

**THE REVOLUTIONARY GOVERNMENT OF ZANZIBAR
MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS**

FINAL REPORT

**ASSESSMENT OF JUSTICE NEEDS AND
OBSTACLES IN ZANZIBAR**

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LIST OF ABBREVIATIONS AND ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPU	Child Protection Unit
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
FGD	Focus Group Discussions
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MKUZA	Mkakati wa Kukuza Uchumi Zanzibar
MLYWCD	Ministry of Labour, Youth, Women and Children Development
MOJCA	Ministry of Justice and Constitutional Affairs
NGO	Non-Governmental Organizations
PRSP	Poverty Reduction Strategy Paper
RGoZ	Revolutionary Government of Zanzibar
ZAFELA	Zanzibar Women Lawyers Association
ZLSC	Zanzibar Legal Services Center
ZSGRP	Zanzibar Strategy for Growth and Reduction of Poverty

CHAPTER 1: BACKGROUND AND CONTEXT

A Synopsis of the Zanzibar Legal Sector

The Zanzibar justice system has a rich history which dates back to over 150 years when the Sultan of Oman adopted Zanzibar as the centre of his empire in the 1830s. Islamic law was the basic law of the islands and judicial authority was asserted and even exercised by the Sultan himself.¹ However, the Sultan granted rights for consuls of foreign powers to exercise extra-territorial jurisdiction over the own citizens under successive treaties with Great Britain (1822 and 1839), U.S.A. (1833), France (1844) and several other European states. Owing to substantial foreign interests, it was only Great Britain that fully utilized the extraterritorial jurisdiction. After 1839 they established the British Consul had power to handle civil and criminal cases between British subjects and claims brought by subjects of the Sultan against British subjects. These arrangements continued unaffected after 1861, when Zanzibar was separated under its own Sultan from Muscat.²

In 1866 the British Consular Court in Zanzibar was formally established by Order of Council. Zanzibar under British protection was treated as a district of India and the Order in Council provided that appeals from judgments of the Consular Court were to be taken to the High Court of Bombay. However, the right of appeal to Bombay in civil cases was limited to cases where the subject matter exceeded 200 dollars in value. Under the Treaty of 1839 the Consul could hear disputes between British subjects or between them and citizens of other Christian nations and claims against them by subjects of the Sultan. A new Treaty in 1866 enlarged the consular jurisdiction to include all civil and criminal cases in which a British subject was the defendant.

The Consul's Court was replaced in 1897 by Her Majesty's Court of Zanzibar. This Court was given a dual role: to exercise original jurisdiction in Zanzibar over British and certain other foreign subjects, it was also designated as the first Court of Appeal for East Africa. On the other hand, the Sultan retained powers to legislate for his subjects. In 1897, a formal Sultan court system applying Islamic law for his subjects was established. Surprisingly, it was not until 1914 that provision was made for Zanzibar appeals to go to the East African Court, ending the link with the High Court of Bombay. Meanwhile, by Decree of 1908 the Sultan had surrendered the jurisdiction of the Court of Delegated Jurisdiction to what was now known as the

¹ Until 1861 the Sultanate of Zanzibar was under the Sultan of Muscat.

² Read, J.S. 2007 Justice on Appeal: A Century Plus of Appeal Courts and Judges in Tanzania. In Peter, C.M. and Kijo-Bisimba, H. (Eds); *Law and Justice in Tanzania: Court of a Century of the Court of Appeal*. Dar es Salaam: Mkuki na Nyota Publishers, p. 56.

British Court. The effect of the Decree and an Order in Council of 1906 was to establish in Zanzibar the unique dual jurisdiction of the Sultan's Courts and the British Courts. It was not until 1923 when the Sultan by Decree allowed his subjects to be tried in the British court when they were jointly charged with a person subject to British jurisdiction.

When the Sultan and the British legal systems were streamlined in the 1920's, a unique legal system which was a blend of the British legal system and Islamic legal system had substantially developed. The court system and the legal profession in general were well developed. However, after the 1964 Revolution, the legal framework which had developed for over 150 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. Law, regulations and rules were not considered important during the period immediately after the Revolution and later during the one party political system in the country.³ The newly introduced People's Courts were presided over by lay people and some of them completely illiterate, and were not bound by rules of evidence and procedure. This development had serious repercussions for the development of the legal sector in Zanzibar. The capacity of the legal sector suffered heavily in terms of infrastructure, operational capacity and institutional capacity.

The revolutionary legal system was abolished in 1985 and the existing system established instead⁴. However, the system continued to stagnate as it was starved of resources. In 1996, the Legal Task Force of the Financial and Legal management Upgrading Project (FILMUP) – Legal Sector Component submitted its report which identified a number of major weaknesses in the Zanzibar legal sector and came up with comprehensive recommendations to improve the sector. Unfortunately, 1996 was the year of donor standoff following the first multiparty elections. Funds to implement the Zanzibar legal sector initiatives were not provided; hence problems in the legal sector compounded.

³ Following the adoption of the Interim Constitution of 1965, Tanzania officially became a one-party state in 1965. However, two parties ruled – Tanganyika African National Union (TANU) on the Mainland and Afro Shiraz Party (ASP) on the Isles. The two parties were merged into Chama cha Mapinduzi (CCM) in 1977.

⁴ Decree No. 11 of 1966 revolutionized the Zanzibar legal system by introducing Peoples Courts, High Court and the Supreme Council. It was not until 1985 when the revolutionary legal system was abolished and the current legal system (Kadhis Courts, Magistrates Courts, and High Court) established. The Zanzibar and Mainland legal systems merge at the Court of Appeal level which is a Union matter.

The Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA I) had identified many legal sector issues but which were not fully addressed. MKUZA II too has identified numerous shortcomings being faced by the legal sector in Zanzibar. These include: inadequate institutional and operational capacity; low public awareness on basic justice processes and rights; poor infrastructure; delays in delivery of justice, and poor legal practice and procedures; the sector responds slowly to new social, economic and technological realities; apparently, there is public perception that corruption in the legal sector has now become endemic; inadequate provision of legal aid services, absence framework for managing and coordinating legal training and education; and underfunded courts leading to delay of justice⁵. All of these hamper the legal sector's ability to deliver justice efficiently and effectively, improve good governance and contribute positively to pro-poor development.

Several steps that have been taken, such as the creation and strengthening of the DPP Office, creation of the new Ministry of Justice and Constitutional Affairs (MoJCA)⁶, the revival of the Law Review Commission and many other independent initiatives seem to bring limited positive change. Whereas these parallel and fragmented efforts have been useful, they focused on discrete areas where project interventions were made, hence limiting the capacity assessments to particular institutions or specific capacity components.

The existing political stability and support provide a unique opportunity for Zanzibar to embark on comprehensive legal sector reform. What is now required is a more comprehensive way of addressing legal sector issues; a collective approach towards capacity development, maximizing individual strengths of the agencies that form the chain of justice including a more fundamental review of activities and a more systematic response, in light of Zanzibar's legal sector capacity development. It is against this backdrop that the Ministry of Justice and Constitutional Affairs (MoJCA) in collaboration with the United Nations Development Programme (UNDP) commissioned the Research on Poverty Alleviation (REPOA) to undertake this study.

Scope and Objectives of the Study

The legal sector in Zanzibar, like in any other country, is very wide and cuts across all types of organizations and all classes of individuals. While it was necessary to take on board as many stakeholders in the legal sector as possible to achieve a high commitment, collaboration and cohesion among stakeholders; this study was not intended to probe all classes of individuals neither did it cover all types of

⁵ Page 69-70 ZSGRP II 2010-2015 (MKUZA II).

⁶ A Ministry of Constitutional Affairs and Good Governance (MOCAGG) previously existed but now MOJCA deals specifically with justice and constitutional issues.

organizations. Coverage of the study was with respect to 17 key legal sector institutions representing both the public and private sectors⁷. In so doing, the consulting team ensured that the study was as comprehensive as possible in order to be able to address key issues that facilitated attainment of the intended objectives.

The Ministry of Justice and Constitutional Affairs (MoJCA), collaborating with the United Nations Development Programme (UNDP), commissioned the Research on Poverty Alleviation (REPOA) to undertake an assessment of the needs and obstacles of the justice sector in Zanzibar. The overall objective of the assessment was to provide a quantitative and qualitative analysis of the “needs of justice” from the demand side of justice in Zanzibar. As part of the review, the consulting team was expected to identify the types of grievances faced by vulnerable groups through the identification of justice perceptions and main priority areas for different groups as well as identification of structural problems that contribute to grievances. The team was also required to identify and analyze the positive factors (what is working) as well as obstacles (what is not working) for disadvantaged people to access the justice sector to have their grievances redressed by: identifying awareness, perception and understanding of human rights and the justice system by vulnerable groups; identifying coping mechanisms developed in the absence of recourse to formal justice mechanisms; and identifying sources of conflict that emerge out of the lack of access to justice mechanisms.

Approach, Methodology and Work Plan

The study was conducted by REPOA under the supervision of Prof. Samuel Mwita Wangwe who was supported by Mr. Juvenalis Motete, Ms. Rukiya Wadood, and Ms. Kokuteta Mutembei. The consulting team’s overall approach and work plan was characterized by three phases of work and outputs. The three phases fall under the following descriptions:

⁷ These institutions include: the Ministry of Justice and Constitutional Affairs; the President’s Office Public Service and Good Governance; the Judiciary; the Attorney General’s Office; the Office of the Director for Public Prosecutions; the Law Review Commission; the Registrar General’s Office; the Police Force; the Zanzibar Food and Drugs Board; the Offenders Correctional Institutions (Prisons); the Commission for Human Rights and Good Governance; the Legal Training Institutions; the Private Legal Practice (i.e. Zanzibar Law Society - ZLS); Reforms Coordination Unit in the Office of the Chief Secretary; Mufti’s Office; Wakf and Trust Commission; and institutions forming the demand side of justice [e.g. the Zanzibar Female Lawyers Association (ZAFELA); the Zanzibar Legal Service Center (ZLSC); Zanzibar Organization for People with Disabilities; the Bankers’ Association; Chambers of Commerce and Agriculture; Civil Society Organizations (SCOs) representing vulnerable groups; and Faith Based Organizations (FBOs)].

- **The Inception Phase:** This phase commenced with exploratory discussions on the scope of the assignment as reflected in the Terms of Reference (ToR) with the Ministry of Justice and Constitutional Affairs. We also discussed our proposed methodology and work plan, commenced the review of key documents, prepared the draft inception report, obtained feedback from the client, and prepared the final inception report. The key output of this phase was an Inception Report.
- **The Creative Phase 2:** This was the core phase of the assignment. Key tasks performed included the review of documents; interviews and discussions with stakeholders in both Unguja and Pemba; identifying needs and obstacles of the justice sector; preparing a summary of findings, conclusions and recommendations; and preparing a draft report.
- **Validation and finalization Phase:** A national workshop at which stakeholders will be invited to comment on the draft report will be organized by the Ministry of Justice and Constitutional Affairs. At the workshop the team will validate their findings and recommendations. The feedback that will be received will provide the basis for preparing the final report.

Report Structure

This report is organized in five chapters; chapter 1 is the background and introduction. Chapter 2 outlines the key obstacles as identified through literature review and chapter 3 deals with the findings of the assessment of needs and obstacles of the justice sector in Zanzibar. It identifies grievances by the different vulnerable groups; chapter 4 identifies the positive factors and chapter 5 proposes the way forward and recommendations. The report also contains three annexes as follows:

- Annex A – List of documents reviewed;
- Annex B – Stakeholder representatives met;
- Annex C – Terms of reference (ToR).

CHAPTER 2: THE KEY CHALLENGES: ACCESS TO JUSTICE IN ZANZIBAR

According to the existing literature, there are challenges related to the administration of justice in general in Zanzibar. Women and children's rights, people with disability and those with HIV and AIDS, as well as the poorest people's rights are infringed but access to justice in general for these groups is limited⁸. The following emerge as some of the key challenges in the literature:

Lack of Knowledge and Awareness

One of the most serious problems is that the public is not aware of the specific laws governing their rights. These laws are inexistence, although they may have gaps and weaknesses. Even legal Institutions themselves fail to differentiate between policy and legal framework, there is a clear lack of understanding between what the law provides and the policy statements against gender based violence.⁹ Low levels of awareness of victims is another problem and thus when faced with criminal cases or civil cases, they do not know what to do or where to go to access assistance¹⁰. Also, poor knowledge about the nature of the crime contributes to many cases being unreported.¹¹ Victims do not report the cases believing that it is acceptable within community to be maltreated, while some victims lack the means of reporting for fear of community marginalization or exclusion, particularly women and children¹².

Limited Efficiency of Legal Sector Institutions

The absence of reliable data on GBV incidence results in weak follow up by government institutions responsible for protecting citizens against human rights abuses.¹³ Apart from that the legal system discriminates against women and this impacts on their access to justice.¹⁴ Another challenge is the court system takes time in adjudicating cases because of limited efficiency occasioned by the system itself. It takes a good length of time to investigate and collect evidence, it is difficult to track

⁸ Op.cit.

⁹ Revolutionary Republic of Zanzibar (2011) A Multi- sectoral strategy and action plan for preventing and responding to gender based violence in Zanzibar.

¹⁰ Parker, A. Zanzibar Conference on Legal Aid and Access to Justice.

¹¹ Incidences and Response in Zanzibar: an evidence based study (2007).

¹² Op.cit.

¹³ Incidences and Response in Zanzibar: an evidence based study (2007).

¹⁴ Danish Institute for Human Rights (2011) Access to Justice and Legal Aid in East Africa.

witnesses, advocates are unwilling to provide free legal aid and assistance and many other challenges¹⁵. Corruption has been cited as one of the main obstacles to accessing justice which is unethical conducts and practices of legal officers in the legal system have been pointed out as a major cause for delays in adjudicating of cases¹⁶. Delay of handling the case despite of the fact that there is increasing number of legal officers is a problem that needs to be further digested¹⁷. This has led to a backlog of cases that are not dealt with because for example incomplete evidence.

Limited Funding for Legal Aid

Legal aid generally suffers from funding in Zanzibar. There are no resources targeted for legal aid in government and there is also minimal donor funding for legal aid generally. As a result, legal aid is concentrated in urban areas, and there is limited or no access in some rural areas¹⁸.

Lack of a Response Mechanism to address Gender Based Violence

Gender- Based Violence (G-BV) in the isles is more pronounced among women victims than among men. It is a result of discrimination arising from unequal power relationships between men and women. The origins of GBV are deeply rooted in patriarchy, culture and attitudes that perceive women as second class citizens. GBV is even worse pronounced for women with disabilities. Due to widespread ignorance on what constitutes GBV, and low sensitivity to domestic violence, victims and their families rarely take action against incidents of GBV. This is because law enforcers as well as community believe that violence against women and children is a private matter to be solved within the family. Statistics shows that one in ten women in Zanzibar faced physical violence and many have experienced sexual violence. Most of GBV cases are never prosecuted because of difficulties in assembling evidence and lack of enforcement mechanism on laws that address GBV. There exists no specialized institution to deal with GBV crimes hence leaving most GBV issues being solved at the family level.

The Revolutionary Government of Zanzibar has undertaken various initiatives towards violation against women and children, one such action is the enactment of a Children's rights statute in 2011 aiming to promote the rights of children. Apart from

¹⁵ Ibid.

¹⁶ Danish Institute for Human Rights (2011) Access to Justice and Legal Aid in East Africa.

¹⁷ Ibid.

¹⁸ Parker, A. Zanzibar Conference on Legal Aid and Access to Justice.

that, the government established gender-based violence committees at local, regional and national levels and has created a child protection unit within the Department of Social Welfare, which is working together with police so as to work on cases of abuse against children.¹⁹

MKUZA II has clearly targeted gender equity, equality and women empowerment as among a development issues in Zanzibar which requires multi-sectoral approach. Moreover, under each cluster there will be specific gender related targets and interventions to address gender issues identified in the situational analysis. Furthermore, MKUZA II will target vulnerable groups such as women, widows, youth, orphans, elderly, neglected children, people with disabilities, those infected and affected by HIV/AIDS and the poorest of the poor.

Lack of an Efficient Legal System for the Private Sector

The private sector has a prominent role in Zanzibar as an engine of growth, it is prioritized in the Zanzibar Growth Strategy and efforts are being undertaken to boost investments and promote the growth of the private sector generally. However, institutional framework to support this role is weak. The Zanzibar National Chamber of Commerce, Industry and Agriculture (ZNCCIA) and the Zanzibar Business Council are still young and require a surmountable legal and policy support. However, a framework for promoting and developing partnership between the state and non-state actors has not been developed and a conducive legal and regulatory framework is missing.

According to MKUZA II, the wider participation of entrepreneurs, particularly those in the informal sector is limited by a number of factors including: existence of multi-Trade Licensing Agencies; multiplicity of taxes; inadequate support services for business development, most notably for Micro, Small and Medium Enterprises (MSMEs); poor enforcement of Fair Trade and Consumer Protection Act of 1995. In general, business is poorly regulated and legislations that guide business like Trade Licensing Act of 1983 and Company Legislation are outdated.

Limited Access to Legal Aid

Legal aid is something that has been emphasized internationally and regionally but has not been prioritized in Tanzania mainland and Zanzibar. In Tanzania, it is at the discretion of the government to decide who qualifies for legal support which is mainly in capital offences. There are cases where the government has provided legal aid

¹⁹ UNFPA (2011) One Stop Centre for Survivors of Violence Opens in Zanzibar, (<http://unfpa.org/public/home/news/pid/8142>).

providers with certificates of exemption, allowing them to process cases without paying court fees. This has to some extent enabled the poor to access legal aid and support. Provision of legal support to the poor and vulnerable is something that a state is obligated to do, and although the state chooses whether to provide legal aid or not to the poor, according to the ICCPR, article 40 (2) obliges state parties to offer legal aid to children charged of criminal offenses. According to Article 40 (2) (b) every child alleged as or accused of having infringed the penal law has to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense. Article 40 (2) (b) (iii) states to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child.

Although Tanzania has ratified this Convention and enacted a legislation governing the rights of Children, Children's Act, in practice children involved in criminal cases are not guaranteed the rights stipulated in the CRC . Likewise, the African Charter on the Rights and Welfare of the Child has been ratified by Tanzania. According to Article 17 (1) "every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others". Article 17 (2) (c) (iii) requires the state to ensure that minors are "afforded legal and other appropriate assistance in the preparation and presentation of his defense.

Tanzania signed the Maputo Protocol (*The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, the Maputo Protocol*) but has not domesticated it. The protocol provides for legal aid to women. Article 8 provides for access to justice and equal protection before the law. It provides that women have should have effective access to judicial and legal services, including legal aid. However, although organizations that provide legal aid in Zanzibar exist, they are in sufficient to carter for the need. In Zanzibar, ZLSC and ZAFELA are the recognized NGOs that provide legal aid, ZAFELA provides legal aid to women and children while ZLSC provides legal aid to all who need it. NGOs cannot be provided with exemption to pay court fees in Zanzibar as it is done in Mainland Tanzania. Clients of legal aid or any other person who cannot afford court fees have access to court exemption through a slightly complicated procedure. In Zanzibar, according to the Judicial Service Act of 2005, the Chief Justice or Judge can wave court fees for a poor person. A person needing financial exemption can apply to be exempted to the Chief Justice who offers this certificate. However, the person has to first pass through the Sheha who prepares a letter that toes to the Regional Commissioner

who finally issues a certificate of means form to the client. Thereafter, the certificate is submitted to the Registrar of Court for further processing. Given the high illiteracy rates, lack of knowledge regarding procedures and the challenge of distance coupled with poverty, this procedure is likely to hinder access to this valuable service.

Efforts have been undertaken in Zanzibar to strengthen access to legal aid through use of paralegal services. In Zanzibar, paralegals were identified and trained by ZLSC. This is a commendable effort in ensuring that the most marginalized are reached with these services. ZLSC has implemented and is continuing to implementing a two year paralegals training and capacity building program. This will to some extent address some of the gaps in terms of reaching legal aid services particularly in rural areas. ZLSC is providing this training for Unguja and Pemba participants. There is already evidence that their work is impacting on the poor in that it advises those using Kadhi's Courts. However, the sustainability of this intervention is questionable, as the NGO provides the paralegals with a stipend and there have not been efforts to ensure that the paralegals will continue to provide this assistance for free when the project closes down. Government officials, particularly law enforcement institutions that have also benefited from these trainings have pointed out that the initiative by ZLSC has not only strengthened access to legal aid in hard to reach areas, but it has strengthened partnerships between law enforcement institutions and civil society organizations providing legal aid.

Legal aid has also been emphasized in the Kyiv Declaration on the Right to Legal Aid of 2007. In this declaration, the poor and vulnerable have a right to legal aid, and it provides that the government has the primary responsibility for creating legal aid schemes. It encourages governments to cooperate with other legal aid providers to ensure access to legal services and places an obligation on private advocates to provide pro bono legal aid. While the Zanzibar Law Society does not mandate its members to provide free legal aid to those who cannot afford the costs of an advocate, the challenge has been the willingness of advocates to do this on pro bono basis. This is different from the Tanganyika Law Society that makes it mandatory for advocates to deal with pro bono cases. However, the Chief Justice of Zanzibar can assign an advocate a legal brief for criminal cases such as murder or treason. In any case, the number of advocates who are members of ZLS are few, the organization has about 192 advocates and out of these, only 52 are practicing law in courts. Given the dire need for legal assistance in Zanzibar, more support needs to be provided to ZLS to promote membership and the use of pro bono cases to facilitate access to justice by the poor.

CHAPTER 3: STUDY FINDINGS: JUSTICE NEEDS AND OBSTACLES

Identification of Grievances by the Different Vulnerable Groups

For purposes of clarity, vulnerable groups are people in the following categories as echoed in a report on vulnerability and social protection programmes in Tanzania²⁰, children below the age of 15 years found living in difficult circumstances, women who are unable to support themselves, youth with unreliable income, unemployed and female youths, people living with long illnesses, persons living with disabilities, elderly persons and drug addicts.

The feedback from key vulnerable stakeholders, particularly users of legal services reflect the need for general improvement of the justice system and access to justice. The feedback was mainly obtained from a section of stakeholders including women attending legal aid clinics, the organization with people with disability, youth in remand and men who are poor. Feedback reveals that women and young children are vulnerable from abuse and have limited access to justice due to their social status and economic situations. Most of the women interviewed highlighted the need for women to access to legal aid due to the fact that they lack knowledge regarding how to access law enforcement institutions on their rights, they have limited information regarding access to law enforcement structures and they have limited resources to access courts though they are victims of abuse and exploitation. Lack of knowledge and increased incidences of gender based violence have been significantly highlighted and documented in Zanzibar. In the then Ministry of Labour, Youth, Women and Children Development (MLYWCD), one of the strategic interventions in their 2008/2012 strategic plan was the enhancement of women's rights. The plan points out that part of the reason women are marginalized and abused is their lack of knowledge regarding rights. This problem has also led to low reporting of GBV cases, where women fear reporting such cases because of fearing divorce or risk being excluded within the family²¹.

Although there have been several women empowerment programmes in Zanzibar what has been the advantages, interventions are still needed to strengthen the capacity of women to access justice. The policy framework as well as the legal

²⁰ Fred Lерisse, Donald Mmari, Mgeni Baruani, Vulnerability and Social Protection Programmes in Tanzania (2003), A study for the Research and Analysis Working Group, Tanzania.

²¹ RGZ, Ministry of Labour, Youth, Women and Children Development, Five Year Strategic Plan 2008/2012.

framework provides an environment where this can happen, but sufficient resources are required to ensure the attainment of policy and legal commitment²².

Youth suffer from limited access to capital and lack of access to productive assets leading to idleness and engagement in drug abuse, prostitution, and theft. However, even when they find themselves in the hands of law enforcement institutions, the treatment they receive further exposes them to vulnerability. Most of the offences committed by youth are minor (basically theft), but they remain in remand for weeks and even months without bail contrary to section 39 (1) which provides that the police officer instead of initiating a prosecution against the child, caution him not to reoffend and release the child into the care of his parents, guardian or family with or without sureties. It is also possible that the police have not been trained about this law and thus weak enforcement. In addition, parents are rarely informed about the arrest of the child, contrary to section 38 of the Children's Act of 2011 where a police officer is supposed to inform a parent or guardian within 24 hours of arrest. Arbitrary use of powers by police was raised again at a stakeholder workshop. Participants were generally concerned about the nature of cases against juveniles that are taken to court. A majority of these cases are minor offences that can be diverted.

Law enforcement officers do not tell them their rights while in the hands of law enforcement institutions; when in remand, they do not have access to basic needs, such as sufficient food. They face discriminatory acts and are likely not to get a fair trial. The legal sector institutions are not youth friendly and have not been geared towards protection of rights of children and youth. As noted by one participant in a stakeholder workshop,

"...today in Zanzibar, juvenile offenders are treated like criminals...this is not supposed to be the case, they are supposed to be rehabilitated...law enforcement institutions are doing this arbitrary, the law does not allow anyone to treat juvenile offenders like a criminal..."

Apart from not knowing their rights under police custody, the children have also faced abusive situations while under the police. For example, one of the children was forced to make a statement at the police station under duress. Another child in remand stated that he was forced to sign a statement that was not read to him. No rights or obligations had been mentioned to any of the children in remand at that time. The Criminal Procedure(Amendment) Act 9, 2004 , Act no 7 of 2004 provides that for bailable offences, Section 28 A: (2) that the police officer has a duty to inform the arrested person of their rights, including rights to speak, advocate, bail if it is a

²² Zanzibar has the Women Protection and Development Policy (2001), which provides the framework for women empowerment. One of the elements of the policy is the protection of rights of women, in particular promoting knowledge on regarding rights of women

bailable offence. This is an obligation that seems not be widely practiced by the police. FGD with men, women and children revealed high levels of abuse of power by police at police stations. Suspects are forced to give false statements and sometimes, they experience torture in the hands of police. Some of the imprisoned men state that additional offences were added to their statements, offences that they did not commit but were forced to agree by signing the statements. The police do not allow the accused to read the statements, in fact they hide the statements so that the accused will not be able to read them. There are frequent cases of unjustified delays in investigation and later delays in trials. The men respondents in a FGD complained that when they asked for proceedings in order to appeal, they often did not have access to the proceedings despite asking for them several times. It was not clear to them why they could not get these proceedings, though they understood that they had a right to appeal.

The legal system is also not friendly and unlikely to provide efficient services to people with disability. This has been clearly pointed out by the Organization for People with Disability. For example, in general, trials usually take a long time, but trials concerning rights of people with disability take even longer. Lawyers shun away from assisting people with disability because in most cases, they can't pay them the fees they require, which are usually exorbitant, from the perspective of people with disability. The organization for people with disability does not provide legal aid and thus entirely depends on other institutions and particularly government to provide legal aid to people with disability.

UWZ has in addition experienced several disappointments in working with government institutions, for example, after a long fight to have a legislation governing rights of people with disability (Disability Act, Act. No.9 of 2006), the development and finalization of regulations to facilitate implement this legislation has been problematic; the process was initiated in 2009.

Lack of regulations has made obstructed the enforcement of the law. According to a research report on vulnerability of children with disabilities and sexual abuse in Zanzibar, most cases that are reported to authorities do not go to court. But the issue is, even if they did, it would be difficult to apply the law without regulations. Section 5 of the Disability Act provides that the government shall take all measures to ensure adequate resources for the implementation of the Act. This section, though empowering the people with disability needs to be further expanded in regulations. In particular the regulations should state areas of investment, entitlements of people with disability who come into contact with law enforcement institutions and obligations of government institutions in facilitating access to rights.

People with disability explained that there are cases where sexual abuse experienced by children with disability and reported to the police are marginalized, ignored and not adequately investigated and prosecuted. Many of such cases end at the police station. While the law provides protection to children (section 11 of the Children's Act, Act no6 of 2011). Law enforcement institutions need to strengthen implementation of this Act.

Although disability desks have been established in police stations, the people manning the desks are said to be corrupt, demanding bribes from people with disability or taking bribes from the culprits at the expense of the rights of a person with disability. They also lack knowledge on rights of people with disability including basic skills such as how to communicate with people with disability. People with disability explained that if they had knowledge regarding their rights and were empowered on how to access law enforcement institutions, they would feel more protected while in the hands of law enforcement institutions.

There have been several processes to promote rights of people living with HIV and AIDS in Zanzibar. Developing a law governing rights of people living with HIV and AIDS (PLHIV) has been a significant part of this process. Through their organization, ZAPHA+, PLHIV are able to access legal aid, although this has not been an easy process. ZAPHA+ is a network organization with over 2000 members, including children orphaned by HIV and AIDS, out of 2000 members, 700 are children. They are established in almost the whole of Zanzibar, having 10 branches in every district and children's clubs in every district. According to this organization, experience from the members that have confronted the police is negative. They stated that once the police find out that a client is HIV positive, they treat them inhumanly. For example, if a person with HIV AIDS has been raped, the police will out rightly tell them that they are prostitutes and other similar statements, they will in the end not take sufficient action to assist the victim. They have also been forced to corrupt police officers to get services. The following have been specifically pointed out as obstacles when vulnerable groups come into contact with law enforcement institutions:

Structural Obstacles

Challenges Facing the Courts

In Zanzibar, there are sufficient lower and middle level courts. However, it is only primary and Kadhi courts that are easily accessible in all districts. As a result, people have to travel long distances to access a court with a particular jurisdiction. For example a victim may be forced to travel from Kizimkazi to Mweza Regional Court, a distance that takes two buses to reach and costs around 5000/= per trip.

For vulnerable groups, this is a huge obstacle as it involves cost that they are not always able to meet given the low income status. The issue of inconvenience caused by distance to access some of the courts was raised by all the representative groups met, including the legal aid organization. However, this was contested in a stakeholder workshop where participants thought the main problem for courts is that they are not rehabilitated. The state of courts in Zanzibar is poor. The other main issue is that people do not want to exhaust lower courts. They would rather file their cases with higher courts and this cannot be allowed. There is also regular adjournment of cases and generally, cases take long to adjudicate because this involves regular travels to the courts, after a while, some of the individuals give up. Geographically there are two Regional Courts in Pemba, Chakechake and Wete. For some users coming from places further, this distance is significant and therefore difficult for them to reach the courts, it is expensive, costing them substantial amounts of money to make regular trips to attend trials.

Kadhi Courts are highly used by citizens in Zanzibar, in most cases, they are the court of first appearance. Kadhi courts have jurisdiction on cases of Muslim law relating to personal status, marriage, divorce or inheritance proceedings in which all parties are Muslims (Kadhi Court Act No 3 of 1985). Kadhi courts are easily accessible by most people with matrimonial, inheritance or custody of children cases governed by Islamic law. The Kadhi Courts are staffed by a Chief Kadhi and a few assistants. The Chief Kadhi is a presidential appointee appointed by the advice of the Judicial Service Commission. They are chosen based on their ability to fully understand and practice Islamic Law. According to section 5(1) of the Written Laws (Miscellaneous Amendments) Act no. 4 of 2003 provides for the minimum qualification of a Kadhi to include knowledge of Muslim religion, Islamic laws, recognized qualifications in Islamic laws from any institutions approved by the Council of Ulamaas and three years' experience. This section replaces the former section 5 in the Kadhi Court Act which only required profession of Muslim religion and knowledge of Muslim law. However the amended provision is still not clear as it does not provide minimum academic qualifications (degree, college, high school, secondary school). This section can be further expanded to provide for a minimum of a degree in Islamic Law which is currently provided at universities in Zanzibar. This will be in line with other courts that have minimum academic qualifications to guarantee entry into service.

Further, like other courts in Zanzibar, Kadhi courts are underfunded and under facilitated. Dr. Majamba in his paper on Kadhi Courts (undated)²³ notes that Kadhi courts are thinly staffed, handling an average of six cases per day and requiring parties to pay for the summons. Cases are heard and determined in poorly

²³ Majamba H. I, undated, Perspectives on Kadhi Courts in Zanzibar.

furnished chambers in the absence of security. Decisions are not taken seriously although it is the court that is nearest communities, as highlighted by Majamba, community members refer to it as a “lover’s court”. This issue was emphasized at a stakeholder workshop where an invited judge pointed out that some of the Kadhi courts lack courtrooms. They are marginalized within the Judiciary and lack the recognition accorded to other courts, their needs are not prioritized.

Kadhi Courts are not favoured by women because they are considered to be discriminatory. According to women, Kadhi Courts often decide against the women in favour of men. The feedback from women in a FGD is that Kadhis interpret the law in their own interests, mostly patriarchal based; decisions are in most cases biased against women particularly those regarding divorce, distribution of matrimonial property, maintenance and custody of children. Women explain that in Kadhi court they have no right to speak, they are not given that opportunity. For example, one of the women in a FGD explained that after being divorced by her spouse who took their three year old son, she lodged a complaint at a Kadhi court to claim the right to stay with her child. The court sided with the father and accused the woman of prostitution, thus unfit to care for the child. One woman quoted a kadhi as having said,

“you should not ask or speak anything in this court...and if you do, I can decide anything against you...if you dare speak, I will imprison you...” Woman, FGD.

Respondents complained that Kadhi Courts do not have adequate capacity to address these issues. This was also pointed out by the Imam in one of the Associations of Imams in Zanzibar and ZAFELA. According to ZAFELA, the Kadhi Courts have limited capacity to address matrimonial cases. They feel that the government has marginalized them in terms of investing in quality service delivery. They state that as a result, even communities have little respect for Kadhi Courts. In a FGD with women, they pointed out that at Kadhi courts, low capacity, limited knowledge of the law, mismanagement of cases and Kadhis believe that women have no rights that they can claim in marriage. They stated that compared to other courts, Kadhi Courts are placed in dilapidated rooms/houses. Also kadhis are few but have to deal with many cases. Women explained that men have little respect for Kadhi Courts because they feel that the Kadhis do not understand Islamic law and therefore they usually do not comply to orders made by the Kadhi. On the contrary, men respond better to district and high courts because they sense that these courts are more serious and action can be taken against them if they refuse to appear in court. However, participants in a stakeholder workshop felt that men do not use Kadhi Courts because cases are always decided against them and that women complain because Kadhis apply Islamic law and Islamic law itself has specific

provisions concerning division of matrimonial property and custody of children, where each party gets what they have contributed in marriage, but women, most of whom do not have assets often demand equal division of property. Children always belong to the father.

Limited Access to Legal Aid

In general, the number of advocates is small compared to the actual need (Refer to the Capacity Needs Assessment Report, REPOA (2012). The total number of paralegals is 167 (2012 data). Advocates are not allowed to appear in Kadhi courts.

The government, through the Zanzibar Law Society facilitates legal aid schemes for low income defendants, particularly those with serious offences. The provision of legal aid through these means has not worked out very well because of lack of financial resources. Because of that, there are many people in prison who have never accessed legal assistance, some of them accused of serious offences and some have been in prison for a number of years without their cases being heard. As is elaborated in the report by the Danish Institute for Human Rights (2011) in almost all the East African countries, these schemes are commonly criticized for lack necessary resources to provide the defense counsel with enough time and motivation for preparing the cases. The provision of legal aid in Zanzibar is guided by the Criminal Procedure Act No 7 of 2004. The Act provides that advocates shall be provided to an accused in cases involving capital offences. Otherwise, there is no other mechanism for legal aid.

In some of the East African countries such as Kenya, there are government supported legal aid schemes to provide legal aid even in civil cases for particular vulnerable groups such as women, children and persons with disability. Pilot projects on such schemes have been implemented and they seem to be successful²⁴.

ZAFELA and ZLSC are the only NGOs providing legal aid to women and children in Zanzibar, ZLSC provides legal aid to poor women and children and disadvantaged groups in Zanzibar. According to ZAFELA, the demand is a lot bigger compared to ZAFELA's capacity to provide this assistance, they have approximately 10 women lawyers attending to cases once a week (on Saturdays), each of them takes 4 to 5 cases per day, apart from follow up cases. This seems to be a huge burden for them, given that they do not have as much financial support from government or donors.

²⁴ Access to Justice and Legal Aid in East Africa, A comparison of the legal aid schemes used in the region and the level of cooperation and coordination between the various actors (2011), *A report by the Danish Institute for Human Rights and the East Africa Law Society.*

During the weekdays approximately 4 lawyers attend 10 cases per week. Compared to the past five years, cases seem to be increasing.

Many of the prisoners have not been reached by legal aid NGOs. Legal aid is provided only for murder cases. There is low attendance of advocates in courts and Advocates refuse to take cases on pro bono basis. Men and women prisoners indicated that they cannot afford to pay advocate fees and that is why they stay for a long time in remand waiting for their cases to be heard.

There was an issue raised regarding the quality of legal aid provided by NGOs, some of the workshop participants questioned the quality of services provided, include the nature of support provided to clients. They stated that clients are provided with written documents but they are not provided with legal representation in courts and this is an obstacle because many of the clients cannot express themselves in courts.

Witness Appearance

Findings reveal lack of effective mechanisms to protect witnesses, as a result, witnesses do not appear in trials and many of the cases are either dismissed or delayed in search of witnesses. Respondents explained that witnesses refuse to appear in court because they think that if they stand as witnesses they may gain enemies in their communities. They also fear that the case might turn against them. Since there is no law to force anyone to give evidence, cases are often dismissed. This happens mainly for rape or GBV cases.

Lack of an Effective Response Mechanism for Gender Based Violence Cases

Gender Based Violence is widely practiced by community members in Zanzibar. According to a study by Salma Maoulid and Ussu Mallya (2007), ²⁵48.9% of respondents in that study indicated a general rise of violence in the community in the last few years. Among them 43.2% report a rise in domestic violence (21.1%) and sexual violence (24%). About 16.2% of respondents reported being victims of some types of GBV. The violence is mostly experienced at puberty (31.4%) and during childhood (23.5%). 73% of females and 51% males have never heard of rights of women and girls.

²⁵ Ministry of Labour, Youth, Women and Children Development, study by Salma Moulid and Ussu Mallya (2004), GBV incidences and Responses in Zanzibar, an Evidence Based Study.

Women who were interviewed in this study stated that whenever a woman reports a GBV case to the police, the police convince the women to settle the matter out of court. In some cases, the police assume the role of the court and decide which of the parties should pay the other compensation. One of the women in a FGD reported that there was a situation where sexual abuse of a girl was reported at a police station and the police encouraged the girl and the man who abused her to get married. The police stood as a witness to that marriage. In this case, the girl was 14 years of age. While participants in a stakeholder workshop explained that this is more of a cultural issue, that it is usually settled through a reconciliation process, it is nevertheless an offence, contrary to section 15 (b) of the Children's Act which provides that any person who sexually abuses a child shall be on conviction liable to imprisonment for a term not less than fifteen years. It must nevertheless be noted that implementation of the law in Zanzibar is problematic as pointed out by a participant in a stakeholder workshop and this is mostly for criminal cases. Participants in a stakeholder's workshop cautioned that the Children's Act is a new legislation and many of the law enforcement institutions are not aware of it. Currently, there are seven regulations for the Children's Act and an implementation plan is being developed. This will facilitate more effective implementation of the law.

The problem of the police deciding to treat sexual offences as civil offences has been lighted in the Save the Children study on violence against woman in Zanzibar²⁶. The report point out that the way violence issues are handled by the police have led to the belief among community that GBV is a social matter that can be mediated by the Shehia or police. However, it is critical to note that resolving to this method of solving the problem is a result of gaps in laws and structures. Basically, there is no law that provides for GBV, apart from traditional penal code that provides for assault. In the absence of a clear law and structures, it is difficult for police and any other law enforcement institution to be consisted and law abiding.

In that report, it is obvious that the problem is not lack of knowledge. Up to 81.3% (North A), 85.7% North B and 85.4% Pemba respondents reported such cases to police.

Women explained that people have a tendency not to report cases of rape, sodomy and GBV because of lack of cooperation and support from the police to facilitate acquisition of evidence. What is also true is that police lack of investigative capacity and they also do not understand the laws. For example, when a case is reported, police may refuse to take statements. Some resolve the cases themselves at the police station. Even when an NGO like ZAFELA intervenes, it is difficult to get the

²⁶ Save the Children, Sharon Snee, (2012), Wall of Silence: A Look at VAW in Zanzibar, Zanzibar.

cooperation of the police. An example, is a case where the police refused to take the statement of girl who was raped, he ended up taking bribe and settled it out of court.

In another case, a DNA test which proved paternity by 99.9% was taken to court as evidence but the court has not concluded the case since 2010. The case is transferred from court to court without sufficient explanation to the victim. Below is an example of the current situation:

Table 1: Reasons Cases were not processes further

Reasons	Unguja	Pemba
Lack of evidence	35.6	20.8
Bureaucracy	40.2	29.2
Lack of diligence	34.4	28.8
Corruption	46.6	14.6
Did not know what to do	2.6	-
Wasting time to and from police	5.3	-
Mediated outside court	-	2.1
Fear and discrimination	-	2.1

Source: Save the Children, Wall of Silence: VAW Report, 2011

Women and children who have experienced GBV complain of mistreatment by police who often send them back home without listening to their plea. In court, cases on GBV are likely to be dismissed compared to other kinds of cases. Since many of the women lack financial security, they often end up giving up the case.

Administrative Obstacles

Lack of Important Needs for Women with Children in Offenders Education Institution

There are several issues within the legal system that are considered as obstacles for women, but the lack of sufficient facilities and skills to cater for the specific needs of women, particularly women in prison stand out as one of the main issues. For example, there are no mechanisms within the Offenders Education Institution to deal with children of women prisoners. The national laws prohibit children below 2 years of age to stay with their mothers in prison. Nevertheless, some women prisoners have no relatives to assist with the caring of the child. In coping with this situation, the prison officers in the past have taken children to social welfare officers but this route has not been successful thus far. According to prison officers, experience shows that Social Welfare Officers are not always receptive to this idea; they refuse

on grounds that children are too young to be taken care of by another party; they claim that children of that age need to be with their mothers. At times, female prison officers have assumed the role of a caretaker, taking the children to live with them. When the mothers complete their term, the prison officers give them their children. However as a matter of principle courts would deal with such cases with utmost caution and according to a participant in a validation workshop, would take all measures to avoid imprisoning the mother and her child.

Separation of the child from the mother is highly discouraged under international law, and the rules provide that where this has to be done, then it should be undertaken with sensitivity, and only when alternative care arrangements for the child have been made. If children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners should be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children. Prison officers declared that eventually, as a result of living within the prison environment, the infants and toddlers in prison are adversely affected; they stand a greater chance to eventually copy the odd behaviours. In addition, children's needs are not budgeted for, thus diet, healthcare, education and needs for a pregnant and weaning mother.

Given the lack of alternative for such situations, the government is obliged to ensure that the welfare of the child is given paramount priority. Rule 23 of the Standard Minimum Rules for the Treatment of Prisoners (1977) provided that,

23. (1) In women's institutions there **shall be special accommodation for all necessary pre-natal and post-natal care and treatment....**

(2) Where nursing infants are allowed to remain in the institution with their mothers, **provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.**

In addition to the Standard Minimum rules for the Treatment of Prisoners, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010), mandates states to take special measures to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison (rule 42 (3)).

There is no special diet for pregnant women or women that have babies. This is not just a violation of the rights of women prisoners, but also risks the health and welfare of the child. According to the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010), Pregnant or

breastfeeding women prisoners are supposed to receive advice on their health and diet under a programme to be drawn up and monitored by qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities need to be provided free of charge. The rules emphasize that women prisoners should not be forced or discouraged from breastfeeding their children, unless by doing so, it is in the best interest of the child. The treatment programmes targeting their specific needs should also include medical and nutritional needs required for a woman who has just given birth. , but whose babies are not with them in prison, shall be included in treatment programmes.

According to the rule 5 of Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) regarding personal hygiene, facilities and materials required to meet women's specific needs including sanitary towels provided free of charge is necessary. Sanitary needs are not considered and not budgeted for, risking the health of women and undermining their dignity. Women are provided with two pieces of cloth to use as sanitary towels for the entire duration of their stay in prison. Prisoners with financial means are allowed to purchase sanitary pads, but the majority who cannot afford these services are left to use the pieces of cloth. According to Rule 5, the accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women who are pregnant, breastfeeding or menstruating .

Lack of Basic Needs for Trainees

According to CHRAGG (2011) individual report of the Tanzania National Human Rights Institution submission to the Human Rights Council (2011), Zanzibar does not have an approved school or juvenile remand home. Juvenile Cases are delayed and the sentences that are applied by magistrates do not seem to be sentences that are aimed at reforming the prisoners. The government is required to develop reform/rehabilitation programmes for children, including build separate facilities for juveniles and increase number of probation officers.

The conditions at the correctional centers are dire for the children. Apart from being mixed with adult remandees during daytime (at night they sleep in separate facilities). Children lack things such as medicines (in the clinic, there is no medication), toothbrush, soap, appropriate nutrition, healthcare and education. According to CHRAGG (2011), the state of detention facilities in Tanzania is generally poor. Prison departments and Offender institutions are inadequately funded. Remand prisoners lack adequate health services, sanitation services, quality food and clean and safe water.

Although young people sleep in separate rooms from adult remandees, they meet during the daytime and spend time together. There is no plan for provision of formal education and other literacy classes for children who dropped out of school. Children stay in remand for quite some time.

Rule 11 of the Standard Minimum Rules for the Treatment of Prisoners (1977) provides for education as a compulsory need and the fact that administrators should pay special attention to it. Rule 77 (1) states that provision for further education should be made available to all prisoners capable of enjoying this opportunity. The education of illiterates and young prisoners shall be compulsory and the administration should give this due priority. The rules further state that the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

There is lack of proper coordination between the Offenders Education Institution and the Ministry responsible for education and vocational training and thus lack of guidance on provisional education to the children. This element is not included in the overall department strategy and according to a participant in the stakeholder workshop; the Institution is not mandated to provide education to the offenders. This is something that can be further explored in the future as it is an important need for trainees. However, Offenders Education Institution officers indicated that currently, they are housing nine (9) children and thus it might be complicated to provide literacy classes.

The main concern for men trainees was the denial of conjugal rights and in general, the rights to have contacts with the outside world. This issue was raised by both the prisoners and the prison officers. The result is that men have sex with men in prison. According to the trainees and the officers because Rule 37 of the Standard Minimum Rules for the Treatment of Prisoners (1977) provides that prisoners shall be allowed to communicate with their family at regular intervals, both by correspondence and by receiving visits. Some of the remandees have been remanded for years without meeting their relatives.

Men also pointed out that there is inadequate food intake and lack of sufficient clothing while in prison. Nutrition is not balanced, they are mainly provided with starch and protein because of the minimal budget. As pointed out by one of the officers, the budget for food is low while the demand is high. Food is insufficient particularly for male trainees.

Lack of an approved School and Juvenile Remand Home

International standard demand that the different categories of prisoners be kept in separate institutions or parts of institutions taking into account the sex, age, criminal record, the legal reason for their detention and the necessities of their treatment²⁷. Thus, untried prisoners should be kept separate from convicted prisoners; Young prisoners should be kept separate from adults. As a result of being mixed, prison officials draw attention to the fact that others prisoners have progressively become difficult to handle, this not only impedes positive behaviour change initiatives meant for an Education Institution but is an infringement of the rights of the prisoner.

The police also point out that there are significant problems with the management of trainees, particularly in transporting them to courts and from the courts to the Offenders Education Institution. The police explain that the current two correctional facilities for Unguja and Pemba are overwhelmed by number of people in remand because they do not have capacity to manage a large number of remandees. They added that transportation of prisoners from one region to another is expensive. The police have no budget for transporting prisoners. This is something that has been raised in the past but no action has been taken to address it. Participants at the workshop pointed out that it is the mandate of the police to transport trainees and in any case, there is no dire need for transportation as due to the culture in Zanzibar, it is more stigmatizing for trainees to travel in cars. Many of the prisoners would prefer to travel on foot, with minimal security.

Discrimination by Law Enforcement Institutions

According to NGOs, courts and police discriminate people with disability, women, PLHIV. Discrimination is one of the obstacles inherent within the legal system, discrimination and marginalization of women. This was raised by women as they discussed weaknesses within the legal system. They elaborated that the system is discriminatory against women, particularly the lower courts. This has led to fear among women to use the Kadhi Courts. This has also been highlighted in the report by the Danish Institute of Human Rights on Legal Aid in East Africa²⁸, the report highlights discrimination issues within the legal system in Zanzibar as pointed out in the following paragraph,

²⁷ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

²⁸ Access to Justice and Legal Aid in East Africa, A comparison of the legal aid schemes used in the region and the level of cooperation and coordination between the various actors (2011), *A report by the Danish Institute for Human Rights and the East Africa Law Society.*

“...the legal system in Zanzibar suffers from inadequate funding and a lack of human resources, causing serious obstacles for access to justice. However, **a tendency for the legal system to discriminate against women**, for example concerning disputes over land ownership, and the lack of technical equipment on the island, such as machinery for DNA tests, are concerns which appear to relate more specifically to the legal system in Zanzibar”.

The report on the analysis on Internal and External vulnerabilities of children with disability against sexual violence in Zanzibar, states that the judiciary lacks sign language experts, therefore facing difficulties when adjudicating cases with people with hearing and intellectual impairment. In courts, there are no facilities to enable a fair hearing for people with disability; there is often no interpreter for persons with disability. Structures such as court buildings lack ramps and people with disability are not provided with any legal aid. For example, if a person with disability has no means of hiring an expert to help them with the translation, then the court would not have an alternative. However, the law provides that an interpreter should be in court to perform that function, but this right is denied because of these facilities are not available.

Likewise, protection to children with disability is not provided for by the penal Act, no 6 of 2004, though it is provided for by the Children’s Act of 2011. The makes reference to *imbeciles and idiots* as meaning people with intellectual impairment, something which has annoyed human rights activists and needs to be addressed.

Men in prison and in remand complained that there are acts of discrimination while in police custody, in courts and in correctional facilities. They stated that bail is granted mostly to accused from Zanzibar, those from Tanganyika do not easily get bail. In courts, accused from mainland are not availed with their rights to be heard. Some of the prisoners from Mainland pointed out they do get the minimal support to defend themselves. The right to appeal is also denied for many of the as it takes time to get proceedings for purposes of appealing, sometimes proceedings are received after the time for appeal has passed sometimes they are never received.

The youth highlighted similar concerns regarding discrimination when in the hands of law enforcement institutions, in particular, they pointed out that they face discrimination and mal treatment while in the hands of law enforcement institutions. Young people explained that the main cause of committing criminal offences is the lack of employment and high poverty rates. They explained that most of them are from low income households and that their needs at the household level are not met.

The report by Larisse et al²⁹, point out that Youth suffer from a number of impoverishing factors, some of which lead them to committing criminal offences. The problem facing the youth in Zanzibar must be addressed in a multisectoral way, engaging several ministries and actors. As emphasized by the youth interviewed in this study, their main problem is unemployment and lack of supportive programmes to facilitate their engagement in production. This is a broader issue that is beyond the mandate of legal sector institutions but consequently impacts on the sector.

Inefficiency and Corruption

Users of legal services complained of corruption within the police and Judiciary, this however was debated in a stakeholders workshop, with some participants stating that corruption has become rampant, particularly nepotism. Others saying that it is difficult to prove corruption in where there is no evidence. Male respondents in a FGD They explained bribe has been entrenched into the systems and highly affects the credibility of the police and court decisions. One of the respondents explained that all one needs to win a case is money, if one has money, they will not go to jail. A participant in a stakeholder's workshop stated that it is true there is corruption in courts and within police; he mentioned that it is difficult to completely avoid corruption because in Zanzibar nepotism is associated with culture and practices. It must nevertheless be addressed as it is one of the obstacles to justice.

Women in FGD elaborated that corruption is generally a problem across all district, primary and Kadhi courts. Legal aid respondents also highlighted that most of their clients complain of corruption and this can be evidenced in judgements, of which the logic for reaching conclusions is sometimes questioned. ZAFELA explained that the entire system needs to be overhauled, because sometimes when people complain of corruption the judge/magistrate is moved to another location, no other action is taken against him. They explained that although there is initiative on the part of government to increase the number of magistrates, most of those manning the district courts are under qualified and unprofessional. Participants in a stakeholder workshop noted that the courts are supposed to be impartial, this is emphasized within the judicial system, all practitioners are required to implement the code of ethics. This however has its challenges and is an issue to be followed up.

Respondents explained that the court is not always impartial. It is not strange to find a personal relationship between the offender, magistrate and the DPP. Therefore a clear case of conflict of interest arises and in these circumstances, the case judge may not be impartial. When the police and the courts want to refuse bail, they will

²⁹ Fred Larisse, Donald Mmari, Mgeni Baruani, Vulnerability and Social Protection Programmes in Tanzania (2003), A study for the Research and Analysis Working Group, Tanzania.

impose a condition that the accused will not be able meet, for example, they will state a financial figure that by all means, the accused will not be able to pay.

Some Government departments also underlined problems of lack of faith on the judiciary. They highlighted that sometimes results of cases, in terms of sentencing, awaken complaints among users. For example, some of the sentences are light for serious offences. They also noted that there is lack of commitment on the part of the DPP as there are cases that have been decided against the accused without sufficient reasoning, but the DPP does not appeal. Stakeholders point out that the judiciary is not performing as efficiently as it used to some years back. They explain that recently, the appointed magistrates and judges do not have sufficient knowledge and experience, they do not know how the system functions and have not received induction training. The public does not have faith in them nor do they have confidence over their work.. According to ZAFELA, some of the older magistrates and judges are not as qualified and in their opinion, unable to provide supervision to younger magistrates.

Stakeholders explained that with some of the inexperienced magistrates , access to justice may not be achieved. The issue of capacity building of judges and magistrate on rights issues has to be taken seriously and there is also need to emphasize on code of conduct and training on professional ethics. ZAFELA pointed out that the system of appointment of judges and magistrates should be more transparent and all those appointed should at least get induction training before they begin their duties.

According to the ZAFELA, because of mishandling of rape cases; during rape trials children are left to go back to parent or environment where the rape took place. No protection is provided to a child and communities are often not supportive to parents or sexually abused children.

It was proposed by government that a committee consisting of regional crime offices and ZAFELA be established to provide technical support to law enforcement institutions on cases on children and women. According to the police, NGOs woks with them when following up cases but there is no continuous realization to strengthen, institutions or improving efficiency. This is what the police would prefer to see happening.

Delays in Investigation

Cases take long to finalize because there is limited investigation capacity. Findings show that many of the vulnerable groups have lost faith on the legal system. Participants in a workshop explained that delays in investigation are mainly caused by lack of working instruments, lack of adequate knowledge by the police, including

low education levels and most importantly, there is no institution responsible for investigation in Zanzibar. The police pointed out that drug cases do not take as long as rape cases to investigate. Investigating rape cases is more complicated because it requires evidence, most of which victims miss. Further at Police point out that capacity to investigate needs to be strengthened. Police officers need to be trained on new methods of investigation, such as cybercrime and use of modern gadgets investigation. CID department needs to work closely with the private sector.

Most of the children interviewed were remanded for minor offence while their cases were still being investigated. For some of them the Investigation has taken up to six months. Children did not understand why they were denied bail by police, especially because investigation takes so long. Although some of them admitted that their parents were not willing to support their bail. Children were not told of their rights while under police custody. Some of the children have been remanded for the past six months, some of them for as long as eleven months.

The issue of delaying proceedings for purposes of appeal was mentioned as more of an inefficiency issue. Response from FGD elaborate that Magistrates explain that the accused has a right of appeal within 45 days after the judgement, but proceedings can take several months and even years to obtain. Some prisoners finish their sentences before receiving the proceedings for purposes of appealing despite several requests and follow ups. For example one of the prisoners had sought his appeal for the full time he was imprisoned (4 years), he gave up recently because he was finally completing his jail sentence.

Participants at the stakeholder workshop mentioned that the system lacks follow up methods. According to the participants, there is no reason why judges should take too long adjudicating cases. In such instances, they should be questioned and made accountable. The case flow management process is generally missing in Zanzibar and needs to be worked on.

Social and Cultural Obstacles

Limited Awareness on Legal Rights

According to respondents, various stakeholders have educated citizens on legal rights and as a result, there are increased level of awareness on legal rights. ZAFELA and LSSC both realize that there is still a huge gap in terms of knowledge of rights. This weakness has been noted among legal aid clients. In their opinion, citizens living in urban areas are better compared to those living in rural areas, but generally, the levels of legal knowledge are very low. They think that the legal sector is doing its best in reaching people with legal knowledge, but standards are

low, particularly in Pemba compared to Unguja. Limited understanding of the law is a contributor to backlogs of cases. ZAFELA states that if people knew the law and in particular if they understood their rights and responsibilities, there would not be so many cases in court. For example, if a child has been raped, before she is taken to the police, she is washed because communities believe that it is bad luck if she walks around in that state. There are also limited understanding regarding rights of an accused person, including right to bail.

Young people explained that many do not know their rights and that is why they are vulnerable to abuse and exploitation. Adding to the problem of limited access to legal aid, they appear in court but cannot defend themselves because they do not understand their rights. Lack of awareness of legal procedures and requirements is not just a problem for vulnerable groups. The private sector, mostly SUIES, lack knowledge regarding laws governing business and procedures

Limited Reporting of Sexual Abuse Cases

The police noted that rape cases are in the rise, particularly child sexual abuse and sodomy. The police mention that the problem is more complex than it seems because of the social cultural environment. They point out that in Zanzibar, there are taboos and beliefs that hinder efficient investigation of such cases. For example, it is difficult to get witnesses because those who commit the offence are usually neighbours or close relatives and community members may not be willing to stand as witnesses because they fear being segregated. But even before cases reach this point, such offences are rarely reported, precisely because of the same reason. In such cases, families agree to settle it out of court, so either the girl is handed over to the boy's family for marriage, or money is given to the family of the girl as compensation. It is only reported to the police when the negotiation process fails.

It is a taboo for a girl who has been raped to walk to the police in the same state. As a practice, the family will wash her first, thus destroying the evidence. They believe that if a girl goes like that to the police, she attracts devils. They will also burn all the evidence for example bed sheet, the bed into which the offence was committed, the clothing etc., believing that if the materials are taken as evidence the girl will bewitched. The leading region for rape cases is kaskazini region.

Gender issues

Employment

In the 1960s women in Zanzibar did not want to join the police force mainly because it was believed that this was a man's job. Therefore during that time, many of the women who were recruited to fill in vacancy positions in the Police Force came from

Tanzania mainland. Currently, women are willing to join police.. However, most women still believe that these kinds of jobs are not for them. According to a senior police official, it is not an institutional problem, but the lack of knowledge regarding rights of women and social cultural beliefs. It is however important to note that there are very few high level positions for women in the legal sector institutions. It is said that the current leadership is committed towards promoting women in leadership positions.

Commissioner of Police is the chair of gender issues of the GBV committee of Zanzibar under the Ministry concerned with gender. He has seen the benefits of working in teams to highlight some of these gender issues. He has also seen how the victims suffer as a result of a bureaucratic legal system and a community that does not understand the law. He therefore proposed that a one stop centre where the victim will access all services, including counselling, police services, hospital services and any other service that a victim needs to access justice. He pointed out that the government needs to establish mechanisms for reporting such cases and strengthen partnerships.

On the other hand, the situation is slightly different with the correctional facilities. Within the training institutions, the numbers between men and women are not equal. When recruiting, women are fewer because of the ratio of prisoners (positions are determined by number of women or men prisoners); Culture also contributes to the limited interest by women. According to a female Offenders Education Institution officer, some women fear joining the army because of religious beliefs for instance the dressing codes. Capacity building opportunities are few and almost non-existent. Capacity building for staff employed in women's prisons is important in order to enable them address the special social reintegration requirements of women prisoners and manage a safe and rehabilitative facility. Where children are allowed to stay with their mothers in prison, awareness raising on child development and basic training on the health care of children should be provided to prison staff .

Lack of Capacity Building Initiatives

Capacity building measures should be targeted for men and women in all legal sector institutions. Capacity building should also include measures for women staff to include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners. By doing so, plans and budgets will be responding to the specific needs of women, including the rehabilitative programmes and services specifically suited to the gender needs of women in prison.

However, the according to one of the senior Offenders Education Institution officers, female officers currently employed are not always willing to advance professionally. Most of the women have no interest in self-advancement; they tend to be complacent with their current positions. For instance, there had been a request for training on health issues on midwifery; none of the women was interested when it was advertised. They have a dispensary but they lack a specific person for maternal health,. In leadership women are comparatively fewer to that of men.

CHAPTER 4: POSITIVE FACTORS IN ADDRESSING THE OBSTACLES FOR DISADVANTAGED PEOPLE

Establishment of a Child Protection Unit

The Child Protection Unit (CPU) under the Ministry of Gender and Children is a department that deals with vulnerable children or children in need of protection. The establishment of the Unit has been facilitated by UNICEF and Save the Children. Although it is a fairly new Unit, it is known and used by users of legal services. It is the first point that abused children can go to get essential services including advice on legal action.

The CPU works with key legal sector institutions such as the police, DPP, Advocates, Judiciary, Legal aid NGOs and the Offenders Education Institution. The role of the committee is to provide immediate referral and any other assistance that may be required by the child. They also raise awareness on rights of children. One of the changes that they are trying to promote is the use of diversion for cases involving juvenile offenders. Regulations on Juvenile Justice are in progress, it is expected that these regulations will change the situation for juveniles in conflict with the law.

Interventions to Strengthen Partnerships between Legal Sector Institutions

The RGZ has progressively increased the number of courts and prison facilities. The expansion of the infrastructure has to some extent increased efficiency although there are still challenges. The office of the DPP works very closely with the Offenders Education Institution and undertakes annual reviews and shares their newsletters with other legal sector institutions. The Zanzibar Legal Services Center trains police officers and prison officers and are able to highlight and analyze several problems concerning users of legal rights. Collaboration and partnerships between institutions has facilitated effective use of resources, strengthened partnerships and facilitate greater knowledge of human rights among law enforcement institutions.

Interventions to Address Corruption and Inefficiency

The government has a policy and legislative framework on corruption and good governance, i.e. a National Good Governance Policy and the Zanzibar Anti-Corruption and Economic Crime Act No 2 of 2012. However, despite the presence of these two instruments, there are implementation challenges.

The Tanzania Police Female's Network and Police Gender

Tanzania Police Force established gender desks in selected police stations as a measure of addressing cases facing women and children. All the appointed police gender desks personnel in Zanzibar were trained. The role of the desks is to accept, register and open files for victims of gender based violence related issues such as rape, battery and assault; Confirm accusation and arrest the suspect/accused; investigate and collect evidence; assist victims with referrals, i.e. to obtain PF3 form, escort to health facilities; link the victim with the court, for justice to take place; and offer legal advice to the victim. The government has also established gender-based violence committees at local, regional and national levels and has created a child protection unit within the Department of Social Welfare, which works with the police on cases of child abuse.³⁰

³⁰ UNFPA (2011) One Stop Centre for Survivors of Violence Opens in Zanzibar, (<http://unfpa.org/public/home/news/pid/8142>).

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS (WAY FORWARD)

In conclusion, reforms in the legal sector should be strengthened access to justice for all with particular attention to challenges of access by the poor and most vulnerable groups in society.. The current status of things reveals several obstacles in accessing justice by the poor. Although there have been reforms to improve service delivery in general, little effort has been placed on improving access to justice in general and to the poor in particular..

Improve Institutional infrastructure

Evidence also reveals that past reforms have mainly focused on infrastructure such as construction of more courts. However, in addition to the infrastructural changes, which are inevitable in order to move services closer to communities, there is need to shift the focus on institutional infrastructure issues such as improving levels of knowledge of all institutions providing oversight, institutions providing legal services and institutions responsible for monitoring and follow up.

Increasing the capacities of all legal sector institutions especially working facilities, efficient personnel, sanitary towels, facilities for children and other important facilities should be accorded priority.

Provision of legal aid is limited but highly needed. It is recommended that the best models of providing legal aid for communities in Zanzibar be sought. An institution to provide training for paralegals, apart from the Zanzibar Center for Legal Services is needed. The Ministry responsible for legal affairs should establish a specific unit to deal with legal aid issues.

Coordination and partnership

Partnership between the Ministry responsible for justice and legal affairs and other legal sector institutions including institutions working in areas of human rights and legal aid is generally weak, needing to be strengthened. Intensifying partnership is important for purposes of increasing efficiency in the legal sector. The Ministry should involve all the actors in planning and budgeting for the key activities and ensure that all actors are involved in the process of determining priorities for the sector. The Ministry should also facilitate implementation by other sectors, for example, assist the other MDAs such as police and Offenders Education Institution to advocate for a budget that meets the most pressing needs of the clientele.

Social and Cultural Issues

Social cultural issues contribute to limited achievement of goals and objectives of a pro poor legal sector reform programmes. Attitudes and behaviors that perpetuate Gender Based Violence have been institutionalized, at the same time, widely practised, limiting the enjoyment of human rights by women and children. Limited knowledge of human rights issues as well as rights in general is something that must be progressively addressed by all legal sector institutions.

The Ministry of Legal Affairs and Constitution needs to engage key actors in raising awareness on a range of rights for vulnerable groups. Specific awareness interventions should be undertaken for people with disability, particularly on their basic rights. The Ministry of Legal Affairs and Constitution can work closely with NGOs providing legal education, for example, ZLCS has TV and radio programmes on human rights. Association of People with Disability has also started education programmes for people with disability.

Human capabilities

The judiciary should also ensure competence and capabilities of all staff responsible for dispensing justice, including a cadre of staff that is competent with skills of communicating with people with disability, competent officials that can use the Children's Act and treat children with respect and officials that understand rights of women. Thus far, the younger magistrates have not had adequate training and therefore make mistakes, sometimes decide cases unfairly. A mechanism that would ensure a transparent selection process, training of enrolled magistrates and judges and enforcement of the code of conduct would most likely improve performance and credibility of the court.

Corruption

Corruption is generally a key obstacle to justice. It is important to train all law enforcement institutions on laws against corruption as well as on-going initiatives to address corruption in Zanzibar. Mechanisms of reporting corrupt practices by law enforcement institutions should be established, for example hot lines. Follow up on allegations of corruption should be seriously followed up and adequately addressed. This will require that awareness building among citizens be undertaken to encourage reporting of corrupt officers.

Gender based violence

The study found that part of the problem in addressing GBV issues lies in the structure of the legal system where the police and the Courts. Significant reforms aimed at improving human rights standards within the justice system need to be undertaken.

Law enforcement

Implementation and enforcement of the laws and rights enacted in defence of vulnerable groups in society such as children, women and people with disabilities should be given priority.

Law Review

Zanzibar needs to identify the discriminatory laws and other laws that impede access to justice. A thorough study of these laws should be undertaken to determine the exact gaps (provisions) and proposals for improvements to be made for purposes of improving access to justice and effectively address discrimination in the legal system.

ANNEXES

Annex 1: List of Institutions and People Met

Institution	Person(s) Interviewed	Position
OFFENDERS EDUCATION INSTITUTION	SEIF MAABAD MAKUNGU	ASB
	SIDA MOHAMED	SSP
	PANDU MAKAME HAJI	SSP
	ASHA AKIDA	ASP
ZAFELA	HAMISA MANGA	Executive Secretary
	SAADA SALUM ISSA	Member
	HADIJA MAMRUKI HASSAN	Member
POLICE FORCE	MUSA A. MUSSA	Commissioner of Police
ZLSC	BI HARUSI MIRAJI MPATANI	Executive Secretary
JUMUIYA YA MAIMAM ZANZIBAR	MUHIDIR ZUBERI	Executive Secretary
ZAPHA+	MASOUD MOHAMED NASOR	Programme Officer
FGD CHILDREN IN REMAND	HARUNI SWEDI MTALIKWA	
	BATROMEO TUTBET NINDI	
	YOHANA KOSEI	
	MOHAMED HAJI JUMA	
	MOHAMED BAKARI ATHUMAN	
	ZUBERI ZAIDI MBARUOK	
	SHABANI	
FEMALE PRISONERS	RUKIA JUMA IDD	
	MWANAHAMIS JUMA	
	SALAMA CHARLES	
CHILD PROTECTION UNIT	KHADIJA ALI AHMED	
	MKASI ADBULLA RAJAB	
	BIUBWA ALI MOHAMED	
	LILIAN JAPHET MUKAMA	
VANZIBAR ASSOCIATION OF THE DISABLED	ALI RASHID SALIM	Executive Director
	ADIL MOHAMED ALI	Deputy Secretary General of UWZ
	DONALD GODWIN NAVETTA	Operations Officer
	ELID Z. KATAYI	Adviser, SMEs

Annex 2: List of References

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