

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

**FINAL REPORT**

**CAPACITY AND NEEDS ASSESSMENT OF LEGAL  
SECTOR ACTORS IN ZANZIBAR**

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## LIST OF ABBREVIATIONS AND ACRONYMS

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AG	Attorney General
CDs	Discs
CHRGG	Commission for Human Rights and Good Governance
CJ	Chief Justice
CRVS	Civil Registration and Vital Statistics
CS	Chief Secretary
CSD	Civil Service Department
CSOs	Civil Society Organizations
DHU	Disputes Handling Unit
DPs	Development Partners
DPP	Director of Public Prosecution
FILMUP	Financial and Legal Management Upgrading Project
HRD	Human Resource Development
ICT	Information and Communication Technology
IEC	Information Education and Communication
IFMS	Integrated Financial Management System
ILD	Institute of Liberty and Democracy
IPAS	Industrial Property Automated System
IT	Information Technology
JSC	The Judicial Service Commission
LRCZ	The Law Review Commission of Zanzibar
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MOJCA	Ministry of Justice and Constitutional Affairs
MKURABITA	Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania
MKUZA	Mpango wa Kupunguza Umaskini Zanzibar
MOFEA	Ministry of Finance and Economic Affairs
NGO	Non Governmental Organization
NRD	Norway Registers Development
OCAG	Office of Controller and Auditor General
ODPP	Office of the Director of Public Prosecutions
ORG	Office of the Registrar General
PMS	Performance Management System
PMU	Procurement Management Unit
POFEDP	President's Office, Finance, Economy and Development Planning
PS	Principal Secretary
RCU	Reform Coordination Unit

RBD	Registrar of Births and Deaths
REPOA	Research on Poverty Alleviation
RGoZ	Revolutionary Government of Zanzibar
ToR	Terms of Reference
UNDP	United Nations Development Program
URT	United Republic of Tanzania
USA	United States of America
ZAFELA	Zanzibar Female Lawyers Association
ZBC	Zanzibar Business Council
ZFDCB	Zanzibar Food, Drugs and Cosmetics Board
ZLS	Zanzibar Law Society
ZNCCIA	Zanzibar National Chamber of Commerce, Industry and Agriculture
ZPRP	Zanzibar Poverty Reduction Plan
ZPSRP	Zanzibar Public Service Reform Program

# CHAPTER ONE: BACKGROUND AND CONTEXT

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## 1.1 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.<sup>1</sup> However, the Sultan granted rights for consuls of foreign powers to exercise extra-territorial jurisdiction over their 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 which 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 until after 1861, when Zanzibar was separated under its own Sultan from Muscat.<sup>2</sup>

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 appeals from Zanzibar 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

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<sup>1</sup> Until 1861 the Sultanate of Zanzibar was under the Sultan of Muscat.

<sup>2</sup> 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: Quarter 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. However, 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.<sup>3</sup> 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 instead<sup>4</sup>. 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.

Several studies and the second generation of the Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA II) identify a number of institutional and capacity challenges still confronting the legal sector in Zanzibar. These include: inadequate

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<sup>3</sup> 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.

<sup>4</sup> 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.

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; public perception that corruption in the legal sector has now become endemic; inadequate provision of legal aid services, absence of framework for managing and coordinating legal training and education; and underfunded courts leading to delay of justice<sup>5</sup>. 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.

In recognition of the critical role of the legal sector in promoting good governance and socio-economic development of the country, over the years, the RGOZ has been undertaking several initiatives aimed at strengthening the legal sector in Zanzibar. These include establishment of a number of institutions, improving accessibility of laws of Zanzibar, increasing the number of Judges and Magistrates, reviewing of existing laws as well as creating an enabling environment for Non Governmental Legal Entities to operate in the Isles. Other measures include creation and strengthening of the DPP's Office, creation of the new Ministry of Justice and Constitutional Affairs (MoJCA)<sup>6</sup>, the revival of the Law Review Commission and many other independent initiatives that seem to have resulted in 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 with a view of informing the development of a capacity development strategy for the legal sector. The Terms of Reference for the assignment are detailed in Annex A.

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<sup>5</sup> Page 69-70 ZSGRP II 2010-2015 (MKUZA II)

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

## 1.2 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 organizations. Coverage of the study was with respect to 17 key legal sector institutions representing both the public and private sectors<sup>7</sup>. 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 objective of the study was to assess the level of capacity assets and the capacity needs of the legal sector actors in relation to:

- (i) The institutions environmental, legal, policy and institutional/organizational framework and arrangements.
- (ii) The institutions' program/project management capacity (leadership commitment, planning/budgeting, coordination, supervision/reporting, monitoring & evaluation, networking, communication).
- (iii) The institutions technical capacity in the administration of justice (technical knowledge, skills and experience, and human resources to match their distinct functions).
- (iv) The institutions administrative capacity (facilities to carry out activities, procurement/contracting, human resource management, assets management, management information systems, case management systems).
- (v) Institutions financial management capacity (dedicated finance unit, finance procedures, experience managing donor funds, internal controls, accounting/financial reporting, and audit issues).
- (vi) The institutions material resources (equipment and tools) and geographical physical presence (infrastructure and services).

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<sup>7</sup> These institutions include: the Ministry of Justice and Constitutional Affairs; 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 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); 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;; Civil Society Organizations (SCOs) representing vulnerable groups; and Faith Based Organizations (FBOs)]

The assessment will provide a basis for the development of a capacity development strategy that will include prioritized and sequenced interventions so that when these tangible components are addressed together, they will provide the necessary capacities for the agencies to effectively and efficiently deliver access to justice in Zanzibar.

### 1.3 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 Wadoud, 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:

- (i) **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. The consultants also discussed the 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.
- (ii) **The Creative Phase 2:** This was the core phase of the assignment. Key tasks performed included review of documents; interviews and discussions with selected legal sector actors as well as other stakeholders in both Unguja and Pemba. These include government officials, representatives of the private sector, women entrepreneurs, NGOs as well as Civil Society Organizations. This was mainly aimed at determining staff and other stakeholders' perceptions regarding the state of institutional capacity of selected institutions. On the basis of analysis of the findings of the study a draft report was prepared and measures towards addressing the prevailing capacity challenges recommended. Annexes B and C are the lists of documents reviewed and stakeholders interviewed respectively.
- (iii) **Validation and finalization Phase:** A national workshop at which stakeholders were invited to comment on the draft report was organized by the Ministry of Justice and Constitutional Affairs. The workshop was held on the 16<sup>th</sup> day of August 2012. At the workshop the team validated their findings and recommendations. The feedback that was received provided the basis for preparing the final report.

## 1.4 Report Structure

This report is organized in three chapters. Chapter one contains the introduction giving the context and objectives of the study, the approach and methodology as well as the structure of the report. Chapter 2 presents an assessment of capacities and needs of selected legal sector actors in Zanzibar. It identifies specific institutional and human capacity challenges of respective institutions. Chapter 3 provides summary of the findings and recommends measures towards addressing the prevailing capacity challenges of the legal sector. The report also contains the following annexes:

- (i) Annex A: Terms of reference (ToR).
- (ii) Annex B: List of documents reviewed.
- (iii) Annex C: List of stakeholders interviewed.
- (iv) Annex D: Key informant tool for government MDAs.
- (v) Annex E: Key informant tool for private sector.
- (vi) Annex F: List of laws and regulations governing business activities in Zanzibar

## CHAPTER TWO: SITUATIONAL ANALYSIS OF EXISTING CAPACITY AND CHALLENGES OF LEGAL SECTOR ACTORS IN ZANZIBAR

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### 2.1 Overview of Institutional and Human Capacities in the Public Service

The role of institutions in a country's development agenda cannot be underestimated. Most of the studies find a positive correlation between the quality and performance of institutions on the one hand and development outcomes on the other. In recognition of the importance of effective institutions in socio-economic development, over the years, the Revolutionary Government of Zanzibar (RGoZ) has been undertaking a number of institutional development initiatives aimed at strengthening the capacity of public service. Immediately after the Revolution, the RGOZ had to establish new institutions and organization units, both at the centre and service delivery levels, to handle responsibilities occasioned by the change of status of the country as well as the need to spearhead socio-economic development<sup>8</sup>. Efforts were also taken to build the capacity of public service personnel to man the new and expanded functions of the government.

The results of these interventions went a long way to create public service machinery which had the capacity and characteristics required to meet the high expectations of Zanzibaris for progress and advancement. However, the rapid and vast expansion of the public service (in terms of institutions and personnel) put a severe strain on the country's resources as well as institutional capacities and contributed, in some measure, to various challenges in the public service. To address the challenges, the Government initiated and implemented a number of reforms which have gone a long way to enhance the capacity and capability of the public service. These include the core reforms coordinated under the Ministry of Finance and Economic Affairs (MoFEA). They were initiated in 2006 under cluster III of the Zanzibar Strategy for Growth and Reduction of Poverty (ZSGRP)<sup>9</sup> in the areas of economic financial and management, good governance as well as institutional and human resources. The triggers of the core reforms were the acute problems which were experienced in the economic and financial management; inherent inadequacies of institutional frameworks and human resources; and the need for compliance with good governance related issues in the country.

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<sup>8</sup> ZPSRP Medium Term Strategy (2010)

<sup>9</sup> Popularly known in Kiswahili as "Mpango wa Kukuza Uchumi Zanzibar (MKUZA)".

According to a situation analysis on the state of public service reforms undertaken in 2009<sup>10</sup>, the core reforms contributed to improvements in the macroeconomic fundamentals of Zanzibar and enhanced the capacity of MoFEA in terms of organization structure, human resource, systems and tools. The reforms have also resulted in enhanced revenue collection, improvement in planning and budgeting as well as accountability.

Results of institutional and human resource reforms include revision of the public service pay structure and consequential enhancement of pay levels. Measures were also taken to address the ghost worker phenomenon resulting in weeding out approximately 1,400 ghost workers. Another action relates to the development and installation of a payroll system resulting in a more efficient management and processing of payroll data in the public service.

With regard to governance reform, notable achievements include the establishment of the Office of the Director of Public Prosecutions (DPP) in 2003 with a view to strengthening the prosecution functions and dispensation of justice. A related positive measure was to separate prosecution and investigation functions (civilianize prosecution). A Framework for Criminal Justice was also prepared.

In as much as the implementation of the core reforms resulted in modest achievements noted above, on the overall public service institutions are still faced with severe institutional and human capacity challenges, characterized by shortages of skilled staff, weak institutional environments which undermine the proper utilization and deployment of existing capacity, limited opportunities for capacity development and skill enhancement, as well as outdated bureaucratic infrastructures and regulatory frameworks. A situational analysis of the state of public services in Zanzibar<sup>11</sup> revealed that among the major institutional, functional and organizational challenges affecting public service institutions include:

**(i) Lack of Clarity on the Roles and Functions of the Government**

There is unclear definition of roles and functions of government institutions vis a vis other players on the one hand and within the government on the other hand. In respect to internal government organs there are weaknesses in institutional arrangements, structures and systems. In this regard, there is a tendency to establish new institutions without adequate analysis of their affordability and sustainability.

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<sup>10</sup> See Liviga et al (2009)

<sup>11</sup> Liviga et al (2009)

**(ii) Absence of Enabling Policy and Legislative Framework**

The constitutional and legislative framework supporting management of the public service was limiting. In fact as at 2009, there was no policy or legislation to elaborate on the roles, functions, mandates and accountabilities of key state institutions that govern the public service thus resulting in overlaps. Nevertheless a Public Service Management Policy and Public Service Act are now in place through the ZPSRP initiatives.

**(iii) Weak Systems and Processes for Managing the Human Resource Functions**

Another major challenge is related to weaknesses in systems and processes for the management of human resource functions including human resource planning, recruitment, deployment, training and development, appraisal, compensation and discipline. These weaknesses result in erosion of ethical conduct, incompetency, indiscipline as well as lack of responsibility and accountability and poor performance.

**(iv) Limited Capacity**

The capacity of the public service, in terms of numbers as well as skills and competencies, is low. The situation is a function of failure to accord adequate attention to systematic training and development as well as inability to attract and retain technical and professional staff.

**(v) Low Pay and Inequitable Pay Structure**

Pay remains a major challenge that undermines the capacity of the government to attract and retain qualified personnel especially at technical, professional and managerial levels. The main issues include: (i) Comparatively low compensation; (ii) Inequity in compensation among public servants; and (iii): inefficient and inequitable pay structure. The issues also contribute to low morale and unethical conduct in the public service, which in turn affects performance and service delivery.

**(vi) Absence of Performance Standards**

Absence of well-established performance standards contributes to poor performance in the public service.

**(vii) Lack of Accountability Frameworks**

Lack of appropriate accountability mechanism does not motivate both institutions and individuals to account for resources and results.

### **(viii) Inefficient and Ineffective Records Management Systems**

Government decisions rely on, among other things, accurate information that can be retrieved easily and in a timely manner. However the management of public records is yet to reach desirable standards for managing information and records in public institutions.

### **(ix) Absence of Institutional and Legal Framework for Operations of ICT in the Government**

Modern information and communication technologies (ICTs) are creating new opportunities for improving public service delivery, management of public resources, and accountability. However the absence of supporting policy and inadequate institutional and human ICT capacities undermines deployment of ICT in government operations.

### **(x) Poor Work Environment**

Work environment is in deplorable condition. Office accommodation is not adequate and most of them are below standard with some being dilapidated and lacking facilities for provision of public services. There is also a shortage of office furniture, tools and equipment.

## **2.2 Capacity Status and Challenges of Legal Sector Actors**

The consulting team acknowledges RGoZ's commitment and efforts towards improving the legal sector and enhancing the capacities of various legal sector actors over the years. Development partners, including UNDP and the Commonwealth Secretariat, have also contributed towards capacity development of the legal sector in terms of, among others, funding: (i) training of judges, magistrates, clerks and Kadhis in human rights and legal research; (ii) training of young lawyers from the Office of the Attorney-General in litigation and advocacy skills; (iii) training of personnel in the Office of the DPP on prosecution of white-collar crime and terrorism; (iv) field visits by DPP's staff to Uganda to learn about the programme of "civilianisation" of prosecutions; (v) training of the personnel of the Office of the Registrar-General on the development of a data base for births, deaths and marriages in Zanzibar; (vi) funding awareness campaigns on the need to register births, deaths and marriages and other relevant civil matters; (vii) provision of office equipment to the judiciary, AG's Chambers, Office of the Mufti, Office of the Registrar-General and the Office of the DPP; (viii) sponsorship of lawyers to attend a course on terrorism as well as (ix) training of judges, magistrates, clerks and advocates on judicial work, corruption and ethics.

The efforts notwithstanding, over and above the generic challenges confronting the public service described above, documentary review and consultations with selected actors of the legal sector as well as other stakeholders revealed that the legal sector still faces institutional and capacity challenges. These challenges are also endorsed under important national documents<sup>12</sup>. They include:

- (i) Absence of clear legal sector policy framework.
- (ii) Inadequate institutional and operational capacity of the legal sector actors.
- (iii) Inadequate infrastructure, technical and financial resources.
- (iv) Outdated laws, legal practice and procedures.
- (v) Inability to dispense justice timely and at affordable cost.
- (vi) Public confidence of legal sector institutions, processes as well as personnel is limited.
- (vii) Dilapidated court buildings and government offices.
- (viii) Lack of proper legal and administrative framework for coordination, control and improvement of legal education, training and the legal profession.
- (ix) Poorly motivated legal professionals and other personnel in the legal sector.
- (x) Public perception of corruption in the legal sector is high.
- (xi) Lack of public awareness on legislations, basic justice process, as well as their rights.

Most of the MDAs consulted face similar institutional capacity challenges, however with different degrees of variation. The capacity status and challenges of specific institutions is described below:

### **2.2.1 The Ministry of Justice and Constitutional Affairs (MoJCA)**

The Ministry of Justice and Constitutional Affairs (MOJCA) was established in November 2010 with responsibilities of overseeing constitutional, legal, religious and civil society related matters<sup>13</sup>. MOJCA has the mandate to coordinate, undertake and/or supervise the following functions:

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<sup>12</sup> MKUZA I, MKUZA II, and Vision 2020.

<sup>13</sup> Previously, legal and constitutional matters were coordinated under the Ministry of State (President's Office) Constitutional Affairs and Good Governance, which was established in 2000.

- (i) Providing policy directions and coordination with regard to the legal sector as a whole;
- (ii) Advising the government on legal matters, preparation and drafting of bills, supervision of government's civil cases, revision of various legislations;
- (iii) Administration of criminal justice;
- (iv) Interpretation, administration and dispensation of justice;
- (v) Enhancement of legal awareness amongst members of the public;
- (vi) Administration of religious (Islamic) matters; and
- (vii) Registration and administration of civil and business activities, including copyright issues.

The Ministry's structure has been reorganized to take into account its new functions. The Ministry has only two internal departments, namely (i) the Department of Planning, Policy and Research and (ii) the Department of Administration and Human Resource Management. The following autonomous institutions fall under the Ministry of Justice and Constitutional Affairs:

- (i) The Judiciary
- (ii) The Office of the Attorney General
- (iii) The Office of the Director of Public Prosecutions
- (iv) The Law Review Commission
- (v) The Office of the Registrar General
- (vi) The Wakf and Trust Commission
- (vii) The Office of the Mufti
- (viii) The Copyright Office
- (ix) The Registrar of Births and deaths
- (x) The Judicial Service Commission
- (xi) The Office of the Officer-in-Charge Pemba

While it is recognized that the above legal sector institutions are independent and have their respective mandates, the legal sector operates in an environment where there is an interdependence of functions and a wide range of shared interests crucial to the effective and efficient administration of justice. In that regard MOJCA as the coordinator of the legal sector has a crucial role to ensure effective institutional

coordination and servicing them on all policy and regulatory issues. This entails among other things leadership of the sector, policy formulation and advice, planning, and providing strategic guidance, facilitating program and activities of the institutions as well as promotion of the efficient and proper functioning of the legal sector. MOJCA also needs to collaborate with other related government institutions and Non State Legal Actors in pursuit of effective administration of justice and promotion of the rule of law in the country. Given the responsibilities to oversee constitutional and legal matters, there is a need of establishing departments/units responsible for constitutional affairs and on legal services. With the advent of a legal sector reform program MOJCA would also be responsible for coordinating the program. This entails providing technical leadership of the programme, coordination of the programme implementation, monitoring and reporting progress of the legal sector reform program. Thus would also necessitate establishment of a reforms coordination unit, within the planning, policy and research department. On the overall the structure and capacity of the Ministry, needs to be reviewed and enhanced accordingly. Functional reviews to be undertaken under the ZPSRP would indeed provide the opportunity to review the establishment and structure of the Ministry. MOJCA is among the pilot ministries earmarked to be facilitated to undertake functional analysis and review of its structures by December 2012.

MOJCA faces the following institutional, organizational and operational capacity challenges:

- (i) Lack of clarity of the ministerial organization structure, accountability as well as roles of MOJCA in relation to other independent departments.
- (ii) There are concerns regarding cases of non compliance with regulations and guidelines by some independent departments due to inadequate commitment and awareness of their roles, accountability and responsibilities as legal sector actors.
- (iii) The Ministry's structure needs to be reviewed. There are only 2 internal departments, the rest are independent departments established under their respective legislations.
- (iv) Weak coordination mechanism for legal matters due to absence of a department/unit on legal matters.
- (v) Limited capacity for policy formulation and analysis, planning, coordination, research, monitoring, and evaluation within the Ministry.
- (vi) Inadequate office space, working facilities and dilapidated office premises. However, this problem will soon be solved. The MoJCA is currently constructing its new office building which is also earmarked to house the

offices of the Registrar General, Registrar of Births and Deaths, and the Wakf and Trust Commission.

- (vii) Despite some improvement in terms of the quality of human resources at the Ministry, there are still concerns regarding adequacy of knowledge and skill of the staff.
- (viii) Inadequate equipment and office facilities.
- (ix) Inadequate financial and human resources.
- (x) Limited awareness and understanding by other institutions on the role of MOJCA as the coordinator of the legal sector.

### **2.2.2 The Judiciary**

The Judiciary in Zanzibar is made up of five distinct courts namely, the High Court of Zanzibar, Regional Courts, District Courts, Primary Courts and the Kadhi's Courts. The Juvenile Court, which is another important institution in the judiciary, is attached to the Regional Court. The Industrial Court is a specialized division of the High Court on labour matters. The Court of Appeal, which is the highest appellate level, is a Union Matter.

#### **(i) The High Court:**

The High Court of Zanzibar is established under Article 93 of the Constitution of Zanzibar. It is a court of record with jurisdiction on all matters, both criminal and civil and other matters that might be trusted to it by other laws. The Chief Justice of Zanzibar is the head of the judiciary. Currently, the High Court has 6 full time judges, including the Chief Justice, which is the optimal number required. However, there is no resident judge of the High Court in Pemba.

#### **(ii) The Regional Court:**

The Regional Court was established under the Magistrates Courts Act, 1985. Under the law, each of the five regions (i.e. North and South Regions of Pemba and North, South and Urban West in Unguja) in Unguja and Pemba is supposed to have a Regional Court. The Regional Court is presided over by a regional magistrate who is supposed to be a qualified lawyer and holder of a law degree from a recognized university.

The Regional Court has both civil and criminal jurisdiction. In civil matters, the Regional Court has the power to entertain cases in which in the case of movable property the value of the subject matter is above TShs. 5,000,000/= but does not

exceed TShs. 30,000,000/= and in the case of immovable property the value of the subject matter is above TShs. 10,000,000/= but does not exceed TShs. 50,000,000/= <sup>14</sup>. In criminal matters, the Regional Court has power to hear cases originally heard by subordinate courts, such as cases relating to offences listed under Schedule 1 to the Criminal Procedure Decree.

The regional magistrate, by virtue of his position, is the chairman of the Children's Court working in his region. In situations where the chief justice extends the powers of the regional magistrate, such a magistrate with extended jurisdiction can exercise the powers of a High Court judge.

### **(iii) The District Court:**

The District Court was established under the Magistrates Courts Act, 1985. Under the law, each district is supposed to have a District Court. The district magistrate has both criminal and civil jurisdiction. In criminal cases, the district magistrate can impose a sentence not exceeding five years in jail. In civil cases, the District Court can handle matters in which in the case of movable property the value of the subject matter is above TShs. 1,000,000/= but does not exceed TShs. 5,000,000/= and in the case of immovable property the value of the subject matter is above TShs. 5,000,000/= but does not exceed TShs. 10,000,000/= <sup>15</sup>. The District Court also exercises appellate and revisionary jurisdiction over the Primary Court below it.

### **(iv) The Primary Court:**

The Primary Courts are established under the Magistrates Courts Act, 1985. There is supposed to be a Primary Court in each district. However, the chief justice is by law allowed to establish more than one Primary Court in each district.

In its criminal jurisdiction, a Primary Court can impose a custodial sentence not exceeding one year or a fine not exceeding TShs. 2,000 or corporal punishment; or a combination of all these sentences. In civil matters, a Primary Court has jurisdiction to hear cases in which in the case of movable property the value of the subject matter does not exceed TShs. 1,000,000/= and in the case of immovable property the value of the subject matter does not exceed TShs. 5,000,000/= <sup>16</sup>.

Advocates and state attorneys are prohibited to appear in the Primary Court. However, *Wakyls* are permitted to appear before primary court magistrates.

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<sup>14</sup> See Extension of Pecuniary Jurisdiction in Civil Cases, Legal Notice No. 7 of 2004

<sup>15</sup> Ibid

<sup>16</sup> Ibid

**(v) The Children’s Court:**

During the Sultanate era, Islamic law and religious leaders such as *Shehas*, *Kadhis*, and *Imams* were the common forums in relation to the administration of juvenile justice in Zanzibar. The first juvenile court was introduced in 1935 following adoption by the British of the Juvenile Offenders Decree. Later, in 1952 the Juvenile Offenders Decree was repealed by the Children and Young Persons Decree, 1952 (Cap 58) which was a product of the English Act – the Children and Young Persons Act, 1933. Cap 58 contained provisions for protection of persons under the age of sixteen years and for the procedure at trial of such persons on criminal charges. It also established a distinct Juvenile Court at the level of the Regional Court for the purpose of hearing and conducting all trials against persons below 18 years. However, in cases where juveniles were charged jointly with adults they lost the protection accorded by the Children and Young Persons Decree, 1952. In those instances, they were not tried by the Juvenile Court.

In 2011, the Children and Young Persons Decree, 1952 was repealed and replaced by the Children’s Act<sup>17</sup>. Among other things, the Children’s Act establishes the Children Court in every region for the purposes of making orders relating to children in need of care and protection, maintenance of children, custody of and access to children, guardianship and parentage of children; and hearing and determining criminal charges against a child for an offence alleged to have been committed before the child reached the age of 18 years. However, the offences of murder, manslaughter, treason or rape – if committed by a child – are not triable by the Children’s Court<sup>18</sup>.

The Chief Justice may, by notice in the Gazette, designate any premises used by a Primary Court to be a Children’s Court<sup>19</sup>. The Children’s Court is presided over by a Regional Magistrate, as chairperson, sitting with at least two other persons appointed by the Chief Justice as members<sup>20</sup>. The persons to be appointed as members should have special knowledge or training in child welfare or child psychology or have been actively involved in health, education or welfare activities pertaining to children. However, the presiding Regional Magistrate may sit alone when hearing and determining criminal charges against a child in the case of offences listed in Schedule I to the Act<sup>21</sup>.

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<sup>17</sup> Act No. 6 of 2011

<sup>18</sup> Ibid; section 18(1)

<sup>19</sup> Ibid; section 18(3)(a)

<sup>20</sup> Ibid; section 18(4)

<sup>21</sup> Ibid; section 18(5)

Attendance to the proceedings of a Children's Court is not open to the general public. It is restricted to the child involved in the matter before the court, his parents or guardian and any other party in the matter; the legal representative of a party to the proceedings, including the legal representative of the child involved in the proceedings; a person who obtained permission to be present from the magistrate presiding at the proceedings; a person performing official duties in connection with the work of the court or whose presence is otherwise necessary for the proceedings; and a probation officer or a welfare officer<sup>22</sup>.

Given the newness of the Children's Act, the consultants could not establish whether:

- i) the Children's Court was now operational;
- ii) the Chief Justice has designated any premises used by a Primary court to be a Children's Court as provided for under section 18(3)(b);
- iii) the Chief Justice has given directions relating to the informality of proceedings in a Children's Court, including the setting and lay-out of the court, the attire of court officials or any other measure designed to contribute to the informality of proceedings in such court with the aim of putting children appearing in such court at ease as envisioned by section 18(3)(c);
- iv) the Chief Justice has appointed at least two other persons, for each region (and at least two persons for each premises used by a Primary Court designated by the Chief Justice as a Children's Court), with special knowledge or training in child welfare or child psychology or have been actively involved in health, education or welfare activities pertaining to children to serve as members of the Children's Court in accordance with section 18(4); and
- v) any induction training has been conducted to the presiding regional magistrates as well as members of the court to introduce and familiarize them with the sensitivity and intricacies of the court.

However, given the fact that the Regional Court and any Primary Court premises that may have been designated by the Chief Justice to be a Children's Court are by themselves inherently constrained in terms of human and financial resources as well as working facilities, the Children's Court would logically and automatically be equally or more constrained. It cannot be expected under these circumstances to

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<sup>22</sup> Ibid; section 18(8)

operate optimally. The work of the Children’s Court can easily be perceived as an additional workload to the already overloaded Regional Court.

**(vi) The Kadhis Court:**

Part Six of the Constitution of Zanzibar of 1984 establishes the judicial arm of the state. The Constitution<sup>23</sup> empowers the House of Representatives to establish other courts subordinate to the High Court and those courts so established shall be vested with power and jurisdiction as shall be provided by law. In 1985, the Kadhi’s Court Act<sup>24</sup> was enacted. It established the Kadhi’s Court in each district and the Chief Kadhi’s Court, with jurisdiction that was restricted to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance, in proceedings in which all parties professed the Muslim religion.

Under the 1985 Act, appeals from the Kadhi’s Court went to the Chief Kadhi’s Court which lacked original jurisdiction but acted as an appellate court for the decisions of the Kadhi’s Court. In 2003, the Kadhi’s Court Act was amended<sup>25</sup>. The amending Act established the Chief Kadhi’s Court to be headed by the Chief Kadhi, the Deputy Kadhi’s Court to be headed by the Deputy Chief Kadhi based in Unguja Island, and the Appellate Kadhi’s Court to be headed by the Appellate Kadhi based in Pemba<sup>26</sup>. It also established a Kadhi’s Court to be presided over by District Kadhis whose number shall not be less than 10 and not more than 15. The Chief Kadhi and Deputy Chief Kadhi are appointed by the President while the Appellate Kadhi and District Kadhis are appointed by the President in consultation with the Judicial Service Commission. For one to qualify to be appointed as a Kadhi of whatever level he has to profess and follow the Islamic Religion as well as possessing recognized qualifications in Islamic Laws from any Institution approved by Council of Ulamaas established under the Provisions of the Establishment of the Office of Mufti Act, 2001<sup>27</sup>.

Each of the Kadhi’s Court is subordinate to the High Court and is duly constituted when held by the Chief Kadhi, Deputy Chief Kadhi, Appellate Kadhi, or a District Kadhi<sup>28</sup>. The Chief Kadhi’s Court, the Deputy Kadhi’s Court, and the Appellate

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<sup>23</sup> Article 100

<sup>24</sup> Act No. 3 of 1985

<sup>25</sup> The amendment was done through the Written Laws (Miscellaneous Amendment) Act, No. 4 of 2003.

<sup>26</sup> Ibid, section 4

<sup>27</sup> Ibid, sections 4(5) and 5(2)

<sup>28</sup> Ibid, section 6(2)

Kadhi's Court do not have original jurisdiction but act as appellate courts for decisions from the District Kadhis Court<sup>29</sup>. Appeals from the Chief Kadhi's Court, Deputy Chief Kadhi's Court, and Appellate Kadhi's Court go to the High Court of Zanzibar which is the highest institution of appeal as far as issues handled by the Kadhi's Courts are concerned<sup>30</sup>. Such appeals are heard by a panel of five members presided by a judge of the High Court and four other members (Ulamaas) who are conversant in Islamic laws. Article 99(1) of the Constitution of Zanzibar of 1984 excludes the Court of Appeal of Tanzania from handling cases relating to matters of Islamic law which begun at the Kadhi's Court<sup>31</sup>.

It should be noted however that the Kadhis Court does not have premises of its own. It shares office premises with the circular courts. Its chambers are not well furnished; it has a very thin staff compliment, and the dearth of financial resources that cuts across the entire judicial system hits even harder on the Kadhis Court.

#### **(vii) The Industrial Court:**

This is a specialized division of the High Court on labour matters. It was established under the Labour Relations Act, No. 1 of 2005 and became operational in the same year. In 2011 there were promulgated regulations under Legal Notice No. 107 of 2011 putting in place mechanism for mediation and arbitration of labour disputes by the Disputes handling Unit (DHU) before they are referred to the Industrial Court.

Currently the Court does not have its own budget, staff, office premises nor working facilities. It is accommodated within the main High Court building. It has been allocated an office building at Mwanakwerekwe which requires extensive renovation but for which a budget has not been provided. The Court is presided over by a Chairman who is also a serving judge handling cases of the High Court main registry. The Registrar of the High Court also doubles as its registrar. Other than the Chairman, it has 5 staff which it shares with the High Court namely, 1 legal advisor, 1 typist, 2 clerks, and 1 messenger. Both the Court and the DHU do not have offices in Pemba. They do not operate in Pemba. All industrial disputes, whether at the DHU or the Court, have to be filed in Unguja.

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<sup>29</sup> Ibid, section 10(1)

<sup>30</sup> Ibid, section 10(2)

<sup>31</sup> See also section 5(1) of the Appellate Jurisdiction Act, Cap 141 (R.E. 2002) which curtails the civil jurisdiction of the Court of Appeal. Section 10(3) of the Kadhis Court Act No. 3 of 1985 which had also the same effect of curtailing the jurisdiction of the Court of Appeal has been deleted and substituted by the Written Laws (Miscellaneous Amendment) Act No. 4 of 2003. The new section is silent on the jurisdiction of the Court of Appeal

The introduction of the DHU has substantially reduced the number of labour disputes filed with the Industrial Court. It has also reduced the backlog. For instance, since its inception a total of 207 cases have been filed with the court. Of these, 60 were pending at the time of the study, of which only 30 cases can be considered a backlog (pending for 2 year or more). The backlog is occasioned by agreements between advocates, appeals against interlocutory orders, or where the Government is a party to the dispute which ordinarily takes longer to resolve.

### **Challenges facing the Judiciary:**

- (i) Most judicial officers are being perceived by the public as being corrupt. Indicators of corruption include court decisions which are delivered contrary to available evidence, some degree of incompetence on the part of judges and magistrates, lack of knowledge of the law, and arbitrary exercise of discretionary powers. Types of corruption referred to by stakeholders included money, sex, and “*muhal*” (nepotism?). Because of corruption, cases are postponed without going into full trial, offenders are unjustifiably acquitted, or complainants are sometimes threatened. There is a deep feeling among most people, especially in Pemba, that the ordinary citizen does not get justice in the courts. This practice has led to a low level of confidence by the public in the judicial institutions. The public has therefore developed coping mechanisms whereby instead of taking wrong-doers to court, they invoke reconciliatory measures. One of the most common reconciliatory steps is when the rapist, for example, is requested to marry the victim of rape. However, evidence indicates that these types of marriages break up after a short while.
- (ii) The Judiciary has dilapidated and insufficient infrastructure to cater for its needs. For example, even though the High Court building has been recently refurbished, it only has one open court. There are no sufficient residential houses for magistrates of all cadres, especially those deployed in remote areas. A case was mentioned of a primary court magistrate who lives in Chake Chake but works in Konde! Court buildings in Pemba are inadequate and those available are in bad shape. It has also been noted that most of the court buildings are not accessible by people with disabilities.
- (iii) There is insufficient number of magistrates at all levels. Most of the regional courts have one magistrate each. Some of the district courts have no magistrates. For example the Chake Chake District Court does not have a magistrate for almost half a year now while Makunduchi District Court does not have a magistrate because few cases are being filed there. There 2 resident magistrates, 1 district magistrate, and 2 primary court magistrates in

the whole of Pemba. The problem is aggravated by the fact that staff retention in Pemba across all sectors is a challenge.

- (iv) There is a dearth of skills with respect to some of the judicial staff. Most court clerks and court assessors do not seem to possess the requisite qualifications required of them. Their appointment criteria are not known or available for public scrutiny.
- (v) Filing fees for civil cases are too high and prohibitive to an ordinary citizen. The fee scales/rates are not known or available for public consumption. Preference is given to hearing of criminal cases at the expense of civil cases. For example, of the 5 working days in a week, only one day is set aside for handling of civil cases in Pemba.
- (vi) There is not even a single practicing advocate in Pemba out of the 54 advocates so far admitted in Zanzibar. All practicing advocates are based in Zanzibar. There is only 1 *Wakyl* in Pemba whose appearance is restricted to Primary Court and Kadhis Court. People in need of services of an advocate have to travel to Unguja meeting transport and upkeep expenses over and above the professional fees to be demanded by an advocate. As a result, most people in Pemba do not afford the services of a lawyer.
- (vii) The Judiciary is generally underfunded. The financial resources allocated to the Judiciary cannot sustain it at the optimal level for the whole year. It cannot pay for witnesses, assessors, Islamic scholars, and interpreters. This contributes to the problem of backlog of cases.

### **2.2.3 The Judicial Service Commission (JSC)**

Initially the JSC was established under Part Five of Chapter Six of the Constitution of Zanzibar of 1984. It was composed of the chief justice of Zanzibar as its chairman, one judge of the High Court, a retired judge of the High Court or the Court of Appeal, one advocate recommended by ZLS, the chairman of the Civil Service Commission, the Attorney General, and the Chief Kadhi. The JSC dealt with appointment and discipline of various functionaries of the judiciary. These included office of the registrar and deputy registrar of the High Court, the office of regional and district magistrates, office of any subordinate court with criminal jurisdiction, the office of the Kadhi, and any other office in the judiciary as shall be directed by the House of Representatives. Following the amendments to the Zanzibar Constitution in 2002, the JSC had powers to advise the president on the appointment of the chief justice and to make recommendations to the president on the appointment of High Court judges.

In 2010, the Constitution of Zanzibar of 1984 was amended through “*Sheria ya Marekebisho ya Kumi ya Katiba ya Zanzibar ya 2010*”. Section 56 of the amendment Act repealed the entire Part Five of Chapter Six (i.e. Articles 102, 102A, and 103) of the Constitution of Zanzibar of 1984 and substituted them with a new Article 102 in the following terms:

*“102. Kutakuwa na Tume ya Utumishi wa Mahakama ambayo muundo, kazi na uwezo wake utakuwa kama ilivyoelezwa na sheria iliyotungwa na Baraza la Wawakilishi.”*

In 2011, the Representative Council enacted an Act to provide for the structures, operation and management of the Zanzibar public service and matters related thereto<sup>32</sup>. Section 33(1) of the Act established the JSC among other Service Commissions. It is composed of a Chairman who is a High Court Judge or a person qualified to be a High Court Judge appointed by the Chief Justice, a representative of the Attorney General, a representative from the Zanzibar Law Society and not more than three other members appointed by the Chief Justice<sup>33</sup>. Section 104(1) repealed the Judicial Service Commission Act, No. 13 of 2003.

Under the current law, the JSC’s functions and powers are to approve qualifications, number of persons to be employed, selection process and nullification of any recruitment process or employment made in contravention of approved procedures; to recommend to the Civil Service Commission the approval of scheme of service or where there is none, to make directions for its preparation; to approve promotion of employees in accordance with the scheme of service or to recommend promotion or appointment to senior positions where such promotion or appointment is not within its mandate; to ensure that public service basic principles, values and codes of conduct are observed; to deal with any matter within its jurisdiction referred to it by the Chief Justice; and to approve extended service up to two years.

### **Challenges:**

- (i) The JSC meets on ad hoc basis. The Chairman is a serving Judge of the High Court while the Secretary is a deputy Registrar of the High Court. Other than members whose composition is as per the law, the JSC does not have its own staff. It has been relegated by the new law to a level where it is difficult to make independent and unquestioned decisions by the powers that be in the Judiciary. It is no longer an autonomous institution; it has been reduced to a mere “*Staff Recruitment Committee*”. It only met once since the new law came

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<sup>32</sup> The Public Service Act No. 2 of 2011.

<sup>33</sup> Ibid; section 34(2).

into force and its decisions have not been implemented as they irritated the authorities.

- (ii) Perhaps flowing from the above challenge, the JSC does not have separate office premises nor does it have its own budget. It does not have working facilities. The consulting team could not establish whether there are any approved activities that are budgeted for in the 2012/13 budget.

#### **2.2.4 Attorney General Chambers (AGC)**

The AG's Chambers of Zanzibar is a creature of the Zanzibar Constitution. The office has been created with the purpose of harmonizing the legal affairs and to maintain good relations with the public and government machinery so as to alleviate community problems, to facilitate the creation of modern society free from injustices, discrimination and which observes Rule of Law<sup>34</sup>. Structurally, the Zanzibar Attorney General is the principal legal advisor to the Revolutionary Government of Zanzibar. The AG is also an ex-officio member of the House of Representatives. Article 54(1) of the 1984 Zanzibar Constitution confers on the AG a Constitutional status as the principal legal advisor to the revolutionary Government of Zanzibar on several issues including advising government on human rights, administration of justice and rule of law.

In that regard the AGC has a pivotal role to play in all the vital functions of the Revolutionary Government of Zanzibar, including the introduction of a new democratic constitutional order, the administration of justice; the creation of appropriate legal framework for development and major economic reforms; the drafting of legislation to facilitate the machinery of good governance and the democratization process as well as structuring and negotiation of strategic development projects. The office also plays the crucial role of litigation, as well as drafting and negotiating contracts on behalf of the government.

The AGC is faced with several challenges that constrain the office from implementing its mandate effectively and efficiently. It neither has a guiding legislation nor a clear and well understood organization structure. There is undefined chain of command. In fact the position of the Deputy Attorney General (DAG) in the chain of command is far from clear<sup>35</sup>. Lack of a clear structure has resulted in inefficiency and centralization of operations and decisions at the AG and DAG's offices. The AGC is in the process of drafting a Bill on 'the Office of the Attorney

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<sup>34</sup> Attorney General Chambers (2008), A Comprehensive Eight Years Strategic Development Plan: 2007/2008-2015/2016, page 1

<sup>35</sup> Ibid. pg 11

General'. It will among other things provide for an organization structure of the office. It is proposed that 4 legal and 2 support departments are established. These are: (i) Litigation, (ii) Legal Policy and Legislative Drafting, (iii) Regional and International Law, (iv) Advisory Service and Contract Management, (v) Administration and (vi) Finance and Accounts.

In terms of human resource capacity the office is confronted with acute shortage of trained manpower. In addition to the AG and his deputy currently the AGC has only seven (7) State Attorneys with few areas of specialization. There is also a high demand for lawyers from the department by other government ministries and departments. Even among the few existing staff there are serious skills gaps in handling or structuring of negotiations for international business transactions, legal aspects of privatization and introduction of a market economy, commercial, constitutional law, legal drafting, human rights, and international business law<sup>36</sup>. Consultations with the Deputy AG revealed that efforts to recruit and train staff are constrained by structural issues<sup>37</sup> and lack of financial resources respectively. The need to recruit and enhance the capacity of AG chambers to enable the office function and execute its constitutional duties effectively and efficiently is thus underscored. According to the DAG, the office intends to double the number of State Attorneys in the next 5 years. AGC's current Strategic Plan places emphasis on specialized training of the existing staff in the areas of legislative drafting, civil litigation, and international business transactions, Recently some 40 legal officers across government attended training in money laundering, a contemporary legal and governance issue.

Lack of adequate work environment and facilities is another problem. Currently the AGC is located in relatively conducive premises next to the High Court, albeit with limited space to accommodate the staff comfortably. Nevertheless measures are underway to construct new offices for the AGC which would provide adequate space to accommodate all the staff and other requisite facilities, including a multi media centre. Efforts are being taken to equip State Attorneys with computers, to improve the working facilities as well as to enhance information sharing mechanism within the AGC, but more needs to be done to transform the AGC into well equipped modern offices.

It has also been noted that the AGC has a small library with mostly outdated legal material. It is lacking in basic legal materials such as the law reports or accessible decisions of all courts in Zanzibar, law reports of commonwealth countries, text

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<sup>36</sup> Peter, C.M. (2008) Legal Sector Reforms in Zanzibar; In Nassali (ed), Reforming Justice in East Africa: A Comparative Review of Legal Sector Processes. pg 199

<sup>37</sup> Justification for recruitment was constrained by lack of clear structure of the AGC with approved established posts.

books on international law and books on constitutional human rights law<sup>38</sup>. However according to the Deputy Attorney General, the African Development Bank (ADB), has recently supported the AGC to equip the library.

### **2.2.5 Office of the Director of Public Prosecutions (ODPP)**

The 8<sup>th</sup> Constitutional Amendment established an independent public prosecutions department independent of the Attorney General with a constitutional guarantee of independence and tenure of office. The office is vested with powers to institute criminal proceedings, take over and continue criminal proceedings instituted by it or any other authorities, and to stop any criminal proceedings instituted by any person or organ<sup>39</sup>. It has the objective of civilianization of prosecution, dissemination of information related to administration of criminal justice, and provides for independent prosecution services which adhere to and uphold the constitution and basic norms of human rights.

Comparatively, the ODPP is better resourced in all respects compared to the other legal sector institutions. It has modern office premises with most of the necessary working facilities and a law library. Currently, the office has taken over prosecution of services at the High Court and all regional courts. At the district level, the ODPP has taken over prosecution services at Urban and West districts, both in Urban West Region. There still remain 8 districts (4 in each Isle) where the ODPP has yet to take over prosecution services.

#### **Challenges:**

- (i) One of the major challenges of the Office is to provide prosecution service which is professional, effective, efficient, and transparent and that meets current professional standards worldwide. There is limited and in some instances no sharing of information between prosecution agencies and between the investigation agencies and the prosecutions authorities.
- (ii) Staffing is still a problem thereby slowing down the process of taking over prosecution services. For instance, the modern office facilities that have been constructed in Mkoani and Micheweni are still unutilized because of lack of staff.

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<sup>38</sup> Attorney General Chambers (2008), A Comprehensive Eight Years Strategic Development Plan: 2007/2008-2015/2016, pg 14.

<sup>39</sup> Article 56A

- (iii) Another challenge is the fact that prosecution services are being affected by a number of factors including inadequate skills and expertise (in fraud, corruption, money laundering, e-crime, drug trafficking, forensic examination, and anti-terrorism), the poor legal and judicial system, and chronic underfunding.
- (iv) The Zanzibar criminal justice system requires a big financial boost. The Government should invest in the administration of criminal justice. The current financial resources are highly inadequate to effectively cater for the requirements of the sector.
- (v) The general awareness of the public on the criminal justice system is low. Production of evidence has paralyzed. The environment for evidence production is hostile. Witnesses are treated like accused persons and there is no witness protection.

#### **2.2.6 The Law Review Commission of Zanzibar**

The genesis of the Law Review Commission of Zanzibar (LRCZ) can be traced back in the year 1974 when the Government of Tanzania established the Judicial Review Commission (commonly known as the Msekwa Commission) to conduct a wide range review of the legal system and to recommend changes in the administration of justice<sup>40</sup>. The Msekwa Commission recommended, among other things, the establishment of a permanent law review commission with mandate of keeping the laws attuned to the changing conditions of the society. The Revolutionary Government of Zanzibar seized the opportunity and enacted the Law Review Commission of Zanzibar Act, No. 16 of 1986 that established the LRCZ.

According to the establishing Act, LRCZ's functions include the following:

- (i) Review of any law or branch of the law to propose measures necessary for: bringing that law or branch of the law into accord with current circumstances of Zanzibar; eliminate anomalies or other defects in law, repealing absolute or unnecessary laws and reducing the number of separate enactments on the same subject matter; and the proper modification or simplification of that law or branch of law.
- (ii) Considering and advising or making proposal for the adoption of new or more effective methods for the administration of the law and the dispensation of justice.

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<sup>40</sup> The Zanzibar Law Review Commission Strategic Plan (2011 – 2016), p. 6.

- (iii) Undertaking comprehensive consolidation and revision of the laws of Zanzibar.
- (iv) Provision of assistance to Government departments in undertaking the examination of any particular branch of the law for the purpose of reforming.
- (v) In addition to other incidental matters, for the above purposes, facilitating meetings, seminars, workshops, public lectures and related activities the aims of which are to facilitate public discussion and participating in matters and activities relating to law reforms in Zanzibar.

For several years after its establishment, the LRCZ was being viewed as Zanzibar's "Legal Siberia", a place where one was sent, one's seniority in the profession notwithstanding, once one got in the bad books of the powers that be on the Isles<sup>41</sup>. It was completely neglected. Its first chairman was appointed in 1989 while the commissioners were not appointed until 1993. It was reconstituted in 1998 by the appointment to it of three Nigerian lawyers who left in 2000 without any meaningful contribution to the operations of the LRCZ.

The trend has now reversed and the future of LRCZ appears bright. In 2011 the Commission had only 5 permanent staff 2 of whom were on study leave. The Executive Secretary was appointed in February 2011. Now it has 23 full time staff (1 Chairman, 1 Executive Secretary, 8 lawyers, and 13 support staff) and 5 part-time commissioners. In this regard, the LRCZ has developed its five year strategic plan (2011 – 2016). Its vision is "to become a centre of excellence in law reforms that plays a pivotal role in achieving sustained economic growth, prosperity and eradication of poverty in the 21<sup>st</sup> Century with speedy dispensation of justice in all aspects, affordability and access to justice for all social groups". The Commission has been allocated an independent Vote 46 and for the first time in its history it has been allocated a development budget of Shillings 145m for the initial review of the laws during the year 2012/13. These prospects notwithstanding, still the LRCZ has a steep climb ahead.

### **Challenges:**

- (i) Although under the current leadership it has gained operational and financial autonomy, the LRCZ is still underfunded. It has no significant budget to finance its core mandate for which it was established, i.e. the review and

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<sup>41</sup> See Peter, C.M. 2008 Legal Sector Reform in Zanzibar. In Maria Nassali (Ed) *Reforming Justice in East Africa: A Comparative Review of Legal Sector Processes*: Kituo cha Katiba, Kampala p. 202.

revision of laws. For a number of years, the LRCZ has not been able to plan for any review of laws. The development budget of Shillings 145m for the initial review of the laws during the year 2012/13 is just a drop in the ocean. There is still need to enhance the budgetary allocations on the review of laws.

- (ii) The LRCZ does not have its own permanent office premises. It operates from temporary premises borrowed from EACROTANAL. Even this building does not have sufficient rooms to cater for all LRCZ's needs.
- (iii) The office has inadequate working facilities. The offices lacks transport facilities, there is only one vehicle for the Chairman. The Executive Secretary and other staff are not provided with office transport. There is need for more furniture and equipment. The only available ICT equipment include 5 desktop computers, 4 laptops, 3 printers, 1 photocopy machine, and 1 scanner.
- (iv) The organization structure is not fully developed nor is it functional. A number of key units do not have even a single staff. Staff gaps are in areas such as policy and planning, administration and human resource, procurement, and information MIS. The LRCZ does not sufficient staffed units or departments to be able to establish a tender board. The Executive Secretary finds herself dealing with a multiple of functions which in most cases in contrary to finance and procurement laws.
- (v) The LRCZ, being essentially a research institution, does not have a resourced and functional library. LRCZ's professional core staff lack skills in legislative drafting, research techniques, and computer skills for drafters. No wonder therefore that there are no researches or law reviews that are being undertaken.

### **2.2.7 Office of the Registrar General**

The Office of the Registrar General (ORG) is one of the oldest Government offices in Zanzibar. It used to be called the Administrator-General's Office up to 1984 when it changed to ORG. It has been one entity up to January 2012 overseeing the implementation of 14 pieces of legislation: the Insolvency Decree Cap 20, the Succession Decree Cap 21, the Administrator General Decree Cap 23, the Marriage and Divorce (Muslim) Registration Decree Cap 91, the Marriage (Solemnization) Decree Cap 92, the Registration of Documents Decree Cap 99, the Estate Duty Decree Cap 142, the Transfer of Properties Decree Cap 150, the Companies Decree Cap 153, the Business Names Registration Decree Cap 168, the Societies Act No. 6 of 1995, the Births and Deaths Registration Act No. 10 of 2006, the Zanzibar Industrial Property Act No. 4 of 2008, and the Secured Transactions Act No. 4 of

2011. Each of these pieces of legislation entails one or more functions – hence, a concern from stakeholders that the ORG deals with too many functions without adequate personnel (with the necessary skills) to handle them.

From the above pieces of legislation it can be discerned that the functions of the ORG include: registration of documents, registration of intellectual property rights, patents, industrial designs, copyrights and trademarks, administration of estates of non-Muslim deceased persons, registration of marriages and divorces, registration of business names, registration of companies, and registration of NGOs. However, in 2005 registration of copyrights and related rights was removed from amongst functions of the ORG. A new Copyright Office that was established in 2003 became operational.

There are also concerns that the legal and regulatory framework as well as procedures for business registration are cumbersome and pose serious impediments to the processes of formalizing businesses. There are many laws, by-laws, regulations and administrative procedures that create an unfavourable business environment in Zanzibar<sup>42</sup>. A World Bank report on doing business in Zanzibar, further asserts that the cost of doing business in Zanzibar is relatively very high. Compared to the 183 economies measured by *Doing Business*, Zanzibar ranks 155 on the ease of doing business. In 2010 it took 10 procedures, 28 days and costs 72% of Zanzibar's income per capita to comply with all registration requirements to set up a limited liability company and start to operate<sup>43</sup>. In that regard many Zanzibaris operate outside the formal economy where they face a legally prohibitive environment that makes it difficult for them to realize their full potential for economic empowerment<sup>44</sup>. In response a program aimed at improving the property and business legal and institutional framework, known as the Property and Business Formalization Programme<sup>45</sup> was implemented. The reform initiatives included, among others, decentralization as well as simplification and rationalization of business registration procedures at the RGO.

In June 2009 the RGZ, through the RGO and supported by the World Bank, commenced a comprehensive review of the Zanzibar business and civil registration systems. The review was conducted by Norway Registers Development (NRD)<sup>46</sup>.

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<sup>42</sup> Annex 5 is a list of laws and regulations governing business activities in Zanzibar

<sup>43</sup> World Bank (2010) *Doing Business in Zanzibar 2010*. Washington D.C, World Bank Group.pg10

<sup>44</sup> ILD (2008), *The Property and Business Formalization Programme, Reform Proposals Volume V: Business Formalization Reform Outlines and Packages for Zanzibar*

<sup>45</sup> Popularly known as MKURABITA in Kiswahili.

<sup>46</sup> See Zanzibar Registration Reform: Final Report; May 7, 2010.

Following this review, in January 2010 most of the civil registration functions (i.e. registration of births, deaths, and adoption) were removed from the RGO to the Registrar of Births and Deaths. The only civil registration functions still with the RGO are with respect to registration of marriages and divorces. On the other hand, the review of the business registration systems came up with recommendations on the review of both the RGO's organization structure (plus the introduction of automated registry systems) as well as the regulatory framework. Recommendations on the regulatory framework carried with them proposals of new laws that include Business Registration Act with its Regulations, Movable Property Securities Act with its Regulations, and Insolvency Act. There are also proposals for a new Act of the RGO. Drafts of these recommended pieces of legislation have been discussed at various levels of RGZ.

### **Challenges:**

- (i) The RGO has weak or inadequate capacity in terms of human resources. It is currently understaffed in most of its existing departments and most its existing personnel do not possess the qualifications necessary to manage the various sub-registries. For instance, the Department of NGOs is a one-man office. Most of the current registry personnel do not possess the qualifications necessary to manage the document management systems. This inadequate capacity generally affects the quality of services and the speed at which they are delivered.
- (ii) The RGO is operating under manual systems as most of the registration systems have not yet been automated. It is only the industrial property registration system that has been automated – using the Industrial Property Automated System (IPAS). Other aspects of business registration systems have yet to be automated. Storage and retrieval of information is problematic. The RGO's information service, which is the office's main service, is stuck. The recommendations to install automated registration systems have stalled at the installation phase for want of financial resources.
- (iii) The RGO, like all other public legal sector institutions, does not have the capacity to motivate and retain its qualified staff. Incentives – salaries and other fringe benefits – are highly inadequate and therefore de-motivating. Staff turnover, in areas such as Information Technology (IT) and related positions, is high in search of well-paying jobs.

## 2.2.8 Office of the Registrar of Births and Deaths

There is no specific legislation establishing the Office of Registrar of Births and Deaths. The Births and Deaths Registration Act<sup>47</sup>, that was assented to on 9<sup>th</sup> November 2006 and became effective on the same date, only provides for the appointment of the Registrar of Births and Deaths (RDB) and Deputy RDB<sup>48</sup>, appointment of registrars<sup>49</sup>, and recognizes District Commissioners and *Shehas* as ex-officio registrars in their respective areas within which they exercise jurisdiction<sup>50</sup>. Section 7 of the Act provides for powers and functions of RDB that include: to register births and deaths and to issue certificates therefore; to have custody and keep records of all files, register books and returns made by the registrars; to provide registrars, *shehas*, medical practitioners with such books and forms as may be required, and with such instructions and directions, as he may consider necessary for the registration of births and deaths in their areas; to require any particulars relating to births and deaths be proved by oath or statutory declaration.

It is worth noting here that the 2006 Act provided under section 3(2) that where no RDB is appointed, the Registrar General shall be the Registrar of Births and Deaths. No formal appointment of the RDB was made since this Act became operational. As such, for several years the Registrar General had also doubled as the RDB.

In August 2010 there was held in Addis Ababa, Ethiopia the first ever conference of African Ministers responsible for Civil Registration, under the theme: “*Improved Civil Status Information for Efficient Public Administration and Generation of Vital Statistics for National Development and MDGs Monitoring in Africa*”. The RGZ was represented in the conference. During the Conference the Ministers noted that the challenge before them was to continue mobilizing and rallying political commitment and leadership for the improvement of Civil Registration and Vital Statistics (CRVS) systems in Africa. They therefore resolved, among other things, to:

- (i) Take appropriate policy measures to facilitate the implementation of plans, programmes and initiatives for the reform and improvement of CRVS systems to achieve universal coverage and completeness, taking into consideration the specific circumstances of our countries. In this regard, we resolve to mainstream CRVS processes into national statistical development strategies and other national plans and

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<sup>47</sup> No. 10 of 2006.

<sup>48</sup> Ibid; Section 4.

<sup>49</sup> Ibid; Section 5.

<sup>50</sup> Ibid; Section 7.

programmes, including strengthening coordination of activities among various players at national, sub-regional and regional levels;

- (ii) Formulate laws and policies that ensure timely and compulsory registration of vital events occurring within our countries, with guarantees for equal access to the system for all persons. In this regard, we commit to revise and update our CRVS laws and statistical legislation in line with international and regional guidelines and recommendations, and to allocate adequate human and financial resources for this purpose;
- (iii) Intensify awareness-raising campaigns on the procedures and importance of CRVS systems, to ensure their effective functioning.

It appears the Addis Ababa conference inspired the RGZ which decided to initiate action on CRVS forthwith. Efforts to reform the CRVS system are under way. On 14<sup>th</sup> January 2012 the President of Zanzibar appointed the RBD and Deputy RBD. Upon assumption of the office, the RBD inherited staffs in the Registrar General's Office who were dealing with registration of births and deaths. Currently, the RBD is dealing with registration of births, deaths and adoption. It is estimated that 90% of births in Zanzibar are registered. Registration of marriages and divorces is still being handled under the RGO. However, under the proposed Civil Registration and Vital Statistics Act (whose legislative process is at an advanced stage), registration of marriages and divorces would be hived-off from the RGO to the RBD. The CRVS Act also proposes to repeal the Births and Deaths Registration Act No. 10 of 2006, the Marriage and Divorce (Muslim) Registration Cap 91, and the Marriage (Solemnization) Decree Cap 92.

### **Challenges:**

- (i) Being fairly new, the RBD does not have an office in Pemba. Births and deaths registration services are being offered by ORG's staff. Additionally, the office of the RBD is still highly understaffed. Currently it has a total of 19 employees (including RBD and Deputy RBD). Of these, only 4 staff have university level education, 2 are lawyers, and 5 are data entry staff who are shared with the ORG. The office does not have an organization structure; thus completely lacking staff in the accounts, administration, policy and planning, and procurement areas. These skills and capacity gaps seem to seriously impair the speed of service delivery and quality of the services.

The matrix below summarizes staff position in the RBD's Office:

Total	Unguja		Pemba	Education level		
	Males	Females	0	Certificate or below	Diploma	1 <sup>st</sup> degree or above
19	5	14	0	14	1	4

Source: RBD

- (ii) The RBD does not have an independent Vote. He has only been allocated a sub-Vote recently starting financial year 2012/2013. The allocated financial resources are far from being adequate to cater for the operational needs. For the year 2012/2013, only Shillings 641.7 million was allocated to cater for salaries (Shs. 104.7m), other charges (Shs. 137m), and development budget (Shs. 400m). The development budget is intended to finance the implementation of the CRVS Project.
- (iii) Births and deaths registration in Pemba is time consuming and prohibitively expensive. Forms for late birth registration are not user-friendly. The registration process is faced with redtape. Form filling is conducted in Pemba while certificates are issued in Unguja. The applicant, especially for late registration where s/he is 7 years old or above, is required to pay Shillings 32,000/= per form (excluding transport and upkeep expenses), fill it in Pemba, and submit it in person in Unguja for registration.
- (iv) A concern was raised by legal sector stakeholders that all certificates have to be signed by the RBD himself. His capacity is limited to signing 30 certificates a day. This practice by the RBD, coupled with the fact that certificates are typed using typewriters, slows down the speed of issuance of certificates and has the attendant consequences of increasing registration costs especially for applicants from remote areas or who are not residing in Unguja. The practice was also cited by stakeholders as a disincentive for birth registration.

### 2.2.9 The Copyright Office

The English Copyright law of 1956 was extended to Zanzibar in 1962. Since then registration of copyrights and other related matters was being carried out under the RGO until 2003 upon enactment of the new Copyright Act<sup>51</sup>. This Act is divided into seven Parts namely, preliminary provisions; copyright works; protection of performers, producers of sound recordings and broadcasting organization; protection

<sup>51</sup> Act No. 14 of 2003. The Copyright (Licensing of Public Performances and Broadcasting) Regulations, 2009 have been made under this Act. These Regulations were amended in 2010 by the Copyright Licensing of Public Performances and Broadcasting (Amendment) Regulations, 2010.

of expression of folklore against illicit exploitation; sanctions; collective administration of copyright and related rights; and miscellaneous provisions. Section 38 under Part VI of the Act establishes the Copyright Society of Zanzibar whose functions<sup>52</sup> are:

- (i) to promote and protect the interest of authors, performers, producers of sound recordings, broadcasters, publishers, and in particular, to collect and distribute any royalties or other remuneration accorded to them in respect of their rights provided for in this Act;
- (ii) to maintain registers of works, productions and associations of authors, performers, producers of sound recordings, broadcasters and publishers;
- (iii) to publicize the rights of owners and give evidence of the ownership of these rights where there is a dispute or an infringement;
- (iv) to print, publish, issue or circulate any information, report, periodical, books pamphlet, leaflet or any other material relating to copyright and rights of performers, producers of recording and broadcasters;
- (v) to advise the Minister on all matters under the Act.

Section 43(1) of the Copyright Act, 2003 provides that the composition, proceedings and other matters of the Society shall be in accordance with the provisions of the Schedule to the Act. Paragraph 1(1) of the Schedule makes provisions for the composition of the Board and Paragraph 8 confers power on the Board for the appointment of the Copyright Administrator, who shall be the Secretary to and Chief Executive Officer of the Board, as well as appointment of other staff. According to the Schedule, the Copyright Administrator is responsible to the Board for the administration and management of its affairs as well as supervision of other staff of the Society.

There seems to be a mix in the Act regarding the intended institutions. While the Act establishes the Copyright Society of Zanzibar as the only institution, its operationalization proves the contrary intention. A Board was appointed and two offices – the Copyright Society of Zanzibar and the Copyright Office – have been established. It was not clear to the consulting team which as between the Copyright Society of Zanzibar and the Copyright Office performs the functions as conferred under section 39 of the Act.

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<sup>52</sup> Ibid; Section 39.

The Copyright Office was set up in 2005, recruitment of staff (including the Copyright Administrator) conducted, and registration of rights commenced in 2007. Its Strategic Plan is under preparation. Currently the Office has a total of 7 staff, 1 based in Pemba and 6 in Unguja. Of these, only 3 staffs including the Copyright Administrator are technical. The two Units which discharge the core functions of the Office – Registration & Documentation, and Licensing –are each a one-man office.

**Challenges:**

- (i) The lack of office premises is crippling the organization. It operates from a three-room borrowed office premises in a very old, dilapidated and unventilated building. There is no strong room for storage of registered electronic copyright gadgets. All the three rooms are being used both as offices as well as stores for the various CDs and other copyrights related properties. It is evident that the lifespan of these gadgets is shortened by the lack of conducive storage facilities. Air emitted by these CDs is intolerable and presumably hazardous. The consulting team had the opportunity to witness the only accounts staff sitting on the safe in his office waiting for his colleague who was at the time using the only available table, chair and computer! As if the lack of office premises was not bad enough, the Copyright Office is not one of the institutions under MOJCA which will be housed under the ministry’s new building whose construction has just started.
- (ii) The office lacks financial autonomy and visibility as it does not have an independent Vote. Funds are received through MOJCA at the point of payment for services rendered or goods supplied. Even at this point availability of funds is not guaranteed thereby affecting timely implementation of the planned activities. Budget allocations have in most cases been on the low side as depicted below:

Year	06/07	07/08	2008/09	2009/10	2010/11	2011/12	2012/13
Amount	80M	114M	120M	120M	120M	100M	152M

In all cases, not all the approved funds were disbursed.

- (iii) Staff and skills gaps are vivid. The Copyright Office does not have staff in areas of human resource, procurement, and policy and planning. The Pemba Office has only 1 staff without working facilities. Currently MOJCA conducts procurement on behalf of the Copyright Office. In order for the Office to reduce the gravity of the problem, it is intending to recruit 15 new staff (5 inspectors, 4 licensing officers, 4 registration and documentation officers, and 2 finance officers). For this year it requested for the recruitment of 5 staff. Due

to budgetary constraints, only 3 positions have been included in the 2012/13 budget.

- (iv) In spite of the inadequate number of staff, the Copyright Office does not have the wherewithal to retain its staff. This being essentially a registry, the office depends so much on skilled IT staff to manage and operate its automated systems. However, these are the most difficult to retain due to competition with other sectors. Two of its well-skilled IT staff terminated their contracts recently. Currently the office is using outsourced IT services for servicing its computers. As a temporary arrangement, the documentation and registration officer is being used as an IT staff; with the attendant risk of the system stalling if she encounters an emergency.
- (v) There is a lack of clarity in the establishing Act with respect to the roles and mandates of both the Copyright Society of Zanzibar and the Copyright Office. While the Act seems to have established only one institution (i.e. the Copyright Society of Zanzibar) with the Board above it and the Copyright Administrator as its chief executive officer, operationalization of the Act has resulted into two autonomous institutions which appear to merge at Board level.

### **2.2.10 Office of the Mufti**

The Office of the Mufti of Zanzibar is established under section 3(1) of Act No. 9 of 2001. The functions of the Mufti includes: (i) to give 'Fatwa' on any issue relating to any Islamic question, (ii) to settle any religious disputes, (iii) to coordinate and approve all Islamic activities in Zanzibar, including gatherings, religious lectures by foreign clergy, research activities, importation of Islamic literature as well as (iv) to coordinate and announce sighting of the moon.

The main challenges confronting the Mufti's office include:

- (i) Weak institutional and coordination capacity.
- (ii) The Council of Islamic Scholars (also known as *Ulamaa* Council) not meeting regularly.
- (iii) Limited awareness of Kadhis, other actors as well as public on the mandate and functions of the Mufti. Thus resulting in others taking decisions, issuing religious announcements and guidance.
- (iv) Inadequate number of staff with experience and knowledge on religious matters.

- (v) Inadequate transport and other working facilities. The Office has only 1 vehicle and 1 computer.
- (vi) Financial constraints. Limited budgetary allocation affects the office ability to perform. For instance the office requirement's for 2011/12 was TZS 220 million; however was allocated TZS 70 million and only TZS 40 million was disbursed during the year.

### **2.2.11 Wakf and Trust Commission**

This is one of the earliest institutions in the history of Zanzibar. It was in existence before the introduction of the British rule. However, the first law establishing the Commission was that of 1905. The Commission continued in existence until it was disestablished following the Zanzibar Revolution of 1964 and its functions vested into the Administrator General. In 1980, the Wakf & Trust Commission was re-established by a two-page Decree<sup>53</sup> which did not have elaborate provisions regarding Wakf and trust matters.

An elaborate and consolidated legal system was put in place following the enactment of the Wakf and Trust Commission Act, No. 2 of 2007<sup>54</sup>. According to section 4 of this Act, the Commission has mandate:

- (i) to administer Wakf property, trust property, and estates of deceased Muslims.
- (ii) to coordinate Hajj activities in relation to pilgrims from Zanzibar and to regulate individuals, firms or associations providing travel and other service to pilgrims.
- (iii) to coordinate and regulate the provision, collection and distribution of zakkas and other charitable gifts, provisions and offerings for religious purposes of cause.
- (iv) to coordinate national Idd prayers and Idd Baraza.

#### **Challenges:**

- (i) The funds and sources of the Commission consist of fees and levies collected by the Commission; all payment or property due to the Commission in respect of any matter incidental to its functions; and any grants, donations, bequests,

<sup>53</sup> The Wakf and Trust Decree No. 5 of 1980.

<sup>54</sup> This Act repealed the Wakf Property Decree Cap 103; the Wakf Validating Decree Cap 104; and the Wakf and Trust Decree No. 5 of 1980.

or other contributions made to the commission<sup>55</sup> by any individual, firm, or the Government. However, these sources do not bring in sufficient financial resources for the Commission to be able to fund all its undertakings. Even the subsidy received from the Government, through the national budget, is not adequate to bridge the financial gap, especially in the context of the ever increasing maintenance costs of wakf properties most of which are situated in the Stone Town, which are in bad shape and dilapidated

- (ii) The Commission faces a dearth of experienced and qualified staff. The Commission does not have a qualified civil engineer or architect to man the estates section; neither does it have IT and IEC experts. Education of most of the available staff is Form IV level or below. They execute jobs assigned to them through experience and are not easily trainable.
- (iii) In the course of interviews and discussions, the consulting team was able to see heaps of wakf and trust documents which are maintained and stored manually. Most of these documents are very old, torn out and not easy to retrieve and read. There is no reliable database or system for storing these very important documents. It may not be a little astounding to hear cases of documents which are not traceable. And these are the documents which vest property into the Commission and on the basis of which the Commission generates its meagre income.
- (iv) The organization structure of the Wakf and Trust Commission consists of three directorates: Islamic Affairs that deals with Wakfs, trusts and probates; Finance & Administration dealing with establishment, accounts, planning, and estates; and the head office in Pemba. This structure is not flexible and does not facilitate the effective discharge of the office's functions as envisioned under section 13 of the establishing Act. For instance, the enforcement, compliance and legal matters appear to have been minimized. There is therefore an urgent need for the review of the Commission's organization structure.
- (v) There is a general perception by the Commission and the public that there is conflict between Islamic and circular laws especially on land matters. The most cited laws said to be conflicting each other are the Wakf and Trust Commission Act, the nationalization law, land laws, and probate laws. Upon further scrutiny, the consulting team was able to establish that this perception is caused by the low level of legal awareness by the public. The public is not aware that that inheritance matters involving Muslims and which are touching

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<sup>55</sup> Section 64(1) of the Wakf and Trust Commission Act No. 2 of 2007.

on land are exclusively determined by the Commission and Kadhis Court. Once referred to ordinary courts, there is no mechanism for scrutinizing them at the initial stage with a view of issuing appropriate directives. The case is put on full trial only to realize at the end that the circular court does not have jurisdiction to determine the matter.

- (vi) The head office in Pemba has not been receiving sufficient disbursements to cater for its monthly operational financial requirements. For instance, the office has not been receiving full salary requirements since October 2011.

### **2.2.12 Zanzibar University**

Zanzibar University is a private institution of higher learning. It was established in 1998. It has had a Faculty of Law and Sharia since 1999 and its first graduation took place in 2003. Zanzibar University is the only University in Zanzibar with a law faculty; however its reliability in producing legal manpower is questioned. This is mainly due to (i) assertion that the University has not been rigorous enough in the selection process of applicants, resulting in admission of unqualified students and (ii) dependency of part time staff. The University to a large extent depends on part time staff, including judges and former DPP. Currently the faculty has 7 full time staff, of which 3 are pursuing their graduate studies.

There are assertions that the University admits unqualified students, however the Head of Department of Law, refutes such allegations. He emphasized that the University adheres to the requisite admission requirements and standards set by the Tanzania Commission for Universities. He further confirms that Zanzibar University has been producing competent graduates. Most of them have been employed in key legal institutions such as the Office of the Attorney General, the Law Review Commission, and the DPP's Office the Judiciary (90% of magistrates are products of Zanzibar University) as well as the police and other state organs. However it has been noted that the major issues undermining the students' capabilities include inability to communicate in English, lack of analytical capacities as well as lack of exposure. It is worth noting that indeed the education system in the Isles does have significant effect on the performance of students at the University, as well as at work. The University of Dar es Salaam is another main higher learning institution which has been producing significant number of law graduates for the Isles. The University of Dar es Salaam also maintains a training centre for teaching certificate in law program which has been very useful in producing law clerical staff and paralegals. Zanzibar has also been relying heavily on Mzumbe University and Lushoto Institute of Judicial Administration for training of legal sector staff.

### **2.2.13 The Commission for Human Rights and Good Governance (CHRGG)**

This Commission is an independent department of government established under article 129 of the Constitution of the URT (1977) and Act No. 7 of 2001. It is entrusted with the responsibility of protecting and promoting human rights as well as principles of good governance in the country. Article 130(2) provides that the Commission is an independent department in discharging its functions. The authority/mandate of the Tanzania Commission for Human Rights and Good Governance<sup>56</sup> has been extended to Zanzibar since 25th April, 2007.

The CHRGG functions include to (i) receive, register and investigate complaints from victims of human rights violations and non-compliance with administrative justice principles, (ii) provide recommendations towards redressing these violations, and undertake court action in the event that its recommendations have not been implemented, (iii) monitor violations of human rights and principles of good governance, conducts public enquiries, and suggests remedial measures to the Government for the promotion, protection and enforcement of human rights and principles of good governance, (iv) undertake public and stakeholder education and information programs for increasing awareness about human rights and the principles of good governance, and about the functions, powers, and activities of the Commission.

The capacity of CHRGG to manage its functions depends on the resources allocated in terms of finance, materials and human resource. The commission is constrained in discharging its functions effectively in Zanzibar mainly due to, paucity of human resources. The core function of CHRGG is carried out by investigators, currently only 6 investigators are stationed at Zanzibar offices. CHRGG which is funded by the URT is also confronted with inadequate financial resources.

Other operational constraints include inadequate working environment and facilities. The commission's office in Unguja is located in rented premises with limited office space; the same applies to its newly established (not yet operational) branch in Pemba. The office lacks adequate modern office equipment such as computers and internet facilities. There is only 1 computer operated by the office secretary.

The prevailing resource constraints therefore affect the effectiveness of the commission in provision of legal services, advocacy as well as in its outreach programs. More officers are expected to be transferred to Zanzibar offices from the Commission's headquarters in Dar es Salaam.

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<sup>56</sup> This is a commission which derives its power from the Constitution of the United Republic of Tanzania.

## 2.2.14 The Police Force

In 1920 the Police Force and Prison Service Regulation came into force and in 1922 Police Force Decree in Zanzibar came into force. Following the Zanzibar Revolution in January 1964 and ultimately the Union of Tanganyika and Zanzibar in April 1964, the Police became one of the Union matters pursuant to article 85 of the Interim Constitution of Tanzania Act No. 43 of 1965. The Tanzania Police Force is a creature of the Police Force and Auxiliary Services Act.<sup>57</sup> The objective of the Force is to provide safety for people and property through preservation of the peace, maintenance of law and order, prevention and detection of crime, arrest and guarding of offenders and protection of property.<sup>58</sup>

In 2003, the Ministry of Home Affairs conducted a service delivery survey and self assessment of the Tanzania Police Force. The survey established that the Force was facing a number of challenges and constraints which included, among others, lack of adequate human resources management systems, poor institutional as well as legal and regulatory frameworks, lack of management information systems, and inadequate financial resources. Also the obtained data and information suggested that types, number, quality and intensity of crime occurrences have been increasing over time. All these shortcomings and challenges had adverse impact on the overall performance of Police; hence the need for reforms.

The planning and preparation of the Tanzania Police Force Reforms started during financial year 2007/2008 and the Medium Term Strategic Plan 2007 – 2010 was used as the first and basic instrument document. The Tanzania Police Force Reform Program is composed of three major interlinked clusters of desired outcomes namely, Community Policing, Professionalism, and Modernization. Through this reform initiative, the Force has refocused its vision which is to have professional, modernized and community centred Force that supports maintenance of public safety and security in the country. Its mission is to establish a more dispersed, visible, accessible, and service-oriented Police Force, which interacts freely and gently with its community in protection of both the life and property of all the people, all the time.

A number of measures were implemented aimed at modernizing the police force by putting in place an appropriate legal and regulatory framework for the Force, improving management of human resources, enhancing the capacity of police

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<sup>57</sup> Cap 322 of the Revised Edition of the Laws of Tanzania of 2002. Although the Force is a Union matter, it is only the provisions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 26, 63, 64, 66 (3) and (4), 67, 68, 69, 70, 71, 72, 73, 74, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100 and 106 which apply to Mainland Tanzania as well as to Tanzania Zanzibar.

<sup>58</sup> Ibid; section 5.

officers, providing decent accommodation and conducive work environment to police officers, strengthening partnership with the community as well as introduction of affirmative actions aimed at improving gender balance within the police force. Anecdotal evidence suggests that the police force in Zanzibar also benefitted from the reform interventions, in terms of capacity building, community policing, construction of residential flats at Ziwani Police Barracks and Pemba Police Barracks to name a few.

In spite of the efforts undertaken some issues and challenges were noted and planned to be addressed in the revised Tanzania Police Force Reform Programme (2009/10 – 2013/14). The goal of the revised reform programme is to ensure that the Tanzania Police Force delivers improved policing services in terms of access, quality, timeliness, operational efficiency and effectiveness.

### **2.2.15 The Offenders Education Institute (Correctional Facilities)**

Treatment of offenders is one of the oldest regimes of administration of criminal justice in Zanzibar. The prison services were officially established in 1932. Up to 1964 prison services and training of prison officers was done by the police force. Immediately post 1964 revolution, the name was changed from the prison services to the Offenders Education Institute (correctional facility services). The key objective for such transformation was to nurture and promote positive rehabilitative attributes such that offenders lead productive lives once they are released from the correctional facility systems<sup>59</sup>. Currently the department has been placed under the Office of the President and Chairman of the Revolutionary Council. Apart from general central administrative duties and responsibilities, the basic operations and management of the Offenders Education Institute in both Islands are not fully decentralised.

The current legislation governing the administration of treatment of offenders and prison facilities is the Offenders Education Act, No. 1 of 1980 as amended by Act No. 3 of 2007. The offenders' education facilities maintained at the moment are nine centres<sup>60</sup> with the total holding capacity of 570 inmates. Normally, the number of inmates does fluctuate from time to time. Moreover, there is no experience of inordinate congestion of inmates in the retention facilities. What may appear as the main problem are those remanded inmates who normally congest the existing facilities, especially in the Kiinua Miguu and Wete centres. Thus contributing to,

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<sup>59</sup> Zanzibar Aids Commission, 'The Zanzibar Correctional Facilities HIV/AIDS Strategic Plan 2011-2014, section three.

<sup>60</sup> Kiinua Miguu, Langoni, Kinumoshi, Ubago, Bumbwini, Kengeja, Wete, Tungamaa, and Kangagani.

among others, sexually risky behaviours and prevalence of HIV/AIDs and other STI among inmates<sup>61</sup>.

Challenges facing the Offenders Education Institute are either internal or external. Internal challenges include, among others, placing more emphasis on punishing the offenders instead of correcting their behaviours; the facilities not being properly maintained and furnished; lack or inadequate number of staff with appropriate skills for the provision of physical, psychological and emotional needs of inmates; poor and inhumane cell conditions, absence of user special space and required facilities to address the needs and protect the juveniles, and inadequacy of essential facilities such as clothing, bedding and food for the offenders, as well as transport facilities. Challenges external to the Offenders Education Institute hinge on the collapsed or non-practised probation<sup>62</sup> and community service<sup>63</sup> systems. For example, benefits such as petty offenders being kept away from hard core criminals thereby reducing the risk of petty offenders to become hardened criminals, minimized costs of running detention facilities, etc are not accruing to the state due to non-applicability of the community service system. The infrastructural requirements of these systems would therefore need to be revived and strengthened.

### **2.2.16 The Zanzibar Law Society (ZLS)**

The viability of a country's machinery of justice depends on the commitment and capacity of the legal profession to practicing law. For many years Zanzibar had developed and maintained an admirable legal order. As early as 1914 the Isles had a comprehensive and peculiar legal system managed by well-trained lawyers and jurists. However, the legal profession in Zanzibar was historically affected after the 1964 Revolution, when the existing constitutional order was destroyed and well-established legal system was abolished. It was replaced by a people's courts system which excluded lawyers, judges and other legally-trained personnel. During the post revolutionary era, the legal sector was undermined, no development of the law was

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<sup>61</sup> See 'The Zanzibar Correctional Facilities HIV/AIDs Strategic Plan 2011-2014 by the Zanzibar Aids Commission.

<sup>62</sup> In Zanzibar, the probation system was established and is being regulated under the Probation of Offenders Decree, Chapter 15 of 1947. Probation officers are appointed by the Minister and served under the Department of Social Welfare. Currently, probation orders as an alternative to custodial sentence are not being issued. The probation system has collapsed in terms of the system, human resource and operational framework.

<sup>63</sup> Under the community service system, a petty offender who is liable to imprisonment for a term not exceeding two years may, instead of serving an imprisonment term, be ordered to serve community service for a specified period. Community service system was introduced in the Zanzibar sentencing system through the Criminal Procedure Act, No. 7 of 2004. Under the CPA, the Chief Justice is empowered to make rules to regulate the community system. The regulations were made by the Chief Justice and published as Legal Notice No. 83 of 2005. This notwithstanding, the system is not being practiced in Zanzibar.

encouraged and no resources were allocated to improve the legal sector in Zanzibar. Given this development private legal practice was discouraged, resulting in the emigration of lawyers to other places, including Tanzania mainland, where they could practice law. This led to a limited number of members of the legal profession in the Isles and absence of a Bar Association for a long time.

The legal sector began to pick up from the rumbles of post revolution confusion in the 1980s and in 1999 the Zanzibar Law Society (ZLS) was registered as a non profit organization by the Registrar of Society as per the Societies Act No 6 of 1995. ZLS's mission is to represent, advance and defend the interest of the legal profession as well as the interest of the public. According to its constitution, the objective of ZLS is to: (i) maintain the honour and dignity of the profession of law, (ii) promote the observance of the rule of law and independent administration of justice and the judiciary and the bar, (iii) promote the administration of justice, as well as to (iv) establish and maintain relations and exchanges between the members of the bar.

Membership to the Society is upon application open to all members of the legal profession and is compulsory for all advocates on the roll of the High Court for Zanzibar. There are two main categories of members, namely, ordinary and honorary members. According to ZLS's Program Officer who is presently the Acting Chief Executive Officer, the number of ZLS members is estimated at 55.

ZLS's ability to undertake its functions is determined by its institutional and human capacity. The organs of the society include<sup>64</sup>: (i) the General Assembly; (ii) the Council; (iii) the Board of Trustees; (iv) the Committees formed by the Council as well as the (v) Secretariat. The General Assembly comprising of all members is the apex policy making body of ZLS. The Council assisted by the Secretariat is responsible for the day to day functions of the Society. Although the structure and establishment of the Secretariat do not seem to be in place, currently the secretariat is manned by a Program Officer (who is also acting as the Chief Executive Officer), a Secretary and a part time Accountant. It seemed to be more or less a 'one man show' managed by the newly recruited Program Officer.

Pursuant to undertaking its functions ZLS provides continued legal training to young graduates. This training focuses on procedural law as well as substantive law, including human rights law<sup>65</sup>. Moreover, the ZAFELA occasionally carries out training seminars, where lawyers and other legal sector personnel receive instruction in criminal law. To some extent, the legal profession seems to be involved in the

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<sup>64</sup> According to the ZLS Constitution 2011, passed by the General Assembly on 12<sup>th</sup> February 2011.

<sup>65</sup> The Danish Institute for Human Rights ( 2011), Access to Justice and Legal Aid in East Africa, pg 98.

training of other actors in the legal system, such as paralegals, police officers and others<sup>66</sup>.

In recognition of the great need for legal assistance to the poor in Zanzibar, ZLS is the main actor in the provision of legal aid in Zanzibar. The Zanzibar Law Society (ZLS) provides pro bono legal aid services targeting the underprivileged. In April 2012 the ZLS president, announced that members of the ZLS will assist clients with legal aid on different issues such as those related to land, health, employment, families and individual counseling. Besides ZLS, legal aid is also offered by paralegals and NGOs, such as the Zanzibar Legal Services Centre (ZLSC) and the Zanzibar Female Lawyers Association (ZAFELA)<sup>67</sup>.

At a site visit to ZLS's office , it was observed that administration of ZLS office is weak in terms of inadequate capacity of human resources both in numbers and competence, absence of an updated database of members, improper management of records, inaccessibility of reports or information pertaining to activities or projects implemented or any other relevant information. It was also noted that the working environment of ZLS office, which is located in one room at a run down Bwawani Hotel, is not conducive enough for the efficient and effective operations of the Society. The Society's management audit report for the period ending May 2011, also noted some challenges in terms of financial management, lack of annual plans and budget, lack of supporting documents, as well as improper recording of documentation.

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<sup>66</sup> . ibid,pg 98

<sup>67</sup> 90 percent of ZAFELA's beneficiaries are women and children

## CHAPTER THREE: CONCLUSIONS AND RECOMMENDED PRIORITY REFORM INTERVENTIONS

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- (a) The study acknowledges the RGoZ's commitment and development partners, including UNDP's, support towards improving the legal sector and enhancing the capacities of various legal sector actors over the years. Nevertheless prevalence of a number of institutional and capacity challenges confronting the legal sector in Zanzibar have been identified. These include: inadequate institutional and operational capacity; absence of a policy framework to guide administration and coordination of the legal sector as well as limited human and financial resources in most of the institutions. *Human capacity*

Staffing levels and skills across all legal sector institutions is a big challenge. Some of the legal sector institutions (e.g. LRCZ, JSC, the Copyright Office, and Registrar of Births and Deaths) have only their leadership/management positions filled up without being provided with the corresponding sufficient number of technical staff. Some of the institutions such as the Office of the Director of Public Prosecutions have fully completed office premises in some districts but they are not operational for lack of staff. There are inadequate numbers of magistrates at all levels, prosecutors, state attorneys, legal researchers and other cadres of legal sector personnel. We recommend that the RGoZ should as soon as possible initiate measures to fill up these gaps through the following procedure: conducting a personnel inventory to determine staffing and skills levels, recruitment patterns, and career paths; diagnosing current and future personnel needs; creating incentive schemes for legal professionals, providing training opportunities to legal professionals, administrative and support staff; designing separate career paths for professional staff, administrative staff, and other positions within the sector; developing systems to allow user evaluation not only of services, but also of personnel; and developing strategic plans , which would include building human and institutional capacities through a more strategic perspective.

- (b) *Institutional Capacity*

Most, and certainly all, legal sector institutions in Zanzibar are characterized by inefficiency and ineffectiveness, and often perceived to be adversely affected by the institutional environment. Institutional capacities, notably, infrastructure, systems and processes.

- (i) **Systems and processes:** Weaknesses of records management systems and processes is among the challenges affecting the efficiency and effectiveness of public service, including legal sector institutions, in Zanzibar. In that regard there is a need to accord priority to the

improvement of records management systems within the legal sector, in order to facilitate retrieval of records and information as well as making informed decisions in a timely and efficient manner. All the legal sector institutions in Zanzibar do not have systems in place for data capturing, processing, storing and retrieval. Neither do they have appropriate records management systems. Recent efforts under the ZPSRP on improving records management in public institutions have yet to trickle down to the legal sector institutions. Of all the legal sector institutions covered by this study, it was only 4 institutions have strategic plans that guide their planning and budgeting processes. Most of the legal sector institutions do not have organizational structures which are fully functional, most of the autonomous institutions under MoJCA do not have independent Votes, and their financial requirements for purposes of determining budget ceilings are hard to justify.. This would go a long way to enhance budgetary allocations in these institutions with guaranteed financial autonomy. The two institutions that have recently been allocated independent Votes have witnessed a substantial increase in their budgetary allocations though still not yet adequate.

It is recommended that these systems should be established, each autonomous legal sector institution should prepare a strategic plan and effective monitoring and evaluation framework.

- (ii) **Facilities:** In Zanzibar, basic legal texts, including statutory law and judgments from the High Court of Zanzibar (and even from the Court of Appeal of Tanzania), are generally unavailable as a result of financial constraints which, in turn adversely affect the effectiveness of judges, prosecutors, police, Kadhis and advocates. Government budget for this purpose is often inadequate, as is that for distributing hard copies, even to sector employees. This has negatively impacted on the quality of services rendered and public legal awareness.
  
- (iii) **Wider public service reforms:** A major initiative that is addressing the institutional capacity challenges in the public sector is the Zanzibar Public Service Reform Program (ZPSRP). The main objective of the program is to strengthen the capacity and capability of Zanzibar public service institutions with a view to improving the delivery of public services. In that regard institutional strengthening strategies to be implemented under the ZPSRP would provide opportunities to review the establishments, structures and staffing levels of government MDAs including some of the legal sector actors. In order to ensure synergy and avoid duplication of efforts, it is recommended that legal sector

institutions should seize the opportunity offered by ZPSRP to address their institutional and human resource capacity challenges. The opportunity of an LSRP should only provide a collaborative forum with institutions outside the legal sector, such as the President's Office Public Service and Good Governance (POPSGG) and the President's Office Finance, Economy and Development Planning (POFEDP) in addressing capacity issues. Only legal sector capacity gaps not addressed by ZPSRP, or other reform programmes, should be included in the envisioned LSRP strategy.

(c) *Low level of awareness and understanding of legal issues*

It has been observed that there is limited public awareness and understanding of the basic justice processes, human rights and principles of good governance. Laws and regulations are often not easily understood by people who are not formally trained in the legal profession, thus making access to justice difficult. In addition, most of the Laws are in English language while majority of the people use Swahili language. The other challenge is non enforcement and compliance with the laws, legal processes and respect of authority.

Copies of the Constitution, as the mother law, are also unavailable for use by the general public. The consulting team recommends for Government concerted efforts in ensuring that the necessary financial resources are allocated for the acquisition of basic legal materials, dissemination programs, as well as the implementation of intensive public legal awareness campaigns so as to improve accessibility, public awareness and understanding of various legislation, regulations, procedures as well as the basic principles of human rights and good governance.

(d) *Coordination and ownership of reforms*

Proliferation of reforms in various sectors poses potential challenges in terms of their coordination. There is no effective, formal and consistent vertical and horizontal coordination for all the reforms in the public sector. Although there used to be a core reforms coordination secretariat under the supervision of the MoFEA, it is no longer operational. There are recommendations to establish a Reforms Coordination Unit within the Chief Secretary's office, but the RCU is yet to be established.

Establish an effective legislative and policy framework to guide coordination and administration of the legal sector in Zanzibar. This includes strengthening the capacity of MOJCA in coordinating the legal sector including the legal sector reform program, in formulating and monitoring implementation of a

legal sector policy, as well as other related policies, regulations and guidelines. Exposure of MOJCA senior staff to reforming countries in the region is recommended.

The deficiencies that have been established by this assessment require a more comprehensive way of addressing legal sector issues; a collective approach towards capacity development, and maximizing synergy between individual strengths of the agencies that form the Zanzibar legal sector. A need for the preparation of the legal sector reform strategy, as a collective means of addressing these deficiencies, has been established. However, what is required in the initial stages is political will and commitment – at the national level to undertake a holistic and participatory approach towards the development of the legal sector reform strategy. Ownership of the legal sector reform is paramount.

Coordination of reforms should be accorded high priority and a reform coordination unit established, preferably in the Office of the Chief Secretary in order to provide the necessary leverage and authority to manage the coordination function across the public sector.

(e) *Prioritisation and Ownership*

The challenges facing the legal sector in Zanzibar are insurmountable. To effectively address these challenges requires considerable financial and human resources. Given the economic status of Zanzibar, it may not be feasible to address all these challenges at once. The consulting team agrees with the observation that rule of law reform is about institutional change, and institutional change is a lengthy process. Successful rule of law projects promote incremental change and a gradual, targeted response to problems, rather than trying to resolve a number of issues at once. It would therefore be necessary for the sector to go through a rigorous process of prioritization and establish a consensus on a few high impact outcomes that are realizable within a span of five years. It is recommended that the identification of priority activities should be highly participatory, through detailed consultations with staff and leaders of the legal sector institutions, more widely within Government, and with private sector and civil society stakeholders. During the consultative process, the focus should be on identifying activities which will have a high impact on improving the performance of the legal sector, and which are affordable and represent good value for money.

# ANNEXES

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## Annex A: Terms of Reference (ToR)

### Capacity and Need Assessment for Legal Sector Actors

#### Background and Context

Improving access to justice, strengthening the rule of law, accountability and oversight institutions are core themes for the legal sector and the second generation of the Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA II) recognizes them as essential in promoting governance and consequently to poverty reduction. MKUZA II identifies numerous shortcomings being faced by the legal sector in Zanzibar which include: inadequate institutional and operational capacity; low public awareness on basic justice process 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 legal support, absence framework for managing and coordinating legal training and education; underfunded courts leading to delay of justice<sup>68</sup>.

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 positive steps such as the creation and strengthening of the DPP Office, creation of the new Ministry of Justice and Constitutional Affairs (MoJCA), the revival of the Law Review Commission and many other independent initiatives seem to bring limited positive change and thus a need for a more comprehensive way of addressing legal sector issues. It is now believed that the existing political stability and support provide a unique opportunity for Zanzibar to embark on comprehensive legal sector reform.

Strengthening the capacity of the legal institutions will build on the previous initiatives that have been carried out in Zanzibar to assess the capacity of different justice agencies e.g. the FILMUP Project supported by World Bank in 1996. Whereas these parallel efforts have been useful, they focused on discrete areas where project interventions were expected to be made, hence limiting the capacity assessments to particular institutions or specific capacity components. What is now required is a collective approach towards capacity development, maximising individual strengths of the agencies that form the chain of justice including a more fundamental review of

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<sup>68</sup> Page 69-70 ZSGRP II 2010-2015 (MKUZA II).

activities and a more systematic response, in light of Zanzibar's legal sector capacity development assets and needs.

## **Objectives**

The objective of the proposed Capacity Assessment of the Justice Sector is to assess the level of capacity assets and the capacity needs of the justice agencies in relation to:

- The institutions environmental, legal, policy and institutional/organizational framework and arrangements
- The institutions program/project management capacity (leadership commitment, planning/budgeting, coordination, supervision/reporting, monitoring & evaluation, networking, communication);
- The institutions technical capacity in the administration of justice (technical knowledge, skills and experience, and human resources to match their distinct functions);
- The institutions administrative capacity (facilities to carry out activities, procurement/contracting, human resource management, assets management, management information systems, case management systems);
- Institutions financial management capacity (dedicated finance unit, finance procedures, experience managing donor funds, internal controls, accounting/financial reporting, audit issues).
- The institutions material resources (equipment and tools) and geographical physical presence (infrastructure and services)

The assessment will provide a basis for the development of a capacity development strategy that will include prioritized and sequenced interventions so that when these tangible components are addressed together, they will provide the necessary capacities for the agencies to effectively and efficiently deliver access to justice in Zanzibar.

## **Expected Deliverables/Outputs and Duration of Assignment**

The key deliverables to be produced as a result of this assignment include:

- i) **Capacity Assessment Report** This report will contain the results of the capacity assessment for the capacities outlined in the objectives and scope of work. The report will detail the desired capacities, assessed levels of capacity, capacity gaps, the baseline assessment of the justice system, and an articulation of capacity development and system strengthening strategies, and any potential risk and risk management strategies for the Legal Sector to remain on course.

- ii) **Capacity Development Strategy and Plan** proposing prioritized and sequenced interventions/tasks and articulated deliverables, effort and cost estimates, timeframes, dependencies/relationships with other tasks and suggested responsibilities, milestones and decision points. The plan will be two pronged:
- Short Term Plan providing a detailed work plan to implement short-term solutions (“quick wins”) within 12 months of completing the assessment.
  - Medium-term Plan that provides a high level work plan to implement medium term capacity development strategies over a five year period.

In addition to the above two key deliverables, the assignment will produce the following working deliverables:

- i) **Inception Report:** The consultant will prepare, submit and present to the Ministry of Justice and Constitutional Affairs an inception report within seven (7) working days of contract signature. The inception report will include a full plan of implementation of the assignment including but not limited to:
- A clear outline of the proposed methodology for conducting the assessment and the data collection instruments (if any) that will be utilized;
  - The method of collating and prioritizing the information,
  - The proposed approach to validate the findings,
  - A projected work plan with clear timelines for undertaking and completion of the assignment in keeping with the output/deliverables,
  - Outline limitations to the assessments and any risks to delivery of outputs.

A draft inception report as detailed above, for comments and feedback, within **fourteen (14) working days** of contract signature;

A final inception report incorporating comments received on the draft inception report within **five (5) working days** of receipt of comments;

- ii) **Draft Report:** A draft report will be presented by the consultant/firm at a stakeholders meeting to validate before a final report is produced.

A draft report detailing the outputs related from the assessment for comments and feedback, within **fifteen (15) working days** of completing missions for administering the survey instrument;

A final Report, incorporating the comments received on the draft report submitted, within **five (5) working days** of receipt of comments;

A presentation at the stakeholders' workshop on the findings of the assessment and a report on the workshop within **three (3)** working days of closing the workshop.

- iii) **Final Report:** A final report will be presented to the Ministry of Justice and Constitutional Affairs.

A **Final Report** incorporating comments received on the document and presentation from the validation working within **five (5) working days**.

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## Annex C: List of Stakeholders Consulted/Interviewed

Date	Institution	Person(s) Interviewed	Position
04/06/2012	Ministry of Justice and Constitutional Affairs	Makame Mdingi	Deputy Principal Secretary
	Ministry of Justice and Constitutional Affairs	Saleh Dawood	Legal Officer
05/06/2012	Law Review Commission	Asma Hamid Jidawy	Executive Secretary
	Office of the Director of Public Prosecution	Muumin K. Kombo	Deputy DPP
	High Court	Yesaya M. Kayange	Deputy Registrar Secretary of the JSC
	Abdulla Talib Abdulla	Wakf & Trust Commission	Executive Secretary
	Abdulla Waziri	Office of the Registrar General	Registrar General
06/06/2012	Shaaban Ramadhan Abdalla	Birth & Deaths Registration Office	Registrar
07/06/2012	Mtumwa Khatib Amir	Copyright Office	Copyright Administrator
	Haji Ibrahim	Industrial Court	Legal Advisor
12/06/2012	President's Office Public Service and Good Governance	Yakout H. Yakout	Deputy Principal Secretary
	President's Office Public Service and Good Governance	Ali Vuai	Director, Administration and Human Resource Management
	President's Office Public Service and Good Governance	Hamisi	Director, Human Resource Planning
	President's Office Public Service and Good Governance	Talib	Director, Institutional Systems and Compensation
13/06/2012	ZNCCIA/Pemba	Yussuf A. Bakar	Officer in Charge
	ZNCCIA/Pemba	Hassan A. Rashid	Member
	PESOREC/Pemba	Mohammed Ali Abass	Director
	NMB/Pemba	Hamidu Mughamba	Branch Manager
	Entrepreneurship/Pemba	Suleiman R. Mohammed	Member
	Dira Co-op Dispensary/Pemba	Dr. Ali O. Khalifa	Administrator
	Zanzibar Legal Service Centre/Pemba	Khalfan A. Moh'd	Programme Officer

Date	Institution	Person(s) Interviewed	Position
	Pemba	Halima Ali Hassan	Entrepreneur
	Pemba	Salama Khamis Ali	Entrepreneur
	Pemba	Bikombo H. Rajab	
	Pemba Education Development Organization	Abdalla R. Ali	Member
14/06/2012	President's Office-Public Service and Good Governance/Pemba	Mohammed Masoud Said	Ag. Officer In Charge
	President's Office-Public Service and Good Governance/Pemba	Fathiya Mussa Said	Human Resource Planning Officer
	President's Office-Public Service and Good Governance/Pemba	Hamad Juma Hassan	Human Resource Development Officer
	President's Office-Public Service and Good Governance/Pemba	Omar. Hemed. Abdalla	Human Rights Officer
	President's Office-Public Service and Good Governance/Pemba	Abdalla M. Mbarouk	Training and Human Resource Development Officer
	Registrar General's Office/Pemba	Saleh Mohd. Abdalla	Afisa Utumishi
	Copyright/Pemba	Amour H. Saleh	Documentation Officer
	Judiciary/Pemba	M. M. Simgeni	
	Mufti's Office/Pemba	Said Khalfan	Communications/Public Relations Officer
	Wakf Commission/Pemba	Omar Dad Hamad	Human Resource Officer
	Ministry of Justice and Constitutional Affairs/Pemba	Omar K. Juma	Officer in Charge
	DPP's Office/Pemba	Al –Baghir Yakout	Lawyer
	President's Office Finance, Economy and Development Planning	Ibrahim S. Juma	Finance Officer
	President's Office Finance, Economy and Development Planning	Ali K. Ali	Administrative Officer
18/06/2012	Zanzibar University	Ali Ahmed Uki	Head of Department, Common Law
19/06/2012	President's Office	Dr Abdulhamid Y. Mzee	Chief Secretary

<b>Date</b>	<b>Institution</b>	<b>Person(s) Interviewed</b>	<b>Position</b>
	Zanzibar Food, Drugs and Cosmetics Board	Dr. Burhan O.Simai	Registrar
	Zanzibar Food, Drugs and Cosmetics Board	Khadija Ali. Sheha	Head of Registration and Evaluation
	Zanzibar Food, Drugs and Cosmetics Board	Khadija A. Khamis	Head of Laboratory Services
	Zanzibar Food, Drugs and Cosmetics Board	Khamis A. Omar	Head of Food Safety and Quality
	Zanzibar Food, Drugs and Cosmetics Board	Hidaya J. Omar	Head of Medicine and Cosmetics
	Zanzibar Food, Drugs and Cosmetics Board	Fatma S. Masoud	Quality Manager
	Zanzibar Food, Drugs and Cosmetics Board	Faki H. Haji	Inspector
20/06/2012	Mbarouk. Omar. Mohammed	ZNCCIA	President
	Commission for Human Rights and Good Governance	Mwanyemi Bilal	Officer in Charge
29/06/2012	President's Office Finance, Economy and Development Planning	Idrissa Abeid Shamte	Director, Planning, Policy and Research
02/07/2012	Attorney General Chambers	Said Hassan Said	Deputy Attorney General
10/07/2012	Ministry of Justice and Constitutional Affairs	Daima Mkalimoto	Director, Planning, Policy and Research
	Ministry of Justice and Constitutional Affairs	Kai B. Mbarouk	Director, Administration and Human Resource Management
	Ministry of Justice and Constitutional Affairs	Said Nassor Said	Legal Officer
	Office of Mufti	Thabit Noman Jongo	Head, Fatwa and Research
29/08/2012	Zanzibar Law Society	Said Salim Said	Ag. Chief Executive Officer

## Annex D: Key Informant Tool: MDAs

This is a capacity assessment tool aimed at assessing the capacity and needs of the legal sector in Zanzibar, in relation to legal, policy and institutional environment, management and technical capacity as well as human and financial resources in the administration of justice. This tool is to be administered to government officials in select Ministries, Departments and Agencies (MDAs), representing the key actors of the legal sector in Zanzibar. Respondents are encouraged to respond to all the questions and where possible provide additional information that will add value to the capacity assessment process.

### Section I: Organizational Mandate, Structure and Systems

- Name of your MDA. Is it among the key actors of the legal sector in Zanzibar? What is the mandate and core functions of the MDA?
- Which are the other key actors of the legal sector in Zanzibar? How do they relate to each other?
- What are your views on the capacity of the MDA to manage its mandated functions as per the 'Instrument of Assignment of Ministerial Responsibilities' issued by the President/ or any other relevant instrument/legislation?
- To what extent is the formulation of MDA's strategic and operational plans participative? Are the stakeholders involved in the process?
- How effective are the MDA's legal, policy and organizational framework, systems and processes in facilitating timely delivery of legal services to the public?
- Are there specific issues in policy, regulations or guidelines or any other factor that limits/impedes the performance of the MDA? What are these issues and how they can be addressed?
- Which are the other key actors of the legal sector in Zanzibar? How do they relate to each other?
- What is the position of women in the MDA and what is the ratio between male and female employees; to what extent do women occupy positions of power and high-level decision making; do women get equal opportunities in recruitment and career development?
- To what extent is the Public Service Act; Public Service Management policy and other rules and regulations governing public service management operational and effective?
- How effective are the various oversight institutions such as the legislature, the CAG, the media, and civil society in ensuring accountable and transparent operations of the legal sector actors?

## **Section II: Human and Financial Resource Issues**

1. What is the human resource capacity profile of the MDA, in terms of number of staff, gender, age, levels of academic training and professional experience?(Annex 1 to be filled by head of the HR department/unit)
2. Is the recruitment, appointment and promotion mechanism open, transparent and merit based?
3. What is your assessment of the MDA's human resource capacity in terms of technical knowledge, skills, experience as well as the number of staff? In your opinion, how effectively is the human resource capacity developed, deployed and motivated to undertake its functions in the administration of justice and delivery of legal services to the public?
4. How would you assess the efficiency of the MDA and other actors in the legal sector in carrying out administrative functions? These include leadership, strategic management, supervision, planning, budgeting, financial management, procurement, human resource management, assets management, case management etc?
5. Can you tell us the main technical capacity gaps in terms of delivery of legal services to the public?
6. Is there a public service training policy? How effective is it in addressing the legal sector's capacity challenges?
7. Which training institutions offer training for the legal sector in Zanzibar? What is the relevance of these programs in relation to the practical needs of the MDA and other actors of the legal sector? What opportunities are available for civil servants to pursue these courses?
8. What are the in-house initiatives for capacity development? Are they any structured on-the-job training, mentoring, coaching, placements etc?
9. What incentives are there to attract, motivate, and retain competent legal professionals in the public service? What mechanism is in place to attract Zanzibari legal professionals from the Diaspora?
10. How does the President's Office Public Service and Good Governance plans, determines and coordinates manpower needs of various MDAs?
11. Is the MDA and the legal sector as a whole funded adequately (By RGOZ and other partners) to enable it fulfill its mandate and functions efficiently and effectively?
12. In your opinion how efficiently are the resources utilized to ensure there is adequate capacity within the legal sector?
13. What strategies should be employed to enhance resource mobilization for the legal sector?

### Section III: Work Environment

1. Are physical facilities and resources adequate for providing an enabling work environment at the MDA? (Buildings, office space, equipment, communication, electricity, furniture).
2. What mechanisms/ equipment/ systems exist for both formal and informal communication within the MDA and with other stakeholders? How effective are they?

Please take a few minutes to look at the table below and fill in the corresponding column according to your views in accordance with the scale below:

#### Scaling

1	Excellent
2	Sufficient
3	Average
4	Poor
5	Cannot Respond/Do not know

Issue	Scale	Comment/Reason/Specify
<b>Organizational Issues</b>		
Coordination of Legal Sector Actors in Zanzibar		
Clarity of the mandate and core functions of legal sector actors in Zanzibar		
The efficiency of legal sector actors in dispensation of justice and provision of other legal services to the public		
Effectiveness of MDA's systems and processes.		
Efficiency in provision of legal services to women and other disadvantaged groups		
<b>Human, Financial and Other Resource Issues</b>		
Technical and administrative HR capacity to carry out its core functions		
Existing challenges impeding performance of legal sector actors		
Adequate financial resources		
Adequate transport, equipment and conducive work environment		

## Annex E: Key Informant Tool: Private Sector/Business Enterprises

This is a capacity assessment tool aimed at assessing the capacity and needs of the legal sector in Zanzibar, in relation to legal, policy and institutional environment, management and technical capacity as well as human and financial resources in the administration of justice. This tool is to be administered to representatives of the private sector, SMEs, women owned as well as informal business entities in Zanzibar with the view of consolidating their perception and assessment of the legal sector's capacity and needs in dispensing justice and delivery of legal services to the private sector. Respondents are encouraged to respond to all the questions and where possible provide additional information that will add value to the capacity assessment process.

### Section I: General Overview

- What is your perception of the business environment in Zanzibar and its relationship with legal sector actors?
- Are you aware of the legal framework, legislations and regulations governing business operations in Zanzibar?
- What are the constraints to operating business in Zanzibar? Would you consider access to justice and legal services a challenge?
- What would you say are the challenges with regards to private sector's ability to comply with the processes, regulations and other statutory requirements in registering and operating a business entity? What improvements would you recommend?
- What can you say about enforcement of corporate governance principles?
- What do you think should be the corporate social responsibility of the private sector in addressing some of the challenges of the legal sector in Zanzibar?

### Section II: Technical Issues

- Which institutions represent the key legal sector actors in Zanzibar? What are their mandates and core functions?
- To what extent do they perform their roles and responsibilities? In your opinion, is there adequate capacity within the legal sector to carry out its core functions? How does this affect the functioning of the private sector?
- What is your assessment of the technical capacity of legal sector actors in the administration of justice? The technical capacity in terms of technical knowledge, skills and experience as well as human resources to match their distinct functions.
- Can you tell us the main technical capacity gaps in terms of delivery of legal services to the private sector? How have these gaps affected the performance of business in the formal and informal sectors?

- Are there specific issues in policy, regulations or guidelines or any other factor that limits/impedes the performance of the business sector? What are these issues and how they can be addressed?

### **Section III: Administrative, Financial and Human Resource Issues**

- How effective are the institutions/agencies legal, policy and organizational frameworks, systems and processes in facilitating timely delivery of legal services to the private sector and public in general?
- How would you assess the efficiency of legal sector actors in carrying out administrative functions? These include leadership, strategic management, supervision, planning, budgeting, financial management, procurement, human resource management, assets management, case management etc?
- What is your assessment of the human resource capacity in terms of technical knowledge, skills and experience? In your opinion, how effectively is the human resource capacity developed, deployed and motivated to undertake the core functions of respective institutions of the legal sector?
- What would you say are the main human resource gaps in the legal sector and how do these affect the functioning of the private sector businesses?
- In what areas do you think that human resource capacity needs to be enhanced? What are the priority areas?
- What strategies should be employed to enhance resources mobilization for the legal sector?

### **Section IV: General Knowledge/Understanding/Perception of the Legal Sector's Capacity**

*Please take a few minutes to look at the table below and fill in the according to your views in accordance with the scale below:*

Scaling

1	Excellent
2	Sufficient
3	Average
4	Poor
5	Cannot Respond/Do not know

<b>Issue</b>	<b>Scale</b>	<b>Comment/Reason/Specify</b>
<b>Overview</b>		
Perception of business environment in Zanzibar as it relates to legal sector framework		

<b>Issue</b>	<b>Scale</b>	<b>Comment/Reason/Specify</b>
Awareness of the legal framework, legislations and regulations governing business operations in Zanzibar		
Constraints to operating business in Zanzibar as they relate to the functioning of the legal sector institutions		
Private sector's ability to comply with the processes, regulations and other statutory requirements in registering and operating a business entity		
Access to legal services by women led business, SMEs and informal business entities		
Access to credit facilities by women led business, SMEs and informal business entities		
<b>Technical Issues</b>		
The mandate and core functions of the legal sector actors in Zanzibar		
The efficiency of legal sector actors in dispensation of justice and provision of other legal services to the private sector		
Technical capacity within the legal sector to carry out its core functions		
Existing challenges impeding performance of legal sector actors		
<b>Administrative, Financial and Human Resource Issues</b>		
Administrative capacity and arrangement of legal sector actors		
Effectiveness of systems and processes.		
Legal sector institutions have adequate financial resources for its activities.		
Human resource capacity with adequately skilled, experienced and motivated staff		
Adequate transport, equipment and conducive work environment		

## Annex F: List of Laws and Regulations Governing Business Activities

1. Constitution of URT (1997)
2. Constitution of Zanzibar 1984
3. Civil procedure Decree, Chapter 8
4. Contract Decree, Chapter 149
5. A Decree to amend the law with respect to persons carrying on business as Moneylenders – 1 January 1929.
6. A Decree to provide for the Registration of Business Names – 1 November 1949. (Chapter 168)
7. A Decree relating to the constitution and regulation of Co-operative Societies – 5 April 1952.
8. The Companies Decree Act (1953)
9. A Decree to provide for the establishment and regulation of Public Markets – 4 of 1915 Cap. 35, 1934 20 of 1936, 12 of 1937, 33 of 1955
10. Existing Laws Decree 1964
11. Act No. 49 1966 – Civil Procedure Code 1966 - An Act to replace the Indian Code of Civil Procedure 1908 hereto in force in Tanganyika – 1 January 1967.
12. Act No. 6 of 1967 (revised) – The Evidence Act, 1967 (Principal Legislation).
13. 1975 – Liquor Decree, Chapter 163 – “Licensing Court”.
14. Trades Licensing Act No. 3 of 1983 as amended by Act No. 7 of 1992 and Act No. 11 of 1986
15. The Interpretation of Laws and General Provisions Act No. 7 of 1984
16. The Magistrates Court Act No. 3, 1985
17. Kadhis’ Courts Act No. 3, 1985.
18. High Court Act, No. 2 of 1985 – The Rules of Court (Expenses of Assessors, Witnesses, Interpreters, Medical Practitioners, etc.), 2000.
19. The Pharmaceuticals and dangerous Drugs Act No. 6 of 1986 Zanzibar.
20. Workmen’s Compensation Act No. 15 of 1986 of the laws of Zanzibar
21. Act No. 3 of 1986 – Zanzibar Municipal Council (Fees and Charges) By-Laws, 1992.
22. Act No. 1 – 1988 – Security of Employment – The Civil Service Commission Act No. 14/86 and the General Orders.
23. Newspapers Act No. 5 of 1988, section 8. Printing and publishing of Newspaper.
24. The Fisheries Act No. 8 1988.
25. Zanzibar Trading Act No. 4 of 1989, Section 17: Importation, exportation and re-exportation of any goods outside Zanzibar.
26. Act No. 5 of 1990 – An Act to Amend the Zanzibar Constitution, 1984. 27 July 1990.

27. Act No. 2 of 1992 – 26 June 1992 – An Act to Amend the Constitution of Zanzibar, 1984 and matters connected therewith.
28. Act No. 10 of 1992 – 8 October 1992 – An Act to amend the Entertainment Tax Decree No. 16 of 1962.
29. Act No. 16 of 1992 – 10 March 1993 – An Act to Establish Free Economic Zones in Zanzibar.
30. Act No. 17 of 1992 – 11 February 1993 – An Act to Establish the Zanzibar Free Economic Zones Authority and Other Matters Connected Therewith.
31. The Tanzania Communication Act 18 of 1993 as amended by Act no. 15 of 2001 Sections 9 and 19: Operation of telecommunications or postal services.
32. Private Hospitals (Regulations) Act no 4 Of 1994. Sections 7 and 13: Running private hospitals.
33. Act. No. 2 of 1994 – An Act to Repeal the Trade Disputes (Arbitration and Settlement) Decree and to Provide for the Establishment of the Zanzibar Industrial Court and Matter Therewith – 30 May 1994
34. Act No. 3 of 1994 – An Act to Establish the Stone Town Conservation and Development Authority and other matters connected therewith – 2 June 1994
35. The Hotel Levy Act No. 1 of 1995
36. The Zanzibar Fair Trading and Consumer Protection Act No. 2 of 1995.
37. The Zanzibar Municipal Council Act No. 3 of 1995
38. The Town and District Councils Act No. 4 of 1995
39. The Societies Act (1995)
40. Act No. 6 of 1996 – The Stamp duty – Amendment of the First Schedule
41. Zanzibar Revenue Board Act No. 7 of 1996
42. The Regional Administration Authority Act No. 8 of 1996
43. The Promotion of Tourism Act No. 9 of 1996
44. Insurance Act No 18 of 1996, Section 6 (1): Insurance business, insurance brokers and agents.
45. Act No. 3 of 1997 – The Labour – Conciliation Boards (Areas of Jurisdiction)
46. Zanzibar Broadcasting Commission Act No. 7/1997
47. The Value Added Tax Act No. 4 of 1998. – The Value Added tax (Amendment of Schedules) Order, 1999
48. The Zanzibar Social Security Fund Act No. 2 of 1998. Notice of Commencement Date (under Section 1)
49. Act No. 9 of 1998: An Act to establish Zanzibar Freeport Authority and Provide for Other Matters related thereto and connected therewith.
50. Legal Notice No. 26 of 1998 provided for fees and charges to be liveable by the Municipal Council in respect of several permits and licenses.
51. Town and Country Planning Decree, chapter 85 of the Laws of Zanzibar; and Legal Notice No. 12 of 1998
52. Tourism Business Licensing Regulations, 1998 and Legal Notice No. 87 of 1998

53. Act No. 3 of 1998 – 28 April 1998 – An Act to Amend the Cooperative Societies Act, 1986.
54. Act No. 4 of 1998 – an Act to Make Provisions for the Imposition of a Tax to be known as the Value Added Tax (VAT) on Supplies of Goods and Services and for Related Matters.
55. Act. No. 9 of 1998 – An Act to establish Zanzibar Freeport Authority and Provide for Other Matters Related Thereto and Connected Therewith. 23 July 1999.
56. Fees for business names L.N. 64 of 1999
57. Petroleum Levy Act No. 7 2001 – An Act to replace provision for the imposition of a Tax to be known as the Petroleum Levy Act on supplies of Petroleum Products and for other matters relating thereto and connected to therewith – 5 December 2001.
58. Act No. 5 of 2002 - An Act to Establish the Central Tender Board in Zanzibar and other related matters.
59. Act No. 7 of 2002 – 29 August 2002 – An Act to impose and alter certain taxes and duties and to amend certain written financial and tax laws relating to collection and management of public revenues.
60. The Judicial Service Commission, Act 2003: Code of Conduct for Judicial Officers.
61. Income Tax Act No. 11 of 2004
62. Criminal Procedure Act No. 7 of 2004. An Act to Amend the Zanzibar Social Security Fund Act No. 2 of 1998 – 7 November, 2002 - An Act to Make Provision for the Procedure to be followed in Criminal Cases - 16<sup>th</sup> August, 2004.
63. Penal Decree Act No. 6 of 2004: An Act to Make Provision for a Code of Criminal Law.

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