed. For instance, the review of approved establishments for Dodoma Municipal Council between 2009/2010 and 2015/2016 shows that in 2009/2010 fiscal year, approved establishment was 2516 employees;⁹⁸² in 2010/2011 fiscal year, approved establishment was 3,312 employees;⁹⁸³ in 2011/2012 fiscal year, approved establishment was 3,405 employees;⁹⁸⁴ in 2012/2013 fiscal year, approved establishment was 3,424 employees;⁹⁸⁵ and in 2015/2016 fiscal year, approved establishment was 1795 employees.⁹⁸⁶ In every financial year, the total numbers of approved establishments include new vacancies and promotions. All the approved establishments reviewed were released about two to three months late after budget approval.

Let alone the delay in releasing approved establishments, review of Employment Permits (Establishments) between 2012/2013 and 2015/2016 fiscal years in three Municipal Councils and two District Councils supports the interview responses that employment permits are usually released late and do not match with the exact number of employees requested. The trend of acquisition of employment permits as noted from the review of Employment Permits (Establishments) for the three Municipal Councils and two District Councils is shown in Table 5.1A and Table 5.1 B below.

⁹⁸² See the 2009/2010 Approved Establishments letter No.BC.46/97/03/B/13 of March 19, 2009.

⁹⁸³ See the 2010/2011 Approved Establishments letter No.BC.46/97/03/B/32 of April 6, 2010.

⁹⁸⁴ See the 2011/2012 Approved Establishments letter No.BC.46/97/03/C/4 of June 7, 2011.

⁹⁸⁵ See the 2012/2013 Approved Establishments letter No.BC.46/97/03/C/30 of September 19, 2012.

⁹⁸⁶ See the 2015/2016 Approved Establishments letter No.BC.46/97/03/D/4 of October 19, 2015. Note that, the total numbers in every fiscal year above include new vacancies and promotions.

Table 5.1A: Trend of Employment Permits (Establishments) between July 2012- June 2016 in Dodoma, Kinondoni and Morogoro Municipal Councils

Financial Year	Name of Council											
	Kinondoni MC				Morogoro MC				Dodoma MC			
	Date Requested	No. Requested	Date granted	No. Granted	Date Requested	No. requested	Date granted	No. granted	Date Requested	No. requested	Date granted	No. granted
FY2012/2013	Nov. 2012	1110	Apr. 2013	997	Aug. 2012	406	Nov. 2012	406	Sept.2012	1180	Oct. 2012	1168
FY2013/2014	Oct.2013	1290	Jun.2014	1176	Sep. 2013	671	Dec. 2013	701	Aug. 2013	1059	Dec. 2013	1042
FY2014/2015	Nov. 2014	1837	May2015	1643	Aug. 2014	803	Oct. 2014	803	Oct. 2014	1348	Mar. 2015	1345
FY2015/2016	Aug.2015	2779	Oct. 2015	2779	Mar. 2016	121	Yet	-	Jan. 2016	1652	Jun. 2016	1388

Source: Employment Permits (Establishments)

In Tables 5.1A above and 5.1B below, the column which displays the number of employees requested and the number of employees granted include both new employments and promotion. Table 5.1A shows that, except for Dodoma Municipal Council in 2012/2013 where employment permit was obtained within one month, the rest Councils' employment permits were delayed for about two, three, four, six to seven months. In the case of District Authorities, table 5.1B shows that the time taken to acquire employment permits between 2012/2013 and 2015/2016 ranged between two, three, five, six to seven months, save for Meru District Council in 2012/2013 where it took twelve months to obtain employment permit.

Therefore it appears that, in both Urban and District Councils, employment permits are not released on time. The delay of two(2) to three(3) months in releasing approved establishments and the delay of two(2) to seven(7) months in releasing employment permits make the acquisition of both approved establishments and employment permits delayed for about four (4) to ten(10) months before the recruitment process starts. This, taken together with the period of vacancy advertisement, long and short listing of applicants and conducting interviews may make it take about a year for councils to fill in vacancies and get new employees.

Table 5.1B: Trend of Employment Permits (Establishments), July 2012- June 2016 in Mvomero and Meru District Councils

	Name of District Council							
	Mvomero DC				Meru DC			
Financial Year	Date Requested	No. Requested	Date Granted	No. Granted	Date Requested	No. Requested	Date Granted	No. Granted
FY2012/2013	Apr. 2013	1270	June2013	1270	July 2012	1016	July 2013	826
FY2013/2014	Apr. 2014	807	June2014	807	June 2013	367	Sep.2013	327
FY2014/2015	Nov.2014	556	Apr.2015	556	July 2014	1151	Dec.2014	1151
FY2015/2016	Dec. 2015	328	Apr.2016	300	July 2015	794	Febr.2016	794

Source: Employment Permits (Establishments)

Apart from the delay in releasing employment permits, tables 5.1A and 5.1B above show a slight variation in figures between the number of employees requested and the number of employees approved in the employment permits. This, in addition to the fact that establishments are decided by the PO-PSM supports the views by the forty one (41) (74.5%) respondents who were of the view that LGAs have limited discretion and autonomy in the selection and determination of the number of their employees. Therefore, notwithstanding the views by the twelve (21.8%) who were of the opposite view, the autonomy of LGAs in the selection and determination of the number of their employees seems to be restricted.

The review of the employment permits showed however that, the variation in figures between the number of employees requested by Councils and the number of employees approved in the employment permits is only for new employment posts. In all the employment permits reviewed, there was no problem with approval of promotions. The problem is on the approved number of new employees as exemplified by employment permits of Kinondoni Municipal Council between 2012/2013 and 2015/2016 fiscal years. The Kinondoni Municipal Council’s employment permits between 2012/2013 and

2015/2016 fiscal years shows that: in 2012/2013 fiscal years, the requested number of new employees was 148 but the approved number was 152; in 2013/2014 fiscal years, the requested number of new employees was 716 but the approved number was 114; in 2014/2015 fiscal years, the requested number of new employees was 143 but the approved number was 376; and in 2015/2016 fiscal years, the requested number of new employees was 290 and the approved number was the same-i.e. 290.⁹⁸⁷

The trend of variation between the requested and the approved numbers of new employee shows that, the variation between the requested and the approved number of new employees is sometimes a decrease and sometimes an increase. By this it means councils have no conclusive choice in determining the number of employees in the Councils. Both documentary review and in-depth interviews suggest that LGAs cannot employ without central government approval and that the former have no discretion in the selection and determination of the number of their employees. It is the central government which determines the types and number of employees in LGAs.

When asked to state the reasons for central government to control the process of employment in in LGAs, forty one (41) which is equal to 74.5% out of fifty five (55) respondents argued that, there is no justifiable reason rather than political desire to centralise powers at the centre. Two (2) respondents which is equal to 3.6% were not accessed. Twelve (12) respondents which is equal to 21.8% were of the view that, it is necessary for the central government to conduct recruitment and post employees to LGAs in order to ensure equal distribution of staff between urban and rural areas and control wage bill because it is the central government which foots most of the wage bill of the local government staff.

⁹⁸⁷ See Employment permits (Establishments) for Kinondoni Municipal Council between 2012/2013 and 2015/2016 fiscal years.

The 12 (21.8%) respondents also argued that, when LGAs were given all the powers over personnel affairs, there was serious corruption and favouritism especially in recruitment and appointment of employees. However, there was no any evidence in record availed to the researcher about such allegations of corruption. The only instance which was frequently cited as an example was the issue of ghost employees under which it was alleged that by the 1st May, 2016, the purged list of ghost employees in the public service totalled 10, 295 and, 8373 out of the 10, 295 ghost employees were in the local government service.⁹⁸⁸

The issue of corruption and ghost employees does not in itself seem to justify the continued curtailment of local government autonomy in personnel administration because it is not known who exactly had created these ghost employees having regard to the fact that since the enactment of the Public Service Act, 2002, payroll management has been under central government control. This could have been caused by the central government itself as evidenced by the presence of 1922 ghost employees in the central government itself. Therefore, corruption and favouritism is not a reliable reason for centralisation of recruitment of local government employee.

The question of ensuring equal distribution of staff between urban and rural areas seems to be true but is also wanting because since the government centralised the recruitment process, disparities in number of employees between rural and urban areas has remained a notable feature. For instance, one of the respondents who was involved in pay roll audit to detect ghost employees in May, 2016 in Kilosa District council revealed that, in six(6) rural Wards in Kilosa District Council, there were less than sixty (60) employees in total for all the professionals and categories of local government employees while in Uhindini urban Ward, teachers were more than sixty (60) let alone other professionals

⁹⁸⁸ See Speech of Hon. Dr. John Pombe Joseph Magufuli, President of the United Republic of Tanzania on the Workers Day, 1st, May, 2016. Available at <http://ikulu.go.tz/index.php/media/speech/2638>. Website visited on 10th, June, 2016.

and categories of employees. The issue of overdependence of LGAs on the central government for salaries is, but it might have been caused by lack of sufficient and reliable sources of local government revenue and excessive central control and interventions over local government financial affairs. Therefore, it appears that, though the views by the twelve (21.8%) respondents are convincing, yet are not sufficient reasons to justify centralisation of the recruitment process in the local government service. The views by the forty one (74.5%) respondents that it is only the political desire to centralise powers seem to be valid.

Interviews with Council human resources officers (HoDs) and the director of local government at the PO-RALG also revealed that, even after acquisition of employment permit(s), Councils must inform the Secretariat which (except for the operational service) advertises the vacancies, conducts the interviews and selects qualified candidates.⁹⁸⁹ The selected employees are posted to respective Councils and the Executive Director of the Council only gives them appointment letters, organises induction courses (if required) and allocates them to working stations. In case of the operational service cadre, after obtaining employment permits, Councils must also consult with the Secretariat before advertising the vacancies and thereafter conduct interviews and select qualified employees through their Employment Board. After selection, the names of successful candidates are taken to the full Council for approval and thereafter the director gives them appointment letters and allocates them working stations. The entire process of recruitment of the operational service cadre must be done under the supervision of a representative of the secretariat.⁹⁹⁰

Interview responses also revealed similar procedures for recruitment of sector employees except for teacher's service and the health sector whose employees do not

⁹⁸⁹ See **Appendices VII & VIII**.

⁹⁹⁰ See the Permanent Secretary (PO-PSM) Circular letter No.CCD.129/215/01/40 which among other things directed that in the recruitment process of the twenty two (22) cadres in the operation service, there must be a representative of the Secretariat.

undergo recruitment process. Here, employees are posted to LGAs directly by the PO-RALG and the Ministry of health.⁹⁹¹ Apart from recruitment and appointment of ordinary employees, there is recruitment and appointment of heads of departments. In case of heads of departments, the Director proposes three names and submits them to the PO-PSM for vetting. After vetting the Director makes the appointment and submits the same to the Council for approval. After approval by the Council, the names of selected candidates are submitted to the Permanent Secretary (establishments) for confirmation. Besides HoDs, all chief executive officers (Directors) are appointed, confirmed and promoted by the central government. Furthermore, local government payroll management is controlled by the PO-PSM and, salaries of local government employees are almost paid from central government grants.⁹⁹²

Other aspects of personnel management are shared between both central and local government authorities. For instance, interview responses show that both central government and LGAs are involved in career development (training).⁹⁹³ The former is responsible for short courses and the latter are responsible for long courses. Sometimes because of limited funds, long courses training is done by sharing the cost between an individual employee and the Council or the individual may have to secure a loan. In a case where an individual secures a loan, the Council may only be required to grant study leave. Also in terms of transfers, interview responses showed that both central and local governments are involved.⁹⁹⁴ The Director makes transfers within the Council but Transfers outside the Council are made either by the RAS, PO-RALG or the PO-PSM. Transfers between councils within the region are made by RAS in consultation with the Permanent Secretary at the PO-RALG; transfers between regions are made by the

⁹⁹¹ See **Appendix VIII**.

⁹⁹² See **Appendices VII & VIII**. Also see s. 6, CAP.298, *loc.cit*; Reg. 6, G. N. No. 168 of 2003, *loc.cit*; and Clause 33, G. N. No. 169 of 2003, *loc.cit*.

⁹⁹³ See **Appendices VII and VIII**.

⁹⁹⁴ *Ibid.*

Permanent Secretary in the PO-RALG; and transfers from LGAs to central government or agencies are made by the Permanent Secretary in the PO-PSM.

Notwithstanding the transfers of employees authorised by Council Directors, interviews with human resource officers (HoDs) of the Councils surveyed indicated that, several transfers made by the RAS, the PO-RALG and the PO-PSM are so made without sufficient consultation with the Councils and sometimes without immediate replacement. Even if replaced in time, the replacements are made without due regard to the profession of the employee transferred. However, there were no actual records availed to the researcher on the trend of such central transfers. Nonetheless, it was noted that, between 2014 and 2016 the heads of human resources department in Kilosa District Council and Morogoro Municipal Council were transferred more than thrice but it was not said whether they were transferred by the central government or the respective LGAs.

It was further said that, sometimes it is the employees who make the request to the RAS or the Permanent Secretary (PO-RALG) for transfers while bypassing the Council Directors. Even in the case of permission for further training, the Directors may have withheld the permission because of tight schedule of activities or on the basis of the staff development schedule but employees write to the RAS and the latter gives orders to the Council Director to discharge the employee. However, there was no evidence in records which was availed to the researcher on the tendency of employees to request transfers from the RAS or Permanent Secretary (PO-RALG) and in the case of permission for further training.

In respect of employees' disciplinary authority, review of the Public Service Act, 2002 and interview responses show that Councils are the disciplinary authority for all employees other than those appointed by the President or the Minister.⁹⁹⁵ Nonetheless,

⁹⁹⁵ See s. 6(6), CAP.298, *loc.cit.* Also see **Appendices VII and VIII.**

the disciplinary decisions of LGAs are appealable and can be set aside on appeal to the central government as provided for under the Public Service regulations, 2003.⁹⁹⁶ Though there were no specific records of disciplinary proceedings of local government employees obtained, the provisions of the Public Service Regulations are self-evident on this matter.⁹⁹⁷ From the provision of the Public service Act, it appears that, Council powers in respect of discipline of their employees are somewhat limited. This seems to be worse in sector employees. For instance, though the Public Service Act, 2002 and its instruments require the Directors of LGAs to supervise and manage the general performance of Council employees including the sector employees,⁹⁹⁸ interview responses revealed that Council Directors have no apparent disciplinary authority over sector employees like teachers and health employees. For instance, while conducting interviews, one of the respondents in Kilosa District Council remarked;-

...As the chief executive officer, the Council Director has to ensure that teachers perform their duties as required to the satisfaction of the people, but in case of default, the Director must report the same to the Teachers Service Department (TSD) and if the TSD fails to resolve the matter, the TSD shall refer it to the higher authorities within the ministry of education. It is the ministry of education through the TSD that can take disciplinary action against a teacher but not the Council Director. This applies also to health employees.⁹⁹⁹

Local government personnel affairs are also administered by multiple oversight authorities including the President, the PMO-RALG (now the PO-RALG), the PO-PSM, the RAS and Council. This may cause multiple accountabilities of local government personnel and divided loyalty among local government employees. From this discussion, it is clear that the role of LGAs is mainly limited to needs assessment, recruitment of the operational service, assigning duties to employees and transferring

⁹⁹⁶ See See Reg.60 (1-5), G.N. No. 168, *loc.cit.*

⁹⁹⁷ *Ibid.*

⁹⁹⁸ See Clause 8(3), G.N. No.169 of 2003, *loc.cit.* Also see Clause 12, G.N. No.146 of 2008, *loc.cit.*

⁹⁹⁹ Interview with the Secretary of the TSD in Kilosa District Council in 2015.

employees within the council, long course training and discipline of some junior employees. In the light of the prerequisites of local government autonomy in personnel affairs, it appears that, the present legal framework of central-local government administrative relationship does not support the desired autonomy of LGAs in managing their personnel affairs in Mainland Tanzania. The next item examines the implication of the present legal framework of central-local government administrative relationship on the autonomy of LGAs in managing their financial affairs in Mainland Tanzania.

5.4.2 Local Government Autonomy in Financial Affairs

Local government autonomy in financial affairs depends on devolution of powers over financial matters and includes the discretion of LGAs to raise, borrow and spend money.¹⁰⁰⁰ The decentralisation theory, the subsidiarity and holistic principles require the power and discretion of raising, borrowing and spending money to be transferred to LGAs not only by policy but also by the Constitution and other relevant legislation as a way for realising true local government autonomy in financial management.¹⁰⁰¹

The sources of local government revenue and other aspects of local government finance in Mainland Tanzania are not provided under the Constitution of the United Republic of Tanzania.¹⁰⁰² They are provided under the Local Government Finance Act,¹⁰⁰³ the Urban Authorities (Rating) Act,¹⁰⁰⁴ the Local Government (Urban Authorities) Act¹⁰⁰⁵ and the Local Government (District Authorities) Act.¹⁰⁰⁶ The Local Government Finance Act is the main legislation which governs local government sources of revenue and other local government financial affairs.

¹⁰⁰⁰ See U.S.A.C.I.R.(1993). *Op.cit.* p.1. Available at <http://www.library.unt.edu/gpo/acir/Reports/policy/a-127.pdf>. Site visited on 15th April, 2016-04-14. Also see Libonat, M.E. (2001). Local Government Autonomy. *Louisiana Law Review*, Vol.62:1. p. 97.

¹⁰⁰¹ See Okoli, F.C. (2013). *Loc.cit.*; and Wunsch, J.S. (2014). *Loc.cit.*.

¹⁰⁰² See the discussion of item 4.2 in Chapter Four.

¹⁰⁰³ See ss. 6, 7, 8 &9, 10A, 11, 12, 13, 14 &16, CAP. 290, *loc.cit.*

¹⁰⁰⁴ See for instance ss.6, 16-19, 25 &28, CAP. 289, *loc.cit.*

¹⁰⁰⁵ See for instance ss.114, 115,124 &128, CAP.287, *loc.cit.*

¹⁰⁰⁶ See for instance ss.60, 61, 62,63 & 66, CAP.287, *loc.cit.*

The analysis of the provisions of the Local Government Finance Act¹⁰⁰⁷ shows that, the Local Government Finance Act vests in LGAs a number of assets and other sources of revenue including twenty per cent (20%) of all moneys collected by the central government as land rent.¹⁰⁰⁸ It also vests in LGAs the power to borrow moneys, power to impose taxes and the authority to take advances from banks by overdrafts.¹⁰⁰⁹ Moreover, the Act obliges the central government to pay LGAs annual block grants from the national income.¹⁰¹⁰ However, the exploitation of these sources of revenue and the exercise of these financial powers by LGAs are in most cases subjected to either approval by the Minister responsible for local government in consultation with the Minister for finance or regulations and guidelines made by the Minister responsible for local government.¹⁰¹¹

Interviews with HoDs (finance and planning) and other respondents¹⁰¹² revealed by fifteen (15) out of fifty five (55) respondents which is equal to 27.2% that, there has been an increase in intergovernmental transfers especially for recurrent expenditures since the implementation of the 1998-2014 LGRP started. They further argued that although most of the funds are donor funded, since the LGRP started, most of the government funds are directed to LGAs, especially from 2004 when the Cabinet endorsed formula-based grants and local government capital development grants (LGCDG). The (LGCDG) are spent on the discretion of the individual Councils; hence, local government autonomy in financial affairs has been improved.

Notwithstanding the above views, thirty eight (38) respondents which is equal to 69.1% were of the view that despite the increased inter-governmental transfers of funds, the

¹⁰⁰⁷ See the discussion under item 4.3.4 of Chapter Four.

¹⁰⁰⁸ See ss. 5, 6, 7, 8 & 9, CAP.290, *loc.cit.*

¹⁰⁰⁹ See ss. 11, 12, 13, 14 & 16, CAP.290, *ibid.*

¹⁰¹⁰ See s.10 A, CAP.290, *ibid.*

¹⁰¹¹ See for instance the provisions of ss. 13, 31, 34, 41 & 42, CAP.290, *ibid.*

¹⁰¹² Other respondents as shown in Table 1.1 in Chapter One.

autonomy of LGAs in expenditures is still wanting because of strict central control, directives and instructions tied up with the intergovernmental transfers of funds. It was said that, most of the grants transferred from central government are earmarked and accompanied with frequent instructions from the PMO-RALG (now the PO-RALG) on how such funds must be spend. The discretion and autonomy of LGAs to raise revenue is also limited because, LGAs have no constitutionally defined sources of revenue.

Interviews with the Director of local government at the PO-RALG revealed that, in 2002, the government introduced a local government revenue enhancement plan that required LGAs to review their existing sources of revenue in order to maximise their revenue collection. Some LGAs introduced new forms of taxes for that purpose but in 2004, the Minister for finance circulated a closed list of local revenue which banned several local government taxes and prohibited LGAs from imposing or collecting any tax outside the prescribed list unless there was prior approval by the Minister (PMO-RALG). He further explained that in 2002, Mwanza City Council agreed with stakeholders that for every litre of petrol or diesel sold at any filling station within the area of the City Council, two Tanzanian shillings should be remitted to the Council for repair of City roads. The central government intervened and ordered the remission of not only two shillings but ten Tanzanian shillings per litre to be paid to the TRA and not to the Councils. Now, it is said that the TRA collects this amount of revenue and pays back to the Council only 30% while the larger amount of 70% is given to the TANROADS which has fewer roads to repair.

Furthermore, interviews with the heads of department in human resources and finance at Kinondoni Municipal Council found that, in the past decade, the TRA had also taken over the collection of property tax from Kinondoni Municipal Council as an experiment to improve government collections and financial management. The TRA promised to pay back the collected amount to the Council but for about ten years, the TRA had never

ever paid back any amount of the property tax collected. Documentary review shows that, the central government has recently decided that all the property tax be collected by the TRA and not by individual Councils.¹⁰¹³ Interviews with the said heads of department and the Director of local government at the PO-RALG revealed that all these reforms were made without consultation with the respective LGAs. This suggests that, the sources of local government revenue are uncertain because they may easily be taken up by the central government.

Interviews also revealed that local government sources of revenue are not only unreliable but also somehow difficult to collect and, hence, insufficient. For instance, Kinondoni Municipal Council is among the Councils located in urban areas and thus expected to have many sources of revenue compared to those in rural areas like Kilosa District Council. Interviews with the Mayor, the Director, the HoDs of Finance and Planning and Human Resources showed that the major sources of own revenue (apart from loans) are property taxes (which has long been taken by TRA), utility charges, user charges, license fees and other small collections including fines from defaulters of Council by-laws. These collections hardly contribute to a quarter of the Council budget as exemplified by budget files of Kinondoni Municipal council between 2012/2013 and 2015/2016 fiscal years which were reviewed during the study. Table 5.2 below illustrates this point.

¹⁰¹³ See the Speech of the Minister for finance and planning, Hon. Dr. Philip I. Mpango (MP), introducing to the National Assembly, the estimates of government revenue and expenditure for Fiscal year 2016/17. pp.12 & 22. Available at <http://repository.eac.int/bitstream/handle/11671/1614/BUDGET%20SPEECH%20FINAL%202016%20-%20TZ.pdf?sequence=1&isAllowed=y>; <http://www.mof.go.tz/mofdocs/msemaji/BUDGET%20SPEECH%20FINAL%202016.pdf> Site visited on 17July, 2016.

Table 5.2: Kinondoni MC Contribution in the Budget between 2012 and 2016

	Budget and Contribution of the council and the Local People in the Annual Budget		
Financial Year	Council Budget	Council Collections	Local People Contribution
2012/2013	102,800,394,774.00	8,963,789,876.68	570,729,000.00
2013/2014	114,252,549,564.00	11,804,984,927.76	1,382,193,012.00
2014/2015	135,417,369,177.00	14,447,860,859.00	1,126,257,300.00
2015/2016	156,024,051,000.00	8,482,041,063.50	1,028,857,585.00

Source: Budget files of Kinondoni Municipal council between 2012/2013 and 2015/2016 Fiscal Years

Interviews with the Council Chairperson, the Director and the Secretary of Teachers Service Department in Kilosa District Council showed that, the main sources of own revenue are licenses for different businesses, agricultural cess, user charges or service levies, sales of land, Council house rents, hotel levies, fines and other small charges. Its own contribution to the annual budget is also very small. For instance, review of Kilosa District Council Personal Emoluments budget for 2015/2016 fiscal year shows that out of Tsh. 39,864,456,374.00, Council's own contribution was only Tsh. 253, 198,000.00. The rest of funds were footed by grants from the central government. These two Councils show that, LGAs' own contribution in their annual budgets is very small. These findings are supported by reviewed literature which shows that LGAs' own revenue collections account to only seven per cent (7%) of total LGA expenditure in Mainland Tanzania.¹⁰¹⁴ The poor collections by LGAs might have been contributed by the interventions by the central government to abolish local development taxes and other taxes in 2004 as pointed out in the discussion of this part above.

¹⁰¹⁴ See also Government of the United Republic of Tanzania. (2007). *Op.cit.* p.127; Per Tidemand, Olsen, H.B., and Sola, N. (2008). *Op.cit.* p.16; Per Tidemand, Sola, N.,Bofin, P., Chaligha, A.(2010). *Op.cit.* p. 18; and Per Tidemand and Sola, N. (2014). *Op.cit.*; p.216.

From this discussion it is clear that, if in the entire local government expenditure, local government own contribution is only 7%; there is no way LGAs can claim financial autonomy. Not only that but also the situation may be worse in the future following the above noted government decision that all property tax should be collected by TRA and not individual Councils. This justifies the view by some respondents who argued that LGAs cannot claim for autonomy while whole depending on the central government finance. Until they are financially able to stand on themselves that they can claim for autonomy.¹⁰¹⁵ Therefore, the autonomy of LGAs in managing their financial affairs is in a large extent restricted. Present legal framework of central-local government administrative relationship in Mainland Tanzania does not seem to support the desired autonomy of LGAs particularly in managing their financial affairs. This also affects the discretion and autonomy of LGAs in setting and implementing their own priorities in service delivery as discussed in the next item.

5.4.3 Local Government Autonomy in Setting and Implementing Own Priorities

Among the key requirements of local government autonomy is the discretion of LGAs in determining what to do without undue constraint from higher levels of government.¹⁰¹⁶ This entails the discretion of LGAs to choose functions to perform or determine their own priorities in planning and implementing their plans. The discretion of LGAs to determine what to do is closely connected to financial autonomy and capacity.¹⁰¹⁷ This study found some problems on local government autonomy in planning and execution of local government development plans. It was said by thirty eight (38) out of fifty five (55) respondents which is equal to 69.1% that, the process of planning and implementing local government development plans under the present legal framework does not give LGAs true autonomy in setting their priorities because Council

¹⁰¹⁵ Interview with the RAS and the Assistant Administrative Secretary (local government section) of Dar-es-Salaam, 2015.

¹⁰¹⁶ See Wolman, H. & Mcmanmon, R. (2008). *Loc.cit.*

¹⁰¹⁷ *Ibid.*

priorities must be streamlined in the national priorities and budget ceilings provided by the MoF through the Minister in the PO-RALG. However it was said by fifteen (15) which is equal to 27.2% respondents that the process of planning and execution of local government development plans gives sufficient autonomy to LGAs to decide on their priorities in local service delivery. Two (2) respondents were not accessed for interviews.

Review of the Ministers (Assignment of Ministerial Functions) Notice,¹⁰¹⁸ shows that, the law vests in the Minister of finance and planning the authority for preparation of government budget and budget guidelines and execution of government budget.¹⁰¹⁹ Interviews with stakeholders also show that planning starts by the Ministry of finance (MoF) issuing budget guidelines to the PO-RALG which outlines the national priorities and the indicative planning figures (IPFs) in every year.¹⁰²⁰ The PO-RALG also prepares its budget guidelines in line with the guidelines issued by the MoF and issues them to LGAs. The LGAs communicate the guidelines and the indicative planning figures to the Ward Development Committees (WDC) and a copy of the same to the Village Development Committees (VDC). The village raises their priorities on the basis of the guidelines and IPFs communicated to them and then the ward and district facilitators assemble them.

Preliminary appraisal of the projects on the basis of obstacles and opportunities for development (O&OD) planning is made with the support of ward and district facilitators and after the preliminary appraisal, the Village Council reviews and agrees on the draft. The draft is then submitted to the WDC in order for the WDC to agree on the allocation of IPFs. After agreement on the allocation of IPFs by the WDC, the Village Assembly meets to approve the village plans. After approval by the Village Assembly, the village

¹⁰¹⁸ G.N.No.144 of 2016, *loc.cit.*

¹⁰¹⁹ See the second schedule to the Ministers (Assignment of Ministerial Functions) Notice, 2016, *loc.cit.*

¹⁰²⁰ See the summary of interview responses on the process of planning and budgeting under **Appendix VI.**

plans are consolidated by the WDC which in turn submits the same to the respective Municipal or District Council as either case may be. At the Council level, the plans from the WDCs are discussed in respective departments, in the council management team, standing committees and finally submitted to the full council for deliberation and approval. The proposed Council budget is then submitted to the RS for scrutiny and advice. From the RS, the consolidated council plans in the region are submitted to the PO-RALG and the MoF for presentation to the Parliament.

In such planning process, it seems that the raising of development priorities and budgeting starts at the grassroots (village level) and that Councils are involved in determining their priorities in service delivery. However, the views by the thirty eight (69.1%) respondents that this budget and planning framework does not give true autonomy to LGAs to decide on their local priorities in service delivery seems to be more valid than that of the fifteen (27.2%) respondents. The thirty eight (69.1%) respondents' view is valid because LGAs are bound to follow the budget guidelines and national priorities issued by the MoF and PO-RALG. It was further argued by the (69.1%) respondents that, if Council proposals are to be accepted by the RS scrutiny and in the budget presentation at the PO-RALG and the MoF, it must strictly adhere to such guidelines and directives issued by the PO-RALG. This finding is also supported by documentary review. For instance, documentary review showed that on January 15th 2015, the PMO-RALG issued to all Regional Administrative Secretaries a circular for 2015/2016 budget priorities.¹⁰²¹ This circular enumerated seventeen areas of priority which all LGAs were to take into consideration in planning and preparation of their 2015/2016 budget.

Some respondents (HoDs in the finance and planning departments of the Councils visited) further argued that in actual practice the planning process does not guarantee

¹⁰²¹ See Circular letter No.HA.131/395/01 of 2015.

LGAs the desired autonomy to determine their priorities in service delivery because even if councils had the power to raise priorities, the figures and priorities approved by the full Council are not finally honoured. This argument was further examined by review of budget files of Dodoma Municipal council, Kinondoni Municipal Council and Morogoro Municipal Council between 2012 and 2016 as shown under table 5.3 below.

Table 5.3: Variation of Budget Estimates at the Council and Approved, 2012- 2016

	Name of Council					
	Dodoma MC		Kinondoni MC		Morogoro MC	
Financial Year	Council Estimates	Approved Budget	Council Estimates	Approved Budget	Council Estimates	Approved Budget
2012/2013	5,571,377,097.94	11,603,189,393.92	102,800,394,774	102,800,394,774	37,151,300,702.00	37,149,300,702.00
2013/2014	8,808,078,020.00	6,176,515,216.86	114,252,549,564	114,252,549,564	44,298,525,049.00	42,476,035,944.00
2014/2015	66,717,864,000.00	1,652,504,169.00	135,417,369,177	135,417,369,177	56,477,265,443.00	56,541,407,111.00
2015/2016	4,615,484,000.00	4,949,198,457.00	156,024,051,000	156,024,051,000	68,395,071,259.00	61,018,250,914.00

Source: Budget files of Dodoma, Kinondoni and Morogoro Municipal Councils between 2012 and 2016

Examination of the data presented in Table 5.3 above shows that the difference between Council estimates and finally approved budget is very small and almost negligible. Furthermore, as the records speak for themselves, the variation is not always negative (decreased); sometimes it is positive (increased). However, the budgetary records reviewed were those presented and approved at the PO-RALG and MoF before being submitted to the Parliament and finally approved by the Parliament. This means, some changes might have been made during the scrutiny by the RS because, as pointed out above, before presentation to the PO-RALG and MoF every Council estimates are scrutinised by the RS. Sometimes LGAs are directed to make changes before the said proposals are consolidated in the region for presentation to PO-RALG and MoF. Such changes (if any) are made at the RS after the Councils had already passed their estimates. The interview responses could be correct because it is possible that the figures

which were presented at the PO-RALG and MoF are those which were rectified by the RS and not those which were passed by the Council.

Notwithstanding the envisaged variation between Council estimates and the finally approved budgets, interviews with the HoDs in the finance and planning departments of the Councils visited further showed that, even the finally approved budgets are also rarely honoured because development funds are usually disbursed very late or completely not disbursed. They argued that, the funds which are usually disbursed in time are those for personal emoluments and specified donor or sector funds which are usually earmarked for specific projects.

Review of some budget files in some Councils visited also support this view. For instance review of budget files of Morogoro Municipal Council between 2012/2013 and 2015/2016 revealed that: in 2012/2013 fiscal year, a sum of Tsh. 600,000,000.00 was received from the Ministry of Health for construction of a district hospital though it was not in the council annual budget; in 2014/2015 fiscal year, a sum of Tsh. 100,000,000 was received from the ministry of education for class room building at Tungi primary school; and in 2015/2016 fiscal year, a sum of Tsh. 100,000,000 was received from the ministry of health for construction of maternity ward at Mafiga health centre. The fact that the said sector projects are brought with funds for their implementation does not pose much problems to council budget and as such it cannot be considered critical in the autonomy of LGAs in implementing their plans.

The issue which requires more attention is that of late or non-disbursement of development funds. Review of budget files in some Councils showed that, late disbursement or non-disbursement of funds for development projects has been a common practice. For instance, review of budget files of Dodoma Municipal council between 2012/2013 and 2014/ 2015 revealed that: in 2012/2013 fiscal year, there was

completely no fund disbursed for development projects; in 2013/2014 fiscal year, funds were disbursed for all projects but disbursed late in July-June, 2014; in 2014/2015 fiscal year, funds were disbursed for only one project out of five (5) projects approved and were disbursed late in July-June, 2015; and in 2015/2016 fiscal year, there was completely no funds disbursed for all the five (5) development projects approved in the budget.

The other good examples are Morogoro Municipal Council and Kinondoni Municipal Council. Review of Morogoro Municipal Council budget records (files) between 2012 and 2016 revealed that: in 2012/2013 fiscal year, out of Tsh. 37,149,300,702.00 approved budget, only Tsh. 3,680,522,372.06 was disbursed in July-June, 2013; in 2013/2014 fiscal year, only Tsh. 5,105,503,976.1 out of Tsh. 42,476,035,944.00 requested was disbursed in July-June, 2014; in 2014/2015 fiscal year, only Tsh. 6,638,067,730.21 out of Tsh. 56,541,407,111.00 requested was disbursed in July-June, 2015; and in 2015/2016 fiscal year, only Tsh. 9,888,498,398.49 out of Tsh. 61,018,250,914.00 requested was disbursed in July-June, 2016.

Review of Kinondoni Municipal Council budget records (files) between 2012 and 2016 revealed that: in 2012/2013 fiscal year, out of Tsh. 102,800,394,774.00 requested, only Tsh. 14,033,522,605,582.77 was disbursed in July-June, 2013; in 2013/2014 fiscal year, only Tsh. 10,659,865,378.18 out of Tsh. 114,252,549,564 requested was disbursed in July-June, 2014; in 2014/2015 fiscal year, only Tsh. 10,061,063,832.61 out of Tsh. 135,417,369,177 was disbursed in July-June 2015; and in 2015/2016 fiscal year, only Tsh. 6,460,056,340.00/ out of Tsh. 156,024,051,000.00 was disbursed in July-June, 2016.

In all the three Councils above, funds for development projects were disbursed at the end of the respective fiscal year. The delay in disbursement of funds for development

projects contributes to poor local government service delivery and sometimes councils getting audit queries. The reason is that, the use of public funds requires compliance with the law on public procurement. Following the long and complicated public procurement process, Councils end up with partial implementations of projects because the tendering process takes time and the funds are disbursed nearly at the end of the fiscal year. Because of, time lapses before completion of the projects. At the end of the fiscal year, Councils are required to return all unused funds to the treasury. Nonetheless, when audited by the CAG, such Councils get audit queries which affect their future credibility for receiving LGCDG. The situation is even worse for non-disbursement of funds. For instance, review of the Annual Report of the CAG on the financial statements of LGAs for the financial year which ended on 30th June, 2015 shows that among the areas associated with poor local government service delivery and improper management of public funds is the failure by the central government to honour their obligation in releasing not only capital development grants, but also recurrent expenditures grants.¹⁰²² This has been the trend for the past five years as presented in Tables 5.4 and 5.5 below.

Table 5.4 Trend of Unreleased Recurrent Grants between 2010-2015 Financial Years

Financial Year	Approved Budget	Amount Received	Unreleased Amount	Percentage (%)	Number of councils
2014/15	2,868,480,736,429	2,516,901,739,984	351,578,996,445	12	118
2013/14	2,755,118,626,066	2,337,889,784,223	417,228,841,843	15	126
2012/13	2,102,969,648,522	1,827,566,402,405	275,403,246,117	13	99
2011/12	1,618,877,128,175	1,447,482,142,661	171,394,985,514	11	87
2010/11	1,242,318,963,483	1,111,762,925,260	130,556,038,222	11	78

Source: the CAG Annual Report on the Financial Statements of LGAs, 2014/2015

¹⁰²² See Government of the United Republic of Tanzania. (2015). *Loc.cit.*

The trend of approved and disbursed recurrent grants for the five consecutive years between 2010 and 2015 shows outstanding trend of none release of funds ranging between 11% to 12%. Although this data presents the general trend in the entire local government budget rather than individual Councils, yet it is an indicator that under-disbursement of recurrent grants might have an adverse impact on the financial capacity of LGAs in footing their daily expenses. The problem is more acute in the disbursement of capital development grants as shown in Table 5.5 below.

Table 5.5 Trend of Unreleased Capital Development Grants between 2010-2015 Financial Years

Financial Year	Approved Budget	Amount Received	Unreleased Amount	Percentage (%)	Number of councils
2014/15	752,832,745,765	363,123,775,781	389,708,969,984	52	147
2013/14	743,215,699,222	743,215,699,222	312,037,079,115	42	137
2012/13	1,496,048,444,987	1,106,339,475,003	701,746,049,115	38	114
2011/12	595,064,422,505	345,568,067,477	249,496,355,027	42	113
2010/11	529,494,590,274	308,572,669,609	220,921,920,666	42	105

Source: the CAG Annual Report on the Financial Statements of LGAs, 2014/2015

Looking at the trend of disbursement of recurrent grants in Table 5.4 and the trend of capital development grants in Table 5.5 above, it is clear that the situation is worse in the case of capital development grants. This trend has almost been the same in the past four years. This trend suggests that the discretion and autonomy of LGAs to determine and implement their priorities in service delivery is partly affected by unreliable central-local government transfers of capital development grants.

It was also argued by forty one (41) out of fifty five (55) respondents which is equal to 74.5% respondents that, the autonomy of LGAs in setting and implementing their own priorities in service delivery is further affected by excessive central controls and

interventions. For instance, besides the Minister responsible for local government, this study revealed several other central government executives like the President, the RCs and DCs who are given different control and supervisory powers over LGAs under different pieces of legislation.¹⁰²³ It was said by the forty one (74.5%) respondents that, the control and supervisory powers of the RCs and the DCs over LGAs have negative implication on the autonomy of LGAs in their exercise of powers and discharge of responsibilities. They argued that, the RCs, DCs sometimes have a tendency of exerting direct supervision through inspections and issuing orders and directives to LGAs through the RAS or DAS.

Some of such orders and directives are political rather than developmental and are issued without regards to the Council budgets. Sometimes such orders (such as construction of secondary schools in 2004, construction of laboratories in every ward secondary school in 2014 and the order of procurement of desks in primary schools in 2016) come from the President. Councils are required to implement them under the supervision of the RCs and the DCs. Such orders have serious implication on the Council budget and efficacy in service delivery because, at a time, Councils are forced to depart from their priorities and use the funds which were otherwise allocated for some other purpose to implement the orders and directives of the President, the RCs or the DCs as the case may be.

Nonetheless, twelve (12) respondents which is equal to 21.8% were of the view that, the RCs and DCs' control and supervision of LGAs powers and functions is reasonable and has no negative implication on the autonomy of LGAs in their exercise of powers and discharge of responsibilities because the former are not directly involved in the daily operation of LGAs. This view cannot be underrated. Both majority views and minority views might be correct in one way or other. These interview responses suggest that, to some extent, the present administrative relationship between the RCs and the DCs and

¹⁰²³ See Appendices IV & V.

LGAs supports local government autonomy and to a large extent affects the autonomy of LGAs negatively. Likewise, the process of planning and execution of local government plans to some extent gives autonomy to LGAs to decide on their local priorities in service delivery and to a large extent does not support the same. Therefore, the present legal framework of central-local government administrative relationship has to a large extent a negative effect on the desired autonomy of LGAs in determining and implementing their own priorities in service delivery.

5.5 Conclusion

This chapter has provided the analysis and discussion of the findings of this study. The analysis and discussion of data obtained through documentary review and in-depth interviews revealed that, the Constitution of the United Republic of Tanzania does not state with precision the specific powers and functions of LGAs, and provide guidance on matters relating to the sources of local government revenue, the local government personnel and the central-local government administrative relationship. These aspects are only provided under different pieces of legislation which are also not very specific on the central-local government administrative relationship.

It has further been pointed out that, under the present legal framework of central-local government administrative relationship, the central government interacts administratively with LGAs through control and supervision of local government powers and functions; control and management of local government finance; and through management of local government personnel. In all these three main areas of central-local government administrative relationship, the law vests in the central government overwhelming control and supervisory powers over LGAs and these defeat the desired local government autonomy.

In most cases, the aspects of local government finance and personnel management are centralised contrary to the theory of decentralisation, the principle of subsidiarity and the holistic principle. The present legal framework of Central-local government administrative relationship in Mainland Tanzania does not seem to support the desired local government autonomy in managing their personnel, fiscal affairs and in determining their priorities in service delivery. This chapter concludes that, the present legal framework of central-local government administrative relationship in Mainland Tanzania cannot be relied on to achieve the desired autonomy of LGAs in Mainland Tanzania. The next chapter provides a summary of the major findings, the conclusion and recommendations.

CHAPTER SIX

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This study was conducted to examine the present legal framework of central-local government administrative relationship and its implication on the autonomy of local government authorities (LGAs) in the exercise of their statutory powers and discharge of their statutory functions particularly in the management of their personnel, financial affairs and in determining their own priorities in local service delivery in Mainland Tanzania. The general objective of the study was to examine the present legal framework of central-local government administrative relationship in Mainland Tanzania and its implication on the autonomy of LGAs in managing their personnel, financial affairs; and in determining their own priorities in local service delivery.

The specific objectives of the study were: to expound the legal framework of central-local government administrative relationship in Mainland Tanzania; to examine the manner in which the central government administratively interacts with LGAs in the latter's exercise of power and discharge of functions; and to examine the way the legal framework of central-local government administrative relationship affects the autonomy of the LGAs in management of personnel, financial affairs and determination of their own priorities. To pursue these objectives, three research questions were formed.

The first question was what is the legal framework of central-local government administrative relationship in Mainland Tanzania? The second question was 'how the central government administratively interacts with the LGAs in the latter's exercise of powers and discharge of their functions. The third research question was how the present legal framework of central-local government administrative relationship affects the

autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities in Mainland Tanzania.

Primary data was collected through face to face and telephone in-depth interviews conducted between the researcher and the interviewees between October 2015 and October 2016. Secondary data was collected through documentary review which involved analysis of secondary sources including official records, council approved establishments, employment permits, schedules of approved emolument (annual estimates), employment circular letters, budget guidelines, budget circular letters, records of council annual estimates and approved budgets and local government policies. Both primary and secondary data were analysed and discussed through qualitative technique. The findings on every research question have been discussed in the preceding chapter. This chapter presents only the summary of major findings, the general conclusions of the study and the recommendations as presented hereunder.

6.2 Summary of Major Findings

This study came up with three major findings which are as follows:

First, the present legal framework of central-local government administrative relationship in Mainland Tanzania is complex, uncertain and control-oriented which reflects more of agency than partnership model of central-local government administrative relationship. The complexity of the present legal framework of central-local government administrative relationship is caused by the multiplicity of local government legislation and the absence of an intergovernmental relationship Act that would define the said relationship. Uncertainty of the present legal framework is caused by the absence of an express provision in the Constitution of the United Republic of Tanzania and in the existing pieces of legislation which state with precision the central-local government administrative relationship in Mainland Tanzania. Thus, the present

central-local government administrative relationship in Mainland Tanzania is not fully juridified.

The partial juridification of central-local government administrative relationship makes the central-local government administrative relationship in Mainland Tanzania more informal than formal, *ad hoc*, unpredictable and more loyal than legal based. Also, the present legal framework of central-local government administrative relationship vests in the Minister and other central government authorities overwhelming powers to control, supervise and monitor LGAs. In the absence of intergovernmental forums at the national level, most of central policies which affect LGAs are made and altered without sufficient consultations with LGAs. In most cases, LGAs receive central commands and directives for implementation of policies made without their consultations. This reflects an agency rather than partnership model of central-local government administrative relationship envisaged in the LGRP.

Second, this study found that, under the present legal framework of central-local government administrative relationship, there are mainly three areas of central-local government administrative interaction which include: control and supervision of local government powers and functions; control and management of local government finance; and management of local government personnel. Central control and supervision of local government powers and functions involves several central government authorities including the President, line ministries, the Minister responsible for local government, the RS, the RCC, RCs, DCs, DCC and the Division Secretary.

The control and management of local government finance by the central government is mainly done by the Minister responsible for local government and the Minister for Finance. Other central actors involved in the control and management of local government finance are the President, the CAG, the RC and the RS. Likewise, the

administration of local government personnel involves several central government authorities including the President, the Chief Secretary, the Minister and the Permanent Secretary in the PO-PSM, the Minister and the Permanent Secretary in the PO-RALG, sector ministries and the RAS.

Third, this study found that, the present legal framework of central-local government administrative relationship has mainly negative implication on the autonomy of LGAs in managing their personnel, financial affairs and in determining their priorities in service delivery. As pointed out in this item above, the present legal framework of central-local government administrative relationship vests in the Minister and other central government authorities overwhelming powers to control, supervise and monitor LGAs. The provisions of the Constitution of the United Republic of Tanzania and legislation seem to centralise several aspects of local government personnel management and of the local government financial affairs. This defeats the desired autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities as envisaged by the 1998-2014 LGRP. Consequently, LGAs in Mainland Tanzania are semi-autonomous and more of agents than partners of the central government in service delivery.

6.3 Conclusions

This study was conducted to examine the present legal framework of central-local government administrative relationship with a view to determining its implication on the autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities in local service delivery in Mainland Tanzania. The study proceeded from the idea that, an ideal legal framework of central-local government administrative relationship which allows central-local government consultations, negotiations and support from ministries as opposed to central-local government command relationship

model is very important in determining the degree of local government autonomy in the operation of local government alongside the central government in Mainland Tanzania.

The 1998-2014 LGRP was one of the government efforts to create such a legal framework and improve the autonomy of LGAs in exercise of their statutory powers and in discharging their statutory functions particularly in the management of personnel, financial affairs and in determining their own priorities in local service delivery in Mainland Tanzania. Notwithstanding such effort, it was noted that LGAs still complained of stiff and excessive central controls which interfere with their autonomy in in managing their personnel, financial affairs and in determining their own priorities in local service delivery. There was, in the best knowledge of the researcher, no study conducted to examine the legal framework of central-local government administrative relationship and its implication on the autonomy of LGAs in the exercise of their statutory powers and in discharge of their statutory functions particularly in managing their personnel, financial affairs and in determining their own priorities in local service delivery in Mainland Tanzania. It was for this reason that this study was conducted.

In conducting this study efforts were made to review all relevant documentary materials and conduct in-depth interviews with stake holders in six Councils selected for the purpose of this study, at the PMO-RALG(now PO-RALG), at the regional administration, at the district administration and at Mzumbe University in Morogoro. This was done in order to find out the legal framework of central-local government administrative relationship in Mainland Tanzania; the manner the central government administratively interacts with the LGAs in the latter's exercise of powers and discharge of their functions in Mainland Tanzania; and the manner the present legal framework of central-local government administrative relationship affects the autonomy of LGAs in managing their personnel and financial affairs and in determining their own priorities in Mainland Tanzania.

With the guide of the decentralisation theory, the subsidiarity and holistic principles on one hand, and the theory of juridification and instrumental legal theory on the other hand, the provisions of the Constitution and several legislation relating to local government were analysed with a view to determining how the same provides for good central-local government administrative relationship which is necessary and supportive of local government autonomy and effective service delivery. This involved the examination of the the discretion of LGAs in fixing the number, types, and employment conditions of their employees; the discretion of LGAs in raising and spending moneys; and the discretion of LGAs in determining their own priorities in service delivery.

The findings of this study show that, the present legal framework of central-local government administrative relationship depicts some few features which have positive implication on the autonomy of LGAs. Such features include the provisions of the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act which attempts to change the role of the central government from control to policy making, regulatory and supervisory bodies, promotional and facilitative bodies, and quality assurance. The two Acts also impose a duty on the Minister to ensure sufficient supply and availability of finance; availability of trained and qualified personnel; and the duty to ensure local government autonomy. Furthermore, the Local Government Finance Act transfers some considerable sources of revenue to LGAs and imposes a duty on the central government to pay LGAs annual block grants which has resulted into an increase in intergovernmental transfers since 2004 when the government introduced LGCDG. Also, the Public Service Act 2002 vests in LGAs some authority for appointment, confirmation, staff development, promotion, remuneration and discipline of their employees.

Notwithstanding the few positive features of local government autonomy, this study has also revealed that, the present legal framework of central-local government administrative relationship in Mainland Tanzania does not provide much in terms of protecting the autonomy that LGAs need in the management of their personnel, financial affairs and in determining their own priorities in order to effectively meet their statutory obligations. The main reason is that, having established LGAs in Tanzania, the Constitution of the United Republic of Tanzania does no more than entrusting the Parliament (in the case of Mainland Tanzania) and the House of Representatives (in the case of Tanzania Zanzibar) with the power to determine everything about LGAs.

The Constitution does not provide much about LGAs, the way it does for the central government powers, functions and resources. The Constitution also does not state the administrative relationship between the central government and LGAs. It is contended in this study that, it is not healthy for the Constitution to establish a government (local government) within the national government (central government) without showing how administratively the two governments will work together. Though this has been entrusted to the Parliament, still the Constitution needs to state the basic principles on which the Parliament will proceed to enact a legislation to amplify the constitutional provisions on central-local government administrative relationship. Such basic principles are lacking in the Constitution of the United Republic of Tanzania. If this is left alone without some constitutional safeguards, the autonomy of LGAs is bound to be affected because the powers, functions and sources of local government revenue may be changed or taken away easily by the central government through parliamentary legislation contrary to the theory of decentralisation (D by D) and by disregarding the principal of subsidiarity.

Besides the Constitution, this study found that, the legislative framework of central-local government administrative relationship also does not provide for good central-local

government administrative relationship which is necessary and supportive of the desired local government autonomy in Mainland Tanzania. Under the present legal framework, the manner the central government administratively interacts with LGAs may only be inferred from scattered pieces of legislation enacted by Parliament which are more control-oriented rather than supportive or facilitative of local government autonomy. Furthermore, the study found no specific intergovernmental relationship Act and none of the general Local Government Acts defines with precision the central-local government administrative relationship in Mainland Tanzania. This has made the central government to unfairly meddle with the autonomy of LGAs in exercising their powers and in carrying out their statutory functions.

Although it is accepted in this study that control of local government powers and functions by central government is acceptable to some extent as a way of curbing corruption and other malpractices, it is also submitted that excessive central controls and supervisions which take away the necessary autonomy of LGAs in exercising their powers and in carrying out their statutory functions defeats the whole purpose behind the establishment of LGAs in Tanzania. It is only when the LGAs are autonomous that a fair assessment on their role and performance of their functions can be made.

The analysis and discussion of the study findings show that the current legal framework of central-local government administrative relationship in Mainland Tanzania is a paradox of local government autonomy. The role of LGAs in the administration of local government personnel is only limited to assessing the employment needs, recruitment in the operational service, assignment of duties to employees, transfer within the Councils, long course training for employees and disciplining some junior employees. Also the study found limited discretion and autonomy in local government planning and expenditures because LGAs are required to follow central guidelines and directives (budget ceiling and guidelines) in planning and expenditures.

Central prescription and dictation on how central government grants are to be spent has remained a notable feature in the local government expenditures. The central government influence on financial affairs is prevalent even on local government own revenue collection. The sources of local government revenue have remained limited and substantially poor. Yet the central government interferes even with the very limited and poor sources of local government revenue including expropriation of some local taxes. Therefore, it is argued in this study that, unless a clear legal framework, as recommended in the subsequent section, is put in place for administrative relationship between the two governments, and the LGAs' personnel and finance are solely subjected to the powers of the relevant authorities within the LGAs themselves, the autonomy of LGAs will continue to be meddled and tempered with by the central government as the case at present.

6.4 Recommendations

In order to improve the present legal framework of central-local government administrative relationship and the autonomy of LGAs in managing their personnel, financial affairs and in determining their own priorities in Mainland Tanzania, this study recommends for Constitutional amendment; enactment of an intergovernmental relationship Act; harmonisation of central and sector legislation and local government legislation; rationalisation of local government legislation to form a single comprehensive local government code; and reducing the powers of the Minister over LGAs as explained hereunder.

6.4.1 Constitutional Amendment

The Constitution of the United Republic of Tanzania should be amended to take aboard the policy of decentralisation by devolution and subsidiarity principle like the case of the Constitutions of the selected countries for this study (the Republic of Philippines, South Africa, Kenya and Uganda). The constitutional amendments should clearly define the

authority and procedures for establishment and abolition of LGAs; state with precision the power and functions of LGAs; state clearly the sources of local government revenue; state the distribution of the national income among central government and LGAs in accordance with the responsibilities of the two levels of government; and state the administrative relationship among the two levels of government.

One thing needs to be made clear at this juncture. It is not the intention of this study to recommend for detachment of LGAs from the central government. The argument is that, the LGAs should be able to tell with certainty their constitutional powers and responsibilities and be free to exercise their powers and perform their functions as prescribed by law. This will facilitate accountability in the system of government and promote responsible government. The present legal framework of central-local government administrative relationship does not offer much towards that end.

Amendment of the Constitution should also vest in each local government unit the power to create its own sources of revenues and levy taxes, fees, and charges. Although such powers may be subject to guidelines and limitations provided by Parliamentary Act, the Constitution should emphasise on respect to the basic policy of financial autonomy and all the taxes, fees, and charges should accrue exclusively to LGAs. The amendment to the Constitution should further entitle LGAs a just share in the national taxes which shall automatically be released to them and, all local governments should be entitled to an equitable share in the proceeds of the utilisation and development of the national wealth within their respective areas.

The Constitutional amendment should also devolve the administration of local government personnel and declare LGAs autonomous institutions though interdependent and interrelated with the central government. In other words, the Constitution of Tanzania, like the Constitution of South Africa and the Republic of Kenya, should

emphasise on the duty of the two levels of government to cooperate with one another in mutual trust and good faith, assist and support one another, inform and consult one another on matters of common interest, coordinate their actions and legislation with one another and to avoid legal proceedings against one another.

Furthermore, the Constitutional amendment may also require the establishment of some intergovernmental forums and the establishment of an authority (ombudsman) to regulate central-local government relations and resolve disputes (if any) especially when one of the two levels of government unreasonably interferes with the power and functions of the other or does not honour its responsibilities under the Constitution. The detailed types, composition and functions of the said intergovernmental forums and the ombudsman would be provided under an Intergovernmental Relationship Act to be enacted by the Parliament. The enactment of Intergovernmental Relationship Act and establishment of intergovernmental relationship forums and ombudsman will only be important once the Constitution and local government Acts specify the exclusive powers and functions of central and LGAs, financial resources of either government and the relationship between the two.

The intergovernmental relationship forums will enhance intergovernmental consultations and negotiations on matters of policy formulation and implementation, financial and personnel policy changes and other matters of common interest. Such institutional framework shall make LGAs real partners of the central government in service delivery and not mere executors of central policies as it is now. Since central interventions are inevitable for public interest in a unitary and welfare states, the proposed ombudsman will be employed to assess the validity of such interventions and make enquiries before the Minister evokes his powers vested in him under section 129 of the Local Government (District Authorities) Act and section 71 of the Local Government (Urban

Authorities) Act. The ombudsman may also provide a forum for negotiation, mediation and arbitration between central and LGAs authorities.

6.4.2 Enactment of an Intergovernmental Relationship Act

As pointed out in the discussion of Constitutional amendment under item 6.4.1 above, once the powers, responsibilities and resources of LGAs are constitutionalised, LGAs will become true local governments and not agents or a department of central government as it is the case at present. This shall make the codification (juridification) of central-local government administrative relationship crucial for certainty and predictability. Like the practice in the selected countries for this study, the Intergovernmental Relationship Act may establish and amplify the types, composition and functions of intergovernmental forums and the ombudsman referred under item 6.4.1 above. The intergovernmental forums may include Presidential coordination council, central-local government co-ordination summits, intergovernmental relations technical committees and secretariat and inter-council co-ordination secretariat.

The Presidential coordination council may constitute the President; the Prime Minister and line Ministers; Regional Commissioners; the Regional Administrative Secretaries; and the representatives of LGAs, preferably the ALAT. This council would be the highest intergovernmental relationship forum where matters which affect both central and local government authorities would be discussed and national policies initiated. The central-local government co-ordination summit may involve line ministries, the Ministry of Regional Administration and Local Government and representatives of LGAs to discuss line policies and programmers that affect LGAs. This would also provide an opportunity for policy consultation and negotiation between line ministries and LGAs.

The Intergovernmental Relations Technical Committees and Secretariat may involve all Directors of LGAs, all Regional and District Administrative Secretaries, the Permanent

Secretary of PO-RALG and Permanent secretaries of line ministries. The role of this would be to discuss the implementation of joint programmes, administrative issues and preparation of meetings for the presidential coordination council and the central-local government co-ordination summit. The inter-council co-ordination secretariat may involve two or more councils meeting regularly or on *ad hoc* basis to discuss various matters of common interest such as boundaries, environmental protection, tourism, defense and security, and other matters of common interest.

6.4.3 Legal Harmonisation

Central and sector legislation must be reviewed and harmonised to reflect the objectives of the LGRP. Harmonisation of sector and central legislation should go hand in hand with revision of the local government legislation to create a single comprehensive local government Act and should come after amendment of the Constitution discussed under item 6.4.1 above so as to give effect to the provisions of the Constitution. Harmonisation of sector legislation and rationalisation of local government legislation will reduce the bulkiness and complexity of the present local government Acts and the uncertainty of central-local government administrative relationship under the present legal framework. Moreover, the review of local government legislation should also include reducing the powers of the Minister over LGAs. The powers of the Minister to dissolve LGAs which are body corporate with elected representatives sounds ridicule and paradox of incorporation and the theory of decentralisation and principle of subsidiarity. These powers should be vested in the High Court or the intergovernmental relationship Ombudsman referred under item 6.4.1 above.

REFERENCES

Books

- Bailey, S.H.(2004). *Cross on Principles of Local Government Law, 2nd Ed.* London: Sweet& Maxwell.
- Dickovick,T.J. & Wunsch, J.S.(Eds).(2014). *Decentralisation in Africa: the Paradox of State Strength.* Boulder, London: Lynne Rienner Publishers.
- Griffiths, A. (1976). *Local Government Administration.* Crayford: SHAW & SONS Ltd.
- Hoercke, M.V. & Ost, F. (Eds).(2011). *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* Oxford: Hart Publishing Ltd.
- Hornby A S. (2010). *Oxford Advanced Learner's Dictionary of Current English.* Oxford: Oxford University Press.
- Humes, S. (1961). *The Structure of Local Government throughout the World.* The Hague: Martinus Nijhoff.
- Jackson, R.M.(1967). *The Machinery of Local Government.* New York: Macmillan & Company Ltd.
- Jhering, R.V.(1913). *Law as a Means to an End.* Boston: Boston Book Company.
- Jowell, J. & Olver, D. (Eds).(2000). *The Changing Constitution.* Oxford: Oxford University Press.
- Kombo, D.K. (2006). *Proposal and Thesis Writing: an Introduction.* Nairobi: Paulines Publications Africa.
- Kothari, C.R. (2004). *Research Methodology: Methods and Techniques.* New Delhi: New Age International Ltd.
- Loughlin, M. (1986). *Local Government in the Modern State.* London: Sweet & Maxwell.
- Loughlin, M. (1996). *Legality and Locality: the Role of Law in Central-local Government Relationship.* Oxford: Clarendon Press.
- Max, J.A.O.(1991). *The Development of Local Government in Tanzania.* Dar es Salaam: Educational Publishers and Distributors Ltd.

- Mwaikusa J.T., (1985). *Control of Local Government Authorities in Tanzania*. Mzumbe: Research, Information and Publication Department.
- Oates, W. E. (1972). *Fiscal Federalism*. New York: Harcourt Brace Jovanovich.
- Olowu, D & Wunsch J.M.(2004). *Local governance in Africa: The Challenges of Democratic Decentralisation*. Boulder, London: Lynne Rienner Publishers.
- Raul, P. & De Duzman, D.T.(Eds). (1973). *Philippine Local Government: Issues, Problems and Prospects*. Manila: University of the Philippines.
- Shah, A. (Ed.).(2006). *Local Governance in Developing Countries*. Washington D.C: World Bank
- The World Book Encyclopaedia. (1994).*World Book international*. World Book Inc. Vol.8.
- Walker, D. (2000). *Living with Ambiguity: the Relationship between Central and Local Government*. York: York Publishing Services Ltd.
- Warioba, M.D. & Warioba, L. (2012). *Local Government Reforms in Tanzania*. Mzumbe: Mzumbe University.
- Warioba, M.M.D. (1999). *Management of Local Government in Tanzania*. Mzumbe: Research, Information and Publication Department.
- William, H. (1987). *Local Government and Urban Politics*. London: Longman Publishers.

Journal Articles, Chapters in Books, Technical and Conference Papers

- Adeyemo, D.O. (2005). Local Government Autonomy in Nigeria: A Historical Perspective. *Journal of Social Sciences*, 10(2), 77-87.
- Agrawal, A. & Ribort, J.(2000). *Analysing Decentralisation: a framework with South Asian and East African Environmental Cases (Working Papers Series No.1)*. World Resources Institute.

- Asaju, K. (2010). Local Government Autonomy in Nigeria: Politics and Challenges of the 1999 Constitution. *International Journal of Advances Legal Studies and Governance*, 1(1), 98-113.
- Balan.(2008). Quoted in Zaharia, P. & Bilouseac, I. (2009). Decentralisation and Local Autonomy-Local Public Management Defining Principles. *Anneles Universitatis Apulensis Series Oeconomica*, 11(2), 805-812.
- Benz, A. (1987). Decentralisation in the Federal Republic of Germany- a Case of Pragmatic Adaptation. *International Review of Administrative Science*, 53(4). 467.
- Bin, H. (2012 February).“Distribution of Powers between Central Governments and Sub-national Governments”. A Paper presented by the Committee of Experts on Public Administration, New York.
- Blank, Y. (2009). Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance. *Fordham Urban Law Journal*, 37(2), 523-532.
- Carbone, G.M. (2007). Political Parties and Party Systems in Africa: Themes and Research Perspectives. *World Political Science Review*, 3(3), 1-29.
- Chakunda, V.S.(2015).Central-Local Government Relations: Implication on the Autonomy and Discretion of Zimbabwe’s Local Government. *Journal of Political Science and Public Affairs*, 3(1), 143.
- Chege, M. (2007). *Political Parties in East Africa: Diverse in Political Party Systems. Report prepared for the International IDEA as Part of Its Global Programmes on Research and Dialogue with Political Parties*. Stockholm: International IDEA.
- De Mello, L.R. (2000). Fiscal Decentralisation and intergovernmental Relations: A Cross-Country Analysis. *World Development*, 28(2), 365.

- De Villiers, B. (2012) Codification of Intergovernmental Relations by Way of Legislation: the Experiences of South Africa and Potential Lessons for Young Multitiered Systems. *Zao RV*, Vol. (72), 671-694.
- Devas, N. & Grant, U. (2003). Local government decision making: Citizen Participation and Local Accountability: Some Evidence from Kenya and Uganda. *Journal of Public Administration and Development*, 23 (4), 307-316.
- Devas, N.(2005June).“The Challenges of Decentralisation”. Paper Presented at the Global Forum on Fighting Corruption, Brasília.
- Enejo, W. & Isa, A. (2014).The Imperative of Local Government Autonomy and Intergovernmental Relations in Nigeria. *International Journal of Public Administration and Management Research (IJPAMR)*, 2(3), 74-83.
- Fallet, T.G. (2004). *A Sequential Theory of Decentralisation and its Effects on Intergovernmental Balance of Power: Latin American Cases in Comparative Perspective (Working Paper No. 314)*. Kellogg Institute for International Studies.
- Fatile, J.O. & Ejalonibu, G.L. (2015). Decentralisation and Local Government Autonomy: Quest for Quality Service Delivery in Nigeria. *British Journal of Economics, Management and Trade*, 10(2), 1-21.
- Fleurke, F. & Willemse, R. (2006). Measuring Local Autonomy: A Decision-making Approach. *Journal of Local Government Studies*, Vol. 32(1), 71-87.
- Fortson, R.(1999). Three Roles for a Theory of Behaviour in a Theory of law: a Commentary on Talk by Lewis Kornhauser. *Stanford Journal of Legal Studies*, 1(1), 30-34.
- Gaudioso, C. S.J.R. (1986). Local Autonomy and Inter-Governmental Relations. *Philippines Law Journal*.Vol.61, 423-447.
- Golola, M.L.(2001). *Decentralisation, Local Bureaucracies and Service Delivery in Uganda*. Discussion Paper No. 2001/115. UNU/WIDER.
- Hartlye, O.A. (1971). The Relationship between Central and Local Authorities. *Journal of Public Administration*,Vol.49, 439-456.

- Hoercke, M.V. (2011). Legal Doctrine: Which Method(s) for What Kind of Discipline?
 In Hoercke, M.V. & Ost, F. (Eds). *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (pp.1-18). Oxford: Hart Publishing Ltd.
- Hughes, M. (1998). *The Constitutional Status of Local Government in other Countries: Report Prepared for the Commission on Local Government and the Scottish Parliament*. CRU.
- Jered B. Carr, J.B.(2006). Local Government Autonomy and State Reliance on Special District Governments: A Reassessment. *Political Research Quarterly*, 59(3), 481-492.
- Jones, P. V. (2002). Values and Purpose in Government: Central-Local Relations in Regulatory Perspective. *Journal of Law and Society*, 29(1), 27-55.
- Kamugisha, D. J. (2014). The Liaison Between Central and Local Governments: Is it Inclined in a Symbiotic Fashion to Ease Service Delivery in Tanzania? *International Journal of Social Sciences and Entrepreneurship*, 1 (10), 274-291.
- Katorobo, J. (2005May). "Decentralisation and Local Autonomy for Participatory Democracy". Paper presented at the 6th Global Forum on Reinventing Government. Seoul: Republic of Korea.
- Keles, R.(2003). "The Principle of Subsidiarity in Service of Sustainable Development". In Camarda, D & Grassin, L.(Eds). (2003). *Local Resources and Global Trades: Environment and Agriculture kin the Mediterranean*. Bari: CIHEAM.
- Kwame, B.A.B. (2010). Public Administration: Local Government and Decentralisation in Ghana. *Journal of African Studies and Development*, Vol.2(7), 166-175.
- Lambright, G. M. S.(2013). Decentralisation in Uganda: Explaining Successes and Failures in Local Governance. *African studies review*, vol.56 (1), 182-184.
- Liviga, A.J. (1992). Local Government in Tanzania: Partner in Development or Administrative Agent of the Central Government? *Journal of Local Government Studies*, Vol. 18(3), 208-225.

- Loughlin, J & Martin, S.(2003). *International Lessons on Balance of Funding Issues: Initial Paper*. Centre for Local & Regional Government Research.
- Loughlin, M. (2000). “Restructuring of Central-local Relations”. Quoted in Jowell, J. & Olver, D. (Eds). *The Changing Constitution*. Oxford: Oxford University Press.
- Machingauta, N. (2010). “Supervision of Local Government”. In De Visser, J., Steytler, N.,& Machingauta, N. (Eds). *Local Government Reforms in Zimbabwe: a Policy Dialogue*(pp.139-150). Western Cape: Community Law Centre.
- Malan, L. (2005). Intergovernmental Relations and Co-operative Government in South Africa: The ten-Year Review. *Politeia*. Vol. 24(2), 226-243.
- Mauthe, B. (2005). A critique on Legal Analysis of Local Government and the Central-Local Relationship. *Northern Ireland Legal Quarterly*, 56(3), 373-393.
- Msekwa, P. (2011). Democratic Practices in Tanzania. *Ceta Journal*, Vol.9, 11-51.
- Mutahaba, E. R & Kweyamba, A.B. (2010 November). “Searching for an Optimal Approach to National Development Planning in Africa: Assessing the Contribution of Public Administration Systems”. Paper presented at the 32nd AAPAM Annual Roundtable Conference. Durban, South Africa.
- Ngowi, H.P.(2007September). “Political and Managerial Leadership for Change and Development in Africa”. Paper presented to African Association for Public Administration and management 29th AAPAM Annual Roundtable Conference. MBABANE, Swaziland.
- Ngowi, H.P.(2009). Economic Development and Change in Tanzania since Independence: the Political Leadership Factor. *African Journal of Political Science and International Relations*, vol.3(4), 257-276.
- Oates, W. E (2004). “An Essay on Fiscal Federalism”. In Baimbridge, M. & Whyman, P.(Eds). *Fiscal Federalism and European Economic Integration* (pp.13-47). New York: Routledge.
- Oates, W. E. (1993).The Role of Fiscal Decentralisation in Economic Growth. *National Tax Journal*, 46(2), 237-243.

- Oates, W. E.(2006). *The Theory and Practice of Fiscal Decentralisation: IFIR Working Paper Series No.2006-05*. IFIR.
- Okoli, F.C. (2013). The Autonomy of Local Government and the Place of 4th Tier Government (Community Government Councils) in the Nigeria's Vision 20:20:20 Project. *Mediterranean Journal of Social Sciences*.4 (5), 89-97.
- Olsen, H.B. (2007). *Decentralisation and Local Governance Moddule1: Definitions and Concepts (Concept Paper on Decentralisation and Local Governance)*. EDA.
- Page, E. & Goldsmith, M.J. (1985). Centralisation and Decentralisation: a Framework for Comparative Analysis. *Journal of Environment and Planning C: Government and Policy*, Vol. 3(2), 175-185.
- Per Tidemand & Sola, N.(2014). "Tanzania: Devolution under Centralised Governance". In Dickovick,T.J. & Wunsch, J.S.(Eds). *Decentralisation in Africa: the Paradox of State Strength* (pp.205-228). Boulder, Colorado: Lynne Rienner Publishers.
- Reid, M. (2012).Managing Central-Local Government Relationships: the Case of New Zealand. *Commonwealth Journal of Local Governance*, 11, 1-32.
- Rhodes, R.A.W. (1980). Myths in Central-Local Relations. *The Town Planning Review*, Vol.51(3), 270-285.
- Schneider, A. (2003). Decentralisation: Conceptualisation and Measurement. *Journal of Studies in Comparative International Development*, Vol.38 (3), 32-56.
- Sevic, Z.(2001). Political-Administrative Relationships in Small States. *Bank of Valletta Review*, vol.23, 63-76.
- Shah, A. & Shah, S. (2006). "The New Vision of Local Governance and the Evolving Roles of Local Governments". In Shah, A. (Ed.). *Local Governance in Developing Countries* (pp.1-46). Washington D.C: World Bank.
- Walker, D.B. (1991). Decentralisation: Recent Trends and Prospects from a Comparative Governmental Perspective. *International Review of Administrative Sciences*, Vol.57(1), 113-129.

Wunsch, J.S. (2014). “Decentralisation: Theoretical, Conceptual, and Analytical Issues”. In Dickovick, T.J. & Wunsch, J.S. (Eds). *Decentralisation in Africa: the Paradox of State Strength* (pp.1-22). Boulder, Colorado: Lynne Rienner Publishers.

Government Reports and Papers, Research Reports and E-Resources

Bonoan, M.B.(2010). *Two Decades of Journey to Local Autonomy in the Philippines*. Retrieved August 21, 2016 from the World Wide Web: <http://asiafoundation.org/2010/09/01/two-decades-of-journey-to-local-autonomy-in-the-philippines/>.

Bosire, C.M. (2013). “Devolution for Development, Conflict Resolution, and Limiting Central Power: An Analysis of the Constitution of Kenya, 2010”. Unpublished PhD Thesis, University of Western Cape.

Chaligha, A. (2008). *Local Autonomy and Citizen Participation in Tanzania: from Local Government Reform Perspective*. REPOA.

Chateau, C. (2016). *The Principle of Subsidiarity*. EU Fact Sheets. Retrieved April 10, 2016 from the World Wide Web: http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf.

Dickovick, T.J. & Ried, B.R. (2010). *Comparative assessment of Decentralisation in Africa: Final Report and Summary of Findings*. USAID.

Douglas, M.(2013). *Reflection on the Role of Local and Central Government in the Delivery of Social Services*. A Report for the New Zealand Treasury. Retrieved April 14, 2016 from the World Wide Web: <http://www.mdl.co.nz/site/mckinley/files/pdfs/Local-central-govt-socialservicedelivery-Dec13.pdf>.

Dryden, S. (1966). “Local Administration in Tanzania”. Unpublished Master’s Dissertation, University of East Africa.

Frumence, G., Nyamhanga, T., Mwangi, M., & Hurtig, A.-K. (2013). Challenges to the Implementation of health sector decentralization in Tanzania: experiences from

- Kongwa district council. *Global Health Action*, 6,10.3402/gha.v6i0.20983.
<http://doi.org/10.3402/gha.v6i0.20983>
- Gale, T. (2008). *Local Government*. International Encyclopedia of Social Sciences. Retrieved July 24, 2016 from the World Wide Web Available http://www.encyclopedia.com/topic/local_government.aspx.
- Gasto, F. (1997). "Contradictions in Local Government Decision Making in Tanzania". Unpublished Master's Dissertation in Public Administration, University of Dar es Salaam.
- Government of the United Republic of Tanzania, *History of Local government in Tanzania*. PO-RALG. Retrieved April 14, 2012 from the World Wide Web: <http://www.pmoralg.go.tz/menu-data/about-us/history/History%20of%20Local%20Government%20In%20Tanzania.pdf>.
- Government of the United Republic of Tanzania. (1996). *Local Government Reform Agenda 1996-2000*. PMO-LGM.
- Government of the United Republic of Tanzania. (1998). *Local Government Reform Programme Policy Paper I, 1998-2008*. PMO-RALG.
- Government of the United Republic of Tanzania. (2007). *Joint Government-Development Partner Evaluation Working Papers*. PMO-RALG.
- Government of the United Republic of Tanzania. (2009). *Local Government Reform Programme II (Decentralisation by Devolution)*. PMO-RALG.
- Government of the United Republic of Tanzania. (2011). *The Functions and Organisation Structure of the Prime Minister's Office, Regional Administration and Local Government (PMO-RALG)*. PO-PSM.
- Government of the United Republic of Tanzania. (2011). *The Functions and Organisation Structure of the Regional Secretariats*. PO-PSM.
- Government of the United Republic of Tanzania. (2012). "Prime Ministers' Office-Regional Administration and Local Government Strategic Plan, 2011/12-2015/16". PO-RALG.

- Government of the United Republic of Tanzania. (2012). *History of Local Government System in Tanzania*. PMO-RALG. Retrieved October 10, 2012 from the World Wide Web: <http://www.pmo.go.tz/mawaziri.php?cat=12&subcat=81>.
- Hewison, G. (2008). *Effective Relationship and Collaborative Arrangements between Central and Local Government: a Report Prepared for the Waitakere City Council*. Brook Fields Consultant Ltd. Retrieved April 14, 2016 from the World Wide Web: <http://www.waitakere.govt.nz/havsay/pdf/royalcommission/effective-relationships.pdf>.
- Jumuiya ya Tawala Za Mitaa Tanzania. (2012). “Serikali za Mitaa Tunazohitaji Tanzania katika Katiba Ijayo: Mapendekezo ya Secta ya Serikali Za Mitaa”. ALAT.
- Keller, E.J. (1995). “Decolonisation, Independence and the Failure of Politics”. In Martin P.M. & Meara, P.O. (Eds).(1995). *Africa*. Bloomington: Indiana University Press. Retrieved April 17, 2016 from the World Wide Web: <http://www.sscnet.ucla.edu/polisci/faculty/keller/papers/SelectedPub/decolonization.PDF>.
- Kunkuta, G.E.A. (2011). “Responsiveness and Accountability of Urban Government: experiences from Provision of Water and Sanitation in Temeke Municipality in Dar es Salaam, Tanzania”. Unpublished PhD Thesis, Mzumbe University.
- Lamber, T. *A Brief History of Tanzania*. Retrieved October 10, 2012 from the World Wide Web: <http://www.localhistories.org/tanzania.html>.
- Martin, F. O. (2010). “Low Voter Turnout in Tanzania: Causes and remedies. The Case of Multiparty General Elections and Parliamentary By-elections”. Unpublished Masters Dissertation in Mater of Arts in Development Studies of the International Institute of Social Studies, the Hague, Netherlands.
- Oplas, N. (2008). *Subsidiarity, Decentralisation and Privatisation*. Minimal Government Thinkers Inc. Retrieved July 24, 2016 from the World Wide Web: http://www.minimalgovernment.net/media/mg_20080904.pdf.

- Per Tidemand & Msami, J. (2010). *The Impact of Local Government Reform in Tanzania 1998-2008*. REPOA.
- Per Tidemand, Sola, N., Maziku, A., Williamson, T., Tobias., Long, C., et.al. (2014). *Local Government Authority (LGA) Fiscal Inequalities and the Challenges of Disadvantaged LGAs*. The Overseas Development Institute (ODI) Reports.
- Per Tidemand., Sola, N., Bofin, P. & Chaligha, A. (2010). *Comparative assessment of Decentralisation in Africa: Tanzania in Country Assessment Report*. USAID.
- Per Tidemand, Olsen, H.B. & Sola, N. (2008). *Local Level Service Delivery, Decentralisation and Governance: A Comparative Study of Uganda, Kenya and Tanzania Education, Health and Agriculture Sectors: Tanzania Case Report*. Tokyo: JICA.
- REPOA. (2008). *The Oversight Processes of Local Councils in Tanzania*. REPOA.
- Republic of South Africa (2008). *Fifteen Year Review Report on the State of Intergovernmental Relations in South Africa*. Department of Provincial and Local Government (DPLG).
- Republic of South Africa.(2007).*The Implementation of the Intergovernmental Relations Framework Act: An Inaugural Report, 2005/2006-2006/2007*. Department of Provincial and Local Government (DPLG).
- Ribot, J.C. (2002). *African Decentralisation: Local Actors Powers and Accountability*. UNRISD.
- Rosenbaum, A. *Decentralisation, Local Government and Democratic Institutional Building* Retrieved April 11, 2016 from the World Wide Web: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan048927.pdf>.
- Rwekaza S. M. (2004). *Local Government, Effectiveness and Human Rights: the Cases of Bukoba rural and Mtwara-mikindani Districts in Tanzania*. International Council on Human Rights Policy.

- Stanford Encyclopedia of Philosophy. (2015). *The Nature of Law*. Retrieved April 4, 2016 from the World Wide Web: <http://plato.stanford.edu/entries/lawphil-nature/>.
- The Holy See. (1891 May). “Rerum Novarum Encyclical of Pope Leo XIII on Capital and Labour”. Retrieved April 10, 2016 from the World Wide Web: http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.
- U.S.A.C.I.R.(1993). *Local Government Autonomy: Needs for State Constitutional Statutory and Judicial Clarification*. U.S.A.C.I.R. Retrieved April 15, 2016 from the World Wide Web: <http://www.library.unt.edu/gpo/acir/Reports/policy/a-127.pdf>.
- UNDP. (1999). “Decentralisation: a Sampling of Definitions”. UNDP-Government of Germany Evaluation Working Paper of the UNDP Role in Decentralisation and Local Governance.
- United Nations Human Settlements Programme. (2007). *International Guidelines on Decentralisation and Strengthening of LGAs*. Retrieved April 10, 2016 from the World Wide Web: https://www.uclg.org/sites/default/files/guidelines_0.pdf.
- World Bank, *Administrative Decentralisation*. Retrieved April 17, 2016 from the World Wide Web: <http://www1.worldbank.org/publicsector/decentralisation/admin.htm>.

APPENDICES

APPENDIX I

SELECTED LIST OF PUBLIC DOCUMENTS REVIEWED IN COLLECTION OF PRIMARY AND SECONDARY DATA

- 1) Budget files of Dodoma Municipal Council between 2012/2013-2015/2016 fiscal years.
- 2) Budget files of Kinondoni Municipal Council between 2012/2013-2015/2016 fiscal years.
- 3) Budget files of Morogoro Municipal Council between 2012/2013-2015/2016 fiscal years.
- 4) Employment permits (Establishments) for Dodoma Municipal Council between 2012/2013-2015/2016 fiscal years.
- 5) Employment permits (Establishments) for Kinondoni Municipal Council between 2012/2013-2015/2016 fiscal years.
- 6) Employment permits (Establishments) for Meru Municipal Council between 2012/2013-2015/2016 fiscal years.
- 7) Employment permits (Establishments) for Morogoro Municipal Council between 2012/2013-2015/2016 fiscal years.
- 8) Employment permits (Establishments) for Mvomero Municipal Council between 2012/2013-2015/2016 fiscal years.
- 9) Presidential Circular No.1 of 1998 and Circular Letter No.BC.46/97/03/18.
- 10) 2009/2010 Dodoma Municipal Council Approved Establishments letter No.BC.46/97/03/B/13 of March 19, 2009.
- 11) The 2010/2011 Dodoma Municipal Council Approved Establishments letter No.BC.46/97/03/B/32 of April 6, 2010.

- 12) The 2011/2012 Dodoma Municipal Council Approved Establishments letter No.BC.46/97/03/C/4 of June 7, 2011.
- 13) The 2012/2013 Dodoma Municipal Council Approved Establishments letter No.BC.46/97/03/C/30 of September 19, 2012.
- 14) The 2015/2016 Dodoma Municipal Council Approved Establishments letter No.BC.46/97/03/D/4 of October 19, 2015.
- 15) The Constitution of Kenya, 2010.
- 16) The Constitution of the Republic of Philippines, 1987.
- 17) The Constitution of the Republic of South Africa, 1996.
- 18) The Constitution of the Republic of Uganda, 1995 (as amended in 2005).
- 19) The Constitution of the United Republic of Tanzania, CAP.2, R.E.2002.
- 20) The current Functions and Organisation Structure of the Prime Minister's Office, Regional Administration and Local Government approved in 2011.
- 21) The current Functions and Organisation Structure of the Regional Secretariats approved in 2011.
- 22) The Intergovernmental Relations Act, CAP. 5G.
- 23) The Intergovernmental Relations Framework Act No.13 of 2005.
- 24) The Local Government (District Authorities) Act, CAP.287, R.E.2002.
- 25) The Local Government (Urban Authorities) Act, CAP.288, R.E.2002.
- 26) The Local Government Finances Act, CAP.290, R.E.2002.
- 27) The Local Government Reform Programme Policy Paper I, 1998-2008.PMO-RALG.
- 28) The Local Government Reform Programme Policy Paper II (D by D), 2009-2014. PMO-RALG.
- 29) The Local Government Scheme, 2008, G.N. No.146 of 2008.
- 30) The Local Government Service Act, Act No.10 of 1982.
- 31) The Permanent Secretary Circular No. CCD.129/215/01/40 of 2016.
- 32) The PMO-RALG Circular letter No.HA.131/395/01 of 2015.

- 33) The Public Service Disciplinary Code of Good Practice, 2007, G.N. No.53 of 2007.
- 34) The Public Service Recruitment Code of Good Practice, 2007, G.N. No.54 of 2007.
- 35) The Public Service Scheme, 2003, G.N.No.169 of 2003.
- 36) The Public Service Standing Orders of 2009, G.N.No.493 of 209.
- 37) The Public Services (Regulations) 2003, G.N.No.168 of 2003.
- 38) The Public Services Act No. 8 of 2002.
- 39) The Public Audit Act, 2008, Act No.11 of 2008
- 40) The International Guidelines on Decentralisation and Strengthening of Local Government Authorities. UN-HABITAT.

APPENDIX II
AN INTERVIEW GUIDE

Part I: Areas of Administrative Interaction between the President and LGAs

1. How does the President administratively interact with LGAs in the latter's exercise of power and discharge of responsibilities?
2. Mention the areas of administrative interaction between the President and LGAs in Mainland Tanzania.
3. Does the administrative interaction between the President and LGAs have any negative implication on the Autonomy of LGAs in managing their personnel, fiscal affairs and in determining their own priorities?
4. If the answer in 3 above is yes or is no, briefly explain your answer.

Part II: Areas of Administrative Interaction between the PO-RALG and LGAs

1. How does the Minister in the PO-RALG administratively interact with LGAs in the latter's exercise of power and discharge of their mandated responsibilities?
2. Mention the areas of administrative interaction between the Minister in the PO-RALG and LGAs in Mainland Tanzania.
3. Does the administrative interaction between the Minister in the PO-RALG and LGAs have any negative implication on the Autonomy of LGAs in managing their personnel, fiscal affairs and in determining their own priorities?
4. If the answer in 3 above is yes or is no, briefly explain your answer.

Part III: Areas of Administrative Interaction between Line Ministries and LGAs

1. How do line ministries administratively interact with LGAs in the latter's exercise of power and discharge of their mandated responsibilities?
2. Mention the areas of administrative interaction between line ministries and LGAs in Mainland Tanzania.

3. Does the administrative interaction between line ministries and LGAs have any negative implication on the Autonomy of LGAs in managing their personnel, fiscal affairs and in determining their own priorities?
4. If the answer in 3 above is yes or is no, briefly explain your answer.

Part IV: Areas of Administrative Interaction between the RS and LGAs

1. How does the RS administratively interact with LGAs in the latter's exercise of power and discharge of their mandated responsibilities?
2. Mention the areas of administrative interaction between the RS and LGAs in Mainland Tanzania.
3. Does the administrative interaction between the Minister in RS and LGAs have any negative implication on the Autonomy of LGAs in managing their personnel, fiscal affairs and in determining their own priorities?
4. If the answer in 3 above is yes or is no, briefly explain your answer.

Part V: Areas of Administrative Interaction between the RC and LGAs

1. How does the RC administratively interact with LGAs in the latter's exercise of power and discharge of their mandated responsibilities?
2. Mention the areas of administrative interaction between the RC and LGAs in Mainland Tanzania.
3. Does the administrative interaction between the Minister in RC and LGAs have any negative implication on the Autonomy of LGAs in managing their personnel, fiscal affairs and in determining their own priorities?
4. If the answer in 3 above is yes or is no, briefly explain your answer.

Part VI: Areas of Administrative Interaction between the DC and LGAs

1. How does the DC administratively interact with LGAs in the latter's exercise of power and discharge of their mandated responsibilities?

2. Mention the areas of administrative interaction between the DC and LGAs in Mainland Tanzania.
3. Does the administrative interaction between the Minister in DC and LGAs have any negative implication on the Autonomy of LGAs in managing their personnel, fiscal affairs and in determining their own priorities?
4. If the answer in 3 above is yes or is no, briefly explain your answer.

Part VIII: Implication of the Legal framework on the Autonomy of LGAs in Managing their Personnel, fiscal Affairs and in determining their Own Priorities

1. Does the law governing central-local government administrative relationship afford LGAs the discretion to make independent decisions on what to do in response to local priorities?
2. Does the law governing central-local government administrative relationship afford LGAs the discretion to raise and spend moneys (funds)?
3. Does the law governing central-local government administrative relationship afford LGAs the discretion to hire, determine the employment conditions and fire their staff?
4. What are the major strengths of the law that govern central-local government administrative relationship in promoting local government autonomy in mainland Tanzania?
5. What are the major weaknesses of the law that govern central-local government administrative relationship in promoting local government autonomy in mainland Tanzania?
6. What should be done to improve the legal framework of central-local government administrative relationship and local government autonomy in Mainland Tanzania?

APPENDIX III

TABLE 5.1: CONSTITUTIONAL PROVISIONS GOVERNING CENTRAL-LOCAL GOVERNMENT ADMINISTRATIVE RELATIONSHIP IN MAINLAND TANZANIA

General Provision in the Constitution of the United Republic of Tanzania,1977 CAP 2R.E 2002	Specific Article and Area of Central-Local Government Administrative Relationship
1. Nature of the government of Tanzania.	-Art.1-Tanzania as a Unitary sovereign state (government.
2. Powers of the President of the united republic of Tanzania in relation to LGAs.	<p>-Art.33 (2)-The President as head of state and government</p> <p>- Art.34 (3)-All authority of the government vest in the.</p> <p>-Art.35 (1)-All executive function discharged by officers of the government shall so be done on behalf of the President.</p> <p>-Art.35 (2)-The President has authority to issue orders and directives in respect of all executive functions discharged by officers of the government.</p> <p>-Art.35(1)-The President has authority to constitute or abolish any office in the service of the Government</p> <p>- Art.36 (2)-The President has authority to appoint leaders and chief executives in the service of the government.</p> <p>-Art36 (4)-The President has authority to discipline any public servant in the service of the government.</p>
3. Powers of the Public Service Commission.	-Art.36 (3)-The Public service commission has authority to appoint, promote and discipline non-leaders or chief executives in the service of the government.
4. Establishment and powers LGAs.	<p>-Art.145 (1)-There shall be established LGAs...which shall be of the Type, and designation prescribed by law enacted by the Parliament.</p> <p>-Art.145(2)-The Parliament shall enact a Law providing for establishment of LGAs, their structure and composition, sources of revenue, and procedures for conducting their business.</p> <p>-Art.146 (1)-The purpose of having LGAs is to transfer power to the people.</p> <p>-Art.146 (1) - LGAs shall have the right and power to</p>

	<p>participate and to involve the people in planning and implementation of development programmes within their areas.</p> <p>...in conformity with the provisions of law establishing it, a LGA shall have the following functions;-</p> <ul style="list-style-type: none"> ✓ To perform the functions of local government in its area. ✓ To ensure enforcement of law and public safety of the people. ✓ To consolidate democracy and apply it to accelerate development of the people.
<p>5. Powers of the CAG over government accounts.</p>	<p>-Art.143(2)(b)-The CAG shall have the responsibility to ensure all the moneys authorized by a law enacted by the Parliament are spent and applied in accordance with the purposes for which such moneys were authorized.</p> <p>-Art.143 (2)(c) and 143(2)&(3) - The CAG and any government employee authorized by him has the right to examine books, records, statements of accounts, reports and all other documents concerning local government accounts in every year and report to the president.</p>

Source: the Constitution of the United Republic of Tanzania, 1977

APPENDIX IV

**TABLE 5.2: PRINCIPAL AND SUBSIDIARY LEGISLATION GOVERNING
CENTRAL-LOCAL GOVERNMENT ADMINISTRATIVE RELATIONSHIP IN
MAINLAND TANZANIA**

Name of Legislation	Central Government Authority Involved	Area of Central-Local Government Administrative Relationship (interaction) and Section of law
Regional Administration Act, CAP. 97, R.E. 2002	Regional Commissioner	Ensures compliance with government decisions, guidelines, and regulations; facilitates lawful and efficient execution of functions; and receives reports-s.5, CAP. 97.
	Regional Consultative Committee	Advises LGAs on development plans and considers reports from the DCC-s.9, CAP.97.
	Regional Secretariats	Monitors quality and standard of service delivery; provides backstopping expertise; assists preparation of project proposals; monitors and evaluates performance; gives advice on administrative matters; and conducts routine and ad hoc inspections-s.11, CAP.97.
	District Commissioner	Ensures compliance with government decisions, guidelines and regulations; facilitates or secures lawful and efficient execution of statutory and incidental functions; and receives quarterly and annual reports-s.14, CAP.97.
	District Consultative Committee	Ensures implementation of development plans and council decisions-s.15B, CAP.97.

<p>The Local Government (District Authorities) Act, 1982, CAP.287, R.E.</p> <p>The Local Government Urban Authorities) Act, 1982, CAPS 287 R.E.</p>	Minister (PO-RALG)	Ensures availability of funds and personnel; establish, vary and grade LGAs; enforce performance, require information, transfers functions, dissolve councils; Makes regulations; approves by laws.-ss.4-34, 110, 111A (4) 112, 147, 149, 150, 155, 157,158, 152, 163, 165, 169, 170A, 171 &172, CAP.287; ss.4-14A, 54, 56, 59(g)(-h), 60, 61& 66(2), 71-78 CAP 288
	Line Ministries	Facilitates disc. Functions; formulates policy and regulatory framework; monitors performance; technical support; assists the imp. Decisions, resolutions; ensures quality; and ensures all posts are filled.-ss.174A (1) & (2), CAP. 287 and s.54 (1) & (2), CAP.288.
	Regional and District Commissioners	Approves council write off of areas; consents to by-laws made by the District Councils and Township Authority; permits audit and receives audit reports-ss. 127 (4), 150(3), 156(3&4) &177(2), CAP.287; ss. 65(2-5) and 78A,CAP.288.
<p>The Local Government Finance Act, CAP.290 R.E. 2002.</p> <p>The Public Audit Act, 2008, Act No.11 of 2008.</p>	The Minister (PO-RALG)	Authorises alteration of sources of revenue, determines total grants, approves borrowing and advances, approves LG rates and makes rating rules, proper management of finds, facilitates securing funds and promotes timely preparation of budgets, may vary commencement of LG financial year and may issue written instructions on control of LG finance- ss.9A, 10 & 10A, 11 &12, 13, 15, 34, CAP. 290.
	the RC	Authorises inspection of LG accounts, may make rating orders, receives audit reports 41 and 42, 44

		and 45, CAP.290.
	The CAG	Audits LG accounts and reports to the Minister, RC and CD-s. 10, Act No.11 of 2008; s.45, CAP.290.
The Public Service Act, CAP.298, R.E.2002 Public Service Regulations, 2003, G.N. No.168 of 2003.	The President	Appoints city Directors and commissioners; promotes, removes, dismisses public servants; final disciplinary authority. ss.5, 24 (1) and 25 (1) (a)&(d), CAP.298; Reg.29, 60 (1&5), G.N. No.168 of 2003; Clause 45(1) (a) of G.N. No.169; Clause 66(1) of G.N. No.146
The Public Service Scheme, 2003. G.N.No.169 of 2003. The Local Government Scheme, 2008. G.N. No. 146 of 2008. Presidential Circular No.1 of 1998 and Circular Letter No.BC.46/97/03/18.	Chief Secretary	Head and chief executive officer; provides leadership, direction and image to the LG service; orders terms and conditions of employees; confirms and disciplines presidential appointees; highest ranking disciplinary authority; issues employment permits. s.4, CAP.298; Reg.6 (3) and 35(2) (a) of G.N.No.168 of 2003; Clause 6 and 7 of G.N. No.169 of 2003; Clause 7.3 and 25.1 G.N.No.53 of 2007; and Clause 5 and 6 of G.N. No.146 of 2008.
The Ministers (Discharge of Ministerial Functions) Notice, 2016. G.N.144 of 2016	The PO-PSM	Policy making and implementation; human resources development and planning; payroll management; PS assists of the Chief Secretary; facilitates labour mobility; issues circulars; notifies the Chief Secretary on vacancies; recommends transfers or promotions and appointments by the President- s.8 (2) and 3(f)-(g) CAP.298; Reg.5 (2), 7(1)-(3) G.N. No.168; Clause 5(1), 13(1) (a)-(l) G.N.No.169; Clause 9, 29(1) (b) G.N. No.146. and G.N.144 of 2016

	PO-RALG .	Performance improvement, and HRD; appointment, promotion and discipline of Directors; ensures adequate finance and resources in the service; coordinates central-local relations and monitors performance of LGAs; facilitates labour mobility; PS notifies the Chief secretary on vacancies in LGAs.-s.5 (a) (iii) CAP.298; Reg.6 (f), 7(1)-(2) and 35(2) (b) G.N.No168; Clause 7(1) (e) and 29(1)(a) G.N. No.146
	The Public Service Commission	Issues guidance, monitoring, facilitates and conducts recruitments; facilitates appointments to the service and appellate disciplinary authority. - ss.10 (1) and 29(1), (4) & (6) CAP.298; Reg. 25(1) (b &c) G.N. No.168; Clause 10(a-e) of G.N. No.146.
	Other Ministries	Provides technical assistance, guidance and quality assurance on various matters related to employees in the service whose professions or duties are related to those ministries. s.6 (1) (b) CAP.298; Reg.6 (1) (a) G.N. No.168; Clause 5(2), 8(1) and 12(b) of G.N. No.169; Clause 8 of G.N. No.146.

Source: Principal and Subsidiary Legislation

APPENDIX V

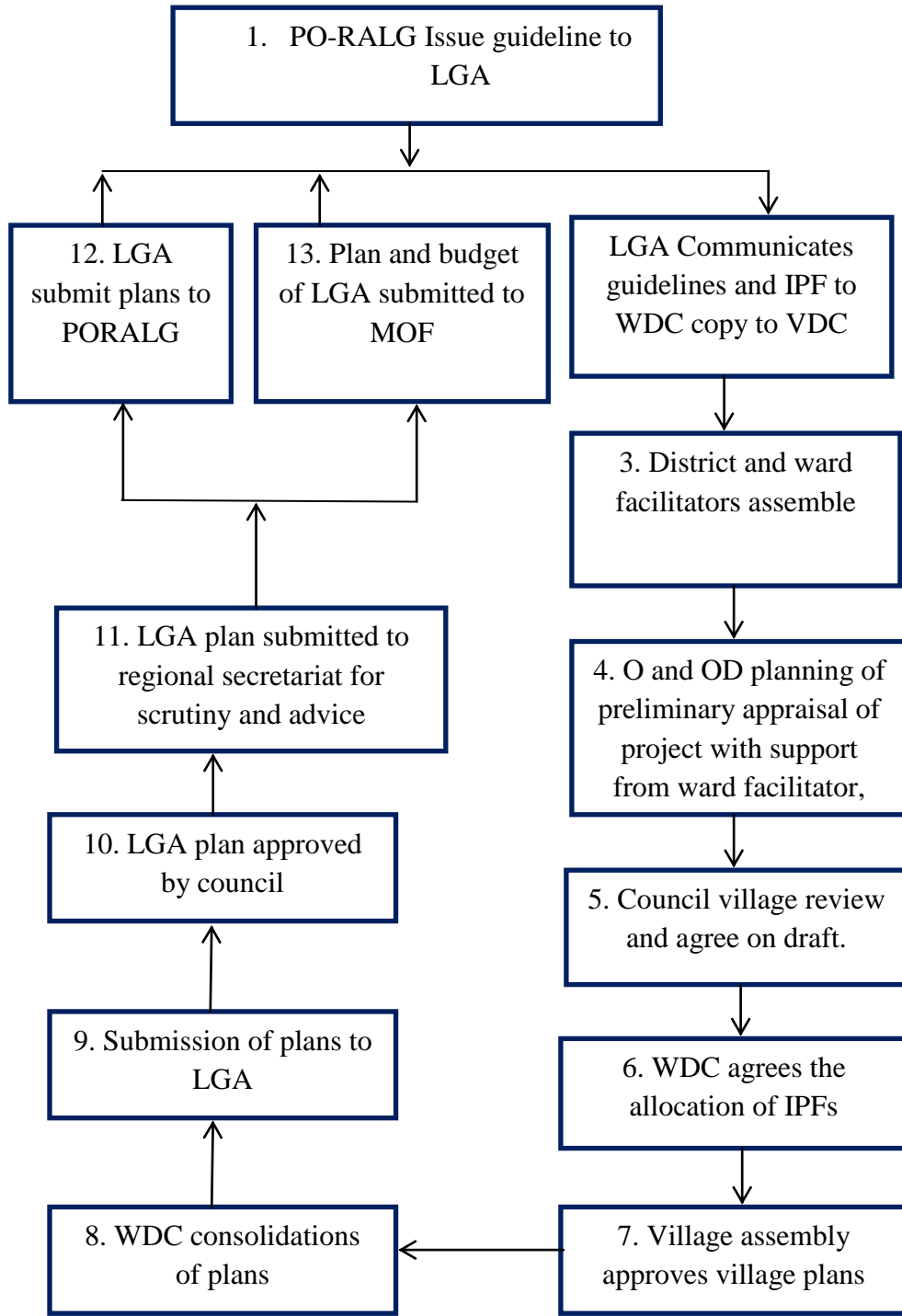
TABLE 5.3: SUMMARY OF INTERVIEW RESPONSES ON THE AREAS OF CENTRAL-LOCAL GOVERNMENT ADMINISTRATIVE INTERACTIONS

Central Authority involved	Area of central-local government administrative Relationship	Frequency(f)	Percentage (%)
President	Exercise of final disciplinary authority.	45	81.8
	Establishment and abolition of offices in the Local government service.	46	83.6
	Appointment of city directors and commissioners of LGAs.	45	81.8
	Issues administrative order and instructions.	46	83.6
	Ensuring good governance.	38	69.1
PO-RALG	Policy Making and regulatory framework.	46	83.6
	Supervision of policy implementation.	41	74.5
	Monitoring and supervision of local government provision of services.	46	83.6
	Control of Local Government finance.	45	81.8
	Appointment of DEDs.	45	81.8
	Transfer of DEDs and Heads of Departments.	46	83.6
	Discipline of DEDs.	46	83.6
	Others.	15	27.3
Line Miniseries	Sector policy making and regulatory framework.	46	83.6
	Setting standards for local service delivery.	48	87.5
	Facilitating local government service delivery.	38	69.1
	Issuing guidelines and directives.	48	87.5
	Capacity building of sector employees.	48	87.5
	Quality assurance.	43	78.2
	Others.	17	30.9
The RC	Implementation of order of the President over LGAs.	46	83.6

	Giving orders and directives to LGAs.	45	81.8
	Requiring and receiving quarterly and annual reports from LGAs.	45	81.8
	Meeting with LG representatives in the RCC and Regional Security Committee (RSC).	46	83.6
	Conducting physical inspection and assessment of LG activities.	46	8.6
The RS	Participation in planning and implementation of LGAs plans.	45	81.8
	Supervision of LGAs financial management.	45	81.8
	Supervision of LGAs service delivery.	45	81.8
	Monitoring and ensuring LGAs compliance with Government policies.	46	83.6
	Ensuring good governance.	45	81.8
	Linking the LGAs with the Central and Sector Ministries.	46	83.6
	Others.	26	47.3
The DC	Supervision of implementation of orders of the RC over LGAs.	45	81.8
	Giving orders and instructions to LGAs.	46	81.8
	Requiring and receiving quarterly and monthly development reports.	46	83.6
	Meetings in the DCC and district security committee.	46	83.6
	Conducting ad hoc inspections and assessment of LGAs activities.	46	83.6
	Others.	26	47.3

Source: In-Depth Interviews, 2015/2016

APPENDIX VI
LOCAL GOVERNMENT PLANNING PROCESS



Source: In-Depth Interviews, 2015/2016

APPENDIX VII

**TABLE 5.4: INTERVIEW RESPONSES ON CENTRAL-LOCAL
GOVERNMENT INTERACTION IN ADMINISTRATION OF COUNCIL
EMPLOYEES**

Aspect of Personnel Administration	Category of Employees	Local Government Responsibility	Central Government Responsibility
Employment need assessment/Planning	All	-Needs assessment and proposition of budget	Approval or adjustment of budget
Recruitment and selection	Directors	-	✓
	HoDs	The director Proposes three names and appoints	Vetting and and confirmation
	Others	-	✓
	Operational service	✓	Secretariat supervises
Allocation to working stations	Directors	-	✓
	All others	✓	-
Remuneration/ payroll control	Except a few contractual, part-time and casual workers	The Director acts as agent of the CG	-Controls Payroll and sends salaries to LGAs
Career development / training	Almost all	-Long courses are financed by councils or cost sharing between employee and council.	-Short courses like seminars on capacity building
Promotion	Almost all	-Preparing budget, the list of employees eligible for promotion and	-Approves the budget.

		requests permit from the PC (PSM).	
Transfers of employees		-the Director Makes Transfer within the Council	-RAS transfers across councils within the Region in consultation with the PC (PO-RALG) - PC (PO-RALG) transfers across Regions. -PC (PO-PSM) from councils to Central Government.
Disciplinary Authority	Directors	May pass a resolution and submit it to the RC	✓
	All others	✓	✓

Source: In-Depth Interviews, 2015/2016

APPENDIX VIII

**TABLE 5.5: INTERVIEW RESPONSES ON CENTRAL-LOCAL
GOVERNMENT INTERACTIONS IN ADMINISTRATION OF SECTOR
EMPLOYEES**

Aspect of Personnel Management	Category of Employees	LG responsibility	CG responsibility
Employment need assessment/ Planning	Teachers	-Proposing budget and pointing out vacancies. -Applying for employment permit.	-Approves or makes adjustments to the proposed budget. - Gives or withholds employment permit.
	Health	-Proposing budget and pointing out vacancies. -Applying for employment permit	-Approves or makes adjustments to the proposed budget. - Gives or withholds employment permit
Recruitment and selection	Teachers	-	✓
	Health	-	✓
Allocation in Working Stations	Teachers	✓	-
	Health	✓	-
Remuneration/ payroll control	Teachers	-	✓
	Health	-	✓
Career development/ training	Teachers	-Long courses	-Short courses
	Health	-Long courses	-Short courses
Promotion	Teachers	-Preparing budget, the list of employees eligible for promotion and requests permit from the PC (PSM).	-Approves the budget.
	Health	-Preparing budget, the list of employees eligible for promotion and requests	-Approves the budget.

		permit from the PC (PSM).	
Transfers	Teachers	-the Director Makes Transfer within the Council	-RAS transfers across councils within the Region. - PC (PO-RALG) transfers across Regions. -PC (PO-PSM) from councils to Central Government.
	Health	-the Director Makes Transfer within the Council	-RAS transfers across councils within the Region in consultation with the Permanent Secretary(PO-RALG) - PC (PO-RALG) transfers across Regions. -PC (PO-PSM) from councils to Central Government.
Disciplinary authority	Teachers	The Director can only report to the TSD	✓
	Health	✓	Appellate

Source: In-Depth Interviews, 2015/2016