



UNITED REPUBLIC OF TANZANIA

**President's Office
Regional Administration
and Local Government**

**Legal Framework
for Implementation
of Government Policy
on Decentralisation
by Devolution**



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Introduction

In June 1996 the Government of Tanzania decided to restructure and downsize the regional administration with the objective of making Local Government more efficient and effective. That decision was followed by the preparation of the Local Government Reform Agenda, 1998-2000. The Agenda was translated into the Local Government Reform Policy, 1998 which set out Government policy on Decentralisation by Devolution. The policy has ever since been implemented by an Act of Parliament and incorporated into Tanzanian Law as the Local Government Laws (Miscellaneous Amendments) Act, No. 6 of 1999.

The Local Government Laws (Miscellaneous Amendments) Act No.6 of 1999 amended the Local Government (District Authorities) Act, No. 7 of 1982, the Local Government (Urban Authorities) Act, No. 8 of 1982, the Local Government Finances Act, No.9 of 1982; the Local Government Services Act, No.10 of 1982; the Local Government Negotiating Machinery Act, No.11 of 1982; and the Urban Authorities (Rating) Act, No.2 of 1983, in order to bring them into line with Government policy on Decentralisation by Devolution.

The spirit which underlies the Policy involves a substantial transfer of authority, functional responsibilities and resources to Local Governments so as to make them largely autonomous, democratically governed and deriving legitimacy through the services they deliver to the people. The enabling legal framework for the Policy is in the form of Acts of Parliament and also subsidiary legislation made by and for the Local Government Authorities (LGAs).

This booklet attempts to outline, among other things, the main legal framework guiding the implementation of Government policy on Decentralisation by Devolution by specifically focusing on what the Legal Outcome of the Local Government Reform Programme is all about, its role and functions, achievements to date, and more specifically, a brief discourse on the importance of laws in the management and improvement of LGAs. It also tries to show the need for citizens to know and understand Local Government laws and more specifically the rationale for participating in making by-laws and to ensure compliance.

The Legal and Institutional Outcome

The Legal and Institutional Outcome is one of the key components of the Local Government Reform Programme (LGRP). The main objective of the Legal Outcome as provided for in the Medium-Term Plan 2002-2005 is to ensure that the legal basis for devolution to, and autonomy of, LGAs is established and complied with. In order to achieve this objective, the Outcome is structured into 11 outputs. These outputs are:

- Sector laws harmonised in line with Government policy on Decentralisation by Devolution;
- Legislation and amendments to LA laws which are necessary to implement Decentralisation by Devolution, prepared and submitted to Parliament;
- Legal instruments necessary for implementation of Decentralisation by Devolution prepared, issued and distributed to all levels of Central and Local Government;
- Strategy for strengthening the by-law-making process and enforcement mechanisms by the LGAs, prepared and implemented;
- Local Government laws revised and compiled into one legal document, printed and distributed;
- Popular version of Local Government laws, prepared, printed and distributed;
- Role of Ward tribunals reviewed and recommendations for improvement tested;
- Strategy for establishing and operationalising LGAs' auxiliary policy, prepared and implemented;
- Proposals on LA courts, LA policy and other enforcement mechanisms prepared, and recommendations submitted to the Attorney-General;
- Chapter 8 of the Constitution redrafted to enshrine the principles of devolution and autonomy, and submitted.

The overriding objective of this Outcome is, therefore, to establish the enabling legislation which will support the effective implementation of Local Government Reform in general and Decentralisation by Devolution in particular. This is done as part of a framework to achieve the overall purpose of the reform, which is to improve the quality of, and access to, public services provided through or facilitated by LGAs as a strategy to ensure the achievement of the LGRP in reducing the proportion of Tanzanians living in poverty.

Achievements

Substantial achievements have been made to put in place a legal framework for implementation of Government policy on Decentralisation by Devolution. The basic principles for the achievement of the policy have been defined in law and momentum has been gained to progress embedment of Decentralisation by Devolution across central and sector legislation. Decentralisation by Devolution, with its four major dimensions – political decentralisation, financial decentralisation, administrative decentralisation and changed central-local relations – has been instituted and based in law. Specific achievements in various aspects of law include the following:

- Local Government Acts have been reviewed and an Amendment Act No. 6 of 1999 has been passed to allow implementation of Government Policy on Decentralisation by Devolution;
- Pro-poor sector legislation, including those in Education, Health, Water, Agriculture, Roads and Land have been renewed and proposals for rationalisation and harmonisation prepared in order to bring them into line with Government policy on Decentralisation by Devolution;
- The Public Service Act No. 8 of 2002 has been revised and amended by Act No.19 of 2004 to provide a legal framework which recognises LGAs as having the authority for appointing, employing, promoting, developing and disciplining their own employees.
- Local Government laws have been compiled to include all amendments to Local Government legislation as well as those of Act No. 6 of 1999, and copies of the same distributed to all levels of Central and Local Government to ensure easy reading, reference, understanding and compliance;
- Various instruments have been prepared and disseminated, including the Code of Conduct and Ethics for Councillors and Staff, Election Regulations for Grassroots Elections, and Staff Regulations;
- A By-laws making database has been designed, tested and finalised and will be installed in all LGAs to strengthen by-law making, approval, publication and enforcement.

The Way Forward

Legal reform to provide a framework for implementation of Government policy on Decentralisation by Devolution will continue to be a core of all institutional and structural reforms for a devolved Local Government system in Tanzania. Building on the momentum that has been gained, emphasis is currently placed on ensuring legal reform is achieved across central and sector legislation. Greatest emphasis is placed on progressing constitutional amendments as an essential prerequisite to give Decentralisation by Devolution an overriding binding legal norm for the whole Government as a strategy to hasten review and harmonisation across central and sector legislation, as well as providing a framework for Decentralisation by Devolution which is consistent with policy formulation and law making.

Another key priority area of focus is preparation of overarching Local Government legislation which will be people-driven. The envisaged legislation will create a system of Local Government whose powers, functions and revenue are decentralised from Central Government to all levels of Local Government, based on the principle of subsidiarity. Key features of the new Local Government law will include:

- Giving full effect to the Decentralisation by Devolution of powers, functions, responsibilities, services and resources at all levels of Local Government;
- Ensuring democratic participation in, and control of, decision making by the people concerned;
- Enhancing service provision and bringing services as close as possible to the local populations;
- Establishing a democratic and gender-sensitive administrative set-up in Local Government;
- Establishing sources of revenue and intergovernmental fiscal transfers as well as financial accountability;
- Providing for government by elected Local Councils;
- Redefining the relations between Central Government and Local Government which will be based on law and non-subordination of Local Government by Central Government institutions. Under the new relations, previous command relations will be abolished and the directory powers of Government vis-à-vis local Councils

will be restricted to legal regulations of Local Government decisions.

The main features of the new relations will be characterised by a clear demarcation of powers and functional responsibility where the powers and functions of Central Government will be restricted to:

- Powers to make national legislation affecting Local Governments;
- Powers to issue regulations;
- Policy formulation, guidelines and national standards, including service delivery;
- Negotiations and consultations;
- Training and capacity building related to Local Governments;
- Information and advocacy;
- Financing (grant mechanism);
- Powers to audit, inspect and monitor;
- Powers to intervene when Local Governments operate illegally.

Central and sector legislation is also a key legal reform necessary to achieve Government policy of Decentralisation by Devolution. Achievements have been made and momentum built following the review and amendment of the Public Service Act by Act No.19 of 2004, review and preparation of proposals for amendment of Education, Health and other pro-poor sector laws.

Emphasis is currently placed on carrying out further consequential review and amendment of the Public Service Act, Public Service Regulations and other related legislation. Review and amendment of other central and sector legislation to ensure consistency with Decentralisation by Devolution will also be given top priority.

Importance of Laws in Local Government Authorities

Local Government Authorities are "governments" that derive their existence from the Constitution, Acts of Parliament and Government policy. LGAs also derive their legitimacy from elections provided by law and in that regard the significance of laws in LGAs cannot be overemphasised. Suffice it to say that laws provide, among other things, the following:

- Basis for the existence of the Local Government Authorities;
- Define the procedure for the establishment or registration of LGAs and the procedure for the discharge of their functional responsibilities and the exercise of their powers;
- Define relations between the Central Government and the Councils, i.e. the LGAs and within the councils. In other words, the laws state exactly how LGAs will be run;
- The laws (Acts) create the responsibilities, rights and obligations of those concerned with LGAs. They also define the penalties to those who do not comply with various directives or regulations that guide LGAs operations;
- The Acts offer an opportunity for the aspirations of the people to be realised through participatory planning and the exercise of their democratic rights and duties;
- The Acts provide the structures of LGAs;
- The Acts implement Government policy of Decentralisation by Devolution.

As instruments of implementation, LG laws ensure that principles of good governance are adhered to by all LGAs. The laws ensure, among other things, the following:

- Political accountability – that requires that Councillors shall perform their roles in respect of the interests of, and priorities defined by, the people and rules and norms inherent in a democratic governance system;
- Transparency – that requires that openness shall be observed in all Local Government transactions. Except for sensitive matters, all decisions and acts shall be open for public inspection, meetings shall as far as possible be open to the public, budgets published, and plans debated in public;
- Integrity of Local Government staff and Councillors – this means members of staff must act in an unbiased, professional and

responsible manner and must not have any personal interest in the conduct of their duties;

- The rule of law – that requires that all political and administrative decisions are made in respect of the national legislation and local laws in place. Decisions must observe fairness, justice and interests of all groups including the most vulnerable sections of society;
- Democratic institutions are in place – that is, rules and procedures are followed in all Council and committee works. Administrative decisions shall not replace the political process.

Citizens and the Law

All Councils are expected to abide by the law (i.e. various Acts, by-laws, regulations, directives, and laid-down procedures) in discharging their responsibilities. The people, on the other hand, are expected to know the law, understand what is expected of them and play their part according to law. It is in this respect that it is absolutely necessary that people understand the laws that govern Local Government Authorities in their respective communities. Councils have obligations to the people in as much as the people on their part have obligations to their Councils. There is therefore a relationship between the Councils and citizens that is provided for in law, guided by law as well as mediated by law. In that regard it is important to explain why it is important for citizens to understand the law.

As stated above, LGAs are provided for by Acts of Parliament based on the Constitution and relevant Government Policy on Decentralisation. It is important for the people to know and understand the various Acts, by-laws and other legal instruments because LGAs belong to the people. LGAs are charged with the responsibility to deliver services to the public, bearing in mind the people's interests and their priorities for development. People in their communities have to work together with Councils and other institutions to ensure their interests, and priorities are taken into account when LGAs implement various activities as agreed and put in their development plans and budget.

In specific terms, people have to know and understand the law for many and varied reasons. Some of the key reasons can be stated as follows:

- People, through their elected Councillors own LGAs. This is specified in law which defines, among other things, how Councillors are elected and how people participate in electing Councillors. People have to know the law to appreciate what ownership of the LGAs means in practice.
- LGAs have been assigned specific roles and functions. These are provided for in law and have to be discharged based on specific rules, procedures and, in some cases, a timeframe. People have to know the law in order to understand the role and functions

that have been assigned to LGAs. They have to know this because they are recipients of services provided by LGAs and have the right to demand the same from their Councils.

- The laws define roles, rights and obligations of people in running LGAs. The people have to understand the law in order to appreciate what is expected of them and why, in some cases, it may be necessary to compel them to comply. The people are expected, for example, to participate in elections, pay taxes, and contribute to community projects and other development activities. Understanding the law greatly facilitates people's participation in LG affairs.
- LGAs are authorised by law to pass by-laws in their respective areas to facilitate implementation of various decisions. These by-laws are made after extensive consultations with stakeholders in the respective Councils. The people are required to not only know the process but also participate fully in the making of these by-laws. Knowledge of the law in that regard facilitates easy participation in decision-making and later implementation of the decisions using the by-law(s).
- LGAs are by law held accountable for their actions (and inactions) to both the Central Government and the people – owners of the Local Authorities. People need to be informed on how to hold LGAs accountable, what actions to take to put things right, and above all sustain an environment conducive for LGAs to deliver services responsibly and responsively.
- LGAs have limited jurisdiction in respect of their roles, functions and obligations both to the Central Government and the people. These limitations are provided for in law. It is important for the people to understand the law so as to appreciate what their LGAs can and cannot do within the framework provided by law.
- Principles of Good Governance require that the people take centre stage in the planning and budgeting process. Participatory planning is provided for in LGAs' instruments for implementation of Local Government Reform. Knowledge of the law facilitates people's participation in LG business.

Challenges

Despite the achievements that have been made in attaining the objectives of the Legal Outcome, full realisation of the legal framework for implementing Government policy on Decentralisation by Devolution presents the following major challenges and problems:

- The exercise of reviewing and amending central and sector laws in order to bring them into line with Government policy on Decentralisation by Devolution has proved to be difficult and massive, requiring a concerted effort by the relevant actors at central and sector ministries. These challenges were further complicated by conflicting law- and policy-making problems. It has been realised that a smooth review and amendment of central and sector laws required a basic amendment of the Constitution of the United Republic in order to provide a binding framework for the relevant ministries to take a lead role in reviewing and amending their laws.
- There is widespread weakness in enforcing laws at various levels of LGAs, due to the lack of implementing mechanisms such as Local Government police and Local Government courts.
- The legal framework for the achievement of Decentralisation by Devolution has not been fully understood or complied with by all the relevant actors, particularly the wider population.

Conclusion

This booklet has attempted to explain, albeit briefly, the importance of laws in running LGAs; why the people have to know and understand the laws governing LGAs; the need for the people to operationalise in concrete terms the concept of ownership; and the challenges that need to be addressed. It has emphasised the need for LGAs to take responsibility for educating and informing the people about laws that govern LGAs. It also calls for the people to develop a habit of reading and getting information relating to Local Government with a view to raising their level of understanding so as to be effective owners of, as well as participants in, LG affairs.



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