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LEGAL SECTOR REFORM IN ZANZIBAR: A CONCEPT NOTE

BACKGROUND

Zanzibar legal system has a very rich history which dates back over a 150 years. When the Sultan of Oman adopted Zanzibar as the centre of his empire in 1830's he did not established any formal legal system in Zanzibar. This situation prompted foreign nations which had commercial or other sovereign interest in Zanzibar to enter into treaties with the Sultan which among other things granted those States extraterritorial legal and judicial jurisdiction in Zanzibar. These States included the United States (1833 Treaty), United Kingdom (1839 Treaty), France (1844 Treaty) etc. Eventually and owing to substantial sovereign interest, the United Kingdom was the only nation which fully exercised the extraterritorial jurisdiction. In 1861 they established a Consular court which had power to handle all cases, civil and criminal over all British subjects in the Sultan dominions of the East Africa. Through the treaty, the British crown had power to extend English laws to the British subjects. It was through this window that the British crown extended to Zanzibar a number of Indian laws, English laws, principles of common law and equity to Zanzibar. On the other hand the Sultan had powers to legislate for Sultan's subjects. In 1897, formal Sultan court system for his subjects was established. The courts were essentially applying Islamic law which was formally declared a fundamental law of Zanzibar. This system was famously referred as the dual legal system.

When the Sultan legal system and the British legal system were streamlined and assimilated in the 1920's, a unique legal system which was a blend of the British legal system and Islamic legal system grew. The court system was well developed and the legal profession in general had a number of eminent practitioners in the region. After the 1964 revolution, the framework which developed for over a hundred years was wholly dismantled and replaced by a new system which was perceived as relevant for the time in order to expedite social, economic and political reforms of the

revolution era. The capacity of the legal system suffered heavily in terms of infrastructure, operational capacity and institutional capacity.

The revolutionary legal system was abolished in 1985 and the existing system was established. However twenty years of stagnation of the sector is still vivid today. The first initiative to revive the system was made in 1994. The Bomani Task Force under the FILMUP project covered Zanzibar as well. The report identified a number of major weaknesses in the Zanzibar legal sector and recommended substantial changes. Among the recommendations of the report which were wholly implemented was the establishment of the Office of the DPP in Zanzibar.

Funding for the FILMUP Projects and Programs started in 1996. This was the year of donor stand off against the Zanzibar Government following the first multiparty elections. The opportunity to implement the legal sector reform in Zanzibar simultaneously with the Mainland Tanzania was lost owing to this unfortunate political circumstance. Ever since there has been no coordinated efforts to revive the legal sector in Zanzibar. The initiatives so far taken have been sporadic and fragmented.

SITUATION ANALYSIS

Under the United Republic of Tanzania constitution, administration of justice is not a union matter. As such, Zanzibar maintains a separate legal sector regime which is distinct from that of Mainland Tanzania though the two jurisdictions share some legal sector institutions, laws and even legal practice.

The legal sector in Zanzibar may be summarised as follows:

- ***Applicable Laws:*** The regime of Applicable Laws in Zanzibar is comprised of the received laws; (Indian legislation, English Statutes of general application, principles of common law and equity). These laws were extended to Zanzibar through successive Orders in Council. Most of this part of the regime can hardly be verified as the law revision and restatement of the applicable received laws has not been done since

1958. Another component of the applicable laws is the statutes passed by the Sultan countersigned by the British Resident, Statutes passed by the legislative council, Statutes passed by the Revolutionary Council from 1964 to 1980 and Statutes passed the House of Representatives from 1980 to date. Most of these statutes are supplemented by bulky subsidiary legislation.

- ***The Court System:*** The court system in Zanzibar is comprised of three main components; the ordinary courts which administer non-Islamic legal regime. This part of the court system is comprised of the Primary courts, District courts, Regional Magistrate Courts and the High Court. These courts administer all civil and criminal matters emanating from the applicable laws of Zanzibar except those emanating from the Islamic law. The second component is the Kadhis' courts. These are the courts which administer elements of Islamic personal law which is applicable as between Muslims in Zanzibar. There are District Kadhis' Courts and an appellate Chief Kadhi's Court. The supreme appellate court for matters arising from the Kadhis' courts is the High Court of Zanzibar which is constituted by a judge who sits with four Islamic scholars. The third component is the judicial tribunals. There are a number of judicial tribunals such as Rent Restriction Board, Land Tribunal, Industrial court, Liquor Licensing Board and Tax Appeals Board.
- ***The Legal Sector Institutions:*** There are a number of legal sector institutions in both public and private sector. Key among them are as follows:
 - **The Judiciary:** The judiciary in Zanzibar is the largest legal sector institution. It is headed by the Chief Justice assisted by the Registrar of the High Court as the Executive Officer. The service of the judicial staff is supervised by the Judicial Service Commission. For non-judicial staff the service is supervised by the Central Establishment.
 - **Attorney General's Office:** The main function of the Office is to serve as chief legal adviser to the Government. It is also responsible for legislative drafting and training through internship of the

new law graduates. The Office is headed by the Attorney General who is also an ex officio member of the House of Representatives and of the Zanzibar cabinet of Ministers.

- **Office of the Director of Public Prosecutions:** The Office is fairly new having been established under the Zanzibar Constitution in 2002 and started its operations in 2003. It has exclusive mandate to prosecute all criminal cases for offences committed in Zanzibar. The Office therefore conducts prosecution work in the High Court, Regional Magistrate Courts and District courts. The Office is so far the largest in terms of the number of qualified lawyers, having 27 lawyers.
- **The Law Review Commission:** The Commission though independent is part of the Attorney General's Office. Its main function is revision of the laws of Zanzibar either at the request of the Attorney General or on its own motion. The Commission is headed by a full time Chairman and Secretary to the Commission. There are also full time legal researchers. Part time Commissioners are appointed as part of the structure of the Commission.
- **Ministry of Constitutional Affairs and Good Governance:** The Ministry which was established in November, 2000 is responsible for coordination and policy direction of the legal sector. It represents all the key legal sector institutions in the House of Representatives and is responsible for legal sector policy advice to the government. Though the Ministry has no distinct legal sector policy unit, it has been coordinating policy matters through Department of Policy and Planning.
- **Registrar General's Office:** The Office was part of the Attorney General's Office until when it was made separate office in 1998. Its main function is civil and business registration; that is registration of birth and death, registration of titles, registration of business names, companies,

patents, trademarks, NGOs and administration of estates of non-Muslim.

- **Police:** Tanzania Police is a Union institution. However it operates in Zanzibar as a special Police zone. It enforces the laws of Zanzibar and the Union laws applicable to Zanzibar. The Police in Zanzibar is headed by the Commissioner of Police Zanzibar assisted by 5 Regional Police Commanders and 10 Officer in charge of Districts (OCDs). On the criminal investigation, the Deputy Director of Criminal Investigation is the head assisted by Regional Crime Officers. There is also Zanzibar Police College which is used to train Police from throughout Tanzania. The main function of the Police is crime prevention, criminal investigation, protection of public safety and road traffic management.
- **Zanzibar Food and Drugs Board:** The Board is a key law enforcement institution in the area of public safety and consumer protection. It is responsible for supervision of safety and standards of pharmaceuticals, food and cosmetics. It is also responsible for orderly management of the services rendered in the area. The Board was established in 2006 and has so far made a great impact in terms of seizure and condemnation of drugs and food stuff unfit for public use or consumption.
- **Offenders Education Institutions (Prisons):** Zanzibar maintains a separate system for treatment of offenders. The Prisons; in the foregoing name is headed by the Commissioner. It is part of discipline forces (Special Department) maintained by the Zanzibar Government. It is responsible for treatment of all offenders including juvenile offenders. They are also responsible for custody of remand prisoners awaiting trials or execution of sentences.
- **Legal Training Institutions:** Zanzibar University is the only university in Zanzibar with a law faculty. The first batch law graduates came out in 2003. Ever since the University has been

producing quite a good number of law graduates. The University of Dar es salaam maintains a training centre for teaching certificate in law program which has been very useful in producing law clerical staff and paralegals. Apart from the two training institutions, Zanzibar has also been relying heavily on Mzumbe University and Lushoto Institute of Judicial Administration for training of legal sector staff. There is no institution within Zanzibar or Mainland Tanzania which deals with legal sector or criminal justice policy research and development, specialised training need for public sector legal institutions. This vacuum has led

- **Private Legal Practice and the Role of NGOs:** Private legal practice is coordinated by the Zanzibar Law Society. Private practice was abolished in Zanzibar following the introduction of post-revolution legal system. It was seriously revived in the late 1990's and has been picking up very slowly. Private practice is characterised by shortage of lawyers, lack of capacity and specialization and non existence of legal aid system which has subsequently lead to limited access to justice. Few NGOs operate in this sector. Few notable ones are the Zanzibar Legal Service Centre and Zanzibar Female Lawyers Association. They provide limited legal aid, public awareness programs and advice to public authorities on various aspects of the legal sector.
- **Legal Sector Policy Framework:** The legal sector policy framework is virtually non-existent. At national level there are mere broad policy statements in the Zanzibar Vision 2020 and also under the Zanzibar Strategy for Growth and Poverty Reduction (MKUZA) where broad policy statements are under Cluster III. There are few institutional and individual components strategic plans. As such legal sector policy framework is characterised by lack of clear policy directive and fragmented reform or improvement strategies.

- **Operational Framework:** The legal sector operational framework is characterised by the following:
 - Severe lack of institutional and operational capacity
 - Severe poor infrastructure
 - Shortage of technical and financial resources
 - Inordinate delay in delivery of justice
 - Outdated or absence of clear policy directives
 - Outdated laws, legal practice and procedures
 - Lack of responsiveness to new social, economic and technological realities
 - Poorly motivated personnel
 - Low competence and efficiency
 - High perception of well ingrained corruption
 - Lack of public awareness on basic justice process

- **Sector wide coordination:** Though the sector institutions need to work closely together in a chain link fashion, the situation on the ground is far from such approach. Apart from few ad hoc meetings and forums the sector is not coherently working together.

- **Areas supported under various programs:** Various initiatives have been undertaken to improve a number of areas of criminal justice sector. The initiatives include support to the establishment of the DPP Office, improvement of judiciary and the improvement of good governance in general. The initiatives have provided some results though not significant. The main weakness of the support initiatives have been an uncoordinated and fragmented nature of the initiatives. Consequently, the results, except for few cases, have not been of conspicuous impact to the sector development in general.

CHALLENGES AND AREAS OF STRATEGIC INTERVENTIONS

The current status of the legal sector in Zanzibar entails a number of challenges that need to be addressed. Further, owing to such extreme challenges, strategic intervention is needed in a number of areas. Among the notable challenges and identifiable areas of strategic interventions are as follows:

- **Key Challenges:** The Legal Sector in Zanzibar is facing key challenges to achieve the following:
 - Speedy dispensation of justice at affordable cost
 - Integrity of the legal sector institutions, legal process and the legal sector personnel
 - Independence and public confidence to legal sector institutions and process
 - Institutional and operational capacity
 - Adoption and adaptation to technological development
 - Sustainable adaptation to ever evolving economic, social and political changes
 - Effective and efficient service delivery
 - Adequate infrastructure and technical resources
 - Sufficient human resource capacity

- **Areas for Strategic Interventions:** The legal sector is broad and almost the whole sector has suffered inordinately long period of stagnation and lack of reforms. It follows therefore, owing to strong linkage between different areas of the sector, all the areas are a priority. However reforms interventions need to be clustered in *five key areas of interventions* for the purpose of obtaining measurable and conspicuous output within a short period:
 - **CRIMINAL JUSTICE:** *Be a sector wide initiative which will cover all aspects of criminal justice including institutional and operational capacity building in specific areas relating to criminal justice. Specific areas covered under this cluster include crime reporting, criminal investigation, forensic and expert service, prosecution, criminal litigation, protection and treatment of victims and witness, treatment of offenders and cross cutting issues such as application of modern technology and integrity of the criminal justice institutions. This aspect will also cover law and policy review in matters specifically relevant to criminal justice.*

 - **JUDICIARY AND ACCESS TO JUSTICE:** *The judiciary being at the centre of the legal sector*

needs special attention. Interventions in this area will cover institutional capacity of the judiciary; from physical to technical infrastructure, management of the judiciary, institutional reforms, human resource capacity and operational culture and practice including case management. This intervention aspect will also cover matters relating private practice, legal aid and affordable access to justice.

- **CIVIL JUSTICE REFORM:** *Civil justice is not only a matter of civil cases. This aspect will cover broad range of issues relating to both judicial and non judicial administration of public affairs (administrative justice and human rights) personal, private, civic, commercial, admiralty, social, family and juvenile justice..*
- **SUSTAINABLE CAPACITY BUILDING:** *Capacity building will cover short, long term and tailor designed trainings. It will also cover capacity building to existing legal training institutions and the establishment of legal resource centres for specialised aspects of the legal sector. Introduction of sustainable Continued Legal Education system as part of legal profession career advancement and improvement of law libraries.*
- **POLICY AND LAW REVIEW:** *Will cover all aspects of legal sector policy development, policy review and matters relating to the development of new legal phenomenon and review of the existing legal regimes. Areas to be covered include the capacity of the institutions responsible for policy development; such as the Ministry, Attorney General's Office, Law Review Commission, the House of Representatives, Local government and other MDAs. The capacity of legislative drafting, research and the whole legislative process.*

KEY REFORM OBJECTIVES AND OUTPUT

The reform initiatives should target the following key objectives and output:

- **Objective I: Effective and efficient national legal framework. Strategic output of the objective:**
 - Legal system which is responsive to the economic, social and global evolving realities;
 - Ascertainable legal regime;
 - Clear national and sectoral policies on each aspect of the legal sector;
 - Sound institutional and operational capacity of the legal sector
- **Objective II: Public safety, national peace, stability and economic prosperity of individuals through credible means: Strategic output:**
 - Protection of public safety through effective and efficient preventive law enforcement;
 - Effective crime prevention
 - Effective prosecution of crimes with measurable impact against proceeds and benefit of crimes to offenders;
 - Humane and effective treatment of offenders at minimum cost to prevent repetitiveness
- **Objective III: Credible, effective and affordable system of dispensation of justice: Strategic output:**
 - Public trust and confidence to the judiciary;
 - Effective, credible and speedy trials;
 - Affordable access to justice
- **Objective IV: Skills and Knowledge of the Legal Sector Personnel meet the demand of sector service delivery: Strategic output:**
 - Highly skilled professionals in the legal sector;
 - Increased specialisation;
 - Measurable career and skill advancement;
 - High research capability;
 - Enhanced ability to dissemination and sharing of knowledge and information.
- **Objective V: Highest Standard of Service delivery and Management of the Legal Sector Institutions: Strategic output:**

- High integrity of institutions and individual personnel of the legal sector;
- Measurable standard of service delivery;
- Sound management of the institutions with clear vision and defined targets;
- Effective coordination and sector wide approach to management of the legal sector.

IMPLEMENTATION FRAMEWORK

Though many studies have been conducted on the legal sector, the result and recommendations are scattered. The five cluster areas of reforms are broad by themselves and are designed the mainstreamed aspects of each cluster and marginal but yet important aspects of each cluster. Further each cluster might involve stakeholders which are not necessarily key players in the cluster yet an indispensable one. In order to meet this implementation challenge and for the purpose of precise identification of challenges and objectives the implementation framework is proposed as follows:

- **Formulation of Zanzibar Legal Sector Reform Steering Committee (SC):** A high level steering committee needs to be formulated at the earliest under the Ministry of Good Governance or as an extra-ministerial set up. The main function of the SC will be to provide strategic direction to the reform process and to coordinate the implementation process. The SC need to be supported by an able multi-institution Secretariat to be identified by the Ministry of Good Governance.
- **Develop Reform Framework (RF) for Clusters:** Each cluster should develop a Reform Framework Paper to identify the current status of the cluster, challenges, reform objectives, areas of strategic intervention and work plan and costing. A good example in this respect is the Criminal Justice Reform Framework, which though does not contain the costing is comprehensive enough to start rolling the initial reform interventions.
- **Adoption of the RF:** Each RF need to be scrutinized by the SC and adopted by the government before it is admitted as a legal sector reform area.
- **Comprehensive Legal Sector Reform Framework:** A collection of clusters RF will form a single Zanzibar Legal

Sector Reform Framework. The final document will also contain aspects of Monitoring and Evaluation of the reform program. Because time is of essence, formulation of the RF papers should start as immediate as possible under special funding arrangement.

CONCLUSION

The background, history and the status quo of the legal sector in Zanzibar demands a precise, pragmatic and well customised reform strategy. The cluster approach offers a great benefit. It is capable of targeting specific areas and produce measurable and conspicuous changes within a short period. It also excludes unnecessary crowding of stakeholders by excluding marginal stakeholders in areas they are not active and leave them to participate in their relevant areas only. The concept note is a mere outline and not a replacement to comprehensive study and need assessment of the legal sector.