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LOCAL GOVERNMENT, EFFECTIVENESS AND HUMAN RIGHTS: THE CASES OF BUKOBA RURAL AND MTWARA-MIKINDANI DISTRICTS IN TANZANIA

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INTRODUCTION

1. This preliminary phase research report covers five main areas. These are (i) general context for Local Government in Tanzania, (ii) the Local Government Areas where research might focus; (iii) the Essential Services to focus on; (iv) Availability of Data; and (v) Preliminary identification of Factors or Approaches that have impacted the Performance of the LGAs.

THE GENERAL CONTEXT

Decentralisation and its Political Context

2. The Local Government is the oldest institution in the Tanzanian political system. It was formally introduced in 1953 by the British Colonial Administration to replace the previous system of "Indirect Rule" through the Native Authorities. Since independence in 1961, there have been at least four major initiatives for reforming the local government system and its institutions in order to make local government more democratic, efficient and effective in social services delivery, and promotive of social and economic development in the country. The most current attempt at reform took off in 1996 and is still going on. The general objective of these reforms is "to improve the delivery of service to the public, and the main strategy to do so is decentralisation" (Tanzania, 1998 a: 3). The aim is to transform local government organisations into organs that are autonomous, strong and effective, democratically governed, deriving legitimacy from services to the people, fostering participatory development, reflecting local demands and conditions, and lastly, conducting activities with transparency and accountability. (Tanzania, 1996). The programme involves: enhancing good governance, restructuring of local government, increasing resources available to local authorities, human resource development, establishing an enabling institutional and legal framework, and lastly programme management (Tanzania, 1998a).

3. Implementation of the programme is divided into three phases over a five-year period. Phase one involved the restructuring of regional administration. This was affected by passage of the Regional Administration Act (Tanzania, 1997). Phase two, which started in 1996 and was to last in 1998 entailed developing the enabling institutional and legal framework, and capacity. The take-off date was later moved to January 2001. This phase involves the restructuring and strengthening of twenty-eight out of the one hundred and sixteen district councils in mainland Tanzania.
4. There are several differences and similarities between LGRP and past reforms. To start with the former, current reforms are unique in their stated aspiration for political devolution and decentralisation to the districts. There seems to be a genuine desire to devolve substantial powers and resources to the lower levels. Secondly these reforms are heavily donor driven, and dependent on donor funding. Though the actual costs of LGRP are unknown, the initial estimated total cost for the five years is US\$ 64.3 million most of which is to be mobilised from donors. Whether funds will be forthcoming in the required quantities at the required time remains to be seen.
5. Like the earlier initiatives, LGRP is very ambitious, striving to fundamentally restructure and strengthen local authorities in a short period of time. Also like earlier reforms, especially the 1972 initiative, LGRP focus overwhelmingly at the district level. Levels below the district seldom feature in the reforms. As Shivji and Peter (1999:36) conclude, "The sub-district level has not been integrated in the LGRP nor conceived as an integral part of the Reform Programme". There is a lot of focus at the District level. While these reforms go further than earlier reforms in striving to create "holistic" autonomous entities that are financially viable, and control their own staff, the central government's "over-riding powers within, the framework of the constitution" (Tanzania, 1998) remain. How these will be exercised remains to be seen. Lastly, these reforms are guided by a national government policy which provides a vision, mission and strategy for the new local government in the country.

The Legal Framework

6. Local Government has a constitutional protection. Article 145(1) of the constitution, as amended in 1984, 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.

Section 2 of the same Article further 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.

7. The purpose and functions are stipulated in Article 146(1&2) of the constitution. Thus, it states:

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 involve people, in planning and implementation of development programmes within their respective areas and generally throughout the country.

8. In the spirit of the above, each LGA has the following broad functions to perform:
 - To perform the functions of local government within its area as defined.
 - To ensure the enforcement of law and public safety of the people; and
 - To consolidate democracy within its area and apply it to accelerate the development of the people.
9. Besides the constitution, the legal framework of the local government comprises of eight sets of law enacted by parliament. These are:
 - The Local Government (District Authorities) Act, 1982, as amended in 2002
 - The Local Government (Urban Authorities) Act, 1982, as amended in 2002
 - The Local Government Finances Act, 1982, as amended in 2002
 - The Local Government Services Act, 1982, as amended in 2002
 - The Local Government Negotiating Machinery Act, 1982, as amended in 2002
 - The Regional Administration Act 1997
 - The Urban Authorities (Rating) Act, 1983, as amended in 2002
 - The District Corporations Act, 1973, as amended in 2002
10. Presently, there are 116 such district and urban authorities distributed unevenly among 21 regions of the country.
11. Since 1994, the local government operates within a multiparty system. Accordingly, the councils of the LGAs consist of representatives who are popularly and democratically elected by the people from their respective wards which are electoral constituencies for councillors. The elections are conducted under a multiparty competitive system.

Forces for Decentralisation

12. As already mentioned, there are two major forces behind the current decentralisation project. These are the Tanzanian state and donors. Since independence, the Tanzanian state has sought to provide for popular participation at the grassroots. These efforts however have been tampered by the urge to retain central oversight and even control. This latest effort however is also marked by extensive donor involvement in its planning and execution. Current efforts must be seen within the context in which the government was compelled to privatise public enterprises, and withdraw from certain functions as well as the provision of certain services. It was also compelled to deconcentrate and devolve some powers and functions to lower levels.
13. The government started to decentralise its functions and responsibilities in certain sectors, particularly the social services sector through the Social Sector Reform Programme (SSRP) which was initiated in early 1990s. Secondly, the government initiated in 1992 the implementation of the Parastatal Sector Reforms Programme (PSRP). The PSRP focused on liberalisation and

privatisation of the public enterprises/parastatals, including the social services sector, by encouraging the participation of the private sector, NGOs and foreign investors. Thirdly, through the Civil Service Reforms Programme (CSR) the central government was reorganised and restructured. The central government hived off virtually all non-core and auxiliary functions, streamlined its staff according to the core-functions; and “hands off” from direct involvement in the economy. Finally, political reforms were introduced in 1992. These reforms involved a transition from the one party to multiparty political system

14. All the above reforms had, in varying degrees, far-reaching implications for local government and its institutions. Local government could not escape from this new form of governance. Thus, in 1996 the Local Government Reforms Programme (LGRP) was initiated. Its implementation, however, started in 2001 in 28 LGAs. The second phase of the Programme which started in 2003, involves another 58 LGA; and the rest of the LGAs will be covered in the last phase.
15. The 3 LGSs relevant for our study have been covered in the first phase, completed in 2003.

Policy Process and Content

16. Besides the legal framework, the decentralisation process is guided by a government policy framework which articulates the government vision of a new local government system in the country. We shall briefly highlight the policy content and the other components of the decentralisation process.
17. The government policy was formulated and endorsed in May 1996. The overall objective is to improve the delivery of services to the public, and the main strategy to do so is decentralisation. The vision of a future local government system is summarised here below:
18. The *raison d'être* for the devolution of roles and authority by the central government, and the existence of the local government, will be the latter's capacity and efficiency in delivering services to the people.
19. Local government councils will be free to make policy and operational decisions consistent with the laws of the land and government policies without interference by the central government institutions.
20. The role of the central government institutions (including the Minister, Proper Officer and Assistant Proper Officer) will be confined to the
 - facilitation and enabling of local governments in their services provision.
 - development and management of a policy and regulatory framework.
 - monitoring accountability by the local government authorities.
 - financial and performance audit.
 - provisions of adequate grants.

21. The strength and effectiveness of the local government institutions will be underpinned by:
 - possession of resources and authority necessary to effectively perform the roles and functions that the individual local government authority has been mandated to perform by the local people and by central government; and
 - having adequate numbers of appropriately qualified and motivated, staff, who will be recruited and promoted exclusively on the basis of merit,
 - mounting necessary training and upholding professionalism in local government,
 - capacity to operate efficiently and cost effectively.
22. The leadership of the local authorities will be chosen through a fully democratic process, which should also extend to village councils and grassroots organisations:
 - facilitate the participation of the people in deciding on matters affecting their lives, planning and executing their development programmes; and
 - foster partnerships with civic groups.
23. Each local government will have roles and functions that correspond to the demands for its services by the local people, and the socio-economic conditions prevailing in the area. The structures of each local government will reflect the nature of its roles and functions.
24. The local government authorities will be transparent and accountable to the people. This will be the basis for justifying their autonomy from undue central government interference.
25. Local Government leaders (Councillors) and staff will adhere to strict code of ethics and integrity. In particular, leaders with incontestable ethical standards will be elected to champion the cause of people's development.
26. The implementation process will be phased as endorsed in the Local Government Reform Agenda because of capacity and funding constraints; because lessons learned during the short implementation period can subsequently be used to prepare a high quality new Local Government Act that will have lasting value; and because phasing will also facilitate a more intensive and meaningful public debate about the scope and content of a new local government system in Tanzania. (Policy Paper on LGR, 1998:3).
27. In order to achieve this vision, the decentralisation process includes four main components or areas:
 - **Political decentralisation** which involves a devolution of powers and the setting of the rules for councils and committees, their chairpersons, etc. In a nutshell, it involves the creation of real, multi-functional LGAs within the framework of the national legislation.
 - **Financial (fiscal) decentralisation.** This means that councils have discretionary powers and powers to levy taxes. The central government, on the other hand, will have the obligation to supply LGAs with unconditional grants and other forms of grants.
 - **Administrative decentralisation.** This involves de-linking local LGAs staff from their respective ministries and procedures for establishment of a local government payroll.

- **Changed central-local relations.** This means the role of central government vis-à-vis local councils will be changed into a system of inter-governmental relations with central government having the over-riding powers within the framework of the constitution [Policy Document 1998:4-5].

Powers of LGAs

28. During the pre-decentralisation process, central-local relations were characterised as excessive control and “command-driven” which limited the powers and authority of the LGAs. The main features of these relations are summarised below using eight variables or resources.

Table 1: Main Features of Command-Driven Central-Local Government Relations

| Issue/Area/Resource | Central Government (CG) | Local Government (LG) |
|------------------------------|--|---|
| 1. Legal Statutory Resources | <p>Powers to establish or dissolve any local government authority (LGA) within the framework of the LGAs laws</p> <p>Powers to amend LGAs laws</p> <p>Powers to approve and ascertain legality and application of LGAs by-laws</p> <p>Powers to up-grade and classify, LGAs into grades</p> <p>Powers to make policy binding on all LGAs</p> <p>Powers to provide the instrument and certificate for the establishment of each LGA</p> | <p>Powers and authority stem from central legislation</p> <p>No appellant powers against dissolution</p> <p>Obligation to abide by the LGAs laws and instrument of their establishment</p> |
| 2. Political Resources | <p>Supremacy of Parliament</p> <p>Legitimacy from a wider national electoral mandate</p> <p>Closer and greater links with and influence on parliament</p> <p>Powers to make public policy</p> <p>Powers to grant or withdraw authority and powers of LGAs</p> | <p>Localised legitimacy</p> <p>Little or no influence over government decisions/policies</p> <p>No close links with, and little influence on parliament</p> <p>Legislative powers limited to by-laws within areas of jurisdiction</p> |
| 3. Information Resources | <p>Monopoly of all vital information (viz. an accrued revenue, investment, domestic and foreign loans/grants, revenue allocation and distribution procedure, etc</p> <p>No established mechanism for sharing information</p> | <p>No direct access to central government information</p> <p>Recipient of central government orders/regulations, directives etc</p> |
| 4. Financial Resources | <p>Wide tax-base</p> <p>Powers to allocate and distribute resources</p> <p>Powers to determine source(s) of revenue for LGAs</p> <p>Obligation to provide grants to LGAs; but actual amount non-negotiable but often discretionary</p> <p>Right to audit and monitor LGAs finances</p> <p>Issue binding financial procedures and regulations to LGAs</p> <p>Application of sanctions against LGAs contravening financial regulations</p> | <p>Narrow tax base determined by CG</p> <p>Agent of CG for revenue collection</p> <p>Difficult to collect revenue</p> <p>Financial accountability to CG</p> <p>Annual budget</p> <p>Plans must be approved by CG</p> <p>Powers to solicit loans/external funds etc subject to approval by CG</p> <p>Dependence on CG grants/subsidies</p> |
| 5. Human Resources | <p>Recruitment and Training of LGAs senior and middle staff</p> <p>Appointment/Transfer/Fire LGAs senior staff</p> <p>Provision of salaries for LGAs senior and middle staff</p> | <p>Right to hire and fire auxiliary staff</p> |
| 6. Organisational resources | <p>Structure and Composition decided by CG within the framework of LG laws</p> <p>Committee system, its composition, number and functions decided by CG within the framework</p> | <p>Obligation to adopt uniform structure</p> <p>Obligation to abide by committee system and the number of permanent</p> |

| Issue/Area/ Resource | Central Government (CG) | Local Government (LG) |
|-----------------------------------|---|---|
| | <i>of LG laws</i> | <i>committees (5) provided in the LGA laws</i> |
| <i>7. Functional Resources</i> | <i>Define national priorities Ensure compliance with mandatory functions by LGAs as prescribed by LG laws Oversee and monitor implementation of national priorities by LGAs Provision of social services at Regional and District level (viz. roads, health, secondary ed.)</i> | <i>Define local priorities in the framework of national policy and priorities Obligation to carry out uniformly mandatory functions Obligated to provide essential social services to areas of their jurisdiction</i> |
| <i>8. Institutional Resources</i> | <i>Ministry of Local Government Vice-President's Office Prime Minister's Office Development Ministries Regional/District Commissioner Regional/District Development Councils) Local Government Service Commission Civil Service Commission Local Government Provident Fund Local Government Loans Board</i> | <i>Environment/ Disaster issues Development and national Policy issues Overall LG issues Social services delivery issues Proper/ Assistant proper officers Budget and development plans-final approval of LGA, budgets and Plans Staffing, negotiating and disputes settlement Staff seconded to LGAs Obligated to remit contributions to LGA staff pension Obligated membership Right to apply for loans</i> |

Source: Compiled and Summarised from Local Government Acts nos. 7, 8, 9, 10 and 11, 1982.

29. As stated earlier, the implementation of the decentralisation process is structured into three phases. Phase 1: 2001-2003 involved 28 LGAs; Phase 2: 2004-2006, which is current has taken on board 58 LGAs; and the rest will be covered in the third phase.
30. The expected new powers/authority of LGAs along with new central-local relations are summarised below using the seven variables or resources.

Table 2: **Main Features of the New Centre-Local Relations**

| Issue/Area | Central Government | Local Government |
|-------------------------------|---|--|
| <i>Legislation and policy</i> | <i>Powers to make policy within the framework of the constitution and legislation Appellate powers Develop and manage appropriate policy framework for LGAs in consultation with LGAs</i> | <i>General discretion and flexibility is making policy, legislation and operational decisions consistent with national legislation and CG policy Council accountable to residents of its jurisdiction in the exercise of its powers Obligation to negotiate with and the right to be consulted by CG on specific issues Make and issue by-laws</i> |

| Issue/Area | Central Government | Local Government |
|---|---|--|
| <i>Local Government Structures and Committees</i> | <i>Advise LGAs on Structures and Committees within the framework of the law</i> | <i>Decide on Structures and Committees according to own priorities within the framework of the law</i> |
| <i>Functions and their implementation</i> | <i>Functions as prescribed by law (Ministries to remain with very few specific implementation powers) Coordination of policies Negotiate and agree with LGAs about implementation of specific national policies</i> | <i>Agency of CG implementing important public services not reserved for CG (Agency System) Discretionary general powers to operate according to own priorities within the law Negotiate and agree with CG on implementation of national policies</i> |
| <i>Finances</i> | <i>Powers to tax Specified obligations to provide adequate grants to LGAs Right to audit, inspect and monitor LGA finances Apply measures against LGAs contravening the law</i> | <i>Powers to tax Specified rights for grants Right to formulate, approve, execute budgets and plans within the law Obligation to provide information to CG on financial administration and decision making</i> |
| <i>Staff</i> | <i>Powers to appoint, transfer or terminate Municipal/Town/District Executive Directors Establish appropriate mechanism for recruitment and disciplinary matters for LGA staff Serve as appellate body for LGA staff Provide certain types of training for LGA staff Apply measures against LGAs contravening the law</i> | <i>Hire, appoint, dismiss all staff other than City/Municipal/Town/District Executive Directors Manage all categories of staff Staff accountable to Council Obligation to adhere to labour laws; regulations in staff relations Responsible for on the job training, promotion, and disciplinary matters</i> |
| <i>Performance and Service delivery</i> | <i>Setting national standards (incl. Service delivery standards) Inspect LGAs' operations in service delivery Conduct performance audit and service delivery surveys Advise LGAs on service delivery Facilitate capacity building for LGAs in Service delivery Take measures against LGAs that contravene the law</i> | <i>Deliver services in accordance with national policies and standards Obligation to operate in an efficient and effective manner</i> |
| <i>Monitoring</i> | <i>Monitor LGAs' service delivery and performance Provide information to LGAs and the public about LGAs performance</i> | <i>Obligation to provide information and reports needed for appropriate performance audits</i> |

Source: Policy Paper on Local Government Reform, 1998, pp. 17-18.

Local Government Structure

31. The local government structure runs parallel with the district administration. Both share the same geographical area and population. The latter represents the central government at the district level in matters of law and order, and policy matters. Thus, the district administration consists of

a District Commissioner who is a political cum Chief Administrator of a district, and is also appointed by the President. He is assisted by a small secretariat comprising a District Administrative Secretary and a small number of a supporting staff. The former consists of an elected organ (council) whose members are popularly and democratically elected after every four years. The council has a mandated and corporate status. In the performance of its functions and duties, the council is assisted by an executive organ. It comprises of an Executive Director, with Heads of all the social services sector and development, and a number of supporting staff.

32. Below the council, there are a number of Ward Executive Officers (WEOs) responsible for administrative and development issues in their respective wards. Each WEO is the secretary to the Ward Development Committee (WDC).
33. The Structure of the LGA is streamlined further to village level where there is a village/street (in the case of urban), government and council headed by elected village chairman and a village executive secretary. A village council comprises of all residents of a village. Each village council has a village development committee. Below the village is Neighbourhood (“Kitongoji”) which represents a number of households within the same village. Their structure of an LGA is provided in the law for two specific purposes” (i) to enable the transfer of power to the people below; and (ii) to promote participation of the people in the governance of the council and development programme.
34. In the same spirit, therefore, development programmes are expected to evolve from Neighbourhood – village committee/council – WDC – District Management Team of the council – Sectoral Heads – Regional Consultative Council for consultation and policy-check – Full Council for Approval.
35. This is an area which the research will be interested to find out the type of relationship that exists between these various levels, in LGAs where the decentralisation process has been completed.

LOCAL GOVERNMENT AREAS TO BE FOCUSED ON

36. The study proposes to focus on **Bukoba, Mtwara and Iringa Districts**. All three were included in Phase I (one) of the decentralisation process which has just been completed. Preliminary observations show that in some of the 28 districts included in phase one, the decentralisation process has produced encouraging results of improvement. There has been a significant improvement in social services delivery. For example, in the education sector, school facilities have been improved, new classrooms have been constructed, and so forth. However, there is still a lot to be expected from the decentralisation process. The research intends, therefore, to focus on the following issues:
 - The degree to which central-local relations have changed from “demand driven to inter-governmental partnership”.
 - The modalities for transferring fiscal autonomy to the LGAs.
 - The Impact and effect of decentralisation on social services delivery by the LGAs.
 - The degree to which power has been transferred “down” to grass-roots level.
 - The extent to which political decentralisation has altered the position of local government in the Tanzanian political system.

- The extent to which the LGAs are instruments for promoting democracy, transparency and good governance at local levels.
- The extent to which new Local Government arrangements are promotive of human rights.

ESSENTIAL SERVICES TO FOCUS ON

37. The most tangible results of the LGRP are found in the social services delivery. The Research, therefore, intends to focus on three social service sectors: **Health, Education and water**. These sectors had experienced serious deterioration from the economic recovery programmes which were introduced in mid-1985. The decentralisation process has apparently revamped these sectors. For the purpose of thorough research and analysis one sector will be covered per site/LGA selected for the study. The extent of community participation and contributions will also be explored.

AVAILABILITY OF DATA

38. The Tanzania government values transparency and accountability as tangible indicators for the existence of good governance in the country. Availability of important data and information to the public has been availed where and when necessary, and/or required for specific purposes. The regional authorities and LGAs have also been urged to keep proper records and statistics of all-important social, economic and development activities.
39. Likewise, as experienced researchers we have never had problems in obtaining data and information at both national and local level. What is still advantageous is that there is enormous data and information in this area on which we intend to focus. However, with regard to primary data, research instruments will be developed appropriate to the data and information sought.

PRELIMINARY IDENTIFIED FACTORS/APPROACHES IMPACTING THE PERFORMANCE OF THE IDENTIFIED LGAS

40. There are a number of Factors/Approaches which could be extrapolated as contributing to the performance of LGAs. These include:
- The inclusion of these LGAs in phase one of the LGRP. In contrast to phase two, phase one was implemented in all its seventeen stages, starting with mobilisation and education of all stakeholders on the LGRP, and the decentralisation as a whole. This facilitated community participation in the decentralisation process and the ownership of the LGRP.
 - Establishment of Health Insurance Fund, Water Fund, and Primary Education Development Programme (PEDP). All these funds are managed, co-ordinated and monitored by the respective LGAs.
 - Reliable Allocation and distribution of PEDP funds by the central government to LGAs.
 - System of tendering and contracting of social services delivery introduced by the LGAs.
 - Introduction of Public Expenditure Tracking Survey (PETs) for Health, Education, Roads, Water and Agricultural Extension Grants.

- Introduction of new Financial Management and Accounting Manual for LGAs.
 - Increased Awareness of the communities on their needs and rights for quality and quality social services; and their readiness to contribute.
 - Increased participation of the private sector, NGOs and Community-Based organisation in the social services delivery.
 - Improved financial transparency and accountability by the LGAs.
41. These and other relevant factors will be studied to find out the degree of their impact on the LGAs performance in social services delivery.

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