
THE EFFECTIVENESS OF THE PROCEDURES ON MAKING BY - LAWS IN ZANZIBAR LOCAL GOVERNMENT AUTHORITIES: A CRITICAL STUDY

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ABSTRACT

The process of making by- laws for local government in Zanzibar has got many challenges since established of local government authority in Zanzibar at 1986. By-laws are enacted without regards legal procedures as other By- laws enacted in other government authorities in Zanzibar. This is because there are not proper procedures that govern the holy process of making By-laws at local government authority in Zanzibar. This study focused to establish the procedures to be followed in the process of making by- laws in local government authorities in Zanzibar. As understanding that making By- Laws procedures is fundamental mechanism in any authorities in order to be clear and to be legal binding, so Local Government Authorities in Zanzibar must use proper mechanisms for enact their By- laws for betterment of making it. Moreover in analyzing the previous By- laws enacted by Local Government a specially in Urban Municipal council seems that there are not followed clear procedure because in the process of enacted those By -laws the laws are there, but does not shows how can be established, up to be signed by the doctor and mayor of that municipal. This study can be useful for make sure that the establishment of By- laws in local government Authority in Zanzibar has a good source for looking the procedures of enacted By – laws. It therefore recommended that the local government authority in Zanzibar must follow the procedures of making By- laws as shown by this study.

Keywords: Procedures, Making By – Laws, Zanzibar Local Government Authorities, enacted.

1.1. Introduction

By-Laws is the Administrative Procedure which includes general principles and should govern the Union's administration. Explain the reasons for dealing with general principles in the recitals of a Regulation on administrative procedures rather than attempting to codify them in the form of articles of the operative part of such a regulation. This however requires asking the preliminary question what general principles of administrative procedural law are and for somehow prevent beyond power to officials from enjoying the benefits on making By Laws. The respondents are of the view that, though subsidiary legislation has been covered through Zanzibar Constitution, 1984 of Zanzibar Interpretation Act, and therefore the subsidiary legislation consist shall be construed as reference as reference to the corresponding provision of the Act, shall include a reference to any subsidiary legislation, the date be affected, published in the gazette, may be cited by reference to the short title related mechanisms for securing the subsidiary legislation proceeds are well organized in the eyes of law. The study emphasize that is null and void to draft By Laws without having lawful procedures which assigned by Local Authority itself.

1.2. Literature Review

In 1930 Professor K.H. Bailey in his Article of *Evidence to the senate select committee on the standing committee system*, p 20 stated that “It is for the executive in making regulations to declare what Parliament itself would have laid down had its mind been directed to the precise circumstances” through this explanation founding that the enactment of By-laws has been specially circumstances and procures where by in Zanzibar this are still challenges and does not found in the local government authorities directives. So this study can be the source of analysing steps to be followed in the process of making By-laws in Zanzibar. Hartlye seem to suggest that local government administrative relationship is determined by the degree of central control and the role of LGAs in relation to the central government in service delivery. The focus of his work was on local government relations in the Philippines from the public administration perspective. Thus, it does not discuss and tell the role of the legal framework in shaping the local government relationship and its implication on the autonomy of LGAs. However, the literature is useful to this study as it shades light on the understanding of traditional models of local government administrative relationship on which the legal framework of local government administrative

relationship in Mainland Tanzania can be understood. Raul and De Duzman also consider local government controls and supervision as necessary elements of local government administrative relationship. The authors go further to argue that, controls and supervision are necessary for the maintenance of minimum standards in services provision; safeguarding standards of administration between and among various levels of government; controlling government expenditures as part of the management and planning of the national economy; protecting the citizens against abuse of powers by local authorities; and integrating the people into a nation (national unity).

1.3.Results and Discussion

The study therefore had a critical value in adding more knowledge on the existing literature regarding the understanding of procedures on making By- Laws for those who practice. Chapter one dealt with the background to the study, statement of the problem, the general and specific objectives, research questions, significance of the Study, as well as scope of the study and to address the legal frame work of the Local Government Authorities on making By- Laws. In execute need more effort to amend the Laws as Tanzania apply within their Principal Law.

In the Zanzibar there are no proper procedures on making By- Laws in a Local Government even if the Laws gives the power to preparing and promulgating By- Laws and its regulation and all legislative measures necessary for execution. More than National and International Laws gives the procedures within Local Government Authorities as the tools used on making By- Laws. The existing laws and practitioners structure not enough on making By- Laws within Zanzibar Local Government Authorities even others proved this by referring to the record of the High Court and Land Tribunal.

1.4. Recommendations

The following recommendations have been given in the study:

1.4.1.Need for Uniform Procedures

Ministry responsible for Local Government Authorities shall prepare the uniform procedures or

guidelines which bound Local Government Authorities to follow on process on make By- Laws even to collect the opinion from grass root.

1.4.2.Capacity Building for Secretariat of Local Authorities

It is the recommendation of the researcher to increase man power to subsidiary legislation committee for the sake of making committee more effective in its function. Through the study the researcher discovered that Members are not interested with subsidiary legislation that is why they are not voluntarily join the committee. So for the purpose of the committee to achieve its goal the researcher recommending that Chairperson of the council should increase numbers of members to the committee so that not be in a small size as they are. In addition to man power, frequent trainings required for secretariat of the committee as they are permanent officials and memory of the institution. It need secretariat to be more conversant in knowledge and skills of legal drafting and enable the institution to achieve its obligation properly.

1.4.3. The Qualifications for Member of the Council Should be reviewed

It is recommended that the qualification for candidate who contesting to be appointed to an office of the Council which stipulated under section 45 of the Zanzibar Election Act should be assessed based on academic grounds to increase the qualification of members of the Council. The provided qualifications that is ability to read and write in Kiswahili does not suffice the main organ of the government to hold members of adequate knowledge on most technical matters tabled and discussed in the Council. This provision should be amended to enable those who appointed to an office of Local Government Council to be able to tackle technical and complex matters tabled in the Council including technical matters in delegated legislation.

1.4.4. Need for Special Studies to be conducted

The researcher recommends that for the Local Government Council to have good network and delegated legislation should be conducted at different Common Wealth parliamentary Association (CPA). To learn how Authorities in the association perform such function themselves and their representative associations like the Association of Local Authorities of Tanganyika (ALAT), the Association of Rural Local Authorities of Tanganyika (ARLAT), and the Federation of the

Associations of Local Authorities of Tanganyika (FALAT) and ZALGA as far as the control of delegated legislation making By- Laws within a Zanzibar Local Government is concerned. On the same side will manage to help delegated authorities to overcome challenges faced by them in By-law making process. However need for the specific procedures to monitor such kind of making By- Laws is also required in order to ensure justice and maintain rule of law within the society at large.

1.5.Conclusion

In procedure of By- law making the local government Authority shall at least two weeks before the meeting of the authority give notice to the inhabitants of the area of its jurisdiction of its intention, calling upon all interested persons within the area to lodge any objections or representations in writing with laws the authority within such time as may be prescribed. After any by-law or by-laws has or have been made or amended by the authority, the by-law, by-laws or amendment shall be submitted for the approval of the Minister, together with 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 this section have been complied with and copies of any objections against the adoption of the by-laws or amendment which may have been lodged in writing with the authority.

The importance to note that the authority is required to comply with the law while making of By-Laws. To ensure the compliance, the effective control is required, that he who delegates its legislative power is entitled an obligation to control over the same to ensure that executive authorities do not abused/misused the power. This study aiming at assessing the effectiveness of Zanzibar Local Government Authorities on making By- Laws, Such efficacy could be obtained if at all the House of Representative could enact clear guidance for procedures of making By- Laws in Local Government. Even though the Interpretation of the Laws Act and other enabling provisions provides for the procedures to follow in enacting delegated legislation, but the law does not clear expressly about the procedures on making By- Laws, this being the case to the House of Representative specifically the subsidiary legislation committee attempt to oversee delegated legislation basing on various procedures stipulated under the Interpretation of the Laws Act and any other Enabling provisions of the laws.

The power of law- making in Zanzibar is entrusted to various authorities, and very few individuals are aware of the power delegated to their authorities, as a results the power is remained to the hands of few elites, but no matter what it is existing today the requirement of the law is that even those authorities are required to enact the law with regards to what is provided in the enabling Act. The procedure of lying may be directory or mandatory depends to the scheme and language of the Act. The use of 'shall' or 'may' suggest if the procedure is mandatory or directory. It should born in mind that if the authorities fail to comply with mandatory procedure while making of delegated legislation that failure invalidate the rule so framed but if it failed to comply with directory procedure such failure will not invalidate the law. However, the legality of every piece of delegated legislation is at the mercy of the Courts.

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