

# THE EXERCISE OF DISCRETIONARY POWER BY DISTRICT COMMISSIONERS IN TANZANIA: THE PARADIGM OF THE POWER TO ARREST

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## **Abstract**

Discretionary power exists to ensure decisions of administrators are not caged by silent elucidation of the law. It allows administrators to use their reasonable common senses but which are controlled by law, to decide over various matters that come before their competence. This article aims at critically discussing the exercise of discretionary powers by District Commissioners (DC's) in Tanzania especially with respect to power of arrest. The article begins by giving the meaning and application of discretionary powers to DC's in Tanzania. The article further traces the historical development of laws and policies relating to exercise of discretionary powers by DC's in Tanzania and analyses the current laws which give mandate to the DC's to exercise discretionary powers. The article cites and discusses few cases where DC's exercised the power of arrest. Prior to

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conclusion and recommendations, the article discusses the exercise of discretionary powers in a human rights perspective.

**Keywords:** *discretionary powers, District Commissioners, power to arrest, abuse of exercise of power, right to disobey unlawful order.*

## 1. INTRODUCTION

This work is centred on a theme that, there are diverse problems related to the exercise of discretionary powers by District Commissioners in Tanzania. This is particularly so, with regard to the exercise of the power to arrest. From the outset, the work aims at exploring the laws providing for powers to arrest by District Commissioners in Tanzania. Thereafter, exploration on the compliance of the laws by District Commissioners when exercising their power to arrest accrues. Alongside, the work narrates the historical development and evolution of laws and policies relating to exercise of discretionary powers by District Commissioners in Tanzania. Evidencing the reality of the subject matter of this study, the authors give practical examples of situations where District Commissioners in Tanzania improperly exercised their discretionary power of arrest. In assessing whether or not District Commissioners properly exercise their discretionary powers test is not only the extent to which they observe the laws granting them power, but also the extent to which they respect human rights.

Essentially, the legislations giving discretionary powers to DC's are very clear on how power is to be exercised and what is the limit. For example, the Regional Administration Act, 1997 empowers the DC's to order arrest of anyone who breaches

peace or disturbs public tranquillity and only when that breach cannot be prevented in any way other than by detention.<sup>1</sup> The problem however is that, despite the clarity of the laws giving discretionary power, DC's knowingly or unknowingly exceed their discretionary powers the effect of which has been violation of human rights. This article therefore, generally aims at explaining the *statuo quo* of the exercise of discretionary power by District Commissioners in Tanzania, the extent such exercise violates some fundamental human rights and at the end making some recommendations.

## **2. THE MEANING OF DISCRETIONARY POWER: ITS IMPLICATION TO DISTRICT COMMISSIONERS IN TANZANIA**

A District Commissioner (DC) is an executive post for the appointee in charge of the Districts or administrative localities. In Tanzania, District Commissioners (DC's) are appointed by the President having various functions such as attending inaugural ceremonies, graduations, responding to emergency situations, maintaining peace and security, organizing protocols and solving conflicts which are principally the duty of the Judiciary and the Police.<sup>2</sup>

The word discretionary power has diversity of meanings and interpretations by various scholars. Such diversity being on wording does not defeat the common meaning of it. One scholar defines it as power to make a reasoned choice within a class of permissible actions.<sup>3</sup> Lord Halsbury utters that discretion means

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<sup>1</sup> Regional Administration Act, 1997, section 15(2).

<sup>2</sup> *Ibid*, section 13(2) read together with section 14 of the same Act.

<sup>3</sup> K. Harloveleen (2011) "An Introduction to Administrative Law" Punjab: Central Law Publications, 15<sup>th</sup> Edition, P.73.

when it is said that something is to be done within the discretion of authorities, such thing is to be done according to private opinion.<sup>4</sup> Generally, discretionary power means the power to choose to act or not to act, using one's rational judgment. Discretionary powers are usually granted by the law.

Harloveleen defines discretionary power as power to make a reasoned choice within a class of permissible actions.<sup>5</sup> This power also ought to be reasonably and not unreasonably applied, and whatsoever may fairly be regarded as incidental to or consequential upon those things which the legislature has authorized ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.<sup>6</sup> Discretionary powers are not justifiable by simply being exercised by proper person but the exercise must also be proper, that is to say the exercise must be within the limit. It is said in one literature that, an act will however be ultra vires even if done by the proper person properly appointed if he exceeds the powers given to him.<sup>7</sup>

The District Commissioners (DC's) in Tanzania as the subject of this paper commands, are therefore bound to exercise their discretionary powers within the scope set by the legislature. Their authorities should not automatically justify their actions. Griffith and Street say that, the punitive actions the DC's takes must be authorized by law since it is provided that no man should be punished or should be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner

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<sup>4</sup> *Ibid.*

<sup>5</sup> K. Harloveleen, *OP.Cit* p.73.

<sup>6</sup> A statement by Lord Selbourne in *A.G v. Great Eastern Rail. Co* (1880), S APP. Cas.473 at p.478 as referred in Foulkes, D.J. (1972) *Introduction to Administrative Law*, London: Butterworths, 3<sup>rd</sup> Edition, p.129-130.

<sup>7</sup> D.J. Foulkes, (1972) *Introduction to Administrative Law*, *ibid.*, p.129.

before the ordinary courts. In other words, there should be absence of arbitrary power or even wide discretionary power on the part of the government.<sup>8</sup>

Although the District Commissioners have been vested with powers to arrest persons, those powers should be exercised within the limits. It may for example be noted that, the discretionary power vested under S.15 (2) of the Regional Administration Act of 1997 to the District Commissioners to order arrest, is to be exercised only where a person breaches peace or disturbs public tranquillity and only when that breach cannot be prevented in any way other than by detention. It is said in one literature that, there must be proper and reasonable connection between facts of the circumstance and the ground used to exercise the discretionary power.<sup>9</sup> The decision of the administrative authority is declared void if it is not based on relevant and germane considerations. Therefore, it will be taken as abuse of power if authority takes into consideration any matter that is unconnected or irrelevant to those stated in the statute.<sup>10</sup> It was held in *Padfield v. Minister of Agriculture*<sup>11</sup> that the administrative order can be challenged if the purpose is arrived at or the purpose is exercised on the basis of irrelevant matters or considerations.

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<sup>8</sup> J.A. Griffith & H. Street (1964) "A Casebook of Administrative Law" London: Sir Isaac Pitman & Sons Ltd, p.13.

<sup>9</sup> K. Harloveleen, *OP.Cit* p.77.

<sup>10</sup> *Ibid.*

<sup>11</sup> (1968) AC 977 a decision by the House of Lords as referred in Harloveleen, K. Harloveleen, *Ibid.*

### **3. HISTORICAL DEVELOPMENT AND EVOLUTION OF LAWS AND POLICIES RELATING TO EXERCISE OF DISCRETIONARY POWER BY DISTRICT COMMISSIONERS IN TANZANIA**

Knowing the history of any phenomenon helps to understand the present. The history will be explained since colonial time excluding pre-colonial. The reason for such exclusion is based on the fact that during pre-colonial there was no legally established local government structure equivalent to the current ones. This should however not defeat the fact that prior to colonialism; some administrative pattern had developed in Africa.<sup>12</sup>

#### **3.1. During Colonial Time**

Colonization of Tanganyika began with the Germans in 1885; however Germany did not bring the territory under full administration until around the turn of the century.<sup>13</sup> There was no real local administration by the people during German rule.<sup>14</sup> The Germans ruled the country (Tanganyika) “directly”. This is to say monitoring of activities and supervision were done by commissioned officers from the central government. Here and there in a scattered form the Germans established posts and manned them by German officers and in local areas, rulers known as “Akidas” were installed. They were mainly foreign people such as Arabs, Asians or Nubians.<sup>15</sup> Exercise of discretionary power

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<sup>12</sup> M. Gluckman (ed) (1969) “Ideas and procedures in African Customary Law” London: Oxford University Press, p.9.

<sup>13</sup> N.C. Durham (1971) “British Tanganyika: An Essay and Documents on District Administration” New York: Duke University Press, p.3.

<sup>14</sup> M.M.D. Warioba, (1999) “Management of Local Government in Tanzania: Some Historical Insights and Trends” Morogoro, Tanzania: Research, information and Publication Department, p.3.

<sup>15</sup> *Ibid.*

during this time can be explained using German officers and Akidas. During this time, the authorities (German officers and Akidas) had wide (not legally granted) discretionary power and they could arrest any person at any time and by any means.<sup>16</sup> Akidas were regarded as minor African administrators each of them having a prescribed area to collect native taxes for the central government. They also ran a court for the trial of petty cases based on African customary law.<sup>17</sup> Germans are remembered for their brutal and direct rule which of course was highly resisted by the people of Tanganyika.

After the First World War, Tanganyika was put under British rule. The devastation of the 1914 war made it necessary for the British to rebuild the administration system, in some areas virtually from the ground up.<sup>18</sup> Their rule lasted less than half a century, an unusually short period by imperial standards. In the period between 1918 and 1926 people experienced almost a similar type of administration as practiced by the Germans. This system of administration was labeled as martial rule.<sup>19</sup> It was a system whereby there was an exercise of arbitrary power by the supreme authority. In the years between 1926 and 1954 the British introduced the system of "indirect Administration". It was a rule whereby the British Government ruled through or used chiefs to govern the country and its people. This rule offered a small degree of participation by the people in the management of their affairs.

For purposes of administration Tanganyika, like most other British colonial territories, was divided into provinces and sub-divided into

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<sup>16</sup> M.M.D. Warioba, (1999), *Op. Cit*, p. 3.

<sup>17</sup> E.K. Lumley, (1976) "Forgotten Mandate: A British District Officer in Tanganyika" London: C. Hurst & Company, p.14.

<sup>18</sup> N.C. Durham, (1971) *Op.Cit*, p.3.

<sup>19</sup> M.M.D, Warioba (1999) *Op.Cit* at p.4.

Districts. At the Head of the Province was the Provincial Commissioner (P.C). Under him were the District Commissioners in charge of the Districts.<sup>20</sup> Instructions on policy travelled from the Governor of the Territory through his Secretariat at Headquarters to the Provincial Commissioner and from him to every DC under his command.<sup>21</sup> As a matter of comparison, the so called provinces and provincial commissioners during British rule are currently called regions and regional commissioners respectively.

The DC during British rule was at the bottom of the colonial administrative ranks. He was at the grass-roots of administration, in direct contact with the tribal chiefs and their subjects. Generally DC's advice to his superiors was taken as to what should or should not be done in his District: he was, after all, the one who should know. The District Commissioner had to be a man of many parts. To qualify for appointment to the administrative branch of the Colonial Service he had, to hold an honours degree in Arts from a recognized university.<sup>22</sup> During that time, universities such as Oxford, Cambridge and Trinity College, Dublin were famous institutions recognized for producing intellectuals.

During British rule, a person before being a DC, on acceptance into the service he was appointed to a particular colony with the rank of cadet, and would normally be posted to a District for training and experience.<sup>23</sup> He served a probationary period of two years and, if he was regarded as successful, would be confirmed in his appointment and promoted to the rank of Assistant District Officer (A.D.O). For him to be confirmed, among others, he had to pass an examination in the criminal code applied to the territory.

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<sup>20</sup> E.K. Lumley (1976) *Op.Cit* at p.9.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Id* at p.10.

<sup>23</sup> *Ibid.*



After serving an average of eight years as an A.D.O then he would be given the rank of District Officer. A District Commissioner sometimes tried all court cases that were within his legal capacity as a magistrate.<sup>24</sup> Sometimes the High Courts would add his labours by giving him extended jurisdiction.<sup>25</sup> The working of the DC's, P.C's and A.D.O's was governed by the 1926 Native Authorities Ordinance, Cap.72<sup>26</sup>, the 1954 Local Government Ordinance Cap.333 and the Municipalities Ordinance Cap.105.<sup>27</sup> Although British colonial administration in Tanganyika interfered with the administration of customary law, it is appreciated in giving a model on how administrative units are to be built.<sup>28</sup>

It can therefore be concluded that, with respect to colonial period, District Commissioners had wide discretionary power and exercised not only executive functions but also judicial function. It can be seen that, exercise of discretionary power was more arbitrary during Germany rule than how it was during British rule. However, it can also be appreciated that, the position of a DC was considered as a position of intellectual persons with high profiled education.

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Native authorities were created by the Native Authority Ordinance Cap.72 to enhance the representative form of Administration introduced by the British.

<sup>27</sup> The local government system in Tanganyika was the same as the British System as the Local Government Ordinance Cap.333 and the Municipalities Ordinance Cap.105 which operated in Tanganyika was a replica of the British local government system.

<sup>28</sup> G.F.A. Sawyer(ed) (1967) "East African Law and Social Change" Nairobi: East African Publishing House, p.17.

### 3.2. Post-independence Era (1961-1980)

The post-independence local government administration in Tanzania was headed mainly by two administrative positions: A Regional Commissioner (R.C) at the regional level and an Area Commissioner (A.C) at the district level. Both of them were appointed by the President.<sup>29</sup> The powers of RC's and AC's were provided in the Regions and Regional Commissioners Act of 1962, Cap 461 and the Regional and Area Commissioners (Amendment) Act of 1963, (Act No.49 OF 1963). The Acts gave discretionary power to the RC or AC to arrest or order a police officer verbally or in writing to arrest any person who in the opinion of the RC is likely to commit a breach of peace or disturb the public tranquillity when such breach cannot be prevented otherwise than by detaining such person in custody.<sup>30</sup>

The RC had certain restricted police powers and these included the right to enter and search council premises in order to root out corruption, but otherwise he had little formal power over the council.<sup>31</sup> Penner explained the position of an Area Commissioner during this period as a position where a person is likely to abuse his power. He said that:

The Area Commissioner's post has raised many problems in the past. Since he has considerable prestige but few clearly defined duties other than those involving persuasion, it is a position requiring

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<sup>29</sup> R.G. Penner, (1970) "Financing Local Government in Tanzania" Dar es Salaam: English Press Ltd, p.9.

<sup>30</sup> Section 7 of the Regions and Regional Commissioners Act of 1962 as amended by the 1963 Regional and Area Commissioners Act (Amendment) Act.

<sup>31</sup> *Ibid.*

a high degree of diplomatic skill and leadership qualities. Few men possess the talents necessary for this difficult task, and as a result there is a danger that, Area Commissioner can create ill will by overstepping their powers. It is also a post which is susceptible to corruption.<sup>32</sup>

He then concluded that, the AC's main function is to act as the President's representative at the local level, explaining central government policy to the people, hearing their complaints, and attempting to persuade them to adopt modern farming techniques and cattle dipping.

As it appears above, soon after independence, the government made certain changes in the law governing local government administration in the then Tanganyika. In particular in 1963, the office of the chiefs was abolished and with it went the Native Authority Act. Therefore, the chiefs ceased to represent people in the district councils. The country underwent some administrative and geographical reorganization. It was divided into regions, districts, divisions and wards. The district councils were designated as the local governments. Councilors of the district councils were to be elected from every ward.<sup>33</sup>

From 1972 to 1980 the Mackinsey recommendations<sup>34</sup> "madaraka mikoani" of July 1972, led to the period without local government in Tanzania. This was caused by the fact that, apparently Tanzania needed rapid socio-economic development in the rural areas and in the entire country at large. Such desired development could not

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<sup>32</sup> *Ibid.*

<sup>33</sup> M.M.D. Warioba, (1999) *LOC.Cit*, p.35.

<sup>34</sup> The government of Tanzania consulted an American Consultancy firm, McKinsey & Co. Inc to undertake a detailed research of the Tanzanian administrative system and give recommendations.

take place within the existing structures and in particular so within the planning mechanisms embedded in such structures.<sup>35</sup> The firm finally recommended that regions and districts should plan and implement local development activities as well as administer local affairs with the very minimum interference from Dar es Salaam. In our view, this was the beginning of the mentality among the DC's and RC's as having wider discretionary powers.

### **3.3. Current Tanzania (from 1980s up to date)**

The current legal framework governing the exercise of discretionary powers by DC's in Tanzania is led at the top by the Constitution of the United Republic of Tanzania, 1977 Cap.2 R.E. 2002 as amended from time to time. The Constitution provides for the local limits within which the DC's shall exercise their powers but also some principles on natural justice which may also be applicable to the DC's. Art. 8(1) (a) of the constitution provides that, sovereignty resides in the people. The provision provides also for people's participation in the affairs of their Government.<sup>36</sup> It can therefore correctly be said that, the government in Tanzania established local governments the aim being to vest power to the people and in so doing be part of the central Government within the spirit of Art.8 of the Constitution. Art.145 of the Constitution provides that there shall be established local government authorities in each region, district; urban area and village in the United Republic. The Constitution makes it clear that the purpose of having local government authorities is to transfer authority to the people.<sup>37</sup>

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<sup>35</sup> M.M.D. Warioba, (1999) *OP.Cit*, p.43.

<sup>36</sup> Constitution of the United Republic of Tanzania, 1977 [Cap. 2, R.E 2002], Art. 8(1) (d).

<sup>37</sup> *Ibid*, Art. 146.

The Constitution directs that, 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.<sup>38</sup> In order to comply with such direction of the Constitution, in 1982 there were enacted three main legislation for the establishment of local governments and other related matters. These laws are; The Local Government (District Authorities) Act, Cap.287 R.E. 2002, The Local Government (Urban Authorities) Act, Cap.288 R.E. 2002 and The Local Government Finances Act, Act. No.9. These laws generally, provide for the establishment of local government authorities, their structure and composition, sources of revenue and procedure for the conduct of their business. In 1994, the Regions and Districts (Establishment Procedure) Act, 1994 (Act No. 12 of 1994) was enacted to provide for the procedures in dividing Tanzania into regions and districts.

In 1997, the Regional Administration Act No. 19/1997 was enacted. This Act aims at making provisions for restructuring Regional Administration for the purposes of strengthening and promoting the local government system.<sup>39</sup> The Act applies in every area of Mainland Tanzania.<sup>40</sup> It is this law which expressly gives power to the DC to order arrest of any person who commits a crime in his presence or who in his opinion commits an act which breaches peace or breaches public tranquillity.<sup>41</sup> Other laws and regulations which may also generally be related to the working of the DC's as will be explained in the next section are The Public

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<sup>38</sup> *Ibid*, Art.145 (2).

<sup>39</sup> As provided by the long title of the Act (Act No. 19/1997).

<sup>40</sup> S.2 of the Act (Act No. 19/1997).

<sup>41</sup> S.15 of the Act (Act No.19/1997).

Service Act No. 8/2002<sup>42</sup>, The Public Servants Circular, No.1 of 1999, Standing Orders for the Public Service 2009 made pursuant to S. 35 (5) of the Public Service Act No.8 of 2002, Cap.298, The Penal Code Cap 16 R.E. 2002 and the Criminal Procedure Act, Cap. 20 R.E. 2002.

#### **4. ANALYSIS OF THE EXISTING LAWS RELATING TO THE EXERCISE OF DISCRETIONARY POWER BY DISTRICT COMMISSIONERS IN TANZANIA**

The above laws are still operational in Tanzania and will help in determining nature, extent and scope of the discretionary power granted to the DC's. This section analyses the existing laws in Tanzania with the aim of exposing out the nature, extent and scope of discretionary power they grant to the DC's. This will include also the review on their effectiveness towards controlling the abuse of such discretionary powers by the DC's.

##### **4.1 The Constitution of the United Republic of Tanzania, 1977 [Cap. 2, R.E 2002]**

The Constitution provides for the establishment and functions of local government authorities under Art.145. It also provides for the functions of local government authorities under Art. 146. The review of the constitution in relation to the exercise of discretionary powers by DC's in Tanzania will base on the principle of natural justice as provided for in the constitution. This serves a purpose of determining to what extent that principle is complied with. It should be noted that, the principle of natural justice is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question

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<sup>42</sup> [Cap.298, R.E 2002].

unless the principle has been excluded by the law itself as it was held in *Delhi Transport Corporation v. DTC Mazdoor Union*.<sup>43</sup> An order depriving a person of his civil right passed without affording him an opportunity of being heard violates principles of natural justice as it was held in *Maneka Gandhi v. Union of India SC*.<sup>44</sup> The main principle of natural justice is rule against bias (*nemo iudex in causa sua*) and the right to be heard (*audi alteram partem*) violation of which no action by any administrative body can be justifiable.<sup>45</sup> The Constitution provides for equal protection before the law under Art.13 (1) and it further provides for right to a fair hearing<sup>46</sup> and being treated innocent unless proved guilty of an offence. The question to be asked is do the DC's afford the victims of their arrest a right to be heard? The answer to this question will be given later. Also, the Constitution provides that, for the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of sentence.<sup>47</sup> The relevance of this provision to the exercise of discretionary powers by DC's is that, when arresting or ordering arrest of any person they are supposed to respect his dignity.

#### **4.2. The Regional Administration Act No. 19/1997**

This is the main legislation by the parliament which is relied upon by DC's in arresting or ordering arrest of persons. The Act

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<sup>43</sup> 1991 AIR 101, 1990 SCR Sup. (1) 142.

<sup>44</sup> AIR 1978 SC 597.

<sup>45</sup> *Said Juma Muslim Shekimweri v. Attorney General*, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 3 of 1996 (Unreported), Samatta, J.K. 475.

<sup>46</sup> Constitution of the United Republic of Tanzania, 1977 [Cap. 2, R.E 2002], Art.13 (6) (a) and (b).

<sup>47</sup> Art.13 (6) (d).

provides that the DC shall act as a principal representative of the Government within the District for which he is appointed.<sup>48</sup> The Act further provides that, the DC shall be responsible for securing the maintenance of law and order in the district.<sup>49</sup> With respect to power to arrest, the Act provides that, the DC shall have power to order or cause to be arrested any person who in his presence commits or to his knowledge has committed, any offence for which a person may be arrested and tried.<sup>50</sup> The Act goes further by giving discretionary power to the DC to order a police officer verbally or in writing to arrest any person who the DC has reason to believe that such person is likely to commit a breach of peace or disturb the public tranquillity, or to do any act that may probably occasion to a breach of the peace or disturb the public tranquillity and that breach cannot be prevented in any way other than by detaining that person in custody.

From the above provisions of the Act, firstly, the DC has got no power to arrest by himself using his own hands. Secondly, the DC will only order arrest of a person when such person has committed an offence in his presence or to his knowledge has committed any offence for which a person may be arrested and tried. Thirdly, the DC may also order arrest of any person who is likely to commit a breach of the peace or disturb the public tranquillity. Fourthly, the DC can only order arrest of a person who is likely to commit a breach of peace when that breach cannot be prevented in any way other than by detaining that person in custody. Fifthly, the DC's order to arrest a person is not only confined to actual breach of peace or actual disturbance of public tranquillity but also to any act which *may probably* (emphasis ours) occasion a breach of the

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<sup>48</sup> S.14(1) of Act No.19/1997.

<sup>49</sup> S.14 (2) of Act No. 19/1997.

<sup>50</sup> S.15 (1) of Act No. 19/1997.



peace or disturb public tranquillity. Sixthly, the Act does not expressly state what are the acts which breach peace or disturb public tranquillity, it therefore leaves that matter within the reasoning of the DC.

The Act also provides for other matters relating to the arrest of a person. Those matters are such as the requirement to take the person before a magistrate empowered to deal with the case by the law, as soon as practicable within not more than forty-eight hours after he is taken into custody, otherwise be restored to freedom and never be arrested again for the same cause.<sup>51</sup> Another requirement is that, the DC after he orders or causes a person to be arrested shall at the time of making the arrest or as soon as possible after giving the order, record in writing his reasons for arresting or ordering the arrest of the person concerned.<sup>52</sup> The Act also provides that such record shall be delivered to the magistrate when the arrested person is brought before the magistrate and that, the person shall be entitled to bail pending inquiry prescribed under the Criminal Procedure Act.<sup>53</sup> The Act also provides for other important matters to be noted with emphasis that, when a DC exercises the power conferred on him by this section in abuse of the authority of his office, then he, as well as any other person involved in procuring the DC to exercise the power in abuse of authority, is guilty of an offence under section 96 of the Penal Code, cap.16. The question whether or not this Act is complied with by the DC's when exercising their discretionary power shall be seen later.

This therefore means that, a DC is a public servant within the spirit of this Act and is therefore bound by Ethics and Code of Conduct

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<sup>51</sup> S.15 (3) & (4) of Act No. 19/1997.

<sup>52</sup> S. 15(5) of Act No. 19/1997.

<sup>53</sup> S.15 (5) & (7) of Act No.19/1997.

of public servants. The DC when exercising his powers is therefore obliged to comply with ethical rules such as *respecting all human rights and being courteous* (emphasis ours), performing diligently and in a disciplined manner, promote transparency and accountability, discharging duties with integrity and *maintaining political neutrality* (emphasis ours). These ethical rules are included in the Code of Ethics and Conduct for the Public Service in Tanzania.<sup>54</sup>

### **4.3. The Criminal Procedure Act, Cap. 20**

This Act provides for the procedures to be followed in the investigation of crime and the conduct of criminal trials and for other related purposes. It is undoubted that, during investigation of crime, there may be arrest of people. That is the essence why the Act under sections 11-33 provides for arrests and warrant of arrest. It is therefore the fact that, when the DC orders or causes arrest of any person, such arrest must comply with the arresting procedures as provided in this Act.

The Act provides that, the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.<sup>55</sup> The Act provides further that, a police officer or other person shall not, in the course of arresting a person, use more force or subject the person to greater indignity than is necessary to make the arrest or to prevent the escape of the person after he has been arrested.<sup>56</sup> The Act also provides that a person arrested shall have the right to be informed of the ground of arrest.<sup>57</sup>

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<sup>54</sup> Rule I of the Code.

<sup>55</sup> S.12 of Cap.20.

<sup>56</sup> S.21 (1) of Cap.20.

<sup>57</sup> S.23 of Cap.20.

The DCs are therefore under obligation to ensure that, any arrest which is effected under their order or capacity is done in compliance with the provisions of this Act.

#### **4.4. The Penal Code Cap.16**

This act provides for what conducts are crimes and what is their punishment. The relevance of this Act with respect to the exercise of discretionary powers by DC's in Tanzania is its provision under S.96. This section makes any person who being employed in the public service guilty of a misdemeanour, if he does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another. This section should be read together with section 15(9) of the Regional Administration Act No. 19/1997 which makes a DC guilty under section 96 of the Penal Code if he abuses his office while exercising his discretionary power of arrest or causing arrest of a person.

It should be noted that, the punishment of the offence under S.96 of the penal code, it being a misdemeanour is imprisonment for a term not exceeding two years or with a fine or with both.<sup>58</sup> Therefore the Penal Code acts as an alert to the DC's to be aware of the danger they are at, in case they abuse their office while exercising their discretionary power.<sup>59</sup>

### **5. DCS EXERCISE OF POWER TO ARREST: HIGHLIGHT OF PRACTICAL EXAMPLES**

This part highlights some incidences in which DCs from different districts in Tanzania mainland were reported by different sources to have ordered arrest of various individuals. On each incidence

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<sup>58</sup> S.35 of Cap.16.

<sup>59</sup> S. 15 of Act No. 19 of 1997.

the authors give their interpretations of the incidences with regard to whether the orders were lawful or otherwise. The incidences are highlighted as follows;

- In February 2017, it was reported that the District Commissioner of Mwanga in Kilimanjaro region ordered the arrest of three officials of Mwanga District Council. The officers were to be detained for not more than 48 hours on allegations of not doing their jobs properly.<sup>60</sup> The questions arise: is it not that poor performance of public servants is regulated by the Public Service Act and the Employment and Labour Relations Act? It is clear that, DCs are not recognized by law to interfere with public service employees' poor performance: Can it be wrong to conclude that the DC in this incidence exceeded his power?
  
- In September 2018, Advocate Patricia Eric was arrested following the order of the District Commissioner for Hai, allegedly because of executing her legal work that is to represent the interests of her client who was arrested allegedly because of tax evasion. She then wrote an appeal letter to the Regional Commissioner for Kilimanjaro asking her to take measures against the DC of Hai, Lengai Ole Sabaya who was behind the orders of arrest. She was then arrested and stayed in Police custody for some time before she was released on bail.<sup>61</sup> Again this incidence raises some doubts. Ethical issues for advocates are to be dealt with primarily under the Advocates Act and the Advocates

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<sup>60</sup> *Bi-Annual Tanzania Human Rights Report*, (2017), p.47 accessed on Monday 9/9/2019 at 11:00 am at <https://www.humanrights.or.tz/>.

<sup>61</sup> Tanzania Human Rights Defenders Coalition, *Report on the Situation of Human Rights Defenders and Civic Space in Tanzania*, (2018), p.25 accessed on Monday 9/9/2019 at 12:20 pm through <https://www.thrhc.cr.tz/>.

(Professional Conduct and Etiquette) Regulations, 2018. This being the position, it is no doubt that the DC exceeded his power.

- In Nkasi District, it was reported that the Nkasi DC, Hon. Said Mtanda ordered the arrest and a 12-hours detention of three public servants for delaying at an important function in Myula Ward. This incident was reported in the Habari Leo Newspaper of 20<sup>th</sup> October 2018 with the heading “*DC awasweka ndani watendaji kwa kuchelewa ‘Songambele.’*”<sup>62</sup> Even if it is proved that such a delay could disturb public tranquillity, the question that needs elaborative answer is was there no any other alternative of dealing with such a situation than putting those public servants in custody? Public apology to the meeting audience could be a reasonable resort. It is very hard to find proportionality between putting those public servants in custody and their delay to the meeting.
- On 21st November, 2015, the District Commissioner of Kinondoni District was reported to have ordered the arrests and detention of six land officials for six hours for coming late to a meeting called for resolving some land disputes in the district.<sup>63</sup> The same questions as raised in the preceding scenario can similarly be posed under this scenario.
- On 15th May, 2016, the Nipashe newspaper reported that the District Commissioner of Tandahimba District ordered the police to arrest 37 leaders of 16 primary co-operative

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<sup>62</sup> Ibid, p.55.

<sup>63</sup> Athuman Mtulya, “DC Orders Officers Locked Up for 6 Hours”, The Citizen, 26<sup>th</sup> December, 2015.

societies in his district and charge them before a court of law with the “offence” of failing to pay cashew nuts farmers their third instalments of payment. It being related to bonafide claim of rights by farmers; and it being directed for prompt charges before court of law: this order can be interpreted as it was within the discretionary power granted to DCs by law.

- On 2<sup>nd</sup> March, 2017, according to the account which was published in Tanzania Daima newspaper two days later, the District Commissioner of Nyamagana District ordered the police to arrest and detain ten district officials for failing to acquire e-mail addresses, omissions which he said contravened his directive. The order was carried out promptly. This was performance related accusation which ought to be dealt with using labour laws relevant to public servants.
- According to a story published in the 5<sup>th</sup> March, 2017 issue of the Mwananchi newspaper, the District Commissioner of Kilwa District ordered the police to arrest and detain the Medical Officer in-charge of the District for not responding speedily to a request for a motor vehicle to convey a very sick person to a hospital. According to the story, the police obeyed the order. Again, even if it was reasonably established that such omission was likely to disturb public tranquillity, putting the Medical Officer in-Charge in custody unheard marked an unjustifiable violation of the latter’s right to freedom of movement and right to be heard.
- The Mwananchi newspaper of 11<sup>th</sup> August, 2017, reported that on the previous day the District Commissioner of Mwanga District in Kilimanjaro Region, had ordered the

Police to arrest the District Secretary, the top civil servant in the District, for not involving him in decision-making in financial matters. The order was speedily carried out. About four and half hours later the officer is said to have regained his personal freedom. Again this was a work related omission ought to be dealt with using relevant laws to which the DC's order for arrest falls outside the proper avenues.

- On 20<sup>th</sup> August, 2017, according to what was reported in the 22<sup>nd</sup> August, 2017, edition of Mwananchi Newspaper, the District Commissioner of the Hai District, Kilimanjaro Region, ordered the arrest of a Secondary School teacher who was “unable” to answer satisfactorily his question about the 2015 academic performance of his school. According to the story, immediately before this happened, the school teacher and his colleagues were asked by the District ruler to mention his (District Commissioner's) name. The teachers were reported to have made no response to the “order.” The teacher was also called upon to point out the difference between CUF – one of the political parties in the country, and CAF – the Confederation of African Football but he could not.<sup>64</sup> It is very inflexible to deny that this incidence was humiliating eroding one's dignity.
- According to the Citizen Newspaper of Thursday January 25 2018, DC of Mbulu District ordered arrest of a resident for allegedly slandering the President.<sup>65</sup> It was reported in this Newspaper that, the DC, Mr. Chelestino Mofuga directed the Officer Commanding District (OCD) to arrest and remand

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<sup>64</sup> Nipashe newspaper of 24<sup>th</sup> August 2017, p.6 reported on the incident of a teacher being humiliated by a District Commissioner before his own pupils in a captured cartoon.

<sup>65</sup> Joseph Lyimo “DC orders arrest of resident for allegedly slandering president”, The Citizen, Thursday January 25<sup>th</sup>, 2018.

Mr. Eliud Petro aged 50 for 48 hours for allegedly ridiculing the President. The DC also directed that, afterwards, such arrested person should be taken to court to hear charges. In principle and facts, the order was well within the discretionary powers granted to DCs since the slandering sought to disturb public tranquilities through ridiculing the President.

- A resident of Paranga Village in Chemba District, one Chindikwa Pingwa, had strokes of the cane administered on him by the District Commissioner of Chemba District because his child is alleged to have been one of the children who had thrown stones at the DC's vehicle as it crossed the village and in the process damaged its windscreen.<sup>66</sup> Having chased the three children involved in the throwing of stones at his vehicle and after obtaining information on the personal particulars of the parents of the children, the District Commissioner and his entourage drove to the home of that parent – Mr Pingwa. He interrogated him on the misconduct of his child which he attributed to his failure to upbringing him properly. The parent protested – *Malezi! Malezi gani unataka kwangu? Mtoto ametoka kwenda Shule, mimi nitajuaje anafanya nini mtaani? Mimi najua mtoto yupo shule, sijui kama amevunja kioo* [Upbringing! What kind of upbringing do you expect from me? The child left for school, how can I know what he did on the way? I know that he is at school; I do not know that he has broken a windscreen].

The District Commissioner was infuriated by this answer. He picked a knobkerrie and hit him several times with it. The Villager

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<sup>66</sup> Renatha Msungu, "DC aliyemjeruhi mzazi kwa kipigo alipa mbuzi aachiwe", Nipashe newspaper of 23<sup>rd</sup> August 2017, pp.1 & 2.



continued to protest and plead for justice: *“Aliyevunja Kioo ni mtoto ... chukueni hatua yoyote haki yangu nitaipata”* [The one who broke the windscreen is a child ... take any steps, I will get justice I deserve].

If he believed that he had successfully defended himself, he was in for a shock. He was immediately handcuffed and conveyed to a Police Station. He had several injuries on his head and his arm was swollen. The matter was reported to the Dodoma Regional Police Commander who ordered his release and was taken to hospital where he received 9 stiches. The Chair of Morongia area in which Paranga Village is situated, Mr Marius Roman, protested vigorously, urging the District Commissioner to apologise as he had no valid reasons to attack the villager. It is clear from this scenario that, the public was against the act that was undertaken by the DC and therefore there was no likelihood of disturbing public tranquillity by the replies of the villager. On this basis it may be valid to conclude that, the DC exceeded his powers.

From the above highlighted incidences, it may be well found that, in assessing whether the order for arrest by the DC is for protecting public tranquillity, there is no ‘one size that fits all’. It all depends with the facts of each case. This is because the law does not define what amounts to public tranquillity.

## **6. THE EXERCISE OF DISCRETIONARY POWER: HUMAN RIGHTS PERSPECTIVE**

Where discretion is absolute, man has always suffered ... absolute discretion is more destructive of freedom than any of

man's other inventions and also absolute discretion, like corruption marks the end of liberty<sup>67</sup> Justice Douglas (1951)

As the above statement expresses itself, it is obvious that, abuse of discretionary powers causes violation of human rights. This Part aims at showing which human rights are at risk of being violated as a result of abuse of discretionary power. This will also manifest the essence of DC's exercising properly their discretionary power. The Part shows what human rights are guaranteed by the Constitution of the United Republic which are likely to be violated by the exercise of discretionary power, but also the rights protected by international human rights instruments to which Tanzania is party. The United Republic of Tanzania is a member of the United Nations and the African Union. It has ratified various UN Human Rights Conventions and thus has made binding international commitments to adhere to the standards laid down in these universal human rights instruments. The human rights which are at stake may be explained from the following human rights instruments:

### **6.1. Rights Enshrined in the constitution of the United Republic of Tanzania, 1977**

The constitution of the United Republic of Tanzania protects the following human rights which may be violated if discretionary power granted to the DC's is improperly exercised.

*Firstly*, the constitution provides for the right to recognition and respect for human dignity since all human beings are born free and are all equal.<sup>68</sup> Generally, human dignity means an individual

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<sup>67</sup> *United States v. Wunderlich* (342 U.S.8)

<sup>68</sup> Art.13 of the 1977 Constitution.

or group's sense of self-respect and self-worth, physical and psychological integrity and empowerment.<sup>69</sup> Therefore there should be no arbitrary order of arrest by the DC to any person bearing in mind that, such arrest will be against human dignity. In most cases the persons who are arrested by the DC's are also government officials whose arrest may bring bad reputation in their surrounding society.

*Secondly*, the constitution provides that, no person shall be subjected to torture or inhuman or degrading punishment or treatment.<sup>70</sup> As it was shown earlier that, persons who are victims of the DC's exercise of discretionary powers are government officials whose arrest may be witnessed by the persons whom they lead, any arbitrary arrest may therefore amount to inhuman treatment. In *Ribitsch v. Austria*, the European Court on Human Rights held that, when a person is deprived of their liberty, any recourse to physical force that is not strict necessary amounts to inhuman treatment.<sup>71</sup>

*Thirdly*, the constitution prohibits arrest, imprisonment, confinement, detainment, deportation or any deprivation of liberty, save only under circumstances and in accordance with procedures prescribed by law.<sup>72</sup> In relation to this the constitution provides for freedom of movement.<sup>73</sup> Since arbitrary arrest leads to obscuring of one's freedom of movement, the constitution directs therefore proper exercise of discretionary power by DC's. The arrest effected out of the DC's order, should be in accordance with procedures prescribed by law.

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<sup>69</sup> Duhaime's Law Disctionary

<sup>70</sup> Art.13(6) (e).

<sup>71</sup> Application No. 18896/91, judgment on 4<sup>th</sup> December 1995.

<sup>72</sup> Art.15(2) of the Constitution.

<sup>73</sup> Art.17 of the Constitution.

Precisely, the Constitution of the United Republic of Tanzania incorporated the rights provided in the Universal Declaration of Human Rights<sup>74</sup> through the 1984 Bill of rights and are the ones which the DC's are to respect while exercising their discretionary powers.

## **6.2. Rights Enshrined in Selected International Human Rights Legal Instruments**

Here, the relevant International legal instruments which shall be analyzed and which Tanzania is party are the International Covenant on Civil and Political Rights, 1966 (ICCPR), The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and the African Charter on Human and Peoples' Rights, 1981 (ACHPR).

### *6.2.1 The International Convention on Civil and Political Rights, (ICCPR) of 1966*

Tanzania committed itself to this instrument on 11 June, 1976 by accession. From this Covenant, the following human rights can be illustrated in relation to the exercise of discretionary powers by DC's.

Firstly, this instrument provides that any person whose rights or freedom are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.<sup>75</sup> This can be read together with S.15 (9) of the Regional Administration Act No. 19/1997 and S.96 of the

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<sup>74</sup> This declaration was adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris.

<sup>75</sup> Art. 2(3) of the ICCPR.

Penal Code, Cap.16 which make it an offence for a DC to abuse his office while exercising his discretionary power of arrest.

Secondly, the instrument under Art.9 also provides that no one shall be subjected to arbitrary arrest or detention. According to the provision, arrest will be arbitrary if it is not in accordance with such procedure as are established by law. The provision goes further to say that, a person arrested shall be entitled to be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him. This may be read in line with S.23 of the Criminal Procedure Act, Cap. 20.

Thirdly, the instrument also provides for right to be treated with humanity when deprived of liberty and with respect for the inherent dignity of the human person.<sup>76</sup> In *Amnesty International and Others v. Sudan*, it was observed that, holding an individual without permitting him or her to have any contact with his or her family and refusing to inform the family whether the individual is being held and his or her whereabouts is an inhuman treatment of both the detainee and the family concerned.<sup>77</sup>

The DC's therefore, when exercising the discretionary powers should bear in mind the above provisions within the ICCPR.

#### *6.2.2. The International Convention on Economic, Social and Cultural Rights (ICESCR), 1966*

This covenant was brought into being pursuant to the United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966.

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<sup>76</sup> Art. 10 of the ICCPR.

<sup>77</sup> (1999) ACiHPR at para. 54.

Tanzania, just like with regard to the ICCPR, became party to the ICESCR on 11 June, 1976 by accession. This instrument has also to be taken into account by the DC's when exercising their discretionary powers.

The instrument recognizes the right of everyone to the enjoyment of the highest standard of physical and mental health.<sup>78</sup> Regard should therefore be taken by DC's when ordering or causing arrest of a person to the effect of that act to the mental or physical health of the victim.

### *6.2.3. The African Charter on Human and People's Rights (ACHPR), 1981*

This instrument was brought into being following the Decision 115 (XVI) of the Assembly of Heads of State and Government at its 16<sup>th</sup> Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter on Human and Peoples' Rights, providing inter alia for the establishment of bodies to promote and protect human and peoples' rights.

Tanzania signed this instrument on 31 May 1982 and it ratified it on 18 February 1984. From this instrument, the following provisions may be relevant with regard to the exercise of discretionary powers by DC's.

Firstly, it provides that, every individual shall be entitled to equal protection of the law and that all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be

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<sup>78</sup> Art.12(1) of the ICESCR.

prohibited.<sup>79</sup> That is to say, when the arrest by the DC is arbitrary, the victim shall be equally protected before the law and that, even where the arrest is not arbitrary, still the arrested person should be treated humanely. In *Krnojelac case*<sup>80</sup> the accused person's act of locking detainees in their cells except when taken to eat in an overcrowded cell was held to be inhumane.

Secondly, the instrument provides that, every individual shall have the right to liberty and to the security of person.<sup>81</sup> The provision goes further to provide that, no one may be deprived of his freedom except for reasons and conditions previously laid down by law. In *Krishna Achutan v. Malawi*, the African Court on Human and Peoples' Rights held that, detention of a political figure at the pleasure of the Head of State without charge or trial, was arbitrary and violated the right to liberty and security of person as it is provided by Article 6 of the ACHPR.<sup>82</sup>

Thirdly, the instrument provides for the right to be heard and being presumed innocent until proved guilty within reasonable time by a competent and impartial court or tribunal.<sup>83</sup> The DC should therefore comply with this provision when exercising his or her discretionary powers granted by law.

Precisely, in order for the exercise of discretionary power by the DC's especially with respect to order or cause to arrest to be within the spirit of human rights, such arrest should take into account the following; right to liberty and security of person and to freedom of movement, prohibition of arbitrary arrest and detention,

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<sup>79</sup> Arts. 3 and 5 of the ACHPR respectively.

<sup>80</sup> (ICTY) 1997, para 5.32.

<sup>81</sup> Art.6 of the ACHPR.

<sup>82</sup> 1994 Judgment, Communication No.68/92 by the African Court on Human and Peoples' Rights.

<sup>83</sup> Art.7 of the ACHPR.

right to be informed of the reason for arrest, right to be informed of any charge, right to be brought before a judicial officer, right to trial or release, right to prompt access to a lawyer, right not to confess or testify against oneself, right to prompt notification of family and when necessary, language assistance has to be provided.<sup>84</sup>

## 7. CONCLUSION AND RECOMMENDATIONS

Discretion cannot be eliminated completely from the hands of the executive and similarly neither can unfettered discretion be granted” in *Padfield v. Minister of Agriculture, Fisheries and Food*.<sup>85</sup>

It is also true that, although discretionary powers are sometimes abused and infringe human rights, but are not devoid of any significance. They still possess some values. Discretionary power should not be restrained to be exercised by a competent authority unless it is exercised with intentional mistake, without jurisdiction or with manifest *malafide*.<sup>86</sup> That being the fact, the authors of this article put forward the following recommendations:

### 7.1. Amendment of the Existing Laws Granting Discretionary Power

S.15(2) of the Regional Administration Act No. 19/1997 for example gives discretionary power to the DC to order arrest when the act committed is likely cause breach of peace or disturb public tranquillity. However, there is nowhere in the Act the meaning of

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<sup>84</sup> Ibid.

<sup>85</sup> (1968) AC 997, 1 All ER 694.

<sup>86</sup> See *Ottu Union and Another v. Hon. Iddi Simba, Minister of Industries and Trade and 7 Others*, High Court (Katiti, J.), May 25, 2000 Miscellaneous Civil Cause No. 100 of 1999.



acts amounting to breach of peace or disturbing public tranquillity has been explained. The provision should therefore be amended.

## **7.2. Training before Being Appointed to the Post**

During British rule, a person before being a DC, on acceptance into the service he was appointed to a particular colony with the rank of cadet, and would normally be posted to a District for training and experience.<sup>87</sup> He served a probationary period of two years and, if he was regarded as satisfactory, would be confirmed in his appointment and promoted to the rank of Assistant District Officer. He was then supposed to serve for period of eight years then he would now become a DC.

This is not a practice in Tanzania. A person is just appointed by the President upon the reasons and qualifications the President will deem fit. Since a DC post is a crucial position, training must be provided to a person before starting to serve such post in order to avoid unnecessary abuse of discretionary power.

## **7.3. Taking Practical Actions against DC's when they Abuse their Office**

S.15(9) of the Act No. 19/1997 makes it an offence for a DC to abuse his office while exercising discretionary power granted to him. The Penal Code, Cap.16 also under S.96 makes it misdemeanour for any person holding an office to abuse it. These provisions of laws should be enforced and put into practice against the DC's instead of just remaining in papers, and just warn them. This will help to control the DC's abuse of discretionary powers. There are reported situations whereby mere warnings as

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<sup>87</sup> Lumley, E.K. (1976) *Op.Cit* at p.9.

opposed to penal measures were given against the DC's and RC's who misused the discretionary powers to arrest and detain:

- In August 2018, the Deputy Minister of State in the President's Office, Regional Administration and Local Government, Dr. Zainabu Chaulla made remarks while opening a training workshop for DC's and District Executive Directors (DED's) in Dodoma, against the habit of some DC's of ordering arbitrary arrests and detention of government officials and public servants. This was reported in the HabariLeo Newspaper of 9<sup>th</sup> October 2018 that "*Ma-DC waonywa utupaji watendaji ndani saa 48.*"<sup>88</sup>
- In October 2018, it was reported in The Citizen Newspaper<sup>89</sup> that the Minister of State in the President's Office, Regional Administration and Local Government, Mr. Selemani Jafo told doctors during the 50<sup>th</sup> National Health Conference in Dodoma that his office would write to all leaders at regional and district levels insisting them to apply the existing procedures in taking disciplinary measures against medical practitioners instead of just punishing them publicly. This move came about after the Medical Association of Tanzania (MAT) decried the decision by Iringa RC, Ally Hapi to publicly suspend a medical doctor manning Kitucha Health Centre, Dr. Andrew Kitwanga, without a hearing.
- In March 2017, the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Umyy Mwalimu warned against RC's and DC's ordering arrest of

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<sup>88</sup> *Tanzania Human Rights Report, 2018*, p.55.

<sup>89</sup> The Citizen, Friday October 26, 2018 by Syriacus Buguzi that "*Minister Orders RC's, DC's to stop detaining doctors without hearing.*"

health workers without good cause and following legal procedures.<sup>90</sup>

- In June 2017, the Minister of State in the President's Office, Regional Administration and Local Government, Hon. George Simbachawene warned against abuse of detention powers by RC's and DC's.<sup>91</sup>

In addition to this, the Commission for Human Rights and Good Governance should be empowered with power to review and recommend appropriate measures whenever the discretionary power is abused by the DC's.

#### **7.4. DC's should not be appointed by the President**

S.13 (2) of the Regional Administration Act No. 19/1997 provides that, every DC shall be appointed by the President. This should be amended because it creates inherent bias to the DC to further interest of the political party in power in which the President is a member.

In an alternative, DC's should be enrolled under normal procedures of employment through making applications and job interview subject to prescribed qualifications and requirements.

#### **7.5. Administrative Punishments Instead of Arrest and Detention**

Pasience Mlowe, a program officer at the LHRC viewed that, when a government official commits a purely work-related omission like coming late to a meeting, administrative punishments should be

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<sup>90</sup> *Bi-Annual Tanzania Human Rights Report*, (2017) at p.47 accessed on Monday 9/9/2019 at 11:10 am through <https://www.humanrights.or.tz/>.

<sup>91</sup> *Ibid*, p.47.

imposed and not arresting and detaining them like criminals.<sup>92</sup> This will ensure respect to the human dignity right. This is true since even the law provides that, the DC's shall exercise his power to arrest when it is proved that the act committed cannot be dealt with by other means other than detention.<sup>93</sup>

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<sup>92</sup> An Interview with Pasience Mlowe, Program Officer at the Legal and Human Rights Centre (LHRC), conducted on August 17<sup>th</sup> 2016 at the LHRC Office-Dar es salaam.

<sup>93</sup> S.15(2) of Act No.19/1997.