



## Institutional and Legal Analysis of D-by-D in Tanzania: Rhetoric vs Reality

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### Key messages

- The constitutional framework for D by D leaves LGAs in a relatively weaker position for exercising more discretion.
- The requirement for official communication to be channelled through PORALG while intended to minimize confusion to LGAs has some intended consequences, especially for control of quality of certain services.
- Arbitrary instructions and circulars that contradict established guidelines and resource envelop undermines the powers of LGAs.
- The modality of implementation of D by D is cumbersome, reducing the effectiveness of devolution.

### Introduction

This policy brief highlights some key aspects of institutional and legal frameworks guiding the central-local relations in Tanzania Mainland. The past decades have seen a major set of initiatives by central government to reform and modernize its local governments. Although there are specific policy and legal reforms, there has been a strong trend towards recentralization of powers.

The findings reported in this brief were collected from a critical review of literature including various government reports, policies, regulations, laws and other secondary data, along with interviews with sectoral ministries (MDAs) responsible for key social and economic services and officers from the Local

Government Authorities (LGAs), the Regional Secretariats (RS). In-depth field work was carried out in Kilimanjaro and Njombe Regions in 2017. The goal of the in-depth research on the sampled two regions in Tanzania was not to construct a representative picture of institutional and legal analysis of D-by-D in Tanzania but to acquire a better understanding of the way different factors result in specific relations and practices. The brief also draws some ideas from other studies undertaken on the subject matter pertaining to decentralisation by devolution in Tanzania.

This policy brief argues that the institutional and legal frameworks in Tanzania have not provided adequate space for effective implementation of Decentralization by

Devolution (D-by-D) as envisaged in the Policy Paper on Local Government Reform.

### **Constitutional Framework for D-by-D in Tanzania: LGAs have Weak Position in the URT's Constitution**

The vision and mission of the D-by-D in Tanzania is driven by the Policy Paper on Local Government Reform (1998), the United Republic of Tanzania's 1977 constitution, sectoral policies and various pieces of legislation. Constitutionally, the status of local governments in Tanzania is legalized by two articles:

*Article 145 (1) states:*

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 the House of Representatives.

*Article 145 (2) states:*

Parliament or the 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.

*Article 146 (1) reads:*

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.

These two articles above are generally inadequate in providing for an effective mechanism to protect LGAs from arbitrary

powers from the central government. In other words, local governments in Tanzania have not been given adequate attention in the Union Constitution. The articles leave central government with the authority to shape local authorities as it wishes. While article 145 provides for the establishment of LGAs across Tanzania, article 146 provides only vague functions for LGAs. Comparatively, in some countries, such as Uganda, LGAs are well defined in the national constitution which has more detailed articles providing for the establishment, purpose, composition, source of revenue and functions of local governments. Moreover, the Ugandan Constitution has one chapter with 31 articles referring to local governments (articles 176-207). These detailed articles in the constitution coupled with the Local Government Act of 1997 in Uganda has been described as one of the most comprehensive decentralization programs in Africa.

The following acts of parliament provide also more precise legal foundations for LGAs in Tanzania Mainland and their functioning:

1. The Local Government (District Authorities) Act No 7 of 1982
2. The Local Government (Urban Authorities) Act No. 8 of 1982
3. The Local Government Finances, Act No 9 of 1982
4. The Local Government Services, Act No. 10 of 1982
5. The Local Government Negotiating Machinery Act No. 11 of 1982
6. The Decentralization of Government Administration (Interim Provisions) (Amendment) Act No. 12 of 1982.

### **There is no Official Policy Framework Guiding Central-Local Relations in Tanzania**

The main guiding policy framework for central-local relations in Tanzania Mainland is the Policy Paper on Local Government Reform (1998). Ironically, this policy is still called a "paper" rather than a "policy" meaning that it

has not been endorsed by the cabinet or the government to become a full-fledged policy document. To researchers and scholars, this may raise many questions regarding the commitment of the central government to develop effective system of local governance in Tanzania.

Nonetheless, the Policy Paper views central-local relations under decentralization as characterized by the abolition of previous command relations. The policy proposes the relations to be characterized by consultations and negotiations, support from ministries to local governments supplemented with regulation and legal supervision of local government political and administrative decisions. In this sense, the directive powers of Government vis-à-vis local councils are restricted to legal regulation with local governments' decisions. Thus, the general influence of local councils is secured through the legislative and regulatory powers of Government, where the Council Director (CD) would be responsible to the council on all administrative matters. The Policy Paper recommends amendments to the Local Government Acts which would be subsumed under the amended local government legislation and that sector policies shall adhere to the principles for the local government reform.

### **Arbitrary Instructions/Circulars to guide operations of LGAs undermine the Powers of LGAs**

Although the LGAs have been empowered to undertake certain functions, their operations occur within the context of the whole nation (Unitary State). Hence, for uniformity and consistence purpose across the LGAs, the Central government, through the Ministry responsible for LGA business, coordinates and regulates LGA functions in a standardized way. Most important of these regulations are:

- Council Articles which regulate the function of the Council and its committees,

- The financial regulations which regulate all financial activities (revenues and expenditures).
- Procurement regulations for all council outsourcing transactions
- HR regulations to guide staffing issues
- Planning and budgeting guidelines to guide planning at all levels of the council
- Urban planning guidelines,
- Entitlement and incentives guidelines etc.

There is a general consensus among council officials that these frameworks for guiding central-local relations are in place, including policies, laws, regulations, and guidelines which are very much resourceful and adequate to guide LGA functions. At ministry and RS levels, all interviewees find the frameworks to be quite adequate. However, the RS staff feel that the problem lies with the centre for not providing enough resources to execute the roles and functions stipulated in the guidelines. Likewise, at the Council levels, there is strong feelings that the frameworks for central-local relations are well framed but sometimes difficult to implement especially where there were instructions to LGAs to perform certain activities without corresponding resources.

Accordingly, although the LGAs may exercise certain discretions, they have to happen within the set national guidelines. Adherence to guidelines is critical because, as discussed further below, much of the funds come from the Central government. A good example is allowances paid to the elected political officials at the Council. These are set by the central government and therefore the elected council body cannot set its own compensations. Even sitting allowances for meetings held have to be approved by Central government.

### **Communication across Sectoral Ministries and LGAs is unclear**

Proper communication within government institutions is an important ingredient for effective service delivery. Governments that coordinate their communications across

ministries are able to deliver public functions far more effectively.

The sectoral ministries feel denied the power to coordinate their officers posted at the LGAs. PO-RALG is seen as taking over most of the functions of the parent ministries such as education, agriculture, health etc, thus creating parallel systems. Parent ministries are left without powers to steer sectoral issues in the country.

Generally, from what is happening on the ground, the practical implementation of D-by-D varies considerably from what is provided in the Policy Paper on Local Government Reform. The findings have clearly shown that there is limited transfer of knowledge concerning D-by-D across the MDAs. This has been largely caused by the lack of a national platform to decide on issues of decentralization. This phenomenon has brought some confusion about the chain of command for the central government as some officials at the Ministries feel that their level of intervention ends at the district levels. For example, street bureaucrats working in some respective sectors such as agriculture, education, health etc. do not know their boundary for decision making points

### **Conclusion and Policy recommendations**

This policy brief has shown that since the constitution is regarded by many democratic governments as the mother law, it also acts as a reference point when it comes to dividing up national power. When local government authorities are well enshrined in the national constitution, it becomes harder for any other institution to undermine their status, roles and functions as local democratic institutions for citizens' participation and social service delivery. However, the practice from Tanzania indicates that local governments, instead of being properly enshrined in the national constitution, are merely regarded as creatures of central government through legislation.

There is also lack of clarity on mandates between central government and the local authorities. Many functions at RS and LGAs are

sometimes interrupted with many directives from central government, but without commensurate resources to implement these directives. The ideal practice would be: money should follow the additional functions.

The brief presents the following recommendations.

- a) Central Government should develop a proper policy on D-by-D in the long term that will clarify mandates/boundaries between central and local governments.
- b) There is need to equip Ministries working on issues of LGAs with knowledgeable staff on LGA business: Existing frameworks of operations and approvals of issues emanating from the LGAs e.g. plans and budgets bring on board ministries like PORALG, Ministry of Finance, Planning Secretariat/ commission to make decisions on matters relating to LGAs.
- c) Sensitization of newly appointed leaders is necessary for smooth functioning of D by D, existing mandates, though not very adequate, must be clear to each functionary in the government system.
- d) The government and other sectoral ministries need to champion D-by-D in all sectors.
- e) There is a need to translate laws and policies into the language (in this case Kiswahili) that all people (local authorities and citizens) can easily understand.
- f) Dialogue between Regional Secretariats (RSs) and LGAs should be improved in order to do away with overruling LGAs decisions, tendency of giving directives, orders and cut bureaucracy during the budget process.
- g) Central Ministries and RSs need to change work attitude toward LGAs, and they should acquaint themselves with challenges facing LGAs in order to be able to advice and supervise them accordingly.



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