

# LEGAL FRAMEWORK ON BY LAW MAKING PROCESS IN TANZANIA

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## ABSTRACT

The people in their localities in many places are not properly involved in the entire process of enacting the By-laws.

The effects of not involving the people in the enactment of the By-laws have made the people not aware of the rules and regulations contained in the By-laws made out of their involvement, as the result many people have found themselves in wrong feet and hence the conflict of interests and misunderstandings begin between the Local Authorities and the people arises.

In that effect there is a need of the Local Government Authorities in Tanzania to consider the material environment of local people concerned by publishing the enacted By-laws so as to make them aware of the said By-laws and to avoid the conflicts between them.

Therefore if people are properly involved in the whole process of enacting the By-laws in their localities in Tanzania, the awareness of the people about the passing and the enforcement of the By-laws in their localities in Tanzania will increase.

The Local Government (Urban Authorities) Act No. 8 of 1982 makes a mandatory requirement for the Local Government Authorities in Tanzania to involve people in enacting By-laws. Also the Local Government Authorities are not bound to publish the enacted By-laws since By-laws are published in the Gazette by the Minister. Thus every person is required to find them.

## INTRODUCTION

The Government of United Republic of Tanzania has been implementing the Local Government Reform Programme together with other Public Service and Sector Reforms since 2000. The implementation started with the downsizing the regional administrative structures while strengthening the local authorities and making them more efficient and effective.

The Reform Agenda was put into force in 1996 and to-date it forms the Policy Paper on Local Government Reform issued in 1998. The Policy Paper has further been backed by the Parliament passing Local Government Laws (Miscellaneous Amendments) Act of 1999, No. 6.

In summary the vision of Local Government Reform Programme (LGRP) is to establish local government authorities with the following characteristic:

- Let them be autonomous institutions
- Be strong and effective
- Be democratically governed
- Derive legitimacy from the good high quality services they provide to people
- Foster participatory approach with their communities in implementing their programmes
- Take into considerations local priorities/demands when planning for the future
- Conduct their activities with transparency and accountability

Therefore the overall objective of the LGRP is to improve the quality and access to public services been provided (by the authorities) to the people. The Agenda has six reform outcome objectives. One of the six reform objectives is the institutional and legal framework. This outcomes aims at establish a legal framework which supports the effective implementation of all the reforms.

## LEGAL FRAMEWORK

### *Constitutional Provisions*

All these authorities have their legal foundation in the Constitution and laws passed by the parliament. Article 145(1) of the Constitution<sup>i</sup> states that there shall be established Local Government Authorities in each Region, District, Urban area and Village in the United Republic of Tanzania which shall be of type and designation prescribed by the law enacted by the parliament or by house of representatives.

However Article 146(1) of the Constitution<sup>ii</sup> outlines the purpose for establishing Local Government Authorities shall have their right to participate, and involve the people, in the planning and implementation of development programme within their respective areas and generally throughout the country.

### *Local Government Act*

In 1982 the parliament enacted two laws for Local Government Authorities (LGA). The Local Government (District Authorities) Act<sup>iii</sup> and the Local Government (Urban Authorities) Act<sup>iv</sup>. Both of these laws took into consideration articles 145 and 146 of the Constitution<sup>v</sup>.

The Local Governments (District Authorities) Act, 1982 is an act of parliament which provides for the establishments, compositions, powers, and function of the District Councils, Townships Councils and Village Councils in which under this context among the functions of these authorities includes the legislative functions. Thus the following types of Local Authorities are established<sup>vi</sup>.

District Authorities are established under section 5(1) of the Local Government (District Authorities) Act, 1982, Township Authorities established under Section 13(1) of the Local Government Authorities (District Authorities) Act, 1982<sup>vii</sup> and Village Authorities created through registration of villages under Section 22(1) of the Local Government (District Authorities) Act 1982<sup>viii</sup>. The village Authorities are established when villages are registered by the registrar and stipulate that (once the village is registered) every person resident of the respective village and has attained the age of 18 becomes a member of the village assembly.

The Urban Authorities are established by the Minister responsible for Local Government under Section 5(1) of the Local Government (Urban Authorities) Act, 1982<sup>ix</sup> that has to publish in

the official Gazette of the intended establishment. The Minister can establish Town Councils, Municipal Councils and City Councils. However where the status of the Municipal has to be raised to that of a city the order must be made by the President<sup>x</sup>.

Below the Local Authorities there are a number of democratic bodies to debate local development needs. In the rural system, the *vitongoji*, the smallest unit of a village, is composed of an elected chairperson who appoints a secretary and three further members all of whom serve on an advisory committee. In the Urban areas streets (*mitaa*) is the smallest unit within the ward of an urban authority. Unlike suburbs (*vitongoji*) the Mtaa Committees have a fully elected membership comprising of a chairperson, six members and an executive officer<sup>xi</sup>.

### ***Legal basis of Delegated Legislations in Tanzania***

Article 97(5) of the Constitution<sup>xii</sup> provides that Article of 64 of this Constitution shall not prevent Parliament from enacting laws making provisions conferring on any person or department of Government the power to make regulations having the force of law or conferring the force of law on any regulations made by any person, or any department of Government<sup>xiii</sup>.

### ***Parent Act***

A parent Act is referred to as Principal Legislation (made by the parliament) which confers legislative powers to individuals (public/civil servants), departments or agency of the government to make delegated legislation. For example The Local Government (Urban Authorities) Act, 1982 is the parent act for making of the bylaws in City Councils, Municipal Councils and Town Councils<sup>xiv</sup>.

## **INSTITUTIONAL FRAMEWORK**

### ***Who Makes Delegated Legislation?***

Normally, the enabling Acts provides (with certainty) a person or a government body (whatever the case may be) responsible to make a delegated legislation are made by ministers, Local Governments/Authorities, Directors, Commissions, Boards, the Chief Justice, and the speaker of the National assembly, the President and the others<sup>xv</sup>.

***Categories of Delegated Legislation (The Commonwealth Approach)<sup>xvi</sup>***

- Statutory Instruments (Delegated Legislation National wide in scope)
- Delegated Legislation which inserts/fills detail to Acts of Parliaments (namely as Rules, Regulations, schemes and orders). They are issued by respective Minister, or The C.J (Court Rules).
- Orders: Made by the Minister to dissolve or create a public body or setting the date for commencement of an Act of the Parliament.
- Regulations: Made by the Minister setting out in the detail how an Act of the Parliament is to be implemented.
- Rules: Made by the Minister, Courts/Tribunal officials setting out procedures
- Directives/Directions/proclamation; made by the Minister (or any other relevant authority) giving binding instructions to public body about how it should discharge its powers.
- Orders of Council (In UK) made by the Lords of the Privy Council in their own right. Intended to regulate bodies which Privy Council exercises a supervisory function, e.g. professional bodies and higher education sectors.
- By Law (Delegated Legislation with limited application) Delegated Legislation made by Local Authorities to deal with matters which affect their locality.
- Orders in Council: (In UK) they are made by the Queen on the advice of the Government and are usually made when Parliament is not sitting. They can be used by the Government in emergency situations<sup>xvii</sup>.

***Position of Delegated Legislation in Relation to Principal Legislation***

Delegated Legislations are inferior/subordinate to Principal Legislations (For instance any Delegated Legislation which is inconsistent with any Act of the Parliament is null and void). However, a Delegated Legislation which is properly enacted becomes part and parcel of the law of the land (like any other law) capable of being enforced in the Court of law.

Sections 41 and 42 of Cap 1 provide that;

- 41(1) a reference in a written law to a written law shall be construed to include a reference to any subsidiary legislation made under that written law.



- 41(2) a reference in a written law to an Applied Act shall be construed to include a reference to any subsidiary legislation made under that Act.
- 42. Any act done under subsidiary legislation shall be deemed to be done under the written law under which the subsidiary legislation was made.

### ***The Rationale of having Delegated Legislation***

The reasons behind of having the delegated legislations are to reduce Parliaments workload that the Parliament does not have time to legislate on everything therefore there is a need of saving Parliaments time also the need to decentralize and devolute the powers to Local Authorities another reason is to meet local variation, to meet emergency matters, for example war, public health also to ensure flexibility in law making in dealing with changing circumstances as well as to handle technical aspects of subject matter.

## **LEGISLATIVE POWERS OF LOCAL GOVERNMENT AUTHORITIES**

Article 146 of the Constitution outlines the three broad functions of the Local Authorities. These are;

- To perform the functions of Local Government within its area of jurisdiction.
- To ensure enforcement of law and public safety of the people
- To consolidate democracy within its geographical area and apply it to accelerate development of its people.

These functions have been well expounded under Part V of both Acts No.7 and No.8 of 1982. The above laws further give legislative power to the Minister responsible for Local Government. These powers are in the establishment of ministerial uniform by laws in respects of urban councils. For example, under Act No 7 of 1982 Section 147 for District Council bylaws, Section 157 for Township bylaws and Section 165 for village bylaws also under Act No.8 of 1982 the uniform Urban Authorities by Laws are made under section 91 of the Act.

Beside the Minister empowered to make uniform by laws, there are other by laws that are made by the local governments themselves. These Local Government Authorities are:

- (1) **By-laws by District Council:** established under Section 118(1)(d) of the Act and give the legislative functions to the district while the making of the bylaws is vested in section 148(1) of the Act.

Also Section 118(1)(d) of the same Act gives the District Council the function of making by laws to be applied in its area of jurisdiction and also consider bylaws made by the Village Councils its area of authority.

- (2) **By-laws by Township Authorities:** for carrying into effect any function conferred to them Local Government (District Authorities) Act, 1982 or by any other written law.

- (3) **By-laws by Village Council:** Under Section 163 of the Act. This section vests legislative powers in the village Council. The by-laws are meant to carrying into effect or for the purpose of any functions conferred to do it by this act.

- (4) **By-laws by Urban Authorities:** are made so as efficiently carry out their function under their Section 88 of the Local Government (Urban Authorities) Act, 1982 which also vests legislative power to City, Municipal and Town Councils.

## **PROCEDURE FOR MAKING BY-LAWS BY URBAN AUTHORITIES**

The second body of authorities that can make bylaws includes City Councils, Municipal Councils and Town Councils.

Wherever making a bylaw the power of any such authority will be exercised by taking into considerations.

- The bylaws must be constitutional
- The bylaw should not conflict with any other written law
- The bylaw must be conformity with the relevant policy
- The bylaw must be in accordance with the relevant procedure
- That the principle of natural justice and human rights are complied with

The procedure in which is to be followed by Urban Councils when making bylaws is contained in Section 90 of the Local Government (Urban Authorities) Act, 1982. This Section states as follows:

- (1) Subject to the following provision of this section where urban authority proposes to make any by laws, it shall, at least two weeks before the meeting of the authority, at which it is proposed to consider the bylaws, give notice to the inhabitants of the areas of its jurisdiction of its intention, in such manner as may most probably bring the notice to the attention of all person likely to be affected by he by laws indicating the precise purport of the bylaws proposed, and calling upon all interested persons within the area to lodge any objections or representation in writing with the authority within such time as may be prescribed.*
- (2) If, upon the expiration of the notice, or not less than three days before the authority's meeting at which it is intended to consider the proposed by laws, no objection or representations are received, or no person raising an objection satisfies the council that there is no need for the bylaws to be made, the authority shall proceed to make the bylaws proposed, taking into account any other kind of objections or representations made.*
- (3) After any by law or by laws has or have been made or amended by the authority, the by law, by laws, by laws or amendment shall be submitted for the approval of the Minister, together with-*
  - a) A copy of the minutes of the meeting of the authority at which the by law or amendment was adopted;*
  - b) A certificate by the Director that the preceding provisions of this section have been complied with;*
  - c) Copies of any objections against the adoption of the by law, by laws or amendment which may have been lodged in writing with the authority, or, if none have been lodged, a statement to that effect.*
- (4) Where any objection has been lodged and has not been withdrawn, the Minister may approve, alter or reject any by law, by laws or amendment and consent to the by law, by laws or amendment so submitted to him.*



*(5) Upon approval being given by the Minister to any by law, by laws or amendment, with or without alteration pursuant to subsection (4), the by law, by laws or amendment shall be published in the Gazette, and shall have full force of law within the area of the urban authority from the date of publication or the date of commencement specified in the by law, by laws or amendment.*

## **ROADMAP FOR URBAN COUNCILS BY-LAWS**

The procedure should follow the following steps that are, general goal and objectives, giving notice, objections and representations, making of by-law, and the procedures after the making of the by-law.

### ***General Goal***

The Urban Council wished to make a bylaw for the purpose of better development and fostering of the system of Local Government in the area of jurisdiction.

### ***Objectives***

The intended objectives before the bylaw is made are to make a bylaw using the power of legislation as contained in section 89 of the Local Government (Urban Authorities) Act, 1982 also foster and maintain the health, safety and well being of the people in its area of jurisdiction another object is to receive objections or representations from the inhabitants of the Urban Council within its area of jurisdiction.

### ***Giving of Notice***

The Urban Council must first give notice to inhabitants of the area of its intention to make the said bylaws with the conditions that the Notice should be given in a manner that will ensure that the notice shall come to the knowledge or attention of all persons likely to be affected by the proposed by law. However the Urban Council should decide to adopt all or any one of the following approaches deemed appropriate, to publish the notice in any news paper circulating in the area of the Urban Council to fix a copy of the notice in conspicuous place for the public to see the notice in any other manner as it is customary in that area.

### ***Objections and Representations***

In that regard, the Notice should be prepared to appear in the manner that it invites all interested persons within the area to lodge any written objections or representations against proposed by-laws also the objections or representations should be prepared in such a way that indicates to be lodged with the Urban Council within the time specified in the Notice.

### ***Making of the By-Law***

Where the time specified in the notice expires without the Urban Council receiving any objections or representations or the council does not uphold any objection then the council should proceed to make the bylaw and while making the bylaw the Council is still enjoined to consider any kind of objections or representations made.

### ***Procedure after Making of the By-Law***

Once the by law is made, the Urban Council will lodge it with the Regional Commissioner in the Region in which the council is located and on receiving the bylaws, the Regional Commissioner is required as soon as practicable to comment upon it (whether it is complied with the procedure and it legally) also the Regional Commissioner submits the bylaw with its comments to the Minister for approval then before the approval the Minister consults any other Minister who the enacted bylaw might be affecting.

On receiving the bylaw together with the comments from the Regional Commissioner the Minister has the following options.

#### **i. Consent the By-Law;**

When the minister responsible for Local Government consents the bylaws the Minister fixes the date as that he gave the consent also fixes the date the bylaw comes into operation then signs the bylaw to signify his approval.

#### **ii. Withhold his Consent**

When the Minister responsible for local government withholds his consent, he should specify conditions or reasons for taking that decision. Thereafter the Minister returns the bylaws directly to the Urban Council also attaches a letter explaining the conditions or the reasons for his decision also should submit a copy of the letter to the Regional Commissioner for records.

However, if the by-law has been approved the minister submit the bylaw to the Office of the Attorney General department of the Chief Parliamentary Draftsman for vetting, then the department scrutinizes on the legality of the by-law and the style employed to draft the bylaw.

Once the Attorney General office has been satisfied with the formalities of the bylaw is then bylaw is submitted to the editor of the Government Gazette. The editor assigns it the Government Notice Number (GN. No) also the editor submits the bylaw to the Government Printer for publication in the gazette then the bylaw comes into force from the date fixed by the Minister responsible for Local Government.

In case the office of the Attorney General rejects the bylaw, the office of The Chief Parliamentary Draftsman sends back the bylaw to the Minister and reasons for rejecting must be attached then the Minister return direct to the Council with the letter carrying the reasons given by the office of the Chief Parliamentary Draftsman is attached with the bylaw also a copy of the letter is served to the Regional Commissioner for records.

## **URBAN LOCAL GOVERNMENT AUTHORITIES IN TANZANIA**

Local Government (Urban Authorities) Act of 1982 creates urban based Local Government Authorities in Tanzania. The Act provides, inter alia, the establishment, composition, functions and legislative powers of City Councils, Municipal Councils and Town Councils<sup>xviii</sup>.

At the Mtaa level, the government structure is comprised of Mtaa assembly consisting of all persons aged 18 and above. The corporate entity of a registered urban council comprises of a Mayor elected by the members of urban Council. There are also Mtaa committees covering such matters as planning, finance, economic affairs, social services, security, forest protection, water resources and others<sup>xix</sup>.

The Urban Councils functions and role include planning and coordinating activities, rendering assistance and advice to its members engaged in agriculture, forestry, horticultural, industrial or any other activity, and to encourage residents to undertake and participate in communal enterprises. Proposed by-law must be adopted by the Council before being submitted to the Minister for approval<sup>xx</sup>. In addition, Section 16 of the Act<sup>xxi</sup> provides for division of Urban into

divisions and wards. As an administrative subdivision between Mtaa and Urban Council, the ward reviews the proposed Mtaa projects in its jurisdiction and approves them for passage up the line to the District Development Committee(DDC)<sup>xxii</sup>.

Local Governments (Urban Authorities) Act of 1982 establishes the Ward Development Committees (the WDC)<sup>xxiii</sup> The WDC is comprised of councilors representing the ward and chairpersons of all Mitaa within the ward. The WDC also includes member(s) of the Urban Council, who ordinarily reside in the ward; and invitees from, for instance the Non Governmental Organizations(NGOS) and other civic groups involved in the promotion of development in the ward. However, the invitees have no right to vote in the meetings. The WDC is responsible for developing general development plans for the ward and the important responsibility in this context is the formulation and submission to the Urban Councils or to the Mitaa the proposals for the making of bylaws in relation to the affairs of the ward. Further, the WDC must manage disasters and environmental related activities within its ward<sup>xxiv</sup>.

At the District level, there is a Urban Council composed of members elected from each ward, members of parliament representing constituencies within the area of the Urban Council, three members appointed by the Minister responsible for the local government.

Urban Councils through the appropriate District Development Committee (the DDC) supervise the implementation of all plans for economic, commercial, industrial and social development in their respective areas. Also, the council approves bylaws and coordinates plans, projects and programmes for the residents within its area of jurisdiction. Apart from the DDC, there are other council committees. These committees are for finance, administration and planning; education, health and water; and economic affairs and environment<sup>xxv</sup>.

## **LEGISLATIVE POWERS OF LOCAL GOVERNMENT AUTHORITIES**

### ***Constitutional Provision***

The Local Government Authorities is composed of district and urban authorities. On the other hand urban authorities are composed of city councils, municipal council and town councils. All these authorities have their legal foundation in the Constitution of the United Republic of Tanzania and Laws passed by the parliament “Article 145 (1) of the Constitution states that

“There shall be established local government authorities in each region, district, urban area and village in the United Republic which shall be of type and designation prescribed by law to enacted by Parliament or by the House of Representatives.” The provisions in the Constitution require the Parliament to enact laws which specify and designation of the local authorities to be established at each level of governance up to village or “mtaa” level. The law also is to states the structure and composition, source of revenue and procedures of how their business will be conducted. The Constitution further requires the Parliament to stipulate the powers and functions of the local authorities in the same law it passes.

### ***Local Government Acts***

In 1982 the parliament of the United Republic of Tanzania enacted two laws for the Local Authorities. The Local Government Act No. 7 of 1982 (District Authorities Act) and the Local Government (Urban Authorities) Act, 1982. Both of these Acts took into consideration Article 145 and 145 of the Constitution.

## **ESTABLISHMENT AND TYPES OF LOCAL GOVERNMENT AUTHORITIES**

There having passed the Local Government (District Authorities) Act, 1982, the following types of local government authorities were established:

- **District Councils** established under Section 5(1) of the Local Government (District Authorities) Act, 1982.
- **Township Authorities** established under Section 13(1) of the Local Government (District Authorities) Act, 1982. The above (two) authorities are established by an order of the Minister responsible for local authorities and this is done by publishing in the Gazette the councils to be established.
- **Village authorities** created through registration of villages, Section 22(1) of the Local Government (District Authorities) Act, 1982. The Village authorities are established when villages are registered by the registrar and stipulates that (once the village is registered) every person resident of the respective village and has attained the 18<sup>th</sup> birthday becomes a member of



the village assembly. This assembly consists... forms the Village Council consisting between 15 and 25 members. The registrar issues the Village Council with a certificate of Incorporation which makes such council a constitute body corporate.

- The establishment of the Local Government (Urban Authorities) Act, 1982 Section 1 is given to the Minister responsible for Local Government and has to publish in the Official Gazette of the intended establishment. The Minister can establish Town Councils, Municipal Councils and City Councils.

However, where the status of existing municipalities has to be raised to that of a city the order must be made by the President.

Urban Authorities which the Minister may establish are:

- A town council whose urban area is a town
- A municipal council whose urban area is a municipality
- A city council whose urban area is a city

## **LEGISLATIVE POWERS OF LOCAL GOVERNMENT AUTHORITIES**

The main goal of having Local Government Authorities is to transfer authority to the people as stipulated in Article 146 of the Constitution of the United Republic of Tanzania. The Constitution outlines three broad functions of local authorities. These are:

- a) To perform the function of local government within its area of jurisdiction
- b) To ensure enforcement of law and public safety of the people
- c) To consolidate democracy within its geographical area and apply it to accelerate the development of its people.

The above functions have been well expounded in Local Government Act No.7 and 8 Part V of each Act, of 1982.

The above Acts further give legislative powers to the Minister responsible of local authorities. These powers are in the establishment of Ministerial uniform by-laws in respect of district councils.

Section 147 of the Local Government (District Authorities) Act, 1982, township authorities Section 157 of the 1982 Act; Village by-laws Section 165 of the 1982 Act and the Urban Authorities Act Section 82 of the said 1982 Act.

Besides the Minister being empowered to make uniform by-laws for the above named types of authorities, there are other by-laws that are made by local government themselves. These local government authorities are:

- a) District Council by-laws established under Section 118 (1) (d) and gives the legislative functions to the district while the making of by-laws is vested in Section 148 (1) of the Local Government (District Authorities) Act, 1982. Also section 118 (1) (d) of the same Act gives the District Council the function of making by-laws to be applied in its area of jurisdiction and also consider by-laws made by village councils in its area of authority.

Section 148 (1) of the same law gives power to the district council that aim at:

- Promoting and securing the good rule and orderly government in its area of jurisdiction
- Fostering and maintaining the health, safety and well being of inhabitants of its area of jurisdiction
- Carrying into effect and for the purpose of any of the functions conferred by or under the 1982 Act or any other written law.

- b) By-laws by township authorities for carrying into effect any functions conferred into them by the Local Government (District Authorities) Act, 1982 or any other written law.
- c) By-laws by Village Councils under Section 163 of the Government (District Authorities) Act, 1982, vests legislative powers in the village council. The by-laws are meant to carrying into effect or for the purpose of any functions conferred to it by this Act.
- d) Urban Authorities by-Laws are made so as to efficiently carry out their functions under Section 80 of the Local Government (Urban Authorities) Act, 1982 which also vests legislative powers to City, Municipal Councils and town Councils.

## LEGISLATIVE PROCEDURES OF LOCAL GOVERNMENT AUTHORITIES

There are three bodies that can make by-laws for the local government authorities. These are the Minister responsible for local government and the district and the urban authorities. In all the three cases they are responsible and have to follow specified procedures in making and approving the by-laws needed in the local authorities. This part of the manual singles and the type of by-law made by each of the above bodies, highlights the aim of each set of by-laws, states the objective of the by-laws and the procedures or the activities that have to be done before the by-laws are needed.

### MAKING OF MINISTERIAL UNIFORM BY-LAWS

The powers of the Minister responsible for Local Government to make uniform By-Laws for District Councils, Township Authorities and Village are contained in Section 147, 157 and 165 of the Local Government (District Authorities) Act, 1982. The Minister also makes By-laws to Urban Authorities and the powers are provided in Section 82 of the Local Government (Urban Authorities) Act, 1982.

- i. Section 147 states that “where the opinion of the Minister, it is necessary or desirable, for the purpose of the better development and uniform fostering of the system of Local Government, that-
  - a) **A certain by-law** not involving any local variation be made by or in respect of all district council
  - b) **uniform by-laws** respecting a specified subject are needed for all councils or all councils of a certain category, he may, subject to section 149, make the required by-law or by-laws which shall come into operation after publication in the Gazette”
- ii. Section 157 states that “where in the opinion of the Minister, it is necessary or desirable for the purpose of better development and fostering of the system of local government in township authorities that-

- a) A certain by-law not involving any a local variation be made by or in respect of all township authorities;
  - b) Uniform by-laws respecting a specific subjects are needed for all the authorities of a certain category he may, subject to Section 158, make the required by-laws which shall come into operation upon publication in the Gazette or on such date as may be specified in the by-law”.
- iii. Section 165 states that “The Minister shall exercise in respect of legislation for villages the same powers he has under this Act to make uniform bylaws in respect of district councils and township authorities, and shall comply with the same procedure in respect of uniform village by-laws as he is required to do in the case of other local government authorities, save that, in the case of proposals by the Minister to make any uniform by-laws in respect of villages or a category of villages, the notice of his intention shall be given to a district council and it shall be the district council which may lodge objections or representations to the Minister on behalf of the village or category of villages concerned”.
- iv. Section 82 (1) of the Urban Authorities Act states that “ The proceedings of every committee, sub-committee or joint committee of a district council shall, subject to this Act, be regulated in accordance with standing orders made under section 81, subject to the following provisions of this section.
  - a. Minutes of the proceedings of a committee, joint committee or sub-committee shall include a record of names of all members present and absent, and shall be drawn up and signed at the same or a subsequent meeting by persons presiding at that meeting, and any minutes so signed shall, in the absence of proof of error, be received in evidence without further proof.
  - b. The validity of any act or decision taken at any meeting of a committee, joint committee or sub-committee shall not be affected by any vacancy in its membership or any defect in the appointment of any of the persons attending the meeting”.

## **PROCEDURE OF MAKING BY-LAWS OF AND IN RESPECT OF URBAN AUTHORITIES**

Section 80 (1) empowers an Urban Authority to make By-Laws for the purpose of efficient carrying out functions conferred on it not only by virtue of its establishing Act but also on other Written Laws. Hence Section 80 (1) states that “ Every Urban Authority may, subject to the consent of the Minister make By-Laws for carrying into effect and for the purposes of the any function conferred on it by virtue of this Act or Any other Written Law”

**Aim:** To make By-Laws which will enable it to efficiently carry out its functions conferred to the Urban Authority by the Act.

**Objectives:** To make By-Laws related to the efficient running of Urban Authorities

-To empower Urban Authorities make sector By-Laws

## **CONDITIONS AND THE POWER OF THE URBAN AUTHORITY TO MAKE BY-LAW**

Wherever making By-law the power of an Urban Authority will be exercised by taking into account the following consideration:

- The by-law must be constitutional
- The by-law should not conflict with any other written law
- The by-law must be in conformity with the relevant policy
- The by-law must be made in accordance with the relevant procedure
- That the principle of nature justice and human rights are complied with

The procedure for making a by-law by an Urban Authority is provided for under Section 81 of the Local Government (Urban Authority) Act, 1982. This Section states that (1) “Subject to the following provision of this section where Urban Authority proposes to make any by-law, it shall, at least two weeks before the meeting of the Authority, at which it is proposed to consider the by-law, give notice to the inhabitants of the area of its jurisdiction of its intention, in such a manner as may most probably bring the notice to the attention of all person likely to be



affected by the by-laws indicating the precise purport of the by-laws proposed, and calling upon all interested person within with the Authority within such time as may be prescribed.

1. Where, upon the expiration of the notice, or not less than three days before the Authority's meeting at which it is intended to consider the proposed by-laws, no objections or representations are received, or no person raising an objection satisfies the council that there is no need for the by-law to be made, the Authority shall proceed to make the by-laws proposed, taking into account any other kind of objections or representations made.
2. After any by-law or by-laws have been made or amended by the authority, the by-laws have been made or amended by the Authority, the by-law, by-laws or amendment shall be submitted the approval of the Minister, together with
  - a) A copy of the minutes of the meeting of the Authority at which the by-law or amendment was adopted;
  - b) A certificate by the Director that the proceeding provisions of this Section have been compiled with;
  - c) Copies of any objections against the adoption of the by-law, by-laws or amendment which may have been lodged in writing with the Authority, or if none have been lodged, a statement to that effect.
3. Where any objection has been lodged and has not been withdrawn the Minister may approve, alter or reject and by-law, by-laws or amendment so submitted to him.
4. Upon approval being given by the Minister to any by-law, by-laws or amendment, with or without alteration pursuant to subsection (4), the by-law, by-laws or amendment shall be published in the Gazette, and shall have full force of law within the area of the Urban Authority from the date of publication or the date of commencement specified in the by-law, by-laws or amendment.

Therefore any Urban Authority wishing to make any by-law provided under Section 81 of the Local Government (Urban Authority) Act, 1982 is required to aid by the following procedure:

a) **Giving of Notice**

Any Urban Authority intending make by-laws is required to give notice to the inhabitants of the Area of its jurisdiction of that Urban Authority. Such notice shall:

- Be given two weeks prior the meeting of the Authority at which it is proposed to consider the by-laws;
- Be given in such a manner as may most probably bring the notice to the intention of all persons likely to be affected by the by-laws.
- Indicate the precise purport of the by-laws proposed
- Call upon all interested persons within the area to lodge and objections or representations in writing with the Authority within such time as may be prescribed.

b) **Objections or Representations**

The law entitles any inhabitant of the area who is likely to be affected by the by-laws to raise an objection or make a representation. Such inhabitant must lodge his objection or representation under the following conditions:-

- It has to be in writing
- With the Urban Authority
- It has to be within the time specified in the notice

Where the objection or representation has been duly lodged, the Urban Authority will consider the representation. On the other hand if the Authority is not satisfied that there is no need for the by-law to be made it shall proceed to make the by-law proposed by must take into account any other kind of objections or representations made.

c) **Making the By-Law**

After complying with the procedures set in (a) and (b) above the Authority may proceed to make the by-law

d) **After Making the By-Law**

Once the by law has been made or amended, the urban authority will do the following;

- Submit the by law or amendment to the Minister for approval. The by law or amendment should be accompanied by;-

- A copy of the minutes of the meeting of the authority at which the by law or amendment was adopted
- A certificate by the Director that the preceding provisions of Section 81 of the Act No. 8 of 1982 have been complied with.

## CONCLUSION

Theoretically it is only the parliament which can make the laws. Looking to the legislation process however its usually the government which makes the laws subject to the parliamentary control. When function of legislation made by such organs is called delegated legislation, they include bylaws, orders, regulations or rules<sup>xxvi</sup>.

Statutes empower the Ministers to make regulations, rules or orders to give directions to confirm schemes. When ministers exercise those powers, they exercise a power delegated to them by the statutes<sup>xxvii</sup>.

In case rules of the enactment of the bylaws in the local governments authorities there are certain procedural requirements which are publications and consultations prescribed by the Local Governments (Urban Authorities) Act<sup>xxviii</sup> as general law, the failure to comply with the said requirement will render the bylaw invalid based on procedural ultra vires<sup>xxix</sup>.

Tanzania had experienced many problems arising between the people and local authorities in many areas on the validity of the local bylaws because the general public found themselves in the wrong foot in the ignorance of the rules applicable to them in a given situation.

## ENDNOTES

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<sup>i</sup> Constitution of United Republic of Tanzania, 1977

<sup>ii</sup> Ibid

<sup>iii</sup> Act No 7 of 1982

<sup>iv</sup> Act No 8 of 1982

<sup>v</sup> Supra

<sup>vi</sup> Jaba Shadrack, T.A, School of Law UDSM, 2011

<sup>vii</sup> Act No 7 of 1982

<sup>viii</sup> Ibid

<sup>ix</sup> Act No. 8 of 1982

<sup>x</sup> Section 8 of Act No. 8 of 1982

<sup>xi</sup> Section 17 of Act. No. 8 of 1982

<sup>xii</sup> Constitution of 1977

<sup>xiii</sup> Ibid

<sup>xiv</sup> Supra

<sup>xv</sup> Ibid

<sup>xvi</sup> Tamisemi Manual, 2005

<sup>xvii</sup> Ibid

<sup>xviii</sup> Act. No 8 of 1982

<sup>xix</sup> Section 17(1) of Act No. 8 of 1982

<sup>xx</sup> Section 90(3) of Act No 8 of 1982

<sup>xxi</sup> Section 21(2) of Act No. 8 of 1982

<sup>xxii</sup> Jaba Shadrack (Supra)

<sup>xxiii</sup> Section 20(1) of Act No. 8 of 1982

<sup>xxiv</sup> Section 21(1) of Act No. 8 of 1982

<sup>xxv</sup> Section 47(1) of Act No. 8 of 1982

<sup>xxvi</sup> C.K TAKWANI, *Lectures In Administrative Law*, 3th Ed, Eastern Book Company, Luck Now, 2006, at page 59

<sup>xxvii</sup> D. FOULKES, *Administrative Law*, 3<sup>rd</sup> Ed, Butter Worths London, 1972, at page 17

<sup>xxviii</sup> Local Government (District Authorities) Act No 7 of 1982

<sup>xxix</sup> C.K TAKWANI (Supra)