

ZANZIBAR GOOD GOVERNANCE

STRATEGIC PLAN



Zanzibar Revolutionary Government

Consultants' Report for

**UNDP Tanzania and
Revolutionary Government of Zanzibar
2nd (Final) Draft**

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ABBREVIATIONS

AccGen	Accountant General
AfDB	African Development Bank
AG	Attorney General
BoT	Bank of Tanzania
ASP	Afro-Shirazi Party
CAG	Controller and Auditor General
CCM	Chama Cha Mapinduzi
CFAA	Country Financial Accountability Assessment
CMO	Chief Minister's Office
CPA	Certified Public Accountant
CPAR	Country Procurement Assessment Review
CSC	Civil Service Commission
CSD	Civil Service Department
CTB	Central Tender Board
CUF	Civic United Front
DPP	Director of Public Prosecution
EPZ	Export Promotion Zone
FA	Financial Administration
GAAP	Generally Accepted Accounting Principles
GFS	Government Financial Statistics
GoT	Government of the United Republic of Tanzania
IASC	International Accounting Standards Committee
ICT	Information, Communication and Technology
IFAC	International Federation of Accountants
IFMS	Integrated Financial Management System
IMF	International Monetary Fund
INTOSAI	International Organisation of Supreme Audit Institutions

IT	Information Technology
ITC	Information Technology Centre
LAN	Local Area Network
LART	Loans & Advances Realisation Trust
LGA	Local Government Authority
MDAs	Ministries, Departments, Agencies
MPs	Members of Parliament
MTEF	Medium Term Expenditure Framework
MANREC	Ministry of Agriculture, Natural Resources, Environment and Cooperatives
MCT	Ministry of Communication and Transport
MECS	Ministry of Education, Culture and Sports
MoF	Ministry of Finance (URT)
MoFEA	Ministry of Finance and Economic Affairs (Zanzibar)
MCAGG	Ministry of State Constitutional Affairs and Good Governance
MHSW	Ministry of Health and Social Welfare
MRALGSD	Ministry of State Regional Administration, Local Government and Special Departments
MTITM	Ministry of Trade, Industries, Marketing and Tourism
MYEWC	Ministry of Youth Employment, Women and Children
MWCEL	Ministry of Water, Construction, Energy and Land
NBAA	National Board of Accountants and Auditors
OCAG	Office of the Controller and Auditor General
OCGS	Office of the Chief Government Statistician
OCs	Other Charges
OIC	Officer in Charge
PAC	Public Accounts Committee
PBZ	Peoples Bank of Zanzibar
PC	Personal computer
PER	Public Expenditure Review
Pes	Personnel Emoluments
PMG	Paymaster General

PS	Principal Secretary
RGoZ	Revolutionary Government of Zanzibar
SADC	Southern African Development Community
SBT	Software Business Technology
SVU	Stock Verification Unit
TRA	Tanzania Revenue Authority
TSAG	Tanzania Statement of Accounting Guidance
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
URT	United Republic of Tanzania
WB	World Bank
ZEC	Zanzibar Electoral Commission
ZIC	Zanzibar Insurance Corporation
ZIFA	Zanzibar Institute of Financial Administration
ZIPA	Zanzibar Investment Promotion Authority
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba Peoples Party
ZPRP	Zanzibar Poverty Reduction Plan
ZPC	Zanzibar Ports Corporation
ZRB	Zanzibar Revenue Board
ZSC	Zanzibar Shipping Corporation
ZSTC	Zanzibar State Trading Corporation
ZSF&PC	Zanzibar State Fuel and Power Corporation
ZSSF	Zanzibar Social Security Fund

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EXECUTIVE SUMMARY

Zanzibar Vision 2020 and Zanzibar Poverty Reduction Plan have identified Good Governance as a key factor for economic development, social welfare, peace and stability. These are the major government policy statements on good governance. In recognition of the importance of fostering good governance, The RGoZ in November 2000 formed the Ministry of Good Governance. The Ministry was given rudimentary initial guidelines and foreseen to establish its Strategic Plan in order to address the broader governance issues in Zanzibar. The need for such a comprehensive analysis was deemed necessary in view of the fact that no such broad assessment has been undertaken since 1961 when the Ministerial system of administration was introduced.

The quest for good governance is not just for the beauty of it. The ultimate objective and indeed proof of good governance is the sustainable political, social, economic and cultural well being of a people. Therefore the point of departure for improving governance in any country is the analysis and appreciation of the situation not only in terms of political, administrative and systematic governance but also in terms of the economic and social well being of the people.

Good Governance is informed by five principles:

1. Transparency
2. Efficiency/Effectiveness
3. Accountability
4. Legitimacy
5. Predictability

Zanzibar's development is based not only on its own internal dynamics, but also on outside influences. The Arab rule and British colonialism shaped the state system, and

have impacted on the work ethics of the society. The 1964 Revolution aimed at destroying the old order, but unfortunately it was not able to create in its place a new system of rules, work ethics, standards of behaviour and efficiency, especially in running public institutions. The lack of a proper operating system over a long period of time has resulted in the current inertia and stagnation. It requires bold initiatives, well-articulated programmes, disciplined supervision and political will to change the situation. And if Zanzibar is to progress and develop, it requires an essential change in its governance and the running of public institutions.

Apart from examining the governance situation in general, the Report looks at the operation of specific institutions such as the President's Office, the Public service, the system of local governance, the Ministry of Constitutional affairs and Good Governance, the Zanzibar Electoral Commission, the House of Representatives and the Judiciary. But this report cannot be considered to be the definitive final work on governance in Zanzibar. The Report strongly recommends that in-depth studies be conducted on the following areas: Constitutional Reform; Local Government Reform; Public Sector Reform; and Legal Sector Reform.

The Report finds it necessary that the Ministry of State for Constitutional Affairs and Good Governance be retained in the President's Office; and strongly recommends that a Governance Co-ordinating Unit be created within the Ministry to guide the governance process in public institutions.

SUMMARY OF RECOMMENDATIONS

In the report we discuss governance issues under five main headings according to the nature of governance issues and the institutional management of these:

1. Central Government,
2. Local Government,
3. MCCAG and Judiciary
4. Electoral System,
5. House of Representatives

The specific recommendations within each of the five above areas are outlined in the table below. These can again be categorised into three broad categories:

Category A. Recommendations regarding key policy or legal issues that RGoZ can make without additional studies. These recommendations are of a high priority in terms of urgency and importance.

Category B. Recommendations regarding further analytical works that needs to be undertaken in order to inform RGoZ decision making on revision of laws and polices. These recommendations imply some external assistance and are of a high priority and urgency. We provide reasonable accurate estimates of the costs involved.

Category C. Recommendations regarding capacity building in the form of training, equipment and office accommodation etc. These are of secondary priority and more detailed analyses are necessary before a complete, reliable and prioritised work plan and budget can be made for all the issues covered in the entire Strategic Plan. Preliminary and indicative cost estimates are however provided in the respective chapters

While it is important to ensure overall co-ordination of all governance reforms through Interministerial co-ordination mechanisms and the Ministry of Good Governance and Constitutional Affairs itself, it is also relevant to observe that some degree of autonomous management of the above mentioned key elements of reform is necessary. Within each of the five areas it is thus possible to identify a particular degree of prioritisation and scheduling of activities. This is tentatively discussed in the separate chapters, a final prioritisation and scheduling is however subject to further consultations and decisions by RGoZ.

The Table below summarises all key recommendations of the report. The last two columns of the table indicate where in the report a more elaborate discussion of the particular recommendation can be found and the level of priority (Category A, B or C recommendations).

No	Recommendation	Section Reference	Category
Chapter 4 Central Governance			
4.1	The composition and roles of the Revolutionary Council, their relationship to the President and the House of Representatives should be clarified	4.3	A
4.2	Modalities for allowing the President to appoint to his cabinet people who are not members of the council should be explored	4.3	A
4.3	The position of the Secretary to the Revolutionary Council should be strengthened	4.4	A
4.4	The cabinet secretariat should be strengthened through provision of additional human resources, skills and infrastructure.	4.4	C
4.5	The capacity of the head of the Civil Service should be increased	4.4	C

No	Recommendation	Section Reference	Category
4.6	The Principal Secretary (Ikulu) should be his Chief Assistant	4.4	A
4.7	The Ministry of State, Finance and Economic Affairs and the Ministry of State Regional Administration and Local Government should be removed from the Office of the President and stand on their own.	4.4	A
4.8	Union Laws should be reworked to accommodate the various forces presently under PO-RALGSD	4.4	B
4.9	A Civil Service census should be carried out in order to establish the real number of employees of the civil service	4.4	B
4.10	A Study should be undertaken to establish the actually required establishment of the service.	4.4	B
4.11	A retrenchment exercise should be carried out	4.4	C
4.12	Civil Service General Orders, Scheme of Service, comprehensive job descriptions, employee performance appraisal systems and guidelines for promotion should be developed. The present mechanisms for vetting of civil servants should be re-examined.	4.4	C
4.13	A Comprehensive Civil Service Reform Programme should be designed and undertaken, to address inter alia pay reforms.	4.5	B
4.14	Review of relevant laws and the Constitution regarding the Civil Service Commission should be speeded up	4.6	B
4.15	Composition of the Civil Service Commission to be revisited	4.6	A

No	Recommendation	Section Reference	Category
4.16	Study of Zanzibar administrative culture to be carried out	4.7	B
4.17	Work on legislation for OCAg to be speeded up for the office to become independent and effective	4.8	B
Chapter 5: Local Governance			
5.1	A thorough study should be carried out regarding a rationalisation and democratisation of local governance structures. The output of the study should be a proposal for comprehensive local government reform policy to be tabled Cabinet.	5.8	B
5.2	Modalities for increased local accountability of sub-national governance structures should be addressed as part of the above-proposed study.	5.8	B
5.3	Appropriate mechanisms for local governance funding should be developed subsequent to a rationalisation of the structures	5.8	B
5.4	Modalities of financing community based projects be harmonised into one, with a clear role for local governments and greater transparency and accountability	5.8	B
5.5	Arrangements for local government elections to be improved	5.8	A/B
5.6	A comprehensive capacity building plan for the Ministry (PO-RALGSD), the regions, districts and local governments should be designed as soon as overall Policy for LG reforms is decided upon.	5.8	B

No	Recommendation	Section Reference	Category
5.7	A compressive Local Government Development Programme should be embarked upon as soon as the overall Policy for LG reforms is decided upon. In addition to capacity building and continued refinements of policies, such a programme should include a modality for development funding of local governments (rehabilitation and construction of small scale infrastructures for communities – water, health, education etc).	5.9	C
Chapter 6: The Judicial System			
6.1	Functions of the MCAGG to be streamlined and focus on policy development and monitoring.	6.1.1	A/B
6.2	A Good Governance Co-ordination Unit be established within the Ministry	6.1.1	A
6.3, 6.5	A Law on Ethics should be passed -	6.1.3	B
6.4	Procedures for public declaration of assets by leaders be developed	6.1.3	B
6.6.	Code of Ethics to be passed for the Public service	6.1.3	B
6.7	Laws and regulations be strictly enforced	6.1.3	A
6.8	Responsibilities of officers, ministers, and parastatal directors and board members should be clearly defined	6.1.3	A/B
6.9 – 6.13	The appointment of judges should be depoliticised and their terms of service be improved	6.2.2	B

No	Recommendation	Section Reference	Category
6.14	Matters of court administration be left to a cadre of specially trained court administrators	6.2.2	B
6.15-6.17	The respective jurisdictions should be rationalised and the professional competence of the magistrates and Kadhis be enhanced.	6.2.2	B
6.18-19	Judiciary should develop and adopt a coherent training policy for all staffs	6.2.2	B
6.20	A Resident judge should be appointed for Pemba	6.2.2	A
6.21	A Study of human resource management should be undertaken for the judiciary	6.2.2	B
6.22-6.25	Children's rights <ul style="list-style-type: none"> • Review of all laws relating to children be carried out, • Review of system of juvenile courts, • Training of relevant staff dealing with children and young people, • Probation system be revamped 	6.2.2	B/C
6.26	Constitution and criminal Procedure decree to be amended to allow an accused person in a criminal trial to have representation of his/her choice.	6.2.2	B/C
6.27 – 6.28	A review to be undertaken of all the procedures of criminal trials	6.2.2	B
6.29	Budgetary provisions for the judiciary be substantially increased.	6.2.2	C
6.30 – 32	Terms and conditions for the judiciary be reviewed and improved	6.2.2	B/C
6.33 – 6.36	Physical facilities for High courts and magistrate courts be upgraded	6.2.2	C

No	Recommendation	Section Reference	Category
6.37-38	A Zanzibar Council of Legal Education (ZACLE) should be established and determine all aspects of applications for admission to the bar.	6.3.3	B/C
6.39-43	A system for postgraduate vocational legal training should be established. A joint GoT and RGOZ Law school should be established to play a key role in this regard.	6.3.3	B/C
6.45-47	Mechanisms should be established to discipline advocates who acts unprofessionally	6.3.3	B/C
6.48-6.49	Specialisation and continuing legal education should be ensured	6.3.3	B/C
6.50	An independent office for ZLS should be established	6.3.3	C
6.51 – 6.54	Short and long term measures for legal aid be implemented	6.4.2	C
6.55-58	Legal Literacy programme be launched and implemented	6.4.2	C
6.59-6.60	Appointment of ZAG to be streamlined	6.5	A
6.61	ZAGC funding to be increased	6.5	A
6.62-64	The position of Deputy Attorney General within ZAGC and MCAGG should be clarified	6.5	A
6.65-66	A unit of justice, constitutional and human rights affairs should be established in the office AGC	6.5	A
6.67-68	Terms and conditions of service for ZAGC be reviewed	6.5	B
6.69-6.74	A training needs assessment for the legal sector as a whole should be carried out – short and long term training programmes be implemented	6.5	B/C

No	Recommendation	Section Reference	Category
6.75-6.77	Office upgrading and retooling of ZAGC should be undertaken	6.5	C
6.78-6.79	Legislation for regulation of civilian prosecution in the office of the DDP should be enacted.	6.6	A/B
6.80-6.83	The law establishing the office of the Mufti should be reviewed in order to harmonise it with Constitutional provisions on religious liberty, freedom of speech, assembly and association as well as separation of religion and state. Religious institutions should be autonomous and not receive state subventions.	6.7	A/B
6.84-6.85	The Commission for Wakf and Trust property should operate as a body corporate. The Act should stipulate that legal disputes are to be handled by Kadhis court.	6.8	A
6.86-6.87	The independence of the Commissions should be guaranteed through proper procedures for appointment of its members.	6.8	A/B
6.88	The recommended need assessment (training) for the legal sector should cover the Office of the Registrar General.	6.9	B
6.89	It should be explored if it is feasible to merge the Commission for Wakf and Trust Property and the Office of Register General into a single autonomous government agency.	6.9	B
6.90-6.92	The Zanzibar Law Review commission should be revitalised and be provided with adequate budgets, office upgrading and retooling.	6.10	A
6.93	It is strongly recommended that the RGoZ extend the mandate of the Commission for Human rights and Good Governance to Zanzibar, by enacting the	6.11	A

No	Recommendation	Section Reference	Category
	necessary legislation to that effect.		
6.94 – 6.97	A training programme should be developed for the legal sector as a whole	6.12	B/C
Chapter 7: Electoral System			
7.1	A well articulated and simple to understand electoral law should be put in place and effectively disseminated to all political actors and stakeholders.	7	A/B
7.2	The composition of ZEC should be reviewed	7	A/B
7.3	The idea of including elements of proportional representation should be pursued. A Constitutional and electoral mechanism should also be put in place to ensure that parties are required to share power once they reach a minimum percentage of votes and no less than 10 elected seats.	7	A
7.4	Residential requirement should be removed as a condition for one to register as a voter in Presidential, house of Representatives or local government elections.	7	A
7.5	Independent candidates should be allowed to stand in general elections.	7	A
7.6	Financial resources for well conducted elections should be accumulated in government budget well in advance of the electoral year	7	A
7.7	ZEC should only be responsible for Zanzibar elections, whereas NEC takes full charge of the Union elections.	7	A
7.8	Autonomy of ZEC should be ensured	7	A

No	Recommendation	Section Reference	Category
Chapter 8: House of Representatives			
8.1	The President should not be part of the legislature	8	A
8.2	The House of Representatives is too big – there is no need for the Regional Commissioners to sit there.	8	A
8.3	The powers of the President to appoint members of the House of Representatives should preferably be abolished – or at least curtailed.	8	A
8.4	The Speaker of the House should be left out of the domain of partisan politics.	8	A
8.5	A minimum education level should be set for members of the House.	8	A
8.6	Members should receive training and orientation in order to perform more effectively.	8	B/C
8.7	A proper secretariat should be established to support the house and its standing committees	8	B/C
8.8	A rationalisation should be undertaken of the staffing structure for ammunisation of the House.	8	B/C
8.9	Staff training should be undertaken	8	C
8.10	The physical environment of the House of the Assembly should be improved and a new building possible sited.	8	C

1. INTRODUCTION

Situated roughly 20 miles from the shores of the African continent, Zanzibar is one of the largest islands in the Indian Ocean. It consists of the two main islands of Unguja, with an area of 640 sq. miles, and Pemba with one of 380. There are other islets, Uzi, Kojani, Shamiani, Kisiwa Panza, Fundo, Makoongwe and Tumbatu; the latter area, with 3600 acres, is the only one inhabited and of any significance, lying not far from the north-west coast of Unguja. The country's population density is very high, with an average of 258 people per sq. mile in Unguja and 352 in the case of Pemba. According to the year 2002 National Census, Zanzibar has a population of 979,637.

Given the islands' geographical proximity to Mainland Tanzania, and Kenya in the case of Pemba, it is not difficult to assume the early inhabitants must have come from these areas [Dale, 1920]. It is not easy to rule out also that people might have also come from places such as the coasts of Mozambique and Somalia, and the islands of Malagasy and the Comoros. It is generally believed that the Ngalawa-type canoe may have come to Zanzibar from Indonesia via Madagascar and the Comoros [Prins, 1961]. The monsoons and the dhows have also brought people from Arabia, India, the Mediterranean and other places. In fact, in the country's history, which dates back to the pre-Christian era, there is much that indicates Zanzibar's active links with the outside world [Oliver and Mathew, 1963]. It is such links also that gave Zanzibar its language, Kiswahili [Prins, 1961].

Writers on Zanzibar can be divided into two groups. There are those who, writing before the 1964 Revolution, were fascinated by the beauty of the country and its landscape, and were therefore unconcerned with the feudal and colonial situation that then prevailed. To them Zanzibar was a romantic 'clove island', the 'pearl of the Indian Ocean', and a good place to see the inter-marriage of many cultures. The country was romanticised as a 'paradise', and venerated as a place where "different races lived together in peace and harmony". But nobody stated that behind the façade of peace and tranquillity, there was "vast actual inequality ... based on a pattern of absolute superiority and inferiority" [Read, 1962; Campbell, 1972].

The other group of writings are those that have been coming out especially since 1964. In that year an armed revolt terminated the rule of Al-Busaidy dynasty; and writings on Zanzibar until 1985 have been of two extremes: cold-war-backed journalists describing the island as the 'Cuba of Africa' and a 'communist base', and those who saw in Zanzibar the arrival of the 'promised land'.

There has never been an attempt to inter-relate the different phases in Zanzibar's historic development. The works of Lofchie [1965] and Ayany [1970] are a wonderful contribution in giving us an understanding of the political and constitutional developments of the pre-1964 period, but they offered no analysis of the forces at play during the time. What was needed was an objective examination of the real pre-revolution situation in terms of the country's place in the whole system, the social structure, and the impact and influence that more than seventy years of direct British colonialism have had on the fabric of the Zanzibar society. *Zanzibar Under Colonial Rule* [Sheriff and Ferguson, 1991] attempts to fill the gap, especially for the period from 1840's, but as the editors themselves admit, this is not a definitive history of colonial Zanzibar [Othman, 1992]. It is only when such an analysis is made that the significance of the 1964 upheaval can be understood and appreciated. Moreover, when such an analysis is provided, it will clear up much of the confusion and misunderstanding of the past and present issues.

The modern history of Zanzibar can be considered to have started with the establishment of Omani rule in 1832, followed by the imposition of a British protectorate in 1890. Having consolidated his position in his Omani Sultanate, Seyyid Said began looking towards the East African Coast [Gray, 1962; 1963]. Prior to his coming to power, Omani Arabs had fought the Portuguese in East Africa, driven them to Mozambique, and started, in the early 18th century, to colonise the coast and the islands. Seyyid Said decided in 1832, because of commercial and strategic reasons, to move his seat from the Persian Gulf to Zanzibar.

Because of the dependency of the Al-Busaidy dynasty on Britain since the Muscat days, it was inevitable that in the rivalry between Britain, Germany and France for the control of East Africa, Britain was favoured by the Sultan of Zanzibar. Zanzibar, consequently,

was made a British protectorate on 14th June 1890 [Hollingsworth, 1953], and thus started the British colonisation of Zanzibar which ended seventy-three years later, on 10th December 1963. There has been debate in the literature as to whether between 1890, when Zanzibar became a British protectorate, and 1963, when British colonialism ended, there was dual power in the islands. What is very obvious is that the British dismantled the Sultan's state and imposed their own. By the 1930's there was no traits of the Sultan's state. It must be stressed, though, that for Britain, Zanzibar was 'Arab state' [Lofchie, 1965; Bennet, 1978; Martin, 1978:49; Zanzibar Protectorate, 1933-34:60; Clayton, 1981:15; Bhagat and Othman, 1978]. In the hierarchical situation that existed in the Zanzibar society there could be seen many contradictions. There was the existence of the colonial power controlling the state and its institutions; the Arab dynasty which was described as "an embodiment of all the worst and most barbarous characteristics of a primitive Arab dynasty"; the landed aristocracy; the Asian in control of trade, commerce and finance; and the African population, both indigenous and immigrant, providing labour in the countryside and in the few industrial outfits that existed in the islands. These contradictions came to manifest themselves much more in later years.

Zanzibar's road to independence was bumpy one. Formal independence from Britain was attained on December 10th, 1963, with the Sultan as the Head of State, with power to nominate his successor [Official Gazette, 1963]. Thus, as Lofchie states, "the Arab rule had not only survived the introduction of representative institutions, but had acquired a degree of legitimacy under constitutional democracy" [Lofchie, 1965:68]. But a month after formal independence, on 12th January, 1964, Zanzibar experienced a revolution that not only overthrew a government, but also immediately abolished a monarchy. With the establishment of a republic and a new coalition of classes in power, a radical change of circumstances occurred. Indeed it has been remarked "with the possible exception of (Sekou Toure's) Guinea, no country in tropical Africa changed so radically in so short a time" [Martin, 1978:60].

On 26th April, 1964, the People's Republic of Zanzibar and the Republic of Tanganyika announced that they had merged to form a United Republic of Tanzania. The circumstances in which the Union was formed raised a lot of questions, many of which are still unanswered, and some have been at the centre of continuous debates and

controversies in Tanzania in the last twenty years [Srivastava, 1978-81; Fimbo, 1981; Dourado, 1983; Mvungi, 1983; Kabudi, 1985; Shivji, 1990; Othman, 1993].

It can be seen in Zanzibar's history that Zanzibar's development is based not only on its own internal dynamics, but on outside influences too. The composition of Zanzibar society has been affected by monsoons and waves of people coming from outside the islands. Their intermingling and inter-marriages have brought into existence a unique Zanzibari culture. The Arab rule and British colonialism shaped the state system, and have had an impact on the work ethics of society. Like all social revolutions in the world, the 1964 Revolution in Zanzibar tried to destroy the old order, but it is debatable whether it has been able to create in its place a new system of rules, work ethics, standards of behaviour and efficiency, especially in running public institutions. The lack of a proper system operating over a long period of time has resulted in what can be termed inertia and stagnation at present. It now requires bold initiatives, well-articulated programmes, disciplined supervision and political will to change the situation. And if Zanzibar is to progress and develop, it requires an essential change in its governance and the running of public institutions.

Unfortunately the Consultants did not have much time to do an in-depth study. In the five weeks available, the Consultants were required not only to review the available literature, documentation and studies done on Zanzibar, but to carry out interviews with senior government officials, political leaders, NGO activists, civil service retirees and many others and to visit a number of institutions. This methodology used was able to give the Consultants a fair view of the present governance situation in the country and the factors behind it. This cannot be considered though to be the final, definitive work on governance in Zanzibar. Further in-depth studies would be required. But a lot of suggestions and recommendations made in here, with political will and serious commitment, can be implemented, and if so well done can make a fantastic difference. Not every thing should wait for donor support. There are certain things Zanzibaris on their own can do, and achieve tremendous results. There are other things, though, that they would need encouragement, material support and solidarity of the international community.

In conducting this study, the Consultants have gone through various documents including the Zanzibar Vision 2020 and the Zanzibar Poverty Reduction Plan. In these two documents in particular the Consultants have found the Zanzibar Revolutionary Government's commitment to good governance well articulated. There is a realisation that democracy and development are sides of the same coin, and what is required then is not only democratic development but development of democracy too.

The Consultants have also looked into the 'Background Paper' of the Ministry of State (PO), Constitutional Affairs and Good Governance which an insight on the Ministry's vision of governance in the country and what it perceives to be its role. There is also the '*Waraka wa Baraza la Mapinduzi: Mwelekeo wa Utekelezaji Majukumu ya Wizara ya Nchi (AR) Katiba na Utawala Bora*' which gives the central government's direction to the Ministry with regard to its work. All this literature has enabled the Consultants to get a clear view of the thinking within government as to what the governance situation should be in the country.

The work is divided into seven main areas, and Conclusion and Recommendations. It charts out also a way forward, and provides a Work Plan and Provisional Costs. It was felt necessary to provide a 'Constitutional History' in order to understand the historical background; and as it is said, it is from the past that one understands the present. The 'Principles of Governance' are the internationally acceptable governance norms, and one has to compare and contrast what is available on the international plane and with what is in practice in Zanzibar. The four remaining sections deal with specific areas and institutions. The Report ends with a Bibliography and a list of people the Consultants met and the institutions they visited.

2. THE CONSTITUTIONAL HISTORY OF ZANZIBAR

A constitution is a framework within which a society governs itself. It sets the principles which drives a people to do things, limits the powers of individuals and the authority of institutions, and confers rights and obligations to those who reside within its geographical jurisdiction.

On 14th June, 1890, Zanzibar was declared a British protectorate. Immediately after that a British Representative was appointed as a First Minister to Zanzibar Sultan where he took charge of Posts, Labour Office, Customs, Harbours, Treasury and Police. The powers of the Sultan himself were whittled down, and he could not remove or transfer British officials at will, and his own annual salary was set by the British authorities. On 1st July, 1913, Zanzibar was removed from the Foreign Office and placed under the Colonial Office [Hollingsworth, 1953]. A Protectorate Council was established on 21st April, 1914 that existed until 1925. This council was advisory to the Sultan, and composed of the Sultan as chairman, the British Resident as vice-chairman, attorney-general, chief secretary, financial secretary and three nominated members (an Arab, an Indian and a European). There was no African representation.

The Legislative and Executive Councils were formed in Zanzibar in 1926 by Order-in-Council. The formation of these two bodies put the administration of the Zanzibar Government in the hands of the British Resident, and required that no decree be enacted by the Sultan without the advice and consent of the Legislative Council [Ayany, 1970; Zanzibar: Laws of Zanzibar, 1934, vol.11, Government Printer; and Great Britain: Zanzibar Order-in-Council, Statutory Instrument No. 835 of 1942]. In the same year a constitutional change was made requiring the British Resident to receive his instructions from the Secretary of State for the Colonies in London and not from the Sultan [Crofton, 1953]. According to Crofton, these changes were intended to safeguard the islands' "complete autonomy and independence" [Crofton, 1953], but in actual fact they very much curtailed the powers of the Sultan and made him a prisoner in his on regime.

The notion, found in some of the contemporary literature on Zanzibar, that during the British colonial period in the islands, there existed a dual state, one Arab and the other British. In a typical 'indirect' rule fashion Britain did not want to interfere with some of

the pre-capitalist institutions it found in the islands. The court system established prior to European colonization was based on Islamic Law. While this was preserved to a certain extent up to the time of formal independence from Britain in December 1963, to run parallel with an English court system, by Order-in-council of 1936 the people of Zanzibar could, in certain cases, appeal to the British Court of Appeal for Eastern Africa.

For twenty years of its existence, the Legislative Council had no representation, direct or indirect, of the indigenous African population. When, by Decree No. 14 of 1942, an announcement was made on the enlargement of this, what was basically a “rubber stamping body”, no African representation was envisaged. Only in 1946, no doubt as a result of the changed political climate in Britain and the world in general, manifested by the coming of the Labour Government in Britain and the institution of left-wing governments in most of Western Europe, was the African representations in the legislative bodies of East Africa, including Zanzibar, thought of [Great Britain: Parliamentary Debates (Commons), Fifth series, CDXXV (9 July 1946), col. 242]. Thus in the case of Zanzibar the new legislative body consisted of eight official and seven unofficial members with the British Resident as its president [Great Britain: The Colonial Empire 1939-1947, Cmd. 7176, London, HMSO, (July 1947), p.35] Of the seven unofficial members, there were to be three Arabs, two Indians, one European and one African. The first African member of this body was Sheikh Ameir Tajo who remained in parliamentary politics till the 1964 Revolution. Bowles, in his article on *The Political Economy of Zanzibar 1945-1964* argues that the Legislative Council was a place where the colonial government moderated conflicts [Sheriff and Ferguson, 1991]. Zanzibar could not escape the ‘wind of change’ blowing all over the colonial world and the struggles for self-determination and independence ravaging throughout Africa and Asia. Even though modern nationalist politics started only in the 1950’s, in the thirties and forties there had already emerged trade union organizations [Clayton, 1948], ethnic groupings and cultural and semi-political movements. In fact in 1948 Zanzibar Town was gripped by a workers’ strike that had deep political overtones [Clayton, 1948; Shaffi,.....]. The collapse of the British colonial system in the Indian sub-continent, with which Zanzibar had long historical links, resulting in the birth of India and Pakistan, and the 1952 overthrow of King Farouq in Egypt by Gamal Abdel Nasser and his fellow

army officers had a tremendous impact on Zanzibar. The meaning of all this could not escape the mind of the colonial power. Apart from this there was a political trial in June 1954 involving the Executive Committee of the Arab Association and the editor of the Association's paper, *Al Falaq* [East African Standard, 21 June 1954; The New York Times, 20 June 1954]. The paper had earlier on condemned British colonial policy in Kenya and Malaya where independence movements were resisting, with arms, colonial repression.

As stated above, the British strategy was to develop Zanzibar as an Arab state. Thus, when in the early fifties the Arab Association started to make political demands, and to back them with a boycott, by its representatives of the Legislative Council, a few constitutional concessions had to be made, promising that the protectorate would be developed towards the attainment of "internal self-government within the Commonwealth" [Kessing's Archives, 1-8 October 1955; The Times, London, 21 October 1955]. The major concession of this exercise was the reconstitution of the Legislative Council to consist of twelve official and an equal number of unofficial members with the British Resident as its president. The interesting thing about the unofficial representation was that African representatives and Arab ones were equal in number, that is four in each group, the remaining four being three Indians and one European. While the Arab community had only one association, the Indian community had two, namely the Indian Association and the Muslim Association (following the existence of India and Pakistan), the African population had also two, namely the African Association headed by Sheikh Abeid Karume and the Shirazi Association headed by Sheikh Ameir Tajo and Sheikh Thabit Kombo. While the division of the a Indian community into two groups was a result of what happened in the India sub-continent that of the African population could be attributed to the success of the colonial policy of 'divide and rule'.

The changes brought about by the 1955 announcement were short-lived. While the Senior Provisional Commissioner was "lamenting" in November 1955, that no political parties had been formed to whom "responsible government" could be transferred, by the end of the year political organizations started to emerge. The Zanzibar Nationalist Party was formed in December of 1955 to be followed by the Afro-Shirazi Party founded on 5th

February 1957. Therefore when some new changes were introduced in 1957, they found political parties already bracing themselves to meet them.

The major innovation in the 1957 constitutional changes was the election of the half of the twelve unofficial members through the common Roll system. This was not only a novelty in Zanzibar but was a 'revolutionary' step in East Africa. The changes envisaged in the constitutional announcement of 1957 placed Zanzibar along the path to self-rule and independence.

The elections were contested by political parties and racial and religious organizations, and in the end, as the government report pointed out at the time, those elections really became a contest between ASP and ZNP. The ASP won five out of six seats, and the remaining seat was won by the Indian Muslim Association candidate.

After the 1957 elections, Zanzibar was never the same again. Passions ran high, and politics infected every family.

In 1960 the British Government appointed Sir Hillary Blood as Constitutional Commissioner to propose future constitutional steps for the islands. The Commissioner made far reaching constitutional proposals. According to Sir Hillary, he had Singapore in mind when making constitutional recommendations for Zanzibar [Blood, Sir Hillary: "How far can Zanzibar advance?" Constitutional Report, 1960 Zanzibar: Office of the Constitutional Commission – Report, ZGP, 1960]. The recommendations included the introduction of a Ministerial system in which the leader with a majority of elected seats in the legislature was to become the Chief Minister; the legislature to have an elected majority of twenty-two seats; the demarcation of constituencies; and, not only the enfranchisement of women but also the relaxation of the property and education conditions for men.

Following the Government's acceptance of Blood's constitutional proposals, elections were held in January 1961. The islands were divided into 22 constituencies, 13 in Unguja and 9 in Pemba. While in 1957 only about 40,000 people had registered to vote, in 1961, more than twice as many, about 85,000, were eligible, thanks to the enfranchisement of women and the relaxation of property and other qualifications. When the elections took place, almost all those eligible voted. ASP won 10 seats, ZNP 9 and ZPPP, which broke

away from ASP in 1959, won 3 seats, It was obvious that the ZPPP was in quite enviable position, with each of the other parties seeking it as a coalition partner. But the ZPPP itself became divided, with one of its members, namely Ali Sharif Musa, joining the ASP, and the other two allying with the ZNP. Thus a stalemate ensued, and new elections had to be called.

There was a criticism at the time over the way the British local authorities handled the election results. ASP had not only the majority of seats, but votes too [Zanzibar Protectorate, 1961a]. ASP felt that the British Resident should have called on its leader to form a government and have him appointed Chief Minister. The government would have had the necessary working majority since the three ex-officio members (the Chief Secretary, the Financial Secretary and the Attorney General) sitting in the Legislative Council were supposed to always vote with the government. But the argument made by the British authorities at the time was that a party had to have a working majority of its own without depending on the ex-officio members. Instead, new elections were planned for June, and the Chief Secretary acted as Chief Minister for six months, with a coalition government consisting of Ministers from all the political parties. January 1961 elections convinced the ASP and many others that the British were determined not to see the ASP in power.

Before the new elections were held in June 1961, a new constituency was created in Pemba, the idea being to prevent another stalemate. But the addition of the new constituency in Pemba where ASP had not enjoyed much support worked against ASP 's favour [Middleton and Campbell, 1965:57]. The June elections had almost 90,000 voters. The ZNP and ZPPP contested the elections as an alliance. The result was that the ASP not only retained its 10 seats but increased its majority by almost 10,000 votes; the ZNP won 10 seats as well, one seat more than in the January elections, though its total vote was reduced by almost 1,000 votes; and the ZPPP retained its 3 seats with its total vote reduced by almost 3000 [Zanzibar Protectorate, 1961b].

The elections were marred by riots which went on for several days. Armed reinforcements came in from outside to help the security forces in Zanzibar to restore order. The official death toll was said to be 68, those who sustained injuries were

estimated to be 381, while over 1000 were arrested and many buildings were damaged, as there was also a good deal of looting [Commission of Inquiry, 1961]. These were not the first riots in Zanzibar; the islands had experienced riots in 1928, 1936 and 1951. Certainly the June riots were an indication of what was to come: the 1964 Zanzibar Revolution. Violence was being accepted as a way of solving political conflict [Lofchie, 1965:205]

A constitutional conference was held in London between 19th March and 6th April 1962 attended by all the political parties in the Legislative Council with the Colonial Secretary as chairman. At the conference the ZNP/ZPPP alliance and the ASP showed much diverged views on future constitutional development. While they both “reaffirmed their loyalty to the Sultan and the Throne and their desire that the dynasty should continue”, they had different ideas on the programme of taking Zanzibar into internal self-government and independence. ASP wanted the complete removal of means and literacy conditions in elections, a reduction of minimum voting age to 18, an increase of elected members from 23 to 31, and the holding of new elections before independence. While the ZNP/ZPPP coalition agreed on the removal of means and literacy conditions, they rejected the other demands. The conference ended in a stalemate.

On 24th June 1963 Zanzibar became an internally self-governing territory, and the following month new elections were held. It was clearly understood by everybody that these were to be last elections before formal independence; and that the government that was to be formed would lead the country to formal independence from Britain. The elections were held from 8th to 15th July 1963 for a legislature of 31 members. The ZNP/ZPPP alliance won 18 seats, and the ASP 13. As in previous elections, the ASP won the majority of votes cast but not a majority of seats. While the ZNP had a fall in the percentage of votes cast from 35.0% in 1961 to 29.8% in 1963, the ASP increased its share of votes from 49.9% in 1961 to 54.3% in 1963. The ZPPP made an increase from 13.7% in 1961 to 15.9% in 1963.

The elections having determined the future government of an independent Zanzibar, the last constitutional conference was convened in London in September, 1963 on Independence Constitution. This conference agreed on the date of Zanzibar’s formal

independence from Britain, 10th December 1963, making the Sultan the Head of State, and giving him more powers, including also the power to nominate his successor [Official Gazette, 1963]. Independence from Britain was granted on December 10th, 1963, and thus ending seventy-three years of British colonial rule.

On 12th January 1964 Zanzibar experienced a revolution that not only overthrew the ZNP/ZPPP coalition government, but immediately also abolished a monarchy.

What did surprise many people outside the islands was how there could occur a “sudden” revolution barely one month after Zanzibar attained its formal independence. The revolutionary government abrogated the Independence Constitution 1963. However, the revolutionary government must have realized the necessity of having a constitutional basis for its actions. Perhaps that is why one the first actions taken by the Revolutionary Council were the passing of a ‘Constitutional Decree’ “providing for constitutional government and the rule of law”. The Decree spelt out the division of powers in the new Government and declared an intention of codifying ‘Constitutional Decrees’ which were to form the basis of the new constitution.

On division of powers, Section 2 of the Decree provides:

“The People’s Republic of Zanzibar is a democratic state dedicated to the rule of law. The President as Head of State validates legislation by his assent. As an interim measure, legislative power resides in the Revolutionary Council and is exercised on its behalf and in accordance with its laws by the President. The principal executive power is exercised on behalf of the Revolutionary Council and with its advice by the Cabinet of Ministers individually and collectively; the principal judicial power is exercised on behalf of the Revolutionary Council by the Courts, which shall be free to decide issues before them solely in accordance with law and public policy.”

It is clear from this section that in actual practice, legislative power was vested in an individual who was to exercise it “on behalf of the Revolutionary Council”. Judicial power was to be exercised by courts also “on behalf of the Revolutionary Council”. The orthodox doctrine of separation of powers was not strictly adhered to since the Revolutionary Council was “everything and everywhere”.

Section 3 of the ‘Constitutional Decree’ throws more light:

“The Revolutionary Council, in addition to its ordinary law making functions, shall progressively enact Constitutional Decrees which shall form the basic law of the People’s Republic of Zanzibar”

On 26th April 1964, the People’s Republic of Zanzibar and the Republic of Tanganyika announced that they had merged to form the “United Republic of Tanganyika and Zanzibar” [Act No.22 of 1964]. In December of the same year by an Act of the Union Parliament, a new name for the United Republic was adopted, i.e. Tanzania [Act No.61 of 1964]. Immediately after the ratification of the ‘Articles of Union’, the Constitution of Tanganyika was adopted as the first Constitution of the United Republic. The Interim Constitution of Tanganyika and Zanzibar, 1964, was to operate until a new Constitution was to be adopted.

In spite of the Union, Zanzibar still retained a certain degree of autonomy. Apart from matters that were specifically reserved for the Parliament and Executive of the United Republic, the President and Chairman of the Revolutionary Council had absolute powers in Zanzibar.

The Interim Constitution was repealed and replaced in 1977 by the Constitution of Tanzania (1977). This Constitution introduced a number of innovations arising from the experiences gained until then.

The first post-revolution Constitution of Zanzibar was enacted in 1979. This Constitution can rightly be called a ‘child’ of the Union Constitution. It was modelled after the Union Constitution providing the same format and organization for government, dividing into executive, legislative and judicial branches. It also endorsed all provisions in the Union Constitution relating to Zanzibar, making only modest modifications where appropriate. The draftsmen of Zanzibar Constitution must have drafted it with a clear desire to avoid any contradistinctions or inconsistencies with the Union Constitution.

Following the adoption of the Zanzibar Constitution some amendments were effected in the Union Constitution to accommodate new changes in Zanzibar. Some new sections

had to be introduced in the Union Constitution endorsing the existence of the House of Representatives and defining its powers.

In 1984 as result of a “polluted political atmosphere” in Zanzibar, Sheikh Aboud Jumbe had to resign his state and party positions: President of Zanzibar, Chairman of the Revolutionary Council, Union Vice-President and CCM Vice Chairman. A new Constitution was adopted for Zanzibar. The 1984 Zanzibar Constitution differs very much from the 1979 one. This constitution has a bill of Rights, defines who is a Zanzibari, stipulates state directives and makes a House of Representatives that consists mostly of elected members. The Constitution has, though some problematic areas such as:

- a) Article 63 makes the President to be part of the legislature, while the Constitution in intent directs at separation of powers;
- b) Under Article 66 the President has a power to nominate 10 members to the House of Representatives. The practice has been for the President to appoint people from his own political party; and the tendency had been for the President to make as Ministers a number of his appointees to the House. There is no real need for the President to appoint people to the House, but if this is to be retained, then it might be better to revert to the original intention when this provision was provided for in the Tanganyika’s Independence Constitution. The idea then was for the President to appoint to the National Assembly people who would be there to help the Assembly, like retired civil servants, respected public figures, professionals, priests and Imams, etc. The idea had never been either for a President to nominate people so as to give his party a necessary majority in the House or to widen a pool where he would be able to get Ministers for a government.

The 1984 Zanzibar Constitution was enacted at a time when Zanzibar, and the whole of Tanzania, was under a one-party system. As a result of the recommendations of the Nyalali commission, amendments to both the Union and Zanzibar Constitutions were made in 1992 to make the whole of Tanzania to be a multi-party state. What was required then, and is still required now, was to draft a really multiparty constitution for both the Union and Zanzibar. In the year 1998 the Union President appointed Justice Kisanga and

his colleagues to look at the Union Constitution and make necessary recommendations. For reasons that are not clear, the Zanzibar Government adopted some of the recommendations of the Kisanga Committee, and made changes to the Zanzibar Constitution. There is a need, though, for the opening up of a debate on the Zanzibar Constitution that will involve the whole population. The '*Muafaka*' agreed by CCM and CUF stipulates that after a period of fifteen months after being signed, Zanzibaris would have to discuss on the type of a constitution they require.

There are so many lessons that one can draw from Zanzibar's constitutional development. One was that any constitutional framework intended to benefit only one group did not stand the test of time. Second, that power needed to be shared, and not concentrated at one place or in the hands of an individual. Third, a people can be forced to act or behave in a certain way, or do things that the authorities want them to do, but over a time they develop a resistance and refuse to be coerced. There comes a time when they refuse to do things that are not to their own benefit.

3. PRINCIPLES OF GOOD GOVERNANCE

The quest for good governance is not just for the beauty of it. The ultimate objective and indeed proof of good governance is the sustainable political, social, economic and cultural well being of a people. Therefore the point of departure for improving governance in any country is the analysis and appreciation of the situation not only in terms of political, administrative and systematic governance but also in terms of the economic and social well being of the people.

What is governance then? As a process in which collective power is utilised for the realisation of common objectives, governance involves actions and interaction of individuals and groups of individuals in diverse and dynamic ways, and institutions that are continuously changing.

Good Governance is informed by five principles:

1. Transparency in all areas of public domain
2. Efficiency in the running of public institutions and Effectiveness in the delivery of services,
3. Accountability,
4. Legitimacy and
5. Predictability.

Good governance takes place when the process is conducted within the framework of a written constitution, constitutionalism, the separation of powers and the rule of law, and ethical codes of conduct and traditions of the people; when it responds to the basic needs, wishes and aspirations of the people; when it is based on sound, efficient organisational and operational principles; and when the entire process is transparent and accountable, whose consequences are understood and predictable. Leadership, competence, political will, integrity and capacity are critical to the promotion of good governance. The following are generally considered to be the principles constituting good governance:

- Constitutionalism: guaranteeing separation of powers, checks and balances, power sharing and sustained respect for and reference to the constitution in all aspects of governance.
- Separation of Powers: the principle of separation of powers insists that no one person or an organ of state should at any one time be in control or have influence over the operation of three organs of government, namely the Executive, the Legislature and the Judiciary.
- Rule of Law: the rule of law compels government and those in charge of governance processes to conduct their activities and behave in accordance with the known and established legal principles and norms. Government powers should be defined by law and be subject to legal control. If challenged government should be able to identify the legal source of its powers, which, furthermore must be such that they exist to protect, guide and provide adequate safeguards against the abuse of power for all the people in society.
- Justice: an effective system of dispensing justice which is fair and accessible to all.
- Electoral and participatory democracy for people to take part in making the decisions that concern their lives and livelihoods, via effective and efficient electoral systems and behaviour, decentralised structures and political, managerial and economic decision making, and a vibrant civil society that ensure sustainable legitimacy for the government.
- Peace and security of person and property.
- Respect, protection and promotion of human rights and basic freedoms by all.
- A reconciled, peaceful and harmonious society.
- Political, managerial and financial accountability and transparency.
- Equity, both intra and inter-generational, including gender balancing and responsiveness, environment as well as external debt management.
- Informed citizenry, through an effective free and responsible media, public access to information, and accessible education for all.

- Effective and efficient delivery of public services, via competent, effective, efficient and accountable public service and other systems for services delivery.
- At least a minimum standard for every one.
- Exemplary, visionary and inspirational leadership that exhibits sustained political will.
- Positive agreed societal values.
- Professional, positive moral and ethical standards.
- Love for one's country (not xenophobia or fanatical nationalism).

Bad governance occurs when the constitutional and legal provisions are faulted, law enforcement fails or is compromised, ethical and traditional codes of conduct are ignored or undermined; when accountability and transparency are lacking, appropriate organisational and operational principles are not applied, and the leaders are greedy, rapacious, corrupt, incompetent, and insensitive to the needs, wishes and aspirations of the people. The following are manifestations of bad governance:

- Corruption in public offices.
- Uncertainty about the security situation.
- The practice of appointing unsuitable people to public offices.
- Breakdown of fiscal discipline.
- Virtual collapse of the financial system.
- Ethnic rivalry and hatred.
- Overzealous quest for political and economic power.
- Insensitivity to and disrespect for human rights including the right to live.
- Mass poverty.
- Poor education, ignorance and a high illiteracy rate.
- Disregard and lack of respect for the laws of the land.

- Breakdown of culture.
- Breakdown of the value system.
- Inequitable distribution of income.
- Lack of mechanism for consultations.
- Lack of independence of the Judiciary.
- Gender inequality.
- Lack of integration.
- Lack of adequate social services delivery.

Creating a society where the principles of good governance are allowed to operate is not an easy task, especially in Africa. African societies have passed through decades (sometimes, centuries) of colonial oppression and humiliation followed by decades of misrule, despotism and greed by their own rulers. Colonialism by definition is undemocratic; and the African rule *a la* Mobutu, Bokassa, Amin, Abacha, etc., that we have seen so far can only be referred to as one-man misrule. The challenges therefore are formidable, but they can be overcome. Successful solutions can only be achieved if proper questions are posed and tackled. Some such questions are:

- How do we instil and enhance the awareness of, commitment to, and practice of, constitutionalism, the rule of law, and respect for human rights and basic freedoms in society?
- How do we attract, develop, motivate and retain on a sustainable basis adequately competent political, managerial, administrative and technical personnel in the public and private sectors as well as in the civil society that will ensure the analysis, formulation, decision, implementation, monitoring, and evaluation of the appropriate development policies for the country?
- How do we disperse political, managerial, administrative, and economic powers, authority, responsibility, and resources, so as to stimulate people's participation in the management of public political and economic affairs, encourage local

initiatives and make public administration responsive and accountable to local populations?

- How do we ensure transparency and accountability in the management of public affairs?
- How do we sustain democratic decision making and political succession so that an environment of freedom, peace, security, liberty, tolerance, and trust is maintained for the people so that they can concentrate on creating prosperity for themselves and future generations?
- How do we increase and improve literacy levels of the people so as to enhance their potential for self-development?
- How do we mainstream equity, including gender issues, environment management, the youth, and people with disabilities, in development policies and activities?

Finally efforts at finding proper solutions to these questions will very much help in facing the big challenge of promoting economic development and eradicating poverty. For good governance to prevail there must be dynamic and vibrant institutions of governance.

4. GOVERNANCE OF CENTRAL GOVERNMENT

4.1 INTRODUCTION

Central Government is critical in any system of good governance. It consists of the apex of the governance system in the country that must lead both the formal and informal structures of governance. It is the ultimate deposition of legitimate authority and power in the land. It decides on the nature and composition the public good and public goals, the design, structures and rules, determines the recruitment of key personnel, their management and inducement to contribute to system objectives, sets the tempo and tone of implementation and delivery of critical outputs. These include delivery on critical state objectives of law and order, modes of peace and justice, and critical social services, and intangibles including national pride, unity, and wellbeing. This section discusses the informing issues, concerns, and historical legacies that have impacted on the administrative system of governance, the institutions and management of central government; the Zanzibar administrative culture; and finally the administrative infrastructure.

4.2 HISTORICAL LEGACIES

Public administration in Zanzibar has been conditioned by several historical legacies and geography. These include (i) Political Partisanship and conflict; (ii) The Revolution; (iii) The Union; and (iv) Country Size; and (v) overwhelming centralization.

4.2.1 Political Partisanship and Conflict

Systems of public administration are always inextricably determined by and linked to the country's politics, and Zanzibar is no exception. The system of administration in Zanzibar has been heavily influenced by the intensity of conflict and partisanship in the country's history. It has been a big challenge for the administrative organization to maintain required levels of neutrality. Typically, the colonial administration was very partisan. The protectorate nature of Zanzibar meant that administration was part of the protective system for the British-cum-Sultan regime. The administrative organization was both colonial and racial. British Officers were at the top, followed by Asians and

Arabs. Africans were at the bottom of the ladder. Pay, rights and privileges were equally skewed in favour of the British and Asians. The revolution tilted the scales to the other side. The down-trodden over-threw the sultanate regime and instituted far reaching changes in the administrative organization. There was a change in personnel, administrative rules and procedures, and culture. There was also a fundamental change in the objective and subjective functions of administration. Economic and Social development for all, justice and equity became overriding concerns. The political assassination of Zanzibar's founder President Sheikh Abeid Amani Karume on 7th April 1972 also triggered a "laager" reaction on the part of the regime to protect itself against possible infiltration and agent provocateurs. A vetting system was instituted within the Civil Service that might have caught even the innocent. It is also said to have excluded many Zanzibaris of Arab and Asian descent from the public service. To date hardly any remain in service. Many are said to have opted for engagement in the private sector. The alleged emergence of "Upemba Regionalism" and what Mapuri calls "growing resentment amongst people in Unguja at what was seen as Wapemba domination of sections of the civil service" (Mapuri, 1996:72) generated a dynamic which was also dysfunctional for the public organization. These were later compounded by purges of personnel following the removal of Seif Shariff Hamad as Chief Minister in early 1988. The introduction of multi-party politics in 1992 and the forces that it unleashed also affected the administrative system. This was more so following the disputed results of the 1995 Zanzibar Presidential elections. Claims have been made that recruitment, promotion, and even firing of public officials was determined by political preferences. For example, the government has recently formed a probe team to look into claims of political victimization of civil servants in accordance with the terms of the MUAFAKA. Recent overall efforts by Government to cool down the political temperature and set a tone of tolerance and moderation are to be commended. They provide a conducive environment within which to build a competent and committed administrative machinery of governance.

4.2.2 The Revolution

The Zanzibar revolution of January 12, 1964 also has had a long lasting effect on public administration. The legacy of the revolution continues. The Government is formally the

Revolutionary Government of Zanzibar, and the cabinet is the Revolutionary Council. The revolution set the general goals and orientation of the state and system of governance, including emancipation, people centred development, equity and justice for all. At a deeper level, revolutions are always by nature, exclusionary. Elements of the ancient regime are excluded and guarded against contaminating the revolution. This must have meant a certain degree of exclusion in recruitment, promotion and retirement. Revolutions are also by nature characterized by impatience, and intolerance of rules and procedures. The extent to which this has been true for the Zanzibar revolution is hard to establish. Revolutions are spearheaded by cadres, pure and trusted agents who are at times entrusted with powers to act in the name of the revolution. The impact of the commissar on the system of administration in Zanzibar for example is still unknown. Finally, the Revolution entails a certain clear break with the past that does not occur in non-revolutionary situations for example on Mainland Tanzania. The system of administration of justice for example was over-hauled. Changes have gradually been introduced to bring the system into the current acceptable paradigms of good governance.

4.2.3 The Union

Zanzibar and Tanganyika formed a political union and became Tanzania on 26 January 1964. The Act of Union divides administrative responsibilities between the Revolutionary Government of Zanzibar and the Government of the United Republic of Tanzania. According to schedule I of the constitution, “Union Matters” include:

- 1) The Constitution of Tanzania and the Government of the United Republic
- 2) Foreign Affairs
- 3) Defence and Security
- 4) Police
- 5) Emergency Powers
- 6) Citizenship
- 7) Immigration
- 8) External borrowing and trade

- 9) Service in the Government of the United Republic
- 10) Income tax payable by individuals and by corporations, customs duty and excise duty on goods manufactured in Tanzania collected by the Customs Department
- 11) Harbours, matters relating to air transport, posts and telecommunications
- 12) All matters concern coinage, currency for the purposes of legal tender (including notes), banks (including savings banks) and all banking business; foreign exchange and exchange control
- 13) Industrial licensing and statistics
- 14) Higher education
- 15) Mineral oil resources, including crude oil and natural gas
- 16) The National Examinations Council of Tanzania and all matters connected with the functions of that Council
- 17) Civil Aviation
- 18) Research
- 19) Meteorology
- 20) Statistics
- 21) The Court of Appeal of the United Republic
- 22) Registration of political parties and other matters related to political parties

Other issues have occasionally been added to the list.

Zanzibar retains jurisdiction over issues that are not included in the above list. These include: Information, Agriculture, Natural Resources, Environment and Cooperatives, Trade, Industry, Marketing, Tourism, Education, Culture and Sports, Health and Social Welfare, Water, Construction, Energy and Land, Communication and Transport and finally, youth, employment, women and children development, etc. The implication of the above is that Zanzibar deals with fewer issues than would have been the case if there were no union. According to a recent study, Union government staff in Zanzibar is estimated to cost close to Tshs. 16 billion annually. The impact of the union is lessened

to some extent by the fact that the Zanzibar government has set up institutions that duplicate or run parallel to the union structures. These include higher education, statistics, harbours, finance, etc.

4.2.4 Size

Zanzibar, as an administrative entity is quite small. As mentioned in the introduction, it consists of two main islands of Unguja and Pemba covering a total area of 1020 square miles. Administratively, small size means an easier task of governance as the area of coverage is small. It may also translate into a smaller public service with few employees than would be the case for a large entity like Mainland Tanzania. Inextricably linked to the issue of size is the question of population. In most instances, a small population translates into a small public service with relatively few employees.

4.2.5 Centralization

Because of the above, there has been an overwhelming pressure and legacy for centralization of the administrative system. The Sultanate regime was centralized and despotic. Colonial states were always centralized, in spite of Lord Lugard's indirect rule schemes. The Revolution also ushered in a period of extreme centralization anchored by the supreme popular leader and father of the revolution; a single party Afro-Shirazi; and a single ideology, populist socialism. Administratively all the three branches of the state were bunched together under the executive. In the early years of the revolution, functions of the legislature were performed by the Revolutionary Council which consisted of hand-picked members, mostly leading cadres of the revolution. Ministries were departments of the Party. Changes were introduced gradually, including institutionalization of elections and establishment of a House of Representatives. Steps by the Government continue to deconcentrate legislative and judicial functions from the executive. Decentralization of area administration is still beset with immense problems as will be shown in the following sections.

4.3 THE CENTRAL INSTITUTIONS OF GOVERNANCE

Institutions of governance in Zanzibar fall into two major categories. The first category consists of institutions that are part of the Government of the United Republic of Tanzania. The second category consists of the institutions of the Government of Zanzibar. They are shown in Figure 1. The first category deals with the schedule of activities called “Union Matters” listed above. The Zanzibar government deals with other matters and a few of the listed union matters as already noted.

Institutions of Governance of the Zanzibar government consist of the (i) President; (ii) the Revolutionary Council-cum-Cabinet; (iii) Ministries, departments and agencies (MDAS); (iv) regional administration, district administration and Shehias, and (v) parastatal sector. The remainder of this chapter looks at the first three. The fourth is looked at in the subsequent section. The parastatal sector is not dealt with.

4.3.1 The President

The President anchors the institutions of Governance in Zanzibar. The President is the leader of Zanzibar and Chairman of the Revolutionary Council. He appoints all members of the Revolutionary council, which is co-terminous with the cabinet. He is not compelled to follow or heed any advise in the discharge of his functions unless so directed by law. In principal all public servants are employed at his discretion (Zanzibar Constitution sections 53 and 54). He is the commander of special departments including Jeshi la Kujenga Uchumi, Kikosi Maalum cha Kuzuia Magendo and Chuo Cha Mafunzo (cha wahalifu). He also appoints Regional Commissioners and District Commissioners. He is also a member of the cabinet of the United Republic of Tanzania.

4.3.2 The Revolutionary Council and Cabinet

The Revolutionary Council has a constitutional status [Zanzibar Constitution, section 43(1)]. It consists of the President, the Chief Minister, all Ministers, and any other members that the President may appoint at his discretion. All Members of Revolutionary Council are members of the House of Representatives, and all belong to the cabinet even if some may be ministers without portfolio [sections 43(2) and 44(2)]. The Revolutionary Council is coterminous with the Cabinet. The Revolutionary Council is

the chief adviser to the President, chief coordinator of all duties of government including those of the President, the Chief Minister, Ministries and Regions, and is collectively responsible to the House of Representatives and to the people for the discharge of government functions. The Secretary to the Revolutionary Council is the Chief of the Civil Service [Section 49(2)].

Administratively the above arrangements raises a number of concerns. Critical to a system of good governance is the principal of separation of powers between the executive, the legislature and the judiciary; and checks and balances between and within them. The current system of government is a hybrid of the British parliamentary executive and American presidentialism. On the one hand, the President is the other part of the legislature and he is not a member of the House, yet on the other hand, he is Chairman of the Revolutionary Council, which is part of the House of Representatives. **(R 4.1) It is recommended that this dilemma be resolved by clarifying the composition and roles of the Revolutionary Council (the Cabinet), their relationship to the President, and to the House of Representatives.**

Secondly, the appointment by the President of Members of the Revolutionary Council (cabinet) from the House of Representatives has serious implications for good governance. There is no clear separation between the Executive and the legislature, as appointees of the executive constitute a significant number of the Members of the House of Representatives. During 1995 - 2000 for example, there were 14 ministers, 1 Attorney General, 5 Deputy Ministers, and 2 other Members of the Revolutionary Council, plus 5 Regional Commissioners who are appointees and ex officio Members of the House. Thus close to one third of the House consisted of Members of the Executive. This arrangement impacts on the capacity of the House to hold Government (especially the Revolutionary Council/Cabinet) accountable. **(R 4.2) It is recommended that possibilities of allowing the President to appoint to his cabinet people who are not Members of the house be explored. This measure would enhance the accountability of the executive to the House, while at the same time allowing the President to tap talents of those people in society who are not prepared to engage in the processes of political competition, especially elections.**

4.3.3 The Ministries

The Zanzibar Cabinet is headed by the President and includes the Chief Minister, Ministers, Ministers of State, and Deputy Ministers. There are currently 9 ministers; 3 ministers of state, and 5 deputy ministers. The current government has commendably reduced the number of ministries from fourteen during the 1995-2000 period to the current twelve as shown in Figure 2. The Ministry of State Planning and Investment; and Ministry of Information, Culture, Tourism and Youth were merged with other ministries. Ministries consist of departments, sections and units. Of the twelve ministries nine are independent while three are ministries of state. Of these, two are in the President's office, and one is in the office of the Chief Minister. In principal, this means that the President and Chief Minister are the actual holders of these portfolios. Ministers of State are their assistants. In some countries for example Great Britain, Ministers of State are not considered members of the cabinet at all. However it seems that the three ministers of state in Zanzibar enjoy full cabinet status and function like their other colleagues. Relatedly if the three ministries of state were run by the President they could be too much for the office to handle in addition to the other general Presidential duties. It is widely recognized that Presidents may retain under their direct charge, functions that are broad, cross cutting and sensitive. They can nevertheless delegate to ministers those that can be neatly delineated.

(R 4.3) It is therefore recommended that Ministry of State Regional Administration and Special departments be removed from the office of the President and stand on its own. The Ministry of State for Constitutional Affairs and Good Governance should remain under the office of the President.

4.4 ADMINISTRATIVE ORGANIZATION

At the apex of the professional and administrative organization in the Zanzibar government is the Chief Secretary (Revolutionary Council). He is the Head of the Civil Service and Secretary to the cabinet. He is assisted by Deputy Chief Secretary. The person is also head of the Cabinet Secretariat and Chairs the Committee of Principal Secretaries that among other things considers papers before they are presented to cabinet.

There is no clear vertical distribution of functions and authority in the governance structure at this level. Most notably, the Chief Secretary and Head of the Civil Service appears to be “a staff position” rather than a “line position”. It does not lie at the heart of the administrative organization as shown in Figure 1.

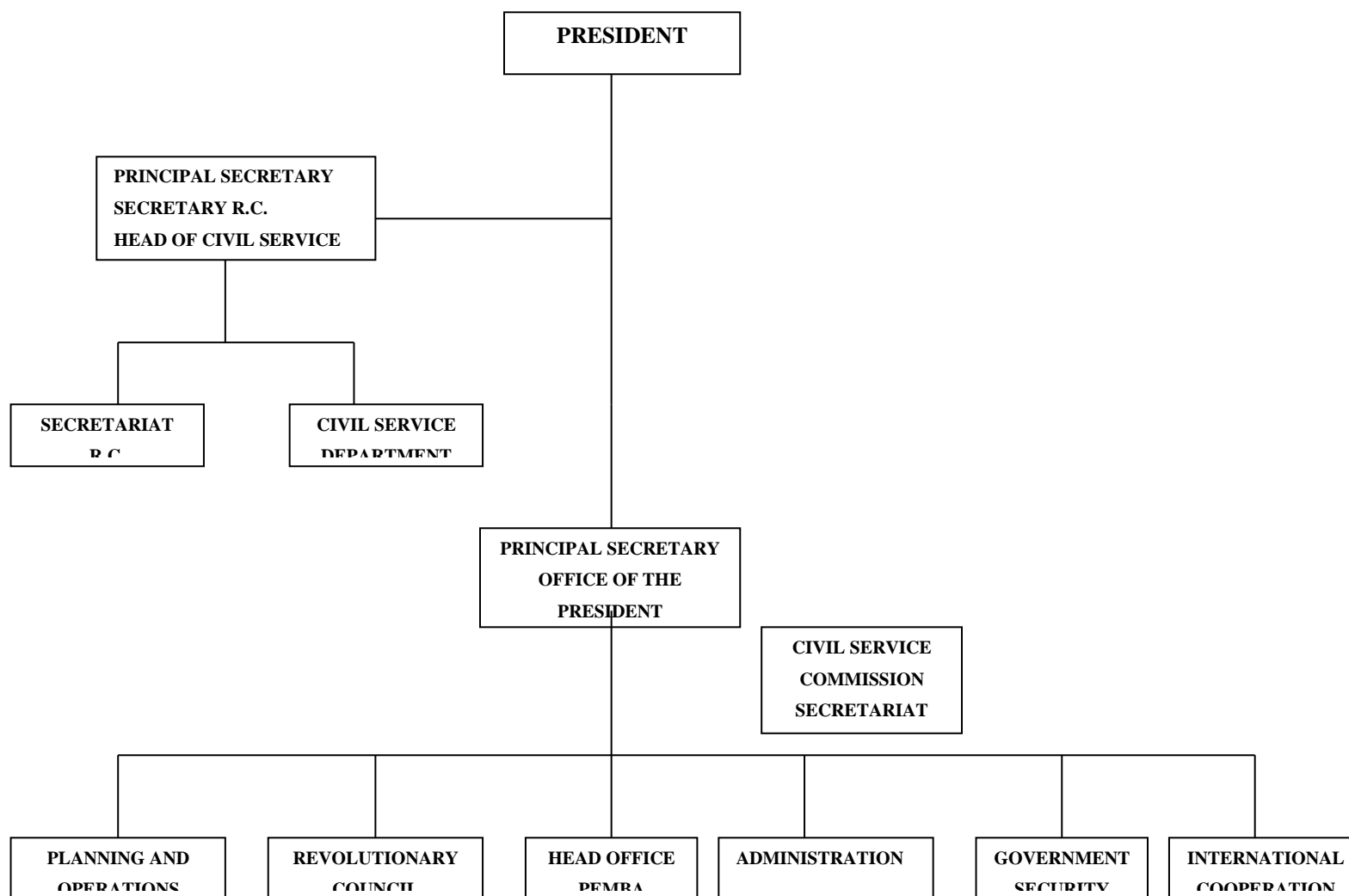
His main function is Secretary to the Revolutionary Council. He supervises the recording of proceedings of the Revolutionary council by two assistants. He personally records comments by the President and Chairman of the Revolutionary council. He is also in theory involved in civil service matters. The then incumbent informed us that he was informed of key appointments, but not involved in the process of name generation, evaluation, and vetting. His major involvement consisted in his making the appointments known to the press five minutes before announcement on the Radio and Television. There are some who dispute the above version of events.

The cabinet secretariat that he heads is seriously under-staffed. It consists of the Deputy Chief Secretary, two graduates and supporting staff. It is situated at the people’s palace, a distance from Ikulu. He does not have other supervisory duties, apart from chairing meetings of the committee of Principal Secretaries that involves all Principal Secretaries.

There is also a Principal Secretary, Office of the President. This would appear to be the line organization, with several departments. According to the incumbent, these include planning and operations (administration), Presidential Services, Administration, Head Office Pemba, Security, and International Cooperation Unit. He also services the Revolutionary Council and the Civil Service Commission secretariat.

There is no coordination of ministerial activity within the office of the President. Activities of ministries of State of the President, the Civil Service Commission etc. are all reported directly to the President and dealt with as such without professional formal technical evaluation, synthesis and advice at that level.

**FIGURE 1: ADMINISTRATIVE ORGANIZATION:
OFFICE OF THE PRESIDENT AS OF JANUARY 2003**



(R 4.4) It is recommended that the position of the secretary to the Revolutionary Council (cabinet) be strengthened and be provided with supervisory and coordinative functions. As secretary to the Revolutionary Council which is charged with advising the President and coordinating all government functions, and Head of the Civil Service, he should be the Chief Secretary. He should coordinate, synthesize and provide technical advice to the President and cabinet on all governance issues.

(R 4.5) The cabinet secretariat should be strengthened by increasing its capacity in terms of provision of additional human resources, knowledge and skills and infrastructure.

(R 4.6) The capacity of the Head of the Civil Service to manage and lead the civil service should be increased. He should be involved in all critical civil service functions including recruitment of senior personnel, their evaluation, promotion, and where necessary termination.

(R 4.7) The Principal Secretary (Ikulu) should be Deputy Chief Secretary. His functions should include management of the office of the President, as is currently the case.

FIGURE 2: Ministries of the Zanzibar Revolutionary Government

1.	The President's Office (Revolutionary Council)
2.	Chief Minister's Office (Ministry of State).
3.	Ministry of State, President's Office, Constitutional Affairs and Good Governance.
4.	Ministry of State Office, President's Office, Regional Administration and Special Departments.
5.	Ministry of Finance and Economic Affairs.
6.	Ministry of Agriculture, Natural Resources, Environment and Cooperatives.
7.	Ministry of Trade, Industry, Marketing and Tourism.
8.	Ministry of Education, Culture, and Sports.
9.	Ministry of Health and Social Welfare.
10.	Ministry of Water, Construction, Energy and Land.
11.	Ministry of Communication and Transport.
12.	Ministry of Youth, Employment, Women and Children Development

Source: CSD

Because of the need to reduce the size of government noted above, ministerial portfolios combine various areas that might otherwise be handled separately. This is commendable. However, in view of the importance of good governance, a reconsideration may be warranted with regard to the composition of the Ministry of State for Regional Administration and special departments. It covers regional administration and local government on the one hand, and special forces on the other. These include Kikosi Maalumu cha Kuzuia Magendo (KMKM) created by the KMKM Decree no. 13, 1979; Jeshi la Kujenga Uchumi (JKU) formed under Jeshi la Kujenga Uchumi Decree Number 5, 1979; (Prisons); Vyuo Vya Mafunzo; Fire and Rescue Services and Volunteers. Clearly, the latter are disciplined instruments of state, and have a coercive element. They sit uneasily with the other component which is supposed to maximise democratic participation.

(R 4.8) It is recommended that special departments should be de-linked from the Ministry. They should report directly to the Office of the President.

4.5 PERSONNEL

Public Service personnel are critical in the delivery of good governance, essential social services and maintenance of the public good. It is important that the public service is manned by the right numbers of people, with the right qualifications, who are managed through correct rules and procedures, thoroughly and regularly evaluated, adequately compensated, and ultimately retired with enough means to live on for the rest of their lives.

There are major gaps in information on the Zanzibar public service. What has emerged from interviews is that; first, the exact size of the public service is not entirely clear. A recent study notes the absence of a centralized database of Government employees (RG02 Dec. 2002). The presence of ghost workers in the Government wage bill has also been noted. The official number of 26,109 employees in the Zanzibar public service shown in Table 1 may thus not be entirely reliable.

Table 4.1: Government Employment

YEAR	MEN	WOMEN	TOTAL	% INCREASE
1994/1995	NA	NA	23,156	
1995/1996	NA	NA	24,406	5.4
1996/1997	NA	NA	NA	NA
1997/1998	NA	NA	24,637	0.9
1998/1999	NA	NA	24,610	-0.11
1999/2000	15,575	9,383	24,958	1.4
2000/2001	15,311	9,827	25,138	0.7
2001/2002	15,841	10,220	26,261	4.5
2002/2003	15,652	10,477	26,109	-0.6
1994-95-2002/03				12.19

Source: CSD

Employment has increased by more than 12 per cent since 1995 as can be seen in Table 1. This is at a time when public services in most countries underwent a public service reform including a freeze on employment and a retrenchment of redundant workers. The percentage of the population that is engaged in government employment is high at 2.7 percent. Comparative figure for Africa in general is 2.0 per cent. (PER 2003:86).

Government employees in Zanzibar are grouped into five categories:

1. Operational scale (OS), Includes drivers, messengers, waiters, gardeners, security guards, cooks, etc.
2. (KU); Clerks, Secretaries, Typists, etc.
3. (MUS); General service scale
4. (MW); Technical staff, required to be graduate or holders of an advanced diploma.
5. (MV): Leaders category. Includes Ministers, Principal Secretaries, Deputy Principal Secretaries, Commissioners, Directors, etc.

Most employees are in the first three categories as shown in Table 4.2.

**Table 4.2: Employment in the general administration by
Salary Category 2000 - 2002**

Salary Grade	2000		2001		2002		Average Increase
	No.	%	No.	%	No.	%	
OS - OS	3239	19	3319	19.2	3472	18.9	262
KU – KU	1115	6.	1173	6.8	1479	9.0	364
MUS – MUS	8631	50.8	9275	53.6	9521	51.7	890
MW – MW	3851	22.6	3383	19.5	3744	20.0	-107
MV – MV	170	0.9	167	0.9	187	0.01	17
TOTAL	17006	100	17,317	100	18,403	100	

Source: PER 2003 P.87

Relatedly, employment in the first three categories is increasing at a faster rate as shown in Table 4.2. Indeed numbers in the technical cadres went down between the year 2000 and 2002.

(R 4.9) It is recommended that a civil service census be carried out to establish the actual numbers of employees in the civil service. Relatedly, it is recommended that, ghost workers if they exist, should be eliminated from the wage bill.

Secondly, recruitment into the civil service has been ad hoc without clear guidelines and enforceable benchmarks. One interviewee characterized the situation as one of recruitment without training nor orientation. There does not appear to be a professional and technical system of personnel evaluation at the highest levels of the civil service.

The Department of Personnel and the Civil Service Commission manage recruitment into the lower levels of the civil service. They however act on requests from ministries and

departments whose merit are hard to establish. A casual visit to most public offices in Zanzibar presents a picture of many employees milling around doing nothing. Sights of three employees clustered on a single computer, with one of them reading, the other entering data and the last one watching are not uncommon. More than two thirds of the employees are not well educated. Few have diplomas, first degree or higher qualifications. For example, only about 80 employees out of around 500 in the Ministry of CAGG have diplomas or degrees. The situation in the Ministry of Youth, Employment, Women and Children Development is as shown in Table 4.3.

The above is partly a result of and also contributes to the involvement of politics in making personnel decisions including recruitment, promotion, and termination. It is claimed that every political trauma in Zanzibar has been followed by a purge.

Table 4.3: Employee Education Qualifications in the Ministry of Youth, Employment, Women and Children Development

QUALIFICATION	NUMBER OF EMPLOYEES
Degree	13
Diplomas	34
Certificates	10
Form VI	4
Form II-IV	67
Primary School/Adult Education	9
TOTAL	137

Source: CSD

One of the most glaring weaknesses of the Zanzibar civil service is the lack of updated data and or presence of outdated rules. Many interviewees lamented the fact that General Orders are old, archaic and outdated. There is no scheme of service though work of developing one has started. There is no equilibrium between cadres in various schemes, for example doctors in the Ministry of Health, and those in a Government Hospital; no civil service lists, no systemic job descriptions. There are no known and enforced hierarchy of supervision and responsibility. Rules are either ignored, not enforced, or simply broken. Enforcement of rules and procedures is seen as colonial. A recent study

for example notes that there are no written policies or regulations or instructions on the management of financial records. Each ministry or department tries to devise its own job descriptions. Many are scanty, poorly thought-out and covers the barest of functions. Gaps within organizations abound. For example, no person or organization is responsible for management of financial records. The whole public service is characterized by archaic and byzantine rules and regulations, poor documentation, weak enforcement, and inadequate, untimely and unreliable information.

Employee performance appraisal is ad hoc and uncoordinated. While there are certain forms when crossing efficiency bars, there are no forms in cases of promotions, only a format. Promotions by and large are not granted on the basis of training, experience and skills. People are promoted on the basis of passing a Kiswahili examination. (Kiswahili chepesi, Kiswahili kigumu). Everything is discretionary depending on the Principal Secretary.

(R 4.10) It is recommended that a study to establish the actual required establishment in the civil service be carried out, and a retrenchment exercise be carried out to weed out non-performing workers, under achievers, habitual absentees, over-age workers, the under-educated, untrained and untrainable and any others.

(R 4.12) It is recommended that:

- a) Work on the Civil Service General orders should be speeded up and concluded.**
- b) Schemes of service for the civil service be developed and utilized**
- c) Civil Service List be developed and utilized**
- d) Comprehensive job descriptions be developed and utilized.**
- e) Efficient and effective systems of employee performance appraisal be developed and enforced.**
- f) Clear guidelines for promotion should be developed and followed regularly in evaluating performance.**

4.6 COMPENSATION

Adequate pay, which includes salary, allowances, in-kind benefits and retirement benefits is crucial to sustaining motivation, performance and integrity of public servants. The Zanzibar pay structure is characterized by several features. First pay is very low. The minimum pay since July 9, 2001 was Shs. 30,000 per month, average salary in lowest grade was Shs. 30,600. The highest salary was Shs. 215,500. Average salary in the highest grade was Tshs. 147,000. Secondly, the salary compression ratio is very low. At 1:7. Salary decompression ratio is an important attribute of a pay structure. A low ratio indicates the choice to minimize the pay differential between the higher and lower echelons of the public service. This is normally achieved through a combination of deliberately suppressing the salaries of those at the top levels usually below the market value for their skills, and raising the salaries of the unskilled and semi- skilled labour force above the market wage. Thus, a low ratio usually reflects a commitment to an egalitarian pay structure. Zanzibar's formal low ratio is partly a legacy of the Revolution as well as Tanzania's policy of Ujamaa. Thirdly, in kind-benefits are very substantial. These include entertainment allowance, allowances for electricity, telephone, driver, fuel, house-servants, house rent, "posho la shamba" etc. These allowances conceal the actual net take-home of Civil Servants especially at the higher levels of the service. For example the Chief Secretary's earnings looked as is shown in Table 4.4 at the time of research.

**Table 4.4: Allowances for Chief Secretary and a Top Official in the Judiciary
(Chief Justice) (Tshs)**

S/N	ITEM	PRINCIPAL SECRETARY (PS)	JUDICIAL OFFICIAL (CJ)
1.	Salary	176,000	372,500
2.	Housing Allowance (50% of salary	88,000	186,250
3.	Responsibility Allowance (50% for CS and 10% for CJ)	88,000	37,250
4.	Sensitivity Allowance (25% for CS and 35% for CJ)	44,000	130,375
5.	Car	YES	YES
6.	Petrol 15 ltrs and 18 ltrs per day for CS and CJ respectively	270,000	313,200
7.	Driver	30,000	30,000
8.	Two Servants	60,000	60,000
9.	Electricity	44,800	69,120
10.	Lawyer's Allowance (35% of salary)	-	130,375
11.	Non-practicing Allowance (35% of salary)	-	130,375
12.	Entertainment Allowance	-	50,000
13.	Telephone	-	140,000
14.	Annual Outfit Allowance	-	150,000
15.	Annual Cutlery Allowance	-	50,000

Source: Interview with Chief Secretary 20 January 2003 and “Mishahara na Posho kwa Wafanyakazi wa Mahakama Kuu Zanzibar”. Mimeo

Allowances for top officials in the judiciary are even higher as indicated in the same table. The point is not to compare the earnings of the two officials, but to show that allowances more than triple the earnings of all top officials. The situation for employees in the lower categories is different. For the lower salary grades, allowances only add on about 30 per cent of their base salary to their take home. There is thus a high level of non-transparency in the wage structure.

Allowances and other in-kind benefits conceal the actual wage bill that is borne by the country. Also, allowances are not taxable, thus creating an avenue of revenue leakage for the government. They ultimately disadvantage the employee because they are not pensionable. They are not included in the calculation of the pension, which relies on the basic salary.

Total wage bill represents the total resource envelope from which public employees are paid. The wage bill to GDP ratio is an indicator of the public service personnel costs share of the total economy. Zanzibar's wage bill is high. For the year 2002, the wage bill constituted 63.2 per cent of recurrent expenditures. This amounted to 10.9 percent of GDP. This means fewer resources are available to fund critical public operations. This is partly a result of over-employment alluded to above. It is also a consequence of wage bill inflation by ministries looking for ways to mobilise resources to cover "other charges" in their organizations. This problem arose out of ignoring "other changes" in budgetary allocations. Ministries resort to wage bill padding as one way of making up for the shortfall. It is estimated that 20-30 per cent of the wage bill may be inflated.

At the end of their careers, public servants are supposed to receive a pension and a gratuity. Gratuity is a lump sum payment, while pension is supposed to be paid out monthly. Both are dependent on contributions that employees make as percentage of their salaries to a special fund. Government as employer is supposed to double the employees' contribution. Since 1998, employees contribute 5 per cent of their salary while the government contributes 10 per cent. Pensions in the Zanzibar Public Service are characterized by several features. First, because of the historically low salaries, most pensions are very low. Retirees who left government service as very senior civil servants are said to receive something as low as Tshs. 2000/= or two US dollars a month. Secondly the government has been unable to pay pensions for a long time. Retired people have not been were not paid since 1995. There is over Tshs. 3 billion pending in terminal benefits. The Government has recently developed a programme to clear the backlog of pension/gratuity claimants.

(R 4.13) It is recommended that a public service reform programme should be launched. In addition to the other issues already mentioned, the programme should include:

- a) A personnel census to establish the actual numbers of employees on the payroll and their pay levels. This should re-establish the integrity of the wage bill.**
- b) Efforts should be made to reduce the size of the wage bill and to standard levels, in order to free resources for other pressing public expenditures.**
- c) A consolidation of base salary, allowances and in kind-benefits should be done to increase the transparency of the wage bill. In the long run this will also have a positive impact on pensions.**
- d) Current efforts by government to clear the backlog of claims for gratuities and pensions are commendable and should continue.**
- e) Levels of benefits for retirees should be re-visited with a view to assuring people who have served their government and people loyally and diligently for the better part of their lives, a tolerable retirement package.**
- f) Civil Service pay should be adjusted to make it adequate so as to attract and retain people with the right skills and sustain their motivation, performance, diligence, commitment, and integrity.**

4.7 ZANZIBAR CIVIL SERVICE COMMISSION

A Civil Service Commission is established according to sections 116-118 of the Zanzibar Constitution, supplemented by Law Number 14 of 1986. Its duties include advising the President on all issues regarding employment in the Civil Service. The Commission also deals with recruitment of officers within the MU S₃ – MUS₁₉, and MW₁ range; as well as appeals against termination, retirement in public interest, cases of increments beyond two at one time, transfers between ministries, etc. The Commission has five members, a chair, and secretary, all appointees of the President. The commission like its counterpart

on the Mainland combines an executive rule with regard to recruitment mentioned above, as well as a quasi-judicial one in relation to appeals. Consequently, it at times come into conflict with senior executives and politicians with regard to either one of its two functions or both. This however is as it should be for as Africa's Public Administration pioneer A. L. Adu (1969:137) observed a long time ago, "Public Service Commission was introduced to insulate appointments, promotions and discipline from politics."

Relevant sections in the constitution as well as the law with regard to the commission are outdated, have serious gaps or contradict each other or other laws and regulations. Fines of Tshs. 5000 referred to in the law are clearly outdated. The commission now does more than what is spelled out in the act, for example administering examinations. Also the constitution does not mention the position of secretary although he/she is a presidential appointee. Because of this anomaly, he/she serves without taking an oath of office. The General orders maintain that an employee who misses work for 48 hours may be summarily dismissed. This however contradicts the Employment Security Act. Work has started to iron out some of these contradictions.

The Commission does its work in very difficult circumstances. The Commission lacks adequate skilled professional staff. Only one of its employees holds a degree. Two others hold diplomas and advanced diplomas respectively. The other eleven employees are supporting staff. The commission also lacks adequate office space, office equipment, and other necessary infrastructure.

(R 4.13) It is recommended that review work on the relevant sections in the constitution and the law concerning the Civil Service Commission should be speeded up to remove the contradictions and fill in the gaps.

(R 4.14) It is also recommended that the capacity of the civil service commission should be strengthened.

4.8 ADMINISTRATIVE CULTURE

Administrative culture refers to modes of regular behavioural patterns as well as modes of practices and responses that are exhibited by organizational members. Public organization in Zanzibar is characterized by several distinctive administrative-cultural traits. We mention four below:

1. High absenteeism

This predominantly consists in people leaving their places of work for a variety of social chores including going to the market; going to funerals (mazikoni); moonlighting on other jobs, and others. There are those who argue that this trait is due to the fact that Zanzibar (especially the town) is a small compact place, and people work near their residencies etc. However others locate the source of the problem to the early eighties when an economic crisis led to a shortage of goods and services. Everybody got involved in hunting for scarce goods even during office hours. It is argued that the practice has proved difficult to stamp out.

2. Non-enforcement of rules and procedures

Supervisors and managers are generally reluctant to enforce rules and procedures especially disciplinary ones. Some attribute this trait to the fact that Zanzibar is a close knit society everybody is related to everybody else by birth, marriage, schooling, neighbourhood, place of worship, etc. A strict application of rules results in petitions and appeals from the victim's family friends and relatives. Immense social pressure is brought to bear. It is argued that it is because of the above that officials, wary of such pressures, they think twice before enforcing rules and regulations.

3. Superior interference/intervention

It is claimed that it is common for aggrieved parties to appeal to higher-ups in the hierarchy who are known and or related to them personally for redress or over-turning of decisions. High officials for example may intervene in recruitment, promotion, transfer and disciplinary decisions. Strict implementation of rules carries a heavy social penalty.

4. There is a certain laissez faire attitude/behaviour in the organization

This is more so at middle and lower levels of the service that constitute more than half of the work force. Apart from frequent absence from offices; there is a loose or non-existent dress code; a certain casualness in approaching/addressing formal issues. There is also a high degree of informality. Enforcement of formality is seen as colonial. Lack of clear rules, regulations, and job descriptions also contribute to the above phenomenon.

(R 4.15) It is recommended that a thorough study of Zanzibar administrative culture be carried out. It should identify the salient features of the administrative culture, identify those that contribute to organizational dysfunction and suggest ways of dealing with them.

4.9 OFFICE OF CONTROLLER AND AUDITOR GENERAL

The function of an independent oversight body is very critical in ensuring efficiency, effectiveness and probity in the expenditure of public funds. The Zanzibar Constitution sections (112 and 113) provides for the appointment and removal of the controller and Auditor General (CAG) by the President. The office was first established by Presidential Decree No. 3 of 1965, chapter V para 12. Until recently, the Office of the Controller and Auditor General (OCAG) operated under the Ministry of Finance and Economic Affairs. OCAG now operationally is under the Ministry of Constitutional Affairs and Good Governance. A new law is being drafted that proposes the establishment of OCAG as an autonomous entity. CAG is responsible for auditing the expenditure of public money in and outside the country by all ministries and departments, commissions or units that are constitutionally established; the House of Representatives; as well as accounts of local authorities and public corporations. [Financial Administration Act (No. 8 of 1996)]. OCAG is charged with the task of examining, enquiring into, and auditing the accounts of all accounting officers and receivers of revenue, and all persons entrusted with the collection, receipt custody, issue payment of public moneys, or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other Government property (OCAG, 2002). CAG is supposed to present his report to the President, who in turn should submit it to the House of Representatives during a specified period. After

that period CAG may submit the report directly to the House, and he has done so on several occasions.

Staff for the CAG's office are recruited through the civil service department. The new law mentioned above proposes the establishment of an Audit Services Board to handle all the human resources needs of OCAG including recruitment, promotion, discipline, and termination or retirement. Currently, the OCAG has a total of one hundred and twenty one members of staff, 105 of whom are in Zanzibar and the rest (16) are stationed in Pemba. The numbers would be more than enough if the employees were well trained and qualified. Unfortunately they are not. None of these employees has full professional accountancy (i.e. CPA) qualifications. Five employees have first degrees, another five have post-graduate diplomas, four have advanced diplomas, seven have ordinary diplomas and one has a certificate, a total of twenty two employees. More than seventy five per cent of the employees do not have any qualifications. This creates a big problem of competence and quality performance.

The OCAG is headed by the CAG. Below him are three principal auditors to each of whom reports Senior Auditors, Auditors, Audit Assistants and Audit Clerks. It is noteworthy that the office is not organized into departments. There is a one section deals with an establishment issues, and another one that deals with administrative issues. All the principal auditors are equal. None is the principal assistant to the CAG. At times this situation may lead to unnecessary rivalry, buck-passing and confusion.

Apart from lack of adequate qualified staff, and poor work organization, audit work is also constrained by lack of audit regulations and procedures. While basic audit programmes do exist, there is a dearth of skills in modern audit techniques for example performance audit and value for money audits. Also the whole process is post-audit. It happens after the events i.e. expenditure. Lack of funds is also a major constraint. The office has been unable to audit some of the government activities because of resource scarcity. According to the CFAA, (P.25) audits of district and town councils have not been undertaken continuously and regularly because of lack of resources. Also audit work is minimal in Pemba, partly due to inadequate staff due to the same reason. According to CFAA (P.60) and our own interviews, the OCAG has also failed to

regularly audit overseas offices of public corporations including the Dubai office of the Zanzibar State Trading Corporation (ZSTC) and in Mauritius.

While the OCAG is lagging behind in its submission of reports to the House of Representatives, there is minimal follow-up of its queries, conclusions, and recommendations. This undermines the OCAG's credibility and leads to questions regarding its usefulness.

We agree with the recommendations of the Country Financial Accountability Assessment (CFAA 2002) with regard to OCAG.

(R 4.16) It is recommended that work on the current draft audit legislation should be speeded up and should involve as many stakeholders as possible. The overall objective of the exercise should be to develop OCAG into an independent, departmentalized, effective, professional, and transparent oversight entity.

(R 4.17) It is also recommended that immediate steps be taken to address the human resources, work organization, and infrastructure needs of OCAG.

4.10 SUMMARY OF RECOMMENDATIONS

(R 4.1) It is recommended that the existing dilemma be resolved by clarifying the composition and roles of the Revolutionary Council (the Cabinet), their relationship to the President, and to the House of Representatives.

(R 4.2) It is recommended that possibilities of allowing the President to appoint to his cabinet people who are not Members of the house be explored. This measure would enhance the accountability of the executive to the House, while at the same time allowing the President to tap talents of those people in society who are not prepared to engage in the processes of political competition especially elections.

(R 4.3) It is therefore recommended that the Ministry of State Regional Administration be removed from the office of the President and stand on its own. The Ministry of State for Constitutional Affairs and Good Governance should remain under the office of the President.

(R 4.4) It is recommended that the position of the secretary to the Revolutionary Council (cabinet) be strengthened and be provided with supervisory and coordinative functions. As secretary to the Revolutionary Council which is charged with advising the President and coordinating all government functions, and Head of the Civil Service, he should be Chief Secretary. He should coordinate, synthesize and provide technical advice to the President and cabinet on all governance issues.

(R 4.5) The cabinet secretariat should be strengthened by increasing its capacity in terms of provision of additional human resources, knowledge and skills and infrastructure.

(R 4.6) The capacity of the Head of the Civil Service to manage and lead the civil service should be increased. He should be involved in all critical civil service functions including recruitment of senior personnel, their evaluation, promotion, and where necessary termination.

(R 4.7) The Principal Secretary (Ikulu) should be Deputy Chief Secretary. His functions should include management of the office of the President as is currently the case.

(R 4.8) It is recommended that Special Departments should be de-linked from the Ministry of Regional Administration. They should report directly to the Office of the President.

(R 4.9) It is recommended that a civil service census be carried out to establish the actual numbers of employees in the civil service. Relatedly, it is recommended that, ghost workers should be eliminated from the wage bill.

(R 4.10) It is recommended that a study to establish the actual required establishment in the civil service be carried out, and a retrenchment exercise be carried out to weed out non-performing workers, under achievers, habitual absentees, over-age workers, the under-educated, untrained and untrainable and any others.

(R 4.11) It is recommended that (a) work on the Civil Service General orders should be speeded up and concluded. (b) schemes of service for the civil service be

developed. (c) a Civil Service List be developed and utilized. (d) comprehensive job descriptions be developed. (e) efficient and effective systems of employee performance appraisal be developed and enforced. (f) clear guidelines for promotion should be developed and followed regularly in evaluating performance.

(R 4.12) It is recommended that a public service reform programme should be launched. In addition to the other issues already mentioned, the program should include:

- A personnel census to establish the actual numbers of employees on the payroll and their pay levels. This should re-establish the integrity of the wage bill.
- Efforts should be made to reduce the size of the wage bill and reduce to standard levels, in order to free resources for other pressing public expenditures.
- A consolidation of base salary allowances and in kin-benefits should be done to increase transparency as well as increased benefits for retirees (pensions).
- Current efforts by government to clear the backlog of claims for gratuities and pensions should continue.
- Levels of benefits for retirees should be re-visited with a few to assuring people who have served their government and people loyally and diligently for the better part of their lives a tolerable retirement package.
- Civil Service pay should be adjusted to make it adequate so as to attract and retain people with the right skills and sustain their motivation, performance, diligence, commitment, and integrity.

(R 4.13) It is recommended that review work on the relevant sections and the law concerning the Civil Service Commission should be speeded up to remove the contradictions and fill in the gaps.

(R 4.14) It is also recommended that the capacity of the civil service commission should be strengthened.

(R 4.15) It is recommended that a thorough study of Zanzibar administrative culture be carried. It should identify the salient features of the administrative culture, identify those that contribute to organizational dysfunction and suggest ways of dealing with them.

(R 4.16) It is recommended that work on the current draft audit legislation should be speeded up and should involve as many stakeholders as possible. The overall objective of the exercise should be to develop OCAG into an independent, departmentalized, effective, professional, and transparent oversight entity.

(R 4.17) It is also recommended that immediate steps be taken to address the human resources, work organization, and infrastructural needs of OCAG.

Capacity Building Budget for OCAG

	TOTAL		2003		2004		2005	
	M/M	US	M/M	US	M/M	US	M/M	US
1.0 PROJECT PERSONNEL								
1.1 International Expert	36	144,000	12	48,000	12	48,000	12	48,000
1.2 National Coordinator	36	45,000	12	15,000	12	15,000	12	15,000
1.3 Consultant	-	40,000	-	20,000	-	20,000	13	20,000
Sub Total	72	229,000	24	83,000	-	83,000		63,000
2.0 TRAINING								
2.1 Long Training	-	120,000		60,000	-	40,000	-	20,000
2.2 Study Tours	-	40,000		20,000	-	20,000	-	-
2.3 In-service Training	-	60,000		20,000	-	20,000	-	20,000
2.4 Seminars, workshops, baseline and mass programmes	-	90,000		30,000	-	30,000	-	30,000
Sub Total	-	310,000		130,000		110,000		70,000
3.0 EQUIPMENT								
3.1(a) Non-expandable Equipment								
3.1.1 Vehicle 6	-	120,000	-	120,000	-		-	-
3.1.2 Motorcycles 10	-	30,000	-	15,000	-	15,000	-	-
3.1.3 Computer 15	-	35,500	-	35,000	-	-	-	-
3.1.4 Heavy duties photocopies machine	-	20,000	-	10,000	-	10,000	-	-
3.1.5 Air Conditioners 4	-	4,000	-	2,000	-	2,000	-	-
3.1.6 Mini-press Machine 1	-	30,000	-	-	-	30,000	-	-
Sub Total		239,500		182,500		57,000		-
3.2 (b) Expendable Equipment								
3.2.1 Support on Stationery	-	30,000	-	10,000	-	10,000	-	10,000
3.2.2 Training materials	-	18,000	-	6,000	-	6,000	-	6,000
Sub Total		48,000		16,000		16,000		16,000

Sub Total (a+b)	287,500	198,500	73,000	46,000
4.0 OFFICE				
INFRASTRUCTURE	350,000	-	350,000	-
4.1 Extension of Office Space (New building)	30,000	-	-	30,000
4.2 Office Furniture				
SUB TOTAL	380,000	-	350,000	30,000
TOTAL	1,206,500	610,000	689,000	225,000

5. LOCAL GOVERNANCE

5.1 INTRODUCTION

Several lower level tiers of central government and a system of elected local governments constitute the sub-national system of governance in Zanzibar.

Three tiers of deconcentrated central government structures are established below the central level:

- a) The regional administration (5 regions);
- b) The district administration (10 districts and 2 sub districts); and
- c) The shehias (236)

The system of elected local governments is based on councils elected on a ward basis for:

- a) Districts Councils (9),
- b) Town Councils (3) and
- c) Municipality (1).

The system is summarised in the table below.

Table 5.1: Sub-national Administrative Structures in Zanzibar

	Unguja	Pemba	Total
Regions	3	2	5
Districts	6	4	10
District Councils	5	4	9
Municipal Council	1 (Zanzibar)	0	1
Town Councils	0	3	3

Compared to its population and the structures on mainland Tanzania, Zanzibar has a very high number of administrative structures. Thus the average population of a Region in

Zanzibar is less than 200,000 compared to an average population of 1.5 million per Region on the mainland.

The entire sub-national system of governance is at central level managed through the Ministry of State (Presidents Office), Regional Administration, Local Government and Special Departments (MRALGSD).

5.2 BACKGROUND

5.2.1 Brief History

A local government system with councils was partially developed during the colonial period in Zanzibar. This included legislation passed in 1944 for the establishment of Town Councils in Zanzibar, Chake-Chake, Wete and Mkoani under the supervision of District Commissioners. Legislation was earlier passed that formalised the authorities of appointed *Sheha* at the local level for maintenance of law and order.

The local government system further developed after WWII in a devolved and democratic direction. However, national political authority in Zanzibar remained under control of the Sultan and the British Protectorate. The colonial system for local administration furthermore had significant racial traits as Arabs were appointed District Commissioners, Africans as *Sheha* and as the African Authorities (*Sheha*) jurisdiction was limited to Africans. The 1964 Revolution not only abolished the monarchy and colonial structures, but also fused all authority into one: the party. The creation of the Union with Mainland Tanganyika the same year maintained a separate system of local administration for Zanzibar.

Since the promulgation of its first post-Revolution Constitution in 1979, Zanzibar has passed several pieces of legislation on local government. More so, the 1984 Zanzibar Constitution specifically calls for the establishment of local government structures (Article 128). The enabling legislation was passed several years later (see below).

5.2.1 The legal basis for local governance

The system of local government is not considered as Union matter and is thus regulated by entirely separate Zanzibar legislation – different from Mainland Tanzania.

The present legal basis for the local government system in Zanzibar is found in:

- Article 128 contained in Chapter 12, Section 2 of the 1984 Constitution of Zanzibar;
- Act number 1 of 1998 – The Regional Administration Authority Act,
- Act number 3 of 1995 – Act to Establish the Zanzibar Municipal Council and Other Matters Connected therewith,
- Act number 4 of 1995 – Act to establish the District and Town Councils and other matters connected therewith

5.3 REGIONAL AND DISTRICT ADMINISTRATIONS

5.3.1 Regional Administration

Zanzibar is divided into 5 regions, three in Unguja and two in Pemba. Each region has a Regional Commissioner appointed by the President. The functions of the Regional Commissioner include:

- a) monitoring, supervising, and assisting in the execution of the functions of the government in his region;
- b) assuring that the policies, plans and directives of the government are observed;
- c) maintaining law and order in the region in collaboration with law enforcement agencies; and
- d) assuring that resources, both material and manpower are used for development in the economy to enhance welfare,

Subject to the provisions of the Constitution, the Regional Commissioner may arrest or order an arrest of “any person...likely to commit a breach of peace or disturb the public...” (Regional Administration Authority Act – Section 6).

A peculiarity of the Zanzibar system is that Regional Commissioners are also Members of the House of Representatives. This creates a situation where Regional Commissioners are administratively accountable to Principal Secretaries, who in turn are politically

answerable to Regional Commissioners (in their function as Members of the House of Representatives).

The Regional Administrative Officer, appointed by the President, is the principal assistant to the Regional Commissioner and the administrative head of the region. (S)he is in charge of the day to day running of the government business in the region, the head of public officers posted in the region and the accounting officer.

The Ministry of Local Government and Regional Administration and Special Departments (MLGRASD) appoint a planning officer and a community development officer to each region. Sectoral ministries also assign officers and staff to the regions to carry out the responsibilities and duties of the sector ministries. In practice, each ministry appoints at least one officer to every region. These officers are through the Regional Administrative Officer answerable to the Regional Commissioner. However, in practice lines of reporting are far from streamlined as the budgets and work plans of sectoral officers mainly are approved from the centre.

5.3.2 District Administration

Each region is divided into two districts; i.e., there are six districts in Unguja and four districts in Pemba.

At the head of each district administration is a District Commissioner appointed by the President and there is also a District Administrative Officer in charge of the district administration. In addition, every district has a planning officer, a community development officer, as well as officers from sectoral ministries assigned to the district.

The staffing and functions of the districts are similar to that of the regions. In fact the legislation in its description of duties of the District Commissioner simply refers to the paragraphs of the same Act describing the duties and functions of the Regional Commissioner.

5.3.3 Development Committees

The Regional Administrative Act established regional and district development committees with the following functions (described jointly in Section 23):

- a) to supervise the implementation of government policies, to identify the problems, and to advise government on the best way to solve these problems and to promote development in their areas;
- b) to monitor and assist in the formulation of policies for local government authorities in their areas and advise on the best implementation strategies;
- c) to mobilize people to participate and contribute in all ways possible to assist in the efficient uses of resources and the protection of environment for sustainable development and in all activities of national development;
- d) to ensure that implementation strategies correspond to relevant policies and to create awareness among the people in their areas on the importance of both; and
- e) to ensure and establish understanding, cooperation and coordination among government agencies, local government authorities, non governmental organizations and the people in creating an enabling environment for sustainable development.

The Act makes no functional distinction between the regional and district development committees in description of their functions.

The membership of regional and district development committees (see Table below) is composed of staff from the de-concentrated levels of the central government as well as from the local governments and their officers.

Table 5.2: Composition of Regional and District Development Committees

Regional Development Committee	District Development Committee
Regional Commissioner – Chairman	District Commissioner – Chairman
District Commissioners in the region	
Regional Planning Officer	District Planning Officer
Regional Development Officer	
District Council Chairman in the region	District Council Chairman
District Council Clerks	District Council Clerks
All Members of Parliament in the region	All Members of Parliament from the district
All Members of the House of Representatives in the region	All Members of the House of Representatives from the district
Mayor of the Municipal Council	
Chairman of Town Councils	Chairman of Town Council
Director of Municipal Council	Director of Municipal Council
Clerks of Town Councils	Clerk of Town Councils
Heads of Government Departments or Institutions in the region will be invited members with no voting power	Heads of Government Departments or Institutions in the district will be invited members with no voting power
Regional Administrative Officer – Secretary	District Administrative Officer – Secretary

5.4 LOCAL GOVERNMENT STRUCTURES

1 Municipal council, 9 District Councils (5 in Unguja and 4 in Pemba) and 3 Town councils (all in Pemba) are currently established in Zanzibar.

Table 5.3: Local Governments, Population and Shehias

	Population	number of wards	number of shehias
Local Government			
Zanzibar Municipality	206,292	24	40
West District Council	184,701	11	29
North A District Council	84,315	12	28
North B District Council	52,605	10	23
Central District Council	62,537	11	38
South District Council	31,160	10	18
Wete District Council	73,371	10	15
Chake Chake District Council	63,155	10	16
Mkoani District Council	82,622	12	19
Micheweni District Council	83,519	10	13
Wete Town Council	25,010	7	3
Chake Chake Town Council	20,196	7	4
Mkoani Town Council	10,154	7	3
Total	979,637	141	249

Source: Census 2002 and MLGRASD

5.4.1 Council structures

The councilors are elected by the people residing in the ward, but supplemented with a maximum of three councilors appointed by the Minister for the Municipality and maximum two appointed members for the Town Councils.

The council elects among its members the Chairman or Mayor (for the Municipality).

Act no 3 and 4 stipulate the mandatory committees and departments to be established by the councils. In the case of the Municipality these are:

- (1) Finance and Economic Development,

- (2) Town Planning,
- (3) Law and Order,
- (4) Labor construction and environment,
- (5) Social services Affairs,

For Town and Councils fewer committees are required.

The same laws stipulate that the President appoints a Director for the Municipality and the Minister appoints a Clerk for other Councils – to execute the decisions made by the Councils.

5.4.2 Local Government Responsibilities

Provision of services such as primary education, primary health, agricultural extension and roads all fall under the Zanzibar central government. Deconcentrated staff from the relevant departments is deployed at district levels.

The roles of local governments are described in more general terms – in case of District Councils as to (Act 4, Section 5(1)):

- a) Formulate, coordinate and supervise the implementation of plans for economic, commercial, industrial and social development;
- b) Ensure the collection of proper utilization of revenue of Council;
- c) Make by-laws applicable throughout its area of jurisdiction; and
- d) Consider, regulate and co-ordinate development plans, projects and programs of villages and township councils within its area of jurisdiction.

The more specific functions and powers of the Local Governments are most clearly spelled out for the Municipality and include inter alia (Act no 3, Part V):

- Establishment and maintenance of recreation grounds,
- Actions to promote public health (as required by the Minister),
- Construction of drainage works,
- Administration of markets.

5.4.3 Local Government Finance

Local Authorities Revenue includes:

- Own source revenue
- Grants from central government
- Loans – with the permission of the Minister,

Grants from central government are generally earmarked for salaries.

The local authorities own revenue is collected through e.g.:

- Registration of taxi cabs,
- Auctioneers fees,
- Fees from rent and use of council property
- Property tax

Data on local government revenue is incomplete, but available data from previous Fiscal Year indicates the following patterns:

- Collections ranging between 150 and 300 TSH per capita per year for rural councils (9-28 million per Council),
- Town Councils collect between 500 and 1000 TSH per capita, and
- The Municipality collects 2,800 TSH per capita – or a total of 580 million TSH.

Except for the Municipality collections are thus very low. A directive from MLGRASD stipulates that minimum 75% of all local revenue shall be spent on local developments. No local governments comply fully – but some are capable of spending more than 50% of local revenue on capital expenditures.

All revenue is paid into the General fund of the Council. Annual budgets shall be approved by the Council and later submitted to the Minister for his final approval.

The Auditor General shall audit final accounts.

5.4.4 Local Government Personnel

Act no 3 gives in principle wide ranging powers to the Municipality for recruitment of personnel as it “may appoint any ...officer it may consider necessary and pay such officers such salaries, fees and allowances as it may determine” (Section 25-2).

Similar autonomy is not outlined in the legislation for District and Town Councils. Local Authorities financial standing- including that of the Municipal Council - under all circumstances limits such autonomy.

Technical staff employed by the Councils is generally paid through central Government subsidies. Support staff (cleaners, watchmen etc – is generally paid from councils own revenue).

The majority of staff at district level (education, health etc) is deconcentrated central government staff that report to the District Commissioner and directly to their Ministry.

5.5 SUB-DISTRICT GOVERNANCE STRUCTURES

While the mainland Tanzania has elected Village Governments below districts level, sub-district (sub-municipality and sub-town council) local administration in Zanzibar is exercised through the Sheha. The Sheha is appointed by the Regional Commissioner upon advice from the District Commissioner.

The Sheha is according to the Regional Administration Authority Act number 1 of 1998 (Section 17) within his Shehia responsible for:

- a) Implementation of all the Government laws, orders, policies and directives, for maintenance of law and order;
- b) Reconciliation and settlement of all social and family disputes arising in that area in accordance with the cultural and customary values of that area and wisdom;
- c) Keeping records of all documents relating to the registration of marriage, divorce, births and deaths, *ngoma* permits, transportation of crops, livestock, charcoal permits and so forth as directed from time to time by the institutions concerned;
- d) The control of immigration in his Shehia and keeping records thereof;

- e) Receiving notification for convening all public meetings;
- f) To do all other things which are legal and has been assigned to him by the District Commissioner.

In absence of police he can order arrests (Section 19-3)

A “Shehia Advisory Council” is established to advice the Sheha. The Council is supposed to be composed of a minimum of 12 members – all appointed by the Sheha himself in consultation with the District Commissioner. A third of the members shall be “elderly persons” (60 years or above and “respectable in their Shehia”).

5.6 LOCAL DEVELOPMENT PLANNING PROCESSES

Several parallel planning processes are in place for planning of similar small scale development projects at community level. In general all these projects are initiated at “community level” and also presumably passed through the above-mentioned Shehia Advisory Council before being tabled for approval and funding through any of the three below procedures as the community forward the request to:

1. the District Council for approval and funding,
2. the District or Regional Development Committee for approval and funding (processes may within these institutions differ according to the sector of the development project proposal) or
3. MoFEA Community Development Programme, where the Sector Policy and Research Department evaluates applications and approves proposals according to its own criteria.

The latter is by far the single biggest funding mechanism for development funding as TZS 200 million was set aside in FY 2002/03.

The funds available at local government level for funding community based initiatives is entirely through co-funding from local taxes. A directive instructs Local Authorities to earmark 75% of all local revenue to community-based projects. For a typical rural district that would amount to some 7 million TSH, but most fail to assign more than 50% of their

own source revenue to such capital investments. The requests for support are typically for cement or iron sheets to small infrastructure projects. The councils also pay for the technical services (e.g. drawings) from the technical staff of the district administrations.

5.7 MRALGSD

The Ministry of State (Presidents Office) Regional Administration, Local Government and Special Departments (MRALGSD) is responsible for the regional administration, the district administration and the local governments.

The Ministry administers its responsibilities in this regard through two directorates:

- Directorate for Planning and Administration and
- Directorate Regional Administration and Local Government.

The ministry maintains one office in Zanzibar and one in Pemba (Chake Chake). The number of graduates is low (five) and personnel generally lack clear job descriptions. Reporting procedures from councils, districts and regions are unclear and generally not followed.

The Ministry also have the responsibility for the oversight of five special departments:

1. Fire and Rescue,
2. KMKM,
3. JKU,
4. Volunteers and
5. Reformatory Centres

The inclusion of these departments under the portfolio of the ministry confounds the core mandate of the ministry.

5.8 CONCLUSION AND RECOMMENDATIONS

The system of local governance in Zanzibar is characterised by a high degree of duplications between the deconcentrated administrations at regional and district level and very limited authority or resources (finances and personnel) transferred to elected local governments. Local accountability is thus virtually absent. Personnel are not allocated functions in a rational manner and are mainly constituted by lower cadre staffs.

The conclusions and recommendations are elaborated upon below under the following headlines:

- Institutional Arrangements (Assignment of responsibilities)
- Local Accountability,
- Local government financing,
- LG election issues,
- Capacity Issues

5.8.1 Inconsistent institutional arrangements

The division of responsibilities between central government, the regional administration, district administrations and local governments is unclear. Regional and district administrations largely duplicate each other. Presumably the regions should play some kind of monitoring role, whereas districts would be more directly responsible for implementation of programmes. However, given the size of Zanzibar one can question the logic of having more than two offices (one in Pemba and one in Zanzibar) charged with monitoring. A rationalisation of the structures should nonetheless be subject to more detailed analysis and consultations.

Responsibilities for a wide range of service functions key to local planning and management are in many cases divided between a wide range of institutions creating confusion and lack of co-ordination. Effective urban planning within the Municipality has thus been hampered by unclear and overlapping roles of the Commission for Lands and Environment, Stone Town Conservation and Development Authority, the Department of water, The Commission for Roads.

The transition from a one-party to multi party state has still to be effectively completed. Government and political bodies were fused during the period of one-party regime. To completely de-link the state machinery from the political parties still remains a challenge – not least for the local government system.

R 5.1: We recommend a thorough study be carried out regarding a rationalisation and democratisation of local governance structures. The output of the study should be a proposal for a comprehensive local government reform policy to be tabled cabinet (Revolutionary Council). The proposed TORs are included as annex.

5.8.2 Lack of local accountability

The elected local governments – in particular the rural – are charged with few functions and resources. The Regional and District administrations are only upwards accountable. Even planning of simple small scale community infrastructures are not under clear local mandate and accountability as e.g. MoFEA maintains right of approval for the bulk of funding for community projects.

The councils themselves are at the moment not fully elected – but partially appointed by central government. This is an indication of a wider problem of limited local accountability of the local administration to the local population. The development committees at sub-district level (*Kamati ya Maendeleo*) are for instance entirely appointed (and not described in law).

The *Sheha* is appointed by the Regional Commissioner and reports to the District Commissioner. The *Sheha* are at present not locally accountable. As the *Shehas* further have been involved in the controversial administration of voter registration as well as administrative matters relating to the settlement of internal immigrants, they have in some areas been discredited. A review of the office of *Shehas* and their functions and relations to the public is desirable.

R 5.2: We recommend modalities for increased local accountability of the sub-national governance structures is addressed as part of the proposed study on rationalisation and democratisation of local governance structures

5.8.3 Local Government Financing

Subsequent to a clear definition of functions and responsibilities at sub-national level it would be possible to design an appropriate system of financing local governments. Currently it is clear that the financing of local governments is insufficient for any meaningful role in development.

Current unclear demarcation between local governments leads to conflicts. Likewise conflicts occur between local authorities and various central government institutions over a range of taxes such as trade licences, road licences, etc. Revenue sharing arrangements are thus in general in need of clarification.

Shehas collect various taxes, which reportedly are not systematically documented by receipts.

An appropriate system for fiscal transfers from central government to local governments also needs to be developed once the principles of expenditure assignments have been clarified and decided upon.

R 5.3: We recommend that the question of appropriate funding (revenue sharing, intergovernmental fiscal transfers and borrowing) of local governments be addressed, subsequent to decisions on rationalisation and democratisation of the local governance system, as part of the proposed study on rationalisation and democratisation of local governance structures

R 5.4: We recommend that the modalities for financing of community-based projects be harmonised into one, where the local governments are assigned a clear role to ensure proper local accountability in planning, accounting and management of such funds.

5.8.4 Local Government Election Issues

A number of governance issues of the local government system are particularly related to the electoral laws:

1. Firstly, it should be noted that no separate local government election law is in existence. Instead chapter V of the general election law describes the particular features of local government elections. This leads however to confusion in a number of cases where the law becomes open to different interpretations.
2. The demarcation of electoral constituencies is without sufficient regard to equality in representation. This may be rectified after the planned population census later this year. Another problem of demarcation is specific to the three Town Councils: here the number of wards exceeds the number of *Shehias* – just as ward boundaries cut across *Shehias* thus creating immense logistical problems.
3. Conflicts occur often between the Mayor and the Council that appoints him/her. Thus a need for consideration of directly elected mayors/chairmen.
4. Women's participation in local politics is even lower than in national politics. For the election of the House/Parliament women are reserved a minimum representation. Such stipulations are not made regarding women's participation in local councils. Only approximately five out of 140 councillors are female.
5. The electoral law insists that all candidates for local government elections should be registered party candidates. This leads to overly politicising local elections already marred by national party conflicts. The system further prevents local elections to emphasise local issues (rather than national) and may prevent capable persons uninterested in party politics to serve within the council. Thus it is recommended to consider non-party candidates to stand for local elections.
6. Civic education has so far mainly been in the form of voter education – and generally emphasising national elections. Activities for creation of awareness on local governance issues are necessary in preparation of more meaningful future local government elections.
7. National elections and local government elections are held simultaneously. This leads to national elections and national political issues to overshadow local issues and local government elections. However, due to the costs involved in holding

separate local government elections it is recognised as un-practical to change the system within a foreseeable future.

8. The Electoral Commission are at the moment not solely managing elections as some functions are undertaking by the Ministry. This leads to claims of impartiality.

R 5.5: We recommend the following for improvement of Local Government elections:

- a) A separate Act be passed to clarify arrangements for local governments elections,
- b) Demarcation of electoral constituencies to reflect the size of populations and be streamlined with demarcation of *Shehias*.
- c) Mayor and Council chairmen to be directly elected.
- d) Reserve seats for women's participation in local councils
- e) Allow non-partisan candidates to stand for local government elections,
- f) Establish separate civic education programme for local government elections.
- g) Consider possibility (given costs) of separating national elections and local government elections

5.8.4 Capacity Issues

Many fundamental capacity problems of the local government system are recognised. These include:

- Finance: local governments are without sufficient revenue to provide basic services. This is mainly due to the overall institutional arrangements, but also due to poor capacity for actual revenue collection and financial administration.
- Awareness: both the population at large as well as politicians and staff of the local government system are widely unaware of the basic laws and regulations that guide the system. Strong personalities take advantage of their position and conduct business contrary to legislation.

- Human Resources – local government staff lack basic skills and qualifications. There is no system in place for basic induction etc of local government staff. Qualified staff is difficult to attract to local governments. Central government staffs at district level are in some cases reported to be “poor performers” transferred from the centre. A merit based appointment and promotion system need to be established. Very few women are working in management functions. The level of education of councillors is also very low. Records from the electoral commission indicate that even in the Municipality only few councillors are educated up to O level, just as several (rural) councillors are without even complete primary education and functionally illiterate.
- Manuals etc that give guidance in more operational aspects of local government planning, finances and management procedures are virtually non-existent.
- Equipments: Local authorities lack basic equipments – ranging from basic office facilities (offices, communication, safes etc) to tools and equipment of production of services (vehicles and equipment for garbage collection for instance).
- Finally it should be noted that the capacity of the Ministry responsible for the overall local government system also need to be considered of the envisaged reforms are to be effectively guided. The Ministry of State Regional Administration and Zanzibar Special Departments is not only responsible for the overall local government system as well as the Regional Administration, but also a number of special departments such as the Coast Guards (involved in the control of clove smuggling), Fire Brigade and others. The overall structure, staffing, human resources and facilities of the Ministry also need to be addressed as a capacity issue in an overall reform programme.

R 5.6: We recommend that once an overall Policy for local government reform has been decided upon that a comprehensive needs assessment be undertaken for the Ministry itself, the regions, the districts and council structures in order to establish a prioritised and costed plan and budget for upgrading of human resources, equipment and procedures (manuals and guidelines).

5.9 TENTATIVE REFORM PROGRAMME AND COSTS

There is broad agreement on the need for reform and improvement of the system of local governance in Zanzibar. A distinction should however be made regarding

- Reform, which refers to a changed institutional and legal relationship between central and local government, as well as a change in relationship between civil society/the public and government, and
- Capacity building, which refers to improvements in the human resources, financial resources, equipments and technical systems (operational guidelines etc), once the overall legal and institutional set-up, has been firmly agreed upon.

While some capacity building of the local government system can be embarked upon without having a legal reform of the system entirely completed, then it is also obvious that technical and financial capacity building in many situations will not be cost-effective or even meaningless if the right institutional framework is not put in place. Experiences from e.g. UNDP support to Zanzibar Municipality are a case in point.

Furthermore it is recognised that support to reform and capacity building of the local government system should be co-ordinated with overall the governance reforms, reforms of the entire public service and the overall Poverty Reduction Strategy for Zanzibar in order to ensure maximum benefits of scarce public resources.

R 5.7: With the above concerns in mind, we make the following recommendations regarding programmatic support to initiatives for policy and institutional reforms as well as capacity building.

5.9.1 Policy Reform

While there is agreement on the overall need for reform and improvement of the local government system, it is necessary to advance the analysis of problems and in order to identify clearly viable options, just as increased awareness among policy makers, civil servants and the general public on the issues are necessary before wide ranging decisions can be made.

Such initiatives further described below can best proceed simultaneously in order to support each other.

5.9.1.1 Awareness and Consultations

It is recommended that a core technical group be established with representation of key Ministries to allow continuous dialogue on the main elements of an overall local government reform. This group should report to Cabinet as relevant and be overall in charge of the reform. Such groups have proved most successful if their membership is personal rather than constantly delegated to different persons (e.g the Malawian experience). This technical group should clear terms of reference for analytical works, study tours, workshops and other activities in support of a reform.

It is recommended that the technical group together with a selected number of Parliamentarians and staff from MRALGSD initially undertake a brief study tour to other small island states in order to extract relevant lessons. TORs for such a study tour have been drafted.

It is recommended that the study tour be supplemented with a review (either documentary or with an additional study tour) to nearby African countries that at present are undertaking major local government reforms (Tanzania mainland and Uganda are deemed most immediately relevant).

It is recommended that wider national consultations be arranged when appropriate to deliberate on key reforms issues. Especially when the below mentioned analytical studies are undertaken it would be relevant to review findings and recommendations in a broader forum.

5.9.1.2 Analytical Work

It is recommended to undertake further analytic works to clarify and prioritise the problems regarding the overall local government system. This should address the overall institutional framework as well as human resources and financial issues. Terms of reference of the study should be elaborated and approved by the established Technical Group. Draft TORs are included in Annex.

5.9.2 Local Government Development Programme

There is a general consensus on the observation that the overall local government system and approach to decentralisation on Zanzibar is in need of a complete rethinking. Considering this assessment and other issues outlined in this chapter it is recommended as a long-term strategy to proceed in a staged manner:

1. As part of the overall Five Year Governance Strategic Plan the analytic works will be expanded, stakeholders exposed to relevant experiences from other small states and national workshops held to exchange experiences and views regarding a future improved system. Guiding principles for a reform of the local government system will be established and possibly formulated as a Policy Paper for endorsement of the House of Assembly,
2. When the overall guiding principles for a reform is established it will be possible to develop a more operational programme for reform which will include activities for detailed legislation, improved procedures, training and various capacity building of the local governments and supporting institutions such as the Ministry itself. It is realised that substantial external donor support to the local government system and capacity building in isolation of more fundamental reforms will neither be desirable nor likely.

Some recommendations can – based on international “best practices” - however at this stage already be made for a capacity building programme for local government development:

1. Coordination of different support initiatives should from the onset be a key priority. Different small and uncoordinated projects should to the extent possible be

avoided. It should from the beginning be attempted to establish one overall and general “Local Government Development Programme” which will manage all support activities through a common basket fund or similar arrangement.

2. The programme should provide a balanced support to local governments. International experience regarding modalities whereby local governments are provided with a mix of development grants (that would ensure immediate benefits to the population at large and poor in particular) with inbuilt incentives for improved local government performance, procedural improvements (better planning guides, appraisal systems, procurement arrangements etc) and capacity building adjusted to local needs (equipment and training) have proved most successful. The development of such a harmonised approach to funding small scale infrastructures at community level should simultaneously address the current anomalies regarding multiple modalities for financing and planning community projects without clear procedures for local accountability (beyond “community consultations”).

5.9.3 Time Schedule

A very tentative time schedule is proposed whereby emphasis the first two years will be on reform of the overall institutional arrangements and initial design of more comprehensive capacity building programmes. From year 2005 onwards a fully fledged programme for capacity building and capital grant funding can be envisioned.

Table 5.4: Key Milestones for Local Government Reform Programme

Main Activities	2003	2004	2005	2006	2007	2008
Studies and consultations for Policy reform	Reform Policy	New Legislation	Improved procedures, manuals and guidelines			
Capacity building Ministry, equipments	Capacity assessment	upgrading				
Capacity building ministry training	Capacity assessment	Training and improved HRD				
Capacity building districts, equipments	Capacity assessment	Retooling and new equipments				
Capacity building districts, Training	Capacity assessments, selected training and design of full programme		Fully fledged national capacity building programme			
Capital/Development Grant		Design of modality	Implementation of capital grants to all local governments for improved services and local governance			

5.9.4 Budget

Based on the above strategy and international experiences with similar programmes, it is possible to suggest some very tentative budget figures. Similar programmes have mainly taken place in bigger countries (Tanzania Mainland, Uganda etc) and it might not be possible to rely on similar scales of economy although mainland experiences and resources can be drawn upon.

However, any detailed programme for LG reforms needs to be based on clarification of initial policy as well as more detailed analysis of capacity needs. These are planned to be initiated 2003.

Table 5.5: Tentative Estimates for LG Reform Programme Zanzibar (000 US\$)

Main Activities	2003	2004	2005	2006	2007	2008	Total
Consultancies and workshops etc for Policy reform	160 ¹	160	100	100	50	50	620
Capacity building Ministry, equipments	10	20	0	0	0	0	30
Capacity building ministry training	0	10	10	10	10	10	50
Capacity building districts, equipments	0	50	100	100	0	0	250
Capacity building districts, Training	0	50	250	250	250	250	1050
Total Reform	170	290	460	460	310	310	2,000
Capital/Development Grant	0	0	1,000	1,000	1,500	1500	5,000
Grand Total	170	290	1,460	1,460	1,810	1,810	7,000

¹ UNDP Trust Fund Programme

6. THE JUDICIAL SYSTEM AND ACCESS TO JUSTICE

This section covers the judicial system and access to justice. In this regard it examines all the institutions in the legal sector of Zanzibar namely, the judiciary, the private bar, the Office of the Attorney General (ZAG), the Office of Director of Public Prosecution (DPP), the Office of Mufti (OM), the Office of Registrar General (RG) and the Commission of Wakf and Trust Property (CW&TP). The ZAG, DPP, OM, RG and CW&TP are part of the portfolio of the Minister of State in the President's Office dealing with constitutional affairs and good governance. This section also covers legal training institutions, the provision of legal aid and dissemination of legal information.

6.1 INTRODUCTION

The legal system of Zanzibar deserves special treatment because of its distinct and separate nature. The legal sector is not a union matter and Zanzibar has its own system of laws and courts with needs, which are more basic than those of the Mainland (Legal Task Force Report (1996), at p.180). In 1993, the Union Government launched the legal sector reform process by constituting the Legal Task Force under the chairmanship of Hon. Mark Bomani. The Legal Task Force carried out a comprehensive review of the legal sector in Tanzania Mainland and Tanzania Zanzibar and elaborated on the institutional and resources constraints underlying the problems in the legal sector for Zanzibar. It identified a number of problems and issues in the legal and institutional framework within the sector. The Report documented all the necessary changes needed to reform the legal sector and concluded that all the institutions and services in the legal sector have been starved of resources in the past and that the legal sector was accorded a very low priority in the allocation of budgetary resources, the provision of the basic infrastructure and facilities, and in public esteem generally. The problems are largely still the same today almost more than ten years since the study was carried out.

The Union Government accepted virtually all the recommendations of the Legal Task Force, and directed for their implementation. There has however, been rather limited

progress in the implementation process for Tanzania Mainland, largely due to dearth of financial resources, local and external and virtually no progress in Tanzania Zanzibar. The main, but not exclusive explanation for this was lack of funding particularly from external sources due to the changed political climate in Tanzania Zanzibar then, which made most donors suspend their financial assistance to Zanzibar. Most if not all of the recommendations of the Legal Task Force with respect to Tanzania Zanzibar are still very relevant. We have tried as much as possible to adopt most of them but of course with the necessary adjustments to suit the present situation in Zanzibar.

6.1.1 Streamlining Operations of the Ministry

The Ministry of State, President's Office, Constitutional Affairs and Good Governance (MS, PO, CA&GG) is instrumental in coordinating good governance issues in Zanzibar due to its relative location. The Ministry is located within the President's Office and it is being recommended in this Report that this should continue to be the position in the future so as to give it the necessary political clout in dealing with cross-cutting issues of good governance such as corruption and leadership ethics.

The structure and operations of the Ministry however, need to be streamlined a bit so as to improve its performance both in terms of resource utilization and capacity to manage the process of good governance. Currently the Ministry has a very heavy portfolio including that of the Judiciary, the Office of the Attorney General (ZAG), the Office of Director of Public Prosecution (DPP), the Office of Mufti (OM), the Office of Registrar General (RG) the Commission of Wakf and Trust Property (CW&TP) and the Controller and Auditor General. This creates an organisational burden and makes the task of coordination cumbersome.

Recent efforts by the Revolutionary Government of Zanzibar to prepare a new draft Audit Act entitled the Establishment of the Office of the Controller and Auditor General Act, 2003 would result in the repealing of section VI of the Financial Administration Act No.8 of 1996. The new Act proposes the establishment of the OCAG as an autonomous body

corporate. This will mean that the OCAG operationally will be removed from the Ministry of State, President's Office, Constitutional Affairs and Good Governance, thus going a long way towards lessening the operational burden on the Ministry.

RECOMMENDATIONS

- 1. It is recommended that the function of the Minister should be to initiate, and approve policies and to monitor their implementation. The responsibility for policy implementation should lie with the Chief Executive Officers and the Heads of the various Government Departments under the portfolio of the Ministry of State, President's Office, Constitutional Affairs and Good Governance**
- 2. It is also recommended that a Good Governance Coordination Unit be established within the Ministry to coordinate good governance issues for Zanzibar.**

Fighting Corruption

The Revolutionary Government of Zanzibar is now set to embark on far reaching economic and political reforms. Among the things envisaged in the strategic plan for good governance is to re-organize the public sector and put in place new structures of governance. As part of the efforts to improve the structures of governance the RgoZ seeks to draft anti-corruption and ethics legislation. Currently, all instances of corruption are dealt with under the Penal Decree, which does not specifically refer such instances as corruption.

The new strategy for good governance envisaged for Zanzibar demands a transformed public service, which is truly transparent and accountable to the public with zero tolerance for corrupt behaviour. The 1996 Report of the Presidential Commission of Enquiry Against Corruption (The Warioba Report) made very detailed evaluations of the

Government delivery systems and made a number of recommendations on how to fight corruption in Tanzania. Although the Warioba Report did not address Zanzibar specifically, its observations and recommendations are relevant to Zanzibar as far as the questions of corruption and leadership ethics are concerned. The Report outlined a number of causes of corruption in the 1970's and 1980's, most of which are still relevant today. These include poor implementation of laws and regulations; administrative laxity; bureaucracy in accessing public services; low salaries; lack of "political will" to fight corruption and managerial weaknesses of state organs; closeness between corrupt businessmen and the leaders; lack of transparency in the economy; erosion in the integrity of leaders; changes in the country's democratic structure and the emergence of competition in conspicuous consumption (Ibid. pp.6-7).

Leadership and Ethics

On leadership and ethics, the Warioba Report made some pertinent comments, which were as relevant for the whole Union then, as they are today. The Report noted that although the poor state of our economy and low salaries could be a source of corruption, but the greatest source is laxity of leadership in overseeing the implementation of established norms. The absence of clear guidelines on accountability of leaders in their respective positions – be it political leadership or senior administrative or management positions is part of that weakness, observed the Report. The Warioba Report emphasized that one important condition of good management systems is that there should be clear operational guidelines to enable leadership to take quick and just decisions. Moreover, good management systems of any institution, which caters for the public, must be easy to understand and implement and therefore must not be a burden on the ordinary citizen. The greatest challenge for the Revolutionary Government of Zanzibar and the people of Zanzibar is therefore to ensure leadership is entrusted on people who believe in and respect ethical standards.

The URT Government established a leadership ethics watch body in 1995 – the Secretariat for Leadership Ethics vide section 132 of the Union Constitution. Its founding

legislation, the Public Leadership Code of Ethics Act No.13 of 1995, creates the office of Ethics Commissioner who has mandate to enforce the code of ethics, which apply to a specified group of public leaders and politicians. This group specifically includes only two Zanzibari leaders, the President of Zanzibar and the Chief Minister of Zanzibar. There is no similar law with respect to other public leaders in Zanzibar. It is understood that a Committee under the Ministry of State, President's Office, Constitutional Affairs and Good Governance is currently working on anti-corruption and ethics legislation. It is not clear whether this law will include those leaders covered by the URT legislation and to what extent, if any; there will be an overlap in responsibilities. These issues need to be clarified with the relevant Union and Zanzibar authorities. It is anticipated that one body will be created in Zanzibar to deal with issues both of corruption and unethical behaviour.

RECOMMENDATIONS

(3) It is recommended that the Law on Ethics for Zanzibar should have the following main features

- **It should list all the ethical standards that should be adhered to with authority on the House of Representatives to make additions to the list;**
- **It should provide for a shorter process of inquiry into indictments;**
- **It should state that all assets of leaders should be declarable without differentiating between “declarable” and “non-declarable” assets;**
- **It should state that all top public leaders should declare their assets publicly, explaining how they were acquired and arrangements should be made to verify the accuracy of the declaration;**
- **It should empower the Ethics Commissioner to make investigations and if satisfied he should pronounce that the leader has breached the Code;**

- It should state that no other agencies or organs should be involved in the investigations of indictments;
 - It should explicitly provide penalties for breach of the Ethical Code. If it concerns a Member of the House of Representatives, the report should be tabled in the House of Representatives for decision. If it concerns an appointee of the President, the President should remove him or her from office.
- (4) It is recommended that procedures for public declaration of assets by leaders be evolved and every leader should be required to do so.
- (5) It is recommended that public leaders whose terms and conditions of service are governed by Rules and Regulations which are different from those provided in the proposed Law on Ethics for Public Leaders, should continue to be governed by such Rules and Regulations
- (6) It is recommended that the Civil Service Department should issue a Code of Ethics and Conduct for the Public Service and public service legislation should be enacted.
- (7) It is recommended that all those who are discovered to have been a source of injustice and breach of established rules and regulations should be severely punished by confiscation and forfeiture of their property in accordance with the law.
- (8) It is recommended that in order to ensure that everyone is held accountable for the responsibilities under him/her the boundaries or limits of responsibility between the Executive Officers of Ministries Departments and Parastatals on the one hand, and Ministers or Members of Parastatal Boards of Directors on the other, should be clearly defined.

6.2 THE COURT SYSTEM AND JUDICIAL ADMINISTRATION

The Court structure of Zanzibar comprises of the High Court of Zanzibar and subordinate courts. The High Court of Zanzibar is a “creature” of the Constitution of the United Republic of Tanzania of 1977, and is governed by its own law, the High Court Act of 1985. According to that Act, the High Court of Zanzibar has jurisdiction in all matters arising in Zanzibar. The Magistrates Courts Act No.6 of 1985 establishes the Subordinate Courts of Zanzibar. These are: Regional Courts, District Courts, Primary Courts, Juvenile Courts and Kadhi’s Courts. The High Court, Regional, District and Primary Courts each have a civil and criminal jurisdiction. Kadhi’s Courts have exclusive jurisdiction in Islamic law cases on personal status matters.

The structure, jurisdiction and powers and functions of Kadhi’s Courts are elaborated in the Kadhi’s Courts Act of 1985. Juvenile Courts are recognized under section 10(1)(f) of the *Courts Decree* Cap.3 of 29th July 1923 as being part of the judicial hierarchy and are established under section 3(1) of the *Children and Young Persons Decree*, Cap.58, which provides the procedure to be followed in dealing with juvenile cases. There are also special rules for juvenile courts – the *Juvenile Courts Rules* (G.N. No.404 of 1944 as amended by the *Juvenile Courts (Amendment) Rules*, 1959.

THE ZANZIBAR JUDICIARY: JUDICIAL OFFICERS’ DISPOSITION AND QUALIFICATIONS

S/N	Position	NO.	Gender		Educational Level
			Male	Female	
1	Chief Justice	1	1	-	LL.B
2	High Court Judges	3	3	-	2 with LL.B., 1 LL.M
3	Chief Kadhi	1	1	-	Islamic Law knowledge
4	High Court Registrar	1	1	-	BA, PGDL and LL.M
5	Regional Magistrates	5	5	-	3 with LL.B, BSL, MA
6	Appellate Kadhis	2	2	-	Islamic Law knowledge
7	District Magistrates	16	12	4	Diploma in Law
8	Primary Court Magistrates	13	13	-	Certificate in Law
9	District Kadhis	12	12	-	3 Degree in Islamic Law, 9 Islamic Law knowledge

6.1.2 BACKGROUND

The current state of the administration of justice and the rule of law in Zanzibar is a reflection of the history of the legal system of Zanzibar. The new legal regime of Zanzibar was created in 1985 after its abolition and replacement in 1969 with “People’s Courts”, a High Court and a Supreme Court. Despite the restoration of the court system, it has yet to fully recover “from the trauma of the revolutionary onslaught.”

6.1.3 PROBLEMS AND ISSUES

(i) The Appointment of Judges

The main weakness with the appointment of Judges in Zanzibar is the political influence that is exerted by the executive in the process. According to section 94(1) of the Constitution of Zanzibar, the President appoints the Chief Justice of Zanzibar. Judges of the High Court of Zanzibar are also appointed by the President but on the advice of the Judicial Service Commission as per section 94(2) of the Constitution.

(ii) The Judicial Services Commission

The Judicial Services Commission is established by section 102 of the Constitution of Zanzibar. According to the 8th Constitutional Amendment to the Constitution of Zanzibar, membership to the Judicial Services Commission is now as follows:

- The Chief Justice of Zanzibar as Chairman;
- One member appointed by the President from amongst Judges of the High Court of Zanzibar recommended by a meeting of the Judges of the High Court of Zanzibar;
- One member from amongst retired Judges of Zanzibar or Tanzania Mainland recommended by a meeting of the Judges of the High Court of Zanzibar;
- One member nominated by the Zanzibar Law Society;
- Chairman of the Civil Service

- The Attorney General
- The Chief Kadhi.

The Chief Justice who is the Chairman, the Attorney General who is the Deputy Chairman and the Chairman of the Civil Service Commission, all presidential appointees in their respective offices, are members of the Judicial Services Commission. In addition the President can appoint any other person he “thinks fit” to be a member of the Commission and this is not restricted to qualification. Thus clearly reflecting a political influence in the appointment of a body, which is supposed to deal with judicial officials. The appointment of senior members of the Judiciary and the members of the Commission remains the constitutional prerogative of the President of Zanzibar. There is no legally stipulated criteria set for the President to adopt when appointing members of the Commission. This is not conducive to transparency.

The powers of the Judicial Services Commission are limited to the appointment and discipline over the Registrar of the High Court, Deputy Registrar, all magistrates, Kadhis and other persons empowered to exercise a criminal jurisdiction. It does not have any role in the appointment of the Chief Justice.

(iii) Judges serving on contract terms

Presently in Zanzibar, there is a Chief Justice and three other High Court Judges, one on permanent terms of service and two on a three-year contract. Section 93(2) of the Constitution of Zanzibar provides for a Chief Justice and not less than two judges. The Constitution does not provide a maximum and minimum number of judges. This situation at one point in time lead to the High Court of Zanzibar being “packed” with eight (8) Judges (including the Chief Justice) of whom 4 were non-citizens employed on contract. This was a clear case of arbitrariness because the number of Judges was highly disproportionate given the size of population and volume of work.

RECOMMENDATIONS

- (9) It is recommended that the President should appoint the Chief Justice in consultation with the Judicial Service Commission.**
- (10) It is recommended further that the Constitution be amended to provide a maximum number of five judges and a minimum number of three judges.**
- (11) It is recommended also that as far as possible Judges should not serve on contract.**
- (12) It is recommended that the Judicial Services Commission be given powers to propose salaries, allowances and retirement of judges and magistrates.**
- (13) It is recommended that the House of Representatives enact legislation on allowances of members of the Judicial Services Commission as well as conduct of meetings of the Judicial Services Commission.**

(iv) Lack of clear-cut managerial hierarchy (chain of command)

There is lack of clear-cut managerial hierarchy in the Judiciary. Consequently, the administrative and management work of the court is done by Judicial Officers, which consumes a lot of their time that could be devoted to judicial duties. The Chief Justice, assisted by the Registrar of the High Court are the chief administrators in charge of the administration of the High Court and the courts subordinate thereto. The High Court has a zone in Chake Chake, Pemba, which is administered by a Deputy Registrar, who is also a Regional Magistrate. The post of Deputy Registrar however, is a mere duty post and not a substantive one.

There is no constitutionally or legally designated Deputy Chief Justice, unequivocally invested with the status of No. 2 officer in the Judiciary. However, given the time, size and the nature of the legal system of Zanzibar, it would not be wise to have a Deputy Chief Justice. The Chief Justice seconded the idea of

having a specially trained cadre of Court Administrators specifically charged with the day-to-day administration of court activities. The lack of a clear chain of command in the administration of the Judiciary is compounded by an ineffectual flow of information in the management of the courts and lack of an adequate information system. Dearth of administrative and management skills among the administrative staff exacerbates the situation.

RECOMMENDATIONS

- (14) It is recommended further that matters of court administration should be left to a cadre of specially trained Court Administrator who shall deal with day- to-day administration of court activities.**

(v) Critical shortage of manpower

The High Court of Zanzibar is understaffed, a factor which contributes to a considerable backlog of cases. There is a High Court Centre at Chake Chake, Pemba but without a resident judge. The Chief Justice attributes the problem of recruitment of judges to the dearth of experienced cadre of senior Regional Magistrates. Of the existing four Regional Magistrates only two meet the legal criteria to qualify for a judge. The law sets out stringent qualifications for the post of Chief Justice and Judges. These are set out in Art. 94(3) (a) – (b) of the Constitution and require a law degree and 7 years experience as a lawyer or judge.

The critical shortage of staff in the Judiciary is also reflected in the subordinate courts. The intention is to have at least one Regional Magistrates in every Region of Zanzibar. There are five regions in the whole of Tanzania Zanzibar, three in Unguja and two in Pemba. The Regional Court at Unguja currently has five Regional Magistrates, two with long experience and two others just recently recruited. One Regional Magistrate has been appointed to be a Chairman to the newly established Land Tribunal.

Currently, all Regional Magistrates are holders of a law degree. In addition, they have undergone a one-year internship after graduation to acquire practical experience. All District Court magistrates hold diploma in law and Primary Court Magistrates are holders of Certificate in Law.

There are generally delays in the Magistrates Courts due to unavailability of magistrates. Low staffing levels particularly at the Regional Magistrate level contributes greatly to heavy workload and thus a slowdown in case-flow. For example, one Regional Magistrate at Zanzibar handles about 240 cases per month.

Kadhi's courts are within the judicial system though maintaining separate and parallel jurisdiction. Appeals from cases decided by these courts lie with the High Court of Zanzibar. The Court of Appeal of Tanzania has no jurisdiction in such cases. The performance of Kadhi's Courts has been rather unsatisfactory due largely to two major factors. One the Kadhi's courts are managed by persons not well trained in the administration of justice and underfunding. Although Kadhis are part of the judiciary they do not get any formal training in the administration of justice.

There is minimal supervision of subordinate courts by Regional Magistrates due to logistical problems. Supervision is limited only to judicial matters and not administrative or managerial matters. There is also uneven supply of staff and materials and lack of essential materials such as court forms and other stationery and lack.

RECOMMENDATIONS

- (15) It is recommended that the respective jurisdictions should be rationalized and the professional competence of the magistrates and Kadhis should be enhanced.**

(16) It is recommended further that Kadhi's courts be adequately and closely supervised and funded to enable them to function properly.

(17) It is also recommended that Kadhis should attend short-courses in judicial administration offered at the Institute of Judicial Administration at Lushoto in Tanga.

(vi) Lack of standard system of review for allocation and transfer of Magistrates

Magistrates are appointed by the Judicial Service Commission but are subject to transfer at the directive of the Chief Justice. The transfer of magistrates from one district to another, from time to time is a common practice throughout the Commonwealth. However, there have been several controversial transfers of magistrates in the past few years of magistrates transferred from the judiciary to the Civil Service and magistrates from Unguja being transferred to Pemba and those from Pemba being transferred to Unguja, without being subjected to a system of review for allocation and transfer of magistrates, which is nonexistent in Zanzibar.

(vii) Lack of qualifications and training of Judicial personnel

There is generally lack of training among judicial staff in almost all levels. The educational standards of the support staff are extremely low. The problem is worse with the Kadhi's Courts. Only a few Kadhis have received some kind of formal education. The Chief Justice attributed the problem of lack of training to financial constraints. The Judiciary has however, made some efforts to train its own staff. About four District Magistrates are currently attending undergraduate law degree courses at the Faculty of Law and Shariah of Zanzibar University and Faculty of Law at the University of Dar es Salaam respectively. The Judiciary generally lacks any coherent training policy. The

majority of the magistrates in Zanzibar received their training either at IDM or the Institute of Judicial Administration at Lushoto or from the Faculty of Law at UDSM.

The supporting court staff have a role to play in the management of cases. Currently, the basic qualification for this cadre is Form IV education with no job-related training at all. The lack of training, which is reflected in poor administrative and technical skills, has contributed a lot to delay in the administration of justice. There is an urgent need to introduce training programmes in the management of cases for the registry staff, including both existing and newly recruited staff.

RECOMMENDATIONS

- (18) It is recommended that the judiciary should develop and adopt a coherent training policy for all the staff.**
- (19) It is recommended further that court clerks should attend a proper course. More specifically, we recommend that they should attend a one-year pre-service training course for administrative staff, currently being conducted at the Institute of Judicial Administration at Lushoto in Tanga.**
- (20) It is recommended also that there should be appointed a Resident Judge for Pemba.**

(viii) Lack of rigorous recruitment system and performance evaluation procedures

There has never been any study on the management of human resources in the Judiciary. There is virtually no known system of recruitment, performance evaluation procedures or staff inventory in place.

RECOMMENDATION

(21) It is recommended that a further study of the management of human resources in the Judiciary, including:

- (a) Evaluation of recruitment procedures with a view to establishing their adequacy in enabling recruitment of candidates with requisite skills;**
- (b) Performance evaluation procedures; and**
- (c) Procedures for periodical staff inventory of the Judiciary.**

(ix) The unsatisfactory nature of children's rights law in Zanzibar

The state of the law relating to children in Zanzibar is shockingly inadequate. The basic law concerning juvenile delinquency and abused and neglected children is the *Children and Young Persons Decree*, (C&YPD), Cap.58 of 1st January 1952, which recognizes a child as person under the age of 14 and a young person as any person under the age of 16. "Juvenile Courts" hear and conduct all trials against children under fourteen years of age and juveniles under sixteen years, except in cases where children are charged jointly with adults. This "child" is therefore left at the mercy of the mainstream court system meant for adults with its cumbersome procedures and harsh punishments. The child is therefore denied the benefit of the enjoyment of the rights and legal protection, which goes with children as stipulated in international human rights treaties.

In theory juvenile courts are "separate courts" and deal with "children" defined as persons under the age of fourteen (14) and "young persons" that is, persons above fourteen but below sixteen years of age. In practice however, there are no separate

Juvenile Courts in Zanzibar and a Juvenile Court consists of a District Court Magistrate and two lay members of whom one must be a woman and sits in camera.

Tanzania is a signatory to the *Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child*, both of which recognizes a child as any human being under 18 years of age. But according to the law relating to children in Zanzibar a person aged between 16 to 18 years (who otherwise would qualify as a “child” under international law), is recognized as a “young adult.” It is not entirely surprising that the law relating to children in Zanzibar recognizes a lower age for children than what is stipulated in international conventions because at the time that the law was enacted, most probably the international community had not yet awakened to the fact that all human beings below eighteen years of age are regarded as “children.”

RECOMMENDATIONS

- (22) It is recommended that a review of all the laws relating to children and young people in Zanzibar be carried out with a view to enacting a single statute on children’s rights for Zanzibar. The proposed legislation must take into account the Zanzibar child and young people development policy and the relevant principles in global and regional treaties relating to the rights of the child.**
- (23) It is recommended further that a needs and impact assessment be done with regard to the system of the administration of juvenile justice in Zanzibar with a view to come up with appropriate recommendations for improving the system and the possibility of having separate juvenile courts.**
- (24) It is recommend also that appropriate training both short-term and long term be conducted targeting all persons dealing with children and young people to inculcate them with the principles and methods of dealing with children in trouble with the law as well as child victims.**
- (25) It is also recommended that the system of probation services be revamped and appropriately funded to provide services to children and young people in conflict with the law.**

(x) Lack of legal representation

There is a right of legal representation in all Courts, except primary courts. This provision was amended to allow the Public Prosecutor a right of appearance in criminal cases but there was no change permitting a defendant to be represented. There is no right of legal representation of a defendant's choice provided for in the Constitution. Section 162 of the Criminal Procedure Decree, Cap.14 provides that:

“In the absence of any provision in any other law to the contrary any person accused before any criminal court, or against whom proceedings are instituted under this Decree in any such court may of right be defended by an advocate.”

RECOMMENDATION

- (26) It is recommended that both the Constitution and the Criminal Procedure Decree be amended to allow an accused person in a criminal trial to have representation of his choice.**

(xi) The procedure for criminal trials

The procedure for criminal trials is found in the Criminal Procedure Decree, Cap.14 as amended. This is a comprehensive statute providing procedures for arrest, search, powers of the Attorney General, committal, bail, sentencing, review, appeal, coroner's inquests and criminal jurisdiction of courts. In view of the recent constitutional changes that have taken place in Zanzibar, particularly with regard to the establishment of the office of the Director of Public Prosecution (DPP), there is a need for a comprehensive review of the Decree to be carried out.

RECOMMENDATIONS

(27) It is recommended that a team of experts be constituted by the RGZ drawing members from the AGC, DPP, Judiciary, the Ministry and other stakeholders to review all the laws relating to the penal system, the Criminal Procedure Decree and the Penal Decree included, with a view to making proposals for their amendment.

(28) It is proposed that the Team of Experts look into such matters as arrest, search, committal, the right to bail, the right to legal representation, powers of the DPP, the role of the Commissioner of Institutions for Education of Offenders, the probation system, review, appeal, coroner's inquests, the parole system, sentencing procedures and criminal jurisdiction of courts.

(xii) Meagre budgetary allocation to the Judiciary

The administration of justice in Zanzibar has been devilled by a historic and unjustifiable under-funding, which has adversely affected the facilities, the working conditions and indeed the efficiency of the Judiciary. Funding is crucial to maintain an independent judiciary and ensure that it is not dependent on the Executive.

RECOMMENDATIONS

(29) It is accordingly recommended that the budgetary provision for the Judiciary be dramatically increased. More precisely, adequate funds should be provided to meet the full financial implications of the recommendations contained herein with respect to the recurrent and the development budget for the Judiciary.

(xiii) Poor terms and conditions of judicial service

Historically, the Judiciary though a third arm of the state, has been taken merely as a Department of Government. The Chief Justice of Zanzibar complains that the judiciary has yet to be accorded high priority in terms of allocation of resources, and conditions of service are generally very poor compared to other Commonwealth jurisdictions and the provision of training facilities is almost absent. The relegation of judiciary to low priority has adversely affected all institutions of the legal sector. In the opinion of the Chief Justice of Zanzibar the Judiciary in Zanzibar is not accorded the requisite status it deserves, as is the case in other Commonwealth countries or even in Tanzania Mainland. Consequently the Judiciary in Zanzibar has always been starved of financial resources.

The pay structure is generally poor. Judges in Zanzibar earn very little by way of salary and a little bit more in terms of allowances. This has an adverse impact on retirement benefits as the pension is calculated on the basis of the basic salary and not the allowances. The Judiciary once came up with proposals for the pay structure of the judicial staff and submitted it to the Government, which rejected them apparently because the proposed salaries would have, in the opinion of the Government, been higher than those payable to “other civil servants.”

RECOMMENDATIONS

(30) It is recommended further that a Special Salaries Review Committee be appointed by the Judiciary to review judicial pay and other terms and conditions for judicial personnel in Zanzibar with a view to upgrading them.

(31) It is recommended also that the proposed committee should review also the terms and conditions of service in respect of other legal officers within the legal sector as a whole.

- (32) It is also recommended that the House of Representatives enact a special legislation in favour of Chief Justice's terminal benefits.**

(xiv) Dilapidated court buildings, poor facilities and lack of office space

Court buildings throughout Unguja and Pemba are in a "shocking state of disrepair" to say the least. The court building in Zanzibar Town, which was constructed in 1926 is overcrowded and poorly furnished without storage, library or adequate registry facilities. Both the High Court buildings in Unguja and in Chake Chake are congested, being home to the High Court, Regional Court, District Court, and the Kadhi's Court. The High Court building both at Unguja and Pemba has no library facilities.

Since 1970's, when People's Courts were established by the Revolutionary Government there has been no law books or reports secured for the Judiciary or the other legal sector institutions. The reference library at the High Court building in Unguja was converted into offices to accommodate the eight Judges that were recruited in the late 90s thus removing any prospects for a library. The Judiciary generally lacks almost all the necessary modern tools to make it work efficiently. It has very old manual typewriters and very few computers and printers, the majority of which have broken down due to lack of funds for maintenance and service.

RECOMMENDATIONS

- (33) It is recommended that the High Court buildings at Zanzibar and Chake Chake be rehabilitated and appropriately equipped with modern courtroom facilities for the Chief Justice, and fellow judges, and suitable accommodation for court staff. The Court should also have its own library.**

- (34) It is recommended that new magistrate court and residential houses should be constructed where there are no such facilities, or where existing facilities are in a state of serious disrepair.**

- (35) It is recommended also that appropriate provision be made for the initial needs assessment by a competent contractor to carry out the relevant architectural drawings and the preparation of the bill of quantities to enable the Government to assess the estimated costs for construction/rehabilitation.**
- (36) It is recommended further that the High Court at Zanzibar and in Chake Chake should be provided with the basic equipment and facilities on the basis of the recommendations of the needs assessment Team.**

ACTION PLAN FOR RECOMMENDATIONS ON THE COURT SYSTEM AND JUDICIAL ADMINISTRATION

S/N	Proposed Action	Time Frame	Responsible Institution
1	Upgrading primary courts and Kadhi's courts by stiffening qualifications	Within 2 years	Judiciary and Revolutionary Government of Zanzibar
2	Initiating study on High Court Rules	Within 1 year	Judiciary and Revolutionary Government of Zanzibar
3	Raising qualifications for High Court Judges	Within 1 year	Revolutionary Government of Zanzibar and Judiciary
4	Setting up a Rules Committee of the High Court to revise rules and procedures and practice governing litigation	Within six months	The Chief Justice of Zanzibar
5	Formalization of Case Flow Management Committees by Legislation	Within 1 year	The Revolutionary Government of Zanzibar
7	Increase of the annual recurrent and Development budgets for the Judiciary	Within 1 year	The Revolutionary Government of Zanzibar
8	Interim improvement of conditions of service	Within 1 year	The Revolutionary Government of Zanzibar
9	Reforming the administrative machinery of the Judiciary	Within 2 years	The Judiciary
10	Revisiting the recommendations of the special salaries review committee, which undertook comprehensive review of the terms and conditions of service of the Judiciary and include other parts of the Legal Sector	Within 1 year	The Revolutionary Government of Zanzibar
11	Implementation of the recommendations of above committee	Within 2 years	The Revolutionary Government of Zanzibar

12	The construction of new court buildings and provision of appropriate facilities	Within 5 years	The Revolutionary Government of Zanzibar with donor support
13	The renovation of High Court buildings and provision of appropriate facilities	Within 2 years	The Revolutionary Government of Zanzibar with donor support
14	Improvement of Library Facilities and provision of legal materials for Judges, Registrars, Magistrates and Kadhis	Within 1 year	The Revolutionary Government of Zanzibar with donor support
15	Training of High Court and Magistrates Courts Registry staff	Within 2 years	The Revolutionary Government of Zanzibar with donor support
16	Internship for aspiring magistrates	Within six months	The Revolutionary Government of Zanzibar
17	Orientation courses for newly appointed High Court, Magistrates and Kadhis	Within 1 year	Revolutionary Government of Zanzibar with donor support
18	Establishment and Training of Court Administrators and Legal Researchers	Within 3 years	Revolutionary Government of Zanzibar with donor support
19	Appointment of Law Report Editorial Board and Upgrading/Reprinting Law Reports	Within 1 year	Revolutionary Government of Zanzibar with donor support

6.2 THE LEGAL PROFESSION

6.2.1 INTRODUCTION

The legal profession is a crucial ingredient of any system of administering justice. The viability of Zanzibar's machinery of justice thus substantially depends on the legal profession's commitment to the cause of justice and its vigour in pursuing such a cause. Unfortunately, the previous revolutionary era regime created an uncongenial atmosphere in which the Bar was marginalized and indeed threatened with extinction, leaving its members "largely demoralized and unable or unwilling to play their role as courageous champions of civil liberties."

The Zanzibar revolution of 1964 abrogated the previous constitutional order and marked a break in the continuity of the basic norm and established a new basic norm (*Consultants' Reports on Constitutional, Electoral and Judicial Reform in Zanzibar*, Inter-Party Committee of CCM and CUF, 2000 at p.4). The revolutionary regime 1964-1984, abolished a well-established legal system, manned by well-trained lawyers and jurists and replaced it with a people's court system, which excluded lawyers and judges. During the revolutionary era 1964-1984, no resources were set aside for the legal sector, and there was virtually no building block to serve as a foundation for erecting a new legal system.

6.3.2 BACKGROUND

Zanzibar has for a very long time been without a Bar association, although recently a few of the practising lawyers in Zanzibar have regrouped and revived the Zanzibar Law Society, which is still in its nascent stages, with elected leaders and without office premises of its own. The legal profession in Zanzibar is relatively limited in numbers compared to the Mainland, with barely 18 practising lawyers for a population of about 900,000+ (2002 population census). Advocates

from the Mainland also do practice in Zanzibar but on a case-to-case basis. Specialization is rare and almost every advocate will deal with any aspect of the law, no matter how diverse. This practice undermines the ability of lawyers to give in-depth attention to legal matters – a situation, which is accentuated by lack of access to the most basic source of information – law books and law reports.

6.3.3 ISSUES AND PROBLEMS

(a) Admission to the Private Bar

The procedure relating to admission to the Bar in Zanzibar is relatively simple compared to the one obtaining in the Mainland. The admission to the Roll of Advocates in Zanzibar is governed by the Advocates Ordinance, which prescribes the qualifications for admission. A person who has satisfied the statutory requirements must also apply for admission by way of petition to the Chief Justice, who exercises the power of admission. The Chief Justice has exclusive discretionary power to admit an applicant to the Roll of Advocates. It is a matter of concern that a great deal of power is vested in one person. Good governance dictates the diffusion of such power among several members of a Committee or Council or Board. There is no Council of Legal Education in Zanzibar. So the Chief Justice determines both the applicant's professional qualification and suitability of character. We recommend that there should be established a Council for Legal Education in Zanzibar vested with all powers relating to admission to the Roll of Advocates.

One other rather anomalous aspect of the admission procedures is that law graduates who join ZAGC after the internship programme are permitted by statute to appear and practice in the Courts, although they have not been admitted to the Roll of Advocates. Their right of audience ceases with the termination of their appointment with the ZAGC. They have, upon leaving, to apply for admission to the Roll of Advocates, however experienced they may be. In other jurisdictions,

no lawyer would be appointed even to the lowest levels in the law officer's grade without prior admission to the Bar. There is a clear need to unify the prerequisites to joining the Private and Official Bars.

RECOMMENDATIONS

(37) It is recommended that a Zanzibar Council of Legal Education (ZACLE) be established for Zanzibar and be entrusted with the responsibility for determining all aspects of applications for admission to the Bar. ZACLE should be composed of the Chief Justice of Zanzibar as the Chairperson, the Registrar of the High Court of Zanzibar as Secretary, the Dean of the Faculty of Law and Shariah at Zanzibar University, two practising lawyers from Zanzibar appointed by the Zanzibar Law Society, the representative of the ZAG, and the representative of DPP as members.

(38) It is recommended that the admission procedures should include these basic elements:

- (a) A person who has successfully completed his or her vocational professional training at the proposed Law School may apply to the proposed Zanzibar Council of Legal Education (ZACLE) for admission to the Roll of Advocates.**
- (b) The proposed ZACLE should determine the professional competence.**
- (c) The ZACLE should determine the professional competence of the applicant and where necessary, the suitability of his or her character for the purposes of the enrolment.**
- (d) The ZACLE should set up a secretariat to assist in vetting each applicant, and direct enrolment if satisfied as the character and competence of the applicant**

(b) Post-Graduate Vocational Legal Training

There is no satisfactory system of post-graduate vocational legal training before admission to the Bar in Zanzibar. Unlike the system in other countries, including the neighbouring countries of Kenya and Uganda, the acquisition of a University law degree, is not followed by formal instruction in a law school for the purpose of acquiring practical legal skills. The internship system, which is organized in ZAGC and the Judiciary, has not been a viable alternative to a formal post-graduate law school programme. In any case, law graduates aspiring to be advocates usually join law firms directly. This calls for essential changes in the pre-qualification training programmes but also for a substantial increase of facilities for continuing legal education for practising lawyers.

RECOMMENDATIONS

- (39) **It is recommended that the Law School, which was proposed in the FILMUP Report, should be established as a joint institution between the RGZ and URT as an independent centre of legal education, with its own governing council institution, to offer formal postgraduate vocational legal training programme to equip graduates with training in practical legal skills beyond undergraduate instruction in law.**
- (40) **It is recommended also that law graduates of designated universities who wish to engage in the practice of law in Zanzibar must first successfully complete a course of study in the proposed Law School combined with a prescribed period of internship. The total duration of this study programme and the internship should not exceed one year.**
- (41) **It is recommended further that this postgraduate training in law must be a prerequisite to admission to the practice of law unless, exemption has been duly granted by a legally recognized authority.**

- (42) It is recommended that the four-year LL.B programme being run by both the Faculty of Law at the University of Dar es Salaam and the Faculty of Law and Shariah at the Zanzibar University be followed by not more than a one year full-time vocational training programme at the proposed Law School.
- (43) It is recommended that the vocational legal training programme should encompass a prescribed course work and an attachment of trainees to judges' chambers, law offices and other legal institutions such as the office of Registrar General, Commission for Wakf and Trust Property etc.
- (44) It is recommended also that the Ministry of State, President's Office, Constitutional Affairs and Good Governance (MS, PO, CAGG), in consultation with the Ministry of Education, the Judiciary and Faculty of Law and Shariah of Zanzibar University, draw up detailed plans for the vocational training programme, taking into account recent developments in professional training in the Commonwealth.

(c) Professional Misconduct and Discipline

The law in Zanzibar vests in the Chief Justice, powers to deal with complaints about the conduct of advocates. There is no body specifically entrusted with the powers of disciplining advocates who act unprofessionally. The need for a procedure for disciplining advocates who behave unethically is therefore long overdue. Although Zanzibar has not yet become a highly litigious society, and the culture of litigation has not yet reached the level where actions for malpractice are instituted in appreciable numbers against legal practitioners, such actions are foreseeable in the not too distant future, and taking insurance against malpractice liability and negligence would be a prudent aspect of legal practice.

RECOMMENDATIONS

(45) It is recommended that ZLS play a more prominent role in disciplining advocates. It should be vested with statutory power to take disciplinary action against its members except in cases, which may attract the sanctions of suspension or expulsion, subject to the right of appeal to the Zanzibar Advocates Committee.

(46) It is recommended also that there should be established an Advocates Committee for Zanzibar composed of three members, a judge of the High Court of Zanzibar, nominated by the Chief Justice of Zanzibar, the Deputy Attorney General of Zanzibar or the Director of Public Prosecutions of Zanzibar and a practising advocate nominated by the Council of Zanzibar Law Society. The Committee should be vested with statutory powers to deal with complaints about the conduct of advocates.

(47) It is recommended further that the Zanzibar Law Society should promote ethical conduct among the members of the profession by drafting and adopting Rules of Professional Conduct and Etiquette.

(d) **Specialization and Continuing Legal Education**

The increasingly sophisticated nature of legal practice calls for the cultivation of expertise in various areas of the law.

RECOMMENDATIONS

(48) It is accordingly recommended that there should be specialization both at the Bench and Bar as a way of improving the quality of legal services. To achieve specialization at the Bar, ZLS should encourage the establishment of partnerships or multi-member law firms.

- (49) It is also recommended that the Zanzibar Law Society organize lectures on a regular basis preferably during its Annual General Meeting for the continuing legal education of practicing advocates, establish a journal and encourage its members to contribute articles on a regular basis.**

(e) Office premises for ZLS

The Zanzibar Law Society does not have an office of its own at the moment. It operates from the offices of its Chairman.

RECOMMENDATION

- (50) It is accordingly recommended that the ZLS should endeavour to search for appropriate office premises of its own and that this should be supported and encouraged by all relevant authorities and bodies such as the Judiciary, ZAGC, DPP, individual advocates from within and without and personalities and interested donors.**

ACTION PLAN AND FINACIAL IMPLICATIONS IN RESPECT OF THE RECOMMENDATIONS ON THE LEGAL PROFESSION

Although some of the recommendations in this section call for Government action, the majority of them deal with the internal organization of the private Bar or ZLS, which are not susceptible to an externally determined action plan. ZLS will have to consider some of these proposals itself and determine its own action plan.

6.4 LEGAL AID AND DISSEMINATION OF LEGAL INFORMATION

6.4.1 BACKGROUND

The constitutional and economic reforms underway in Zanzibar entail a substantial expansion of the legal sector. The liberal constitutional order ushered in by the 8th Constitutional Amendments to the Constitution of Zanzibar of 1984 implies a whole range of potential legal processes for the enforcement of human rights, constitutional norms and legal interests. The introduction of market economy principles, with its attendant legal framework, has the potential of adversely affecting weaker members, the majority of whom are not aware of their rights and have no access to legal assistance or legal advice.

The introduction of multifaceted legal reforms revolving around fundamental concepts like the rule of law, human rights, democracy, good governance etc. is likely to be confined to small elite unless strenuous efforts are made to disseminate legal information to the bulk of the people. The majority of the people are not aware of their rights. Unless remedial measures are taken the new constitutional and legal dispensation will not be particularly meaningful for the vast majority of Zanzibaris, who have neither the means nor the intellectual resources to avail themselves of the benefits of the new constitutional order and good governance principles.

6.4.2 PROBLEMS AND ISSUES

(i) Legal Aid Programme

A modest programme of legal aid is currently administered by the Zanzibar Legal Services Centre (ZLSC), which operates from Zanzibar and has a branch in Chake Chake, Pemba. ZLSC depends entirely on donors to run its programmes, which are limited to providing legal advice and running public education programmes on

various aspects of the law and human rights. The ZLSC operates a branch office in Chake Chake, Pemba and has a thin staff constituting a full time Programme Officer/Coordinator, who is a lawyer, an administrative officer, a law assistant, one office attendant and a part-time secretary. ZLSC also benefits from the services of part time lawyers from both Zanzibar and the Mainland in running some of its legal training programmes. ZLSC cannot however, pretend to meet the needs of the entire population of Unguja and Pemba, particularly in the light of the expanding legal sector and its tiny staff. A more ambitious scheme of legal aid in Zanzibar is therefore more than appropriate.

The principles of good governance and access to justice have to be translated into reality by a system that assures legal aid and legal information to the vast majority of the people, lest they remain hollow. In Zanzibar, access to legal services is severely constrained due to acute shortage of lawyers and limited financial resources. The establishment of an effective system of legal aid is therefore critical to the administration of justice in the Isles. In practice there are no provisions for legal aid either by way of a government funded Public Defenders Office or by subsidized legal aid to private practitioners. When a person is charged with a capital offence (namely, murder or treason), the High Court directs a private practitioner to represent an accused. Such appointed advocates are paid only their travel and subsistence costs. It is apparent from speaking practitioners that undertaking such work is altruistic (*Munuo Nguni's* case).

The majority of persons charged with crimes carrying a penalty of life sentence or periods of incarceration do so without any legal assistance at the committal or hearing stages. The *Criminal Procedure Decree* Cap.14 provides a maximum of imprisonment for life in a wide range of offences such as rape, manslaughter, arson, kidnapping and disabling a person in order to commit a felony and sentences of terms up to 14 years in other offences. The powers of subordinate courts to sentence include powers to imprison and there is no legal aid provided for an accused person. It is clear that lack of legal representation for defendants in

criminal trials is seen as “unequal” and may be offend section 12(6)(b) of the Constitution of Zanzibar and offends against principles of human rights of equality of all before the law and the right to a fair trial, which includes legal representation.

RECOMMENDATIONS

- (51) It is recommended that as an interim measure a system of legal aid be introduced to provide representation in criminal cases to be specified by legislation; in such cases the Advocates’ fees and expenses should be paid by the state. Such representation should also be applicable to any Mzanzibari in litigation on enforcement of human rights and cases involving interpretation of the Constitution.
- (52) It is recommended also that as a long-term measure the Revolutionary Government of Zanzibar, the Zanzibar Law Society and interested donors collaborate in launching a comprehensive countrywide legal aid programme in Zanzibar. This programme will encompass all situations including where a private person or group seeks legal advice from a lawyer such as in establishing and operating a private business (a kind of Zanzibar Citizen’s Advice Bureau - ZCAB).
- (53) In order to ensure the successful implementation of the legal aid programme, we recommend that a legal aid office be established for the purposes of coordinating with, and proving effective support to, groups already engaged in legal aid.
- (54) It is recommended that the Revolutionary Government of Zanzibar should provide funding for the initial stages of the legal aid programme with possible injection of donor funds.

(ii) Legal Literacy Programme

Legal literacy among the people facilitates the development of the constitutional and legal culture of the new order. It has good governance implications too. The best way of extending legal education to the rural areas is to establish intensive paralegal training programmes for a group of people working in the rural areas. This calls for the institutionalisation of a system of training and recognizing paralegals.

RECOMMENDATIONS

- (55) It is recommended that a legal literacy programme be launched.**
- (56) It is recommended also that appropriate legal subjects should be incorporated in the school curriculum in primary schools as well as at the secondary level.**
- (57) It is recommended further that adequate legal information should be supplied to the public. Arrangements to ensure adequate publication of law materials should be made accordingly. The Government Press should be assigned the task of publishing the materials but needs to be supported financially to meet its training needs for the staff, purchase of new machines and rehabilitating existing ones.**
- (58) It is also recommended that concerted efforts should be made to improve the distribution of legal information and materials to the public.**

ACTION PLAN FOR THE RECOMMENDATION OF THE PROPOSALS ON LEGAL AID AND DISSEMINATION OF LEGAL INFORMATION

Activity	Time Frame	Responsibility
Conclusion of Cooperation Agreement for the establishment of Zanzibar Legal Aid Office (LAOZ) for the implementation of Zanzibar Legal Aid Programme between RGZ, ZLS, donors and ZLSC	Within 1 year	Revolutionary Government of Zanzibar, Zanzibar Law Society, Zanzibar Legal Services Centre and donors
Enactment of appropriate legislation providing for the establishment of the legal aid programme	Within 1 year	Revolutionary Government of Zanzibar
Creation of Legal Aid Board	Within 1 year	Revolutionary Government of Zanzibar
Introducing legal education in primary and secondary schools	Within 4 years	Ministry of Education
Preparing appropriate legal materials for paralegal programme and primary and secondary schools	Within 3 years	Ministry of Education, Zanzibar Law Society and Zanzibar Legal Services Centre

6.5 ATTORNEY GENERAL'S CHAMBERS

6.5.1 BACKGROUND

The Attorney General Chambers of Zanzibar fall outside the purview of Union matters, and is a department of the Government of Zanzibar. The Zanzibar Attorney General Chambers (ZAGC) has a pivotal role to play in all the vital functions of the Revolutionary Government of Zanzibar, namely the introduction of a new, democratic constitutional order; the administration of justice; the creation of appropriate legal framework for development and major economic reforms; and the drafting of legislation to facilitate the machinery of good governance. The ZAGC plays a crucial role in the democratisation process and in the implementation of the economic reforms underway. It is necessary therefore for the Revolutionary Government of Zanzibar to make available the resources necessary to revitalize the department.

The Attorney General of Zanzibar is the principal legal advisor of the Revolutionary Government of Zanzibar and an e-officio Member of the House of Representatives. Yet for decades the ZAGC has been marginalized and underfunded. Recently the office of the Director of Public Prosecution was established as a separate and independent Government department vide the 8th Constitutional Amendments to the Constitution of Zanzibar of 1984. Previously public prosecution was the function of the office of the Attorney General's Chambers.

6.5.1 PROBLEMS AND ISSUES

(i) Constitutional and Legal Authority of the Office of the Zanzibar Attorney General

The constitutional and legal position of the Attorney General of Zanzibar (ZAG) is somewhat unclear. The office of ZAG is governed by section 55 of the Constitution of Zanzibar of 1984, which provides for the appointment of the Attorney General of Zanzibar by the President of Zanzibar and designates the Attorney General as the principal legal adviser to the Revolutionary Government of Zanzibar.

The constitutional attributes of the office defy the characterization of the ZAG as a public officer in the strict sense, due to the following reasons:

Firstly, the ZAG lacks security of tenure, the essential ingredient of a public office, since under section 55(3) of the Constitution of Zanzibar, his appointment may be revoked by the President of Zanzibar at any time, and he is, in any case, obliged to vacate his office immediately before a President-elect assumes office.

Secondly, as per section 55(3) and 64(e) of the Constitution of Zanzibar, the ZAG of Zanzibar is an ex-officio Member of House of Representatives.

Thirdly, by virtue of section 43(3) of the Constitution of Zanzibar, the ZAG is entitled to attend all the meetings of the Revolutionary Council and has all rights of a member of the Council.

It would appear that the ZAG's office is in effect a political office. Yet the ZAG does not enjoy ministerial status, is not a full member of the Revolutionary Council and cannot properly be described as a politician. According to section 44(2) of the Constitution, members of the Revolutionary Council who are not Ministers are designated as Ministers without portfolio. The ZAG is expected to carry out the functions of that office as the guardian of the public interest impartially and free from all partisan pressures and yet the incumbent of the office does not enjoy the security of tenure or the institutional independence of a High Court Judge.

RECOMMENDATIONS

(59) It is recommended that the Attorney General of Zanzibar should be appointed primarily on professional grounds, although he must be acceptable to the President of Zanzibar. He must have the professional qualifications for appointment as a High Court Judge.

(60) It is recommended that the ZAG should be appointed by the President of Zanzibar subject to confirmation by House of Representatives but serve at the pleasure of the President and continue to be an ex-officio Member of

House of Representative. The ZAG should continue to attend Revolutionary Council meetings, and should be a full member to enable him to advise the Revolutionary Council.

(ii) Chronic underfunding

The ZAGC continues to be underfunded due to the existence of financial constraints.

RECOMMENDATION

- (61) It is recommended that urgent remedial steps should be taken to deal with the problem of chronic under-funding of the ZAGC by ensuring that the budgetary provision for the ZAGC is adequate, equitable and based on realistic and scientific premises.**

(iii) Organization and management of ZAGC

The office of ZAGC has yet to formulate short-term, medium-term and long-term development plans and programmes. The ZAG has constitutional status as the principal legal adviser to the Revolutionary Government of Zanzibar. A Deputy Attorney General cum Permanent Secretary in the Ministry of State, President's Office Constitutional Affairs and Good Governance (MS, PO, CA&GG) assists the ZAG. The position of Deputy Attorney General of Zanzibar (DAG) in the chain of command is far from clear, and his professional responsibilities in AGC, as distinguished from his administrative functions as Permanent Secretary of the MS, PO, CA&GG, do not appear to be clearly defined.

The DAG's administrative responsibilities as PS of the MS, PO, CA&GG detract from his contribution to the purely substantive, professional work. Shifting from one office to the other and allocating time between administrative and legal functions, the DAG, also performs the functions of ZAG in the latter's absence

and he also carries out specific assignments from the AG, such as appearing in courts of law on behalf of the ZAG.

RECOMMENDATIONS

(62) It is recommended that the position of the Deputy Attorney General in the ZAGC hierarchy should be clarified. The office of the Deputy Attorney General should be established by the Constitution of Zanzibar or by statute as the Number 2 in the hierarchy, with power to deputize for the Zanzibar Attorney General in the latter's absence or inability to act.

(63) It is recommended that the Deputy Attorney General should have immediate responsibility for the supervision of all civil, constitutional and international legal work, including the provision of advice in these areas.

(64) It is also recommended that the Deputy Attorney General should not continue holding the position of Permanent Secretary and the Accounting Officer of the MS, PO, CA&GG. The President should appoint a lawyer to be the Permanent Secretary to the MS, PO, CA&GG.

(iv) ZAG Relations with Other Government Legal Offices

The relations between the legal officers of other Zanzibar Government departments and the Zanzibar Attorney General's need to be streamlined. The issue is whether such officers can give definitive advice to their respective Departments without reference to the AG as the Principal Legal Adviser to the Revolutionary Government of Zanzibar or whether it is practically feasible to clear such advice before issuing it.

RECOMMENDATIONS

(65) It is recommended that a unit of Justice, Constitutional and Human Rights Affairs should be established in the office of the AGC for co-ordinating the Ministry's responsibilities in justice, constitutional and human rights issues.

(66) It is recommended that the above proposed unit should be supervised directly by the Deputy Attorney General and should be concerned with advising the Revolutionary Government of Zanzibar, its departments and public officials on the tenets of the Constitution and human rights principles and representing the Government and other public agencies in constitutional and human rights cases instituted by individuals and other members of the public against such authorities.

(iv) Terms and Conditions of Service

The terms and conditions of service for State Attorneys, the incentives and schemes for ZAGC are generally poor. The ZAGC, like all the other institutions in the legal sector has suffered from the general neglect by the Zanzibar Government.

The Attorney General himself is of the opinion that the terms and conditions of the law officers in his office are relatively good though not that satisfactory compared to other offices in the legal sector. However, in the opinion of the law officers that were interviewed, their terms and conditions of service are still poor and depressing. There can be no assurance that the major political and economic reforms underway will be effective unless they are implemented by key institutions such as the ZAGC, and the State Attorneys in that office cannot play their expected role when they lack the necessary motivation to do so.

RECOMMENDATIONS

(67) It is recommended that a Special Committee be established to review the terms and conditions of service of all other parts of the legal sector including the ZAGC and other Government Departments. The Committee should look at matters such as increasing basic salary scales; various allowances payable to law officers (housing, entertainment, transport, medical care, utilities (telephone and electricity), domestic and servant allowances, duty allowances); according State Attorneys with the status of “rare profession”; retirement benefits etc.

(68) It is also recommended that the current scheme of service for state attorneys should be reviewed with a view to make it more attractive by adoption of incentives such as: reduction of the mandatory steps in the progression from the lowest to the highest rank; and more openings for senior positions.

(v) Training Needs

There is no systematic training programme due to lack of resources. Enterprising officers have sought training opportunities by their own efforts and then secured sponsorship from donors. Despite resource constraints, the training needs of the office need to be spelt out, subject to the availability of funding whether from internal or external sources. Furthermore there is little facility for specialization within the ZAG. The ZAG remarked that lack of specialization has virtually turned his staff into “jack of all trades.” The only legal drafting expert the AGC had is now the Permanent Secretary cum Deputy Attorney and the only expert in commercial law the AGC had is currently the Director of Public Prosecution. The office of Attorney General therefore suffers from acute shortage of specialist lawyers particularly in the area of commercial law and constitutional law as

well as legislative drafting. The case for training more legislative drafters is compelling, particularly since legislative drafting is not covered by the normal LL.B curriculum.

According to the Attorney General, there is a need for immediate specialist training of existing personnel in the areas of legislative drafting, civil litigation, international business transactions and in the prosecution of sophisticated crimes such as computer crimes and organised crimes.

(vi) Personnel Needs

A major problem confronting the department of Attorney General Chambers is acute shortage of trained manpower. The ZAGC has only eight (8) state attorneys. Attempts to train lawyers within the past decade have been seriously constrained by limited resources. There is also high demand for lawyers from the AGC by other Government offices. This coupled with low recruitment drive within the ZAGC itself, has made the crop of specialized lawyers to dwindle tremendously. Although the ZAGC has been conducting an internship programme for new law graduates, this system has proved ineffectual, and the ZAGC lacks any structured system for in-service training of junior or middle-level attorneys. A central strategy for the upgrading of the legal sector and in particular, the office of Attorney General, is the training of its personnel to meet the challenges of the new political, constitutional and economic order.

RECOMMENDATIONS

(69) It is recommended that a training needs assessment for the legal sector as a whole be carried out.

(70) It is recommended that the Office of Attorney General be assisted to send some Law Officers to the Commonwealth Secretariat's Legislative Drafting Programme at the University of West Indies at Cave Hill, Barbados

and after graduating from the LL.M programme, officers would profit from an attachment to the Office of the First Parliamentary Counsel in London.

(71) It is recommended that while the long-term strategy for addressing the deficiencies lies in training state attorneys, there is an immediate need to recruit a number of experts to fill existing gaps and to provide on-the job training in the interim period.

(72) It is recommended that in addition to the normal on-the-job training provided by senior attorneys in the ZAGC, we recommend that an international expert be engaged to provide on the job-training to drafters at various levels of competence for one year.

(73) It is recommended that the AGC should develop a structured system for in-service training of junior or middle-level attorneys

(74) It is recommended also that Senior members of the management of ZAGC should undergo management training, which includes management techniques and information systems.

(vii) Office space, equipment and materials

A basic problem with the ZAGC is lack of adequate office accommodation. The ZAGC office though it appears as if it has recently been renovated, it still need some major rehabilitation, particularly to create space for the library. The ZAGC has yet to make a complete transition to modern offices equipped with computers, word processors, photocopiers, laser printers etc. The total office equipment needs of the ZAGC need to be addressed.

Another pressing need to be addressed is transportation. The ZAGC has little facilities for transporting staff to and from office and other official engagements.

The State Attorneys take advantage of the proximity of the AGC office to the Court building to walk to court.

The ZAGC is most deficient in legal materials. The ZAGC has no library. The little legal materials that there is, are outdated. 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, textbooks on international law, books on constitutional and human rights law. The law reports of Zanzibar are in arrears for the last 30 years. Recently the Department acquired a large consignment of the Tanzania Law Report but due to lack of library space the reports are still lying in the ZAG office. There is no system for law reporting in Zanzibar. There is an Editorial Board for Law Reports for the Court of Appeal of Tanzania, to which the Attorney General of Zanzibar is represented.

There has not been a revision of the laws of Zanzibar since the last revision in 1958 by the colonial government. Some of the laws are simply inaccessible. According to the ZAG there is an immediate need for the review of all the Zanzibar laws, consolidating and harmonizing them as well as preparation of a legal index. There is also a need for printing all the laws and compile them in volumes annually. The last such effort was done in 1990 with a funding from USAID, which enabled the ZAGC to compile and bind the laws of Zanzibar from 1984-1994 in two volumes. Subsequently the ZAGC with own internal sources compiled the 1995-1998 laws of Zanzibar.

RECOMMENDATIONS

- (75) It is recommended that the offices of the ZAG should be refurbished with modern furniture and make space for a library equipped with all the modern library facilities. These will have to be determined by the needs assessment team.**

(76) It is recommended also that the office of ZAG should be equipped with micro-computers, computer work stations, laptops, laser printers, Matrix printers, photocopiers, cabinets, electric typewriters and air conditioners in the quantities and for purposes to be indicated by the Report of the proposed needs assessment team.

(77) It is recommended further that the proposed legal sector needs assessment team also look at the needs for the AGC.

ACTION PLAN WITH RESPECT TO AGC

Proposed Action	Time Frame	Responsibility
Organizational and institutional reforms	Within 1 year	Revolutionary Government of Zanzibar
Interim improvement of terms and conditions of service	Within 1 year	Revolutionary Government of Zanzibar
Preparation of ZAGC's comprehensive training programme	Within 1 year	Revolutionary Government of Zanzibar
Conducting training needs assessment and costing	Within 1 year	ZAGC, RGZ
Conducting needs assessment and costing	Within 1 year	ZAGC, RGZ
Procurement of legal materials and equipment	Within 2 years	RGZ, Donor support
Implementation of training programme	Within 4 years	RGZ, Donor support
Expansion or construction of office facilities for ZAGC and its Pemba Office	Within 3 years	RGZ, Donor support
Comprehensive review of terms and conditions of service	Within 2 years	RGZ
Upgrading of the Revised Laws, harmonizing, compiling, binding	Within 1 year	RGZ, ZAGC

6.6 OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS

The Revolutionary Government of Zanzibar on its own initiative has implemented some of the recommendations in the Legal Task Force particularly by establishing office of Director of Public Prosecution, with the ultimate aim of civilianising the public prosecution system at least at the District level by the year 2007.

6.6.1 BACKGROUND

One of the crucial areas of the administration of justice is the prosecution of criminals. Indeed, a country's system of criminal justice is a critical aspect of the rule of law – a major element in good governance. The Office is expressly provided for in the Constitution of Zanzibar of 1984. Previously, there was no independent office of DPP in Zanzibar and the functions of public prosecution and civil litigation were fused together in the AGC. Both the Report of the Legal Task Force and the Report of the Consultants Report on Constitutional, Electoral and Judicial Reform in Zanzibar had recommended for the separation of public prosecutions and all related matters by removing them from the office of the Attorney General and placing them under an independent office of the DPP, which should be a constitutional office (*Consultants' Report on Constitutional, Electoral and Judicial Reform in Zanzibar*, Inter-Party Committee of CCM and CUF, Zanzibar, 2000 at p.19).

The office of DPP is now established by virtue of section 56A of the Constitution of Zanzibar of 1984 as amended by the 8th Constitutional Amendments, Act No.2 of 2002, thus guaranteeing its institutional independence. According to section 56A(1)(a) of the Constitution of Zanzibar as amended, the DPP of Zanzibar is appointed by the President of Zanzibar and holds office for a renewable period of five years. The qualifications for appointment to the office are identical to those applicable to a Judge of the High Court.

The DPP of Zanzibar is vested with powers to institute criminal proceedings, take over and continue criminal proceedings and discontinue criminal proceedings instituted by himself or any other authorities. The DPP is enjoined to have regard to the public interest, interest of justice and the need to prevent abuse of the legal process when exercising his constitutional powers. In the exercise of his constitutional powers the DPP is independent. He exercises his own discretion and is not to be subjected to the directions or control of any person. This however, does not prevent the DPP from consulting the AG, as the Principal Legal Adviser to the Government, on any issue of public interest and take the AG's advice or opinion into account in the discharge of his constitutional responsibilities. The DPP's tenure is secured under the Constitution of Zanzibar and cannot be removed from office during his five-year tenure except in accordance with procedure similar to that for removing a judge of the High Court.

6.6.2 PROBLEMS AND ISSUES

(i) Independence and Institutional Capacity

The office of DPP has now been structured in such a way that will assure the incumbent the independence and the institutional capacity requisite to the adherence to the basic constitutional tenets in the conduct of criminal proceedings and in the supervision of a unified and civilianised national system of prosecution. According to the DPP, the civilianised system of prosecution will be instituted at least up to the District level by the year 2007.

The office of DPP, like all the other offices in the legal sector is also dogged with a number of institutional, organizational and resource problems, which require immediate and urgent attention. The formidable prosecutorial discretion vested in the DPP of Zanzibar should not be prostituted by lack of integrity or otherwise abused. There is no doubt as to the personal integrity and professional competence

of the person currently serving as the DPP of Zanzibar - a former Deputy Attorney General and Permanent Secretary of the Ministry State, President's Office, Constitutional Affairs and Good Governance. Theoretically, DPP's constitutional powers of supervising all public prosecutions imply authority to review the adequacy of criminal investigations for purposes of criminal prosecutions.

The Director of Public Prosecution as the head of the Prosecution Service has been entrusted with the task of ensuring that the prosecution of offenders is civilianised. This system, when fully operational will do away with the old system of relying on Police Officers to investigate crimes and conduct criminal prosecutions in court. The old system therefore created a dual role for Police Officer. It was highly repugnant to the principle that prosecution should be independent of government control, be impartial and fair, and concerned with the pursuit of justice rather than with winning or losing a court case. The recruitment and training of staff needs to take into consideration the plan to civilianise prosecution services to the District level by the year 2007. Training requires substantial amount of financial resources and in this regard donor assistance is necessary.

(ii) Inadequate Budget

The office of DPP being a newly established office suffers from resource constraints, human, physical and fiscal. The office of DPP, being a legal sector institution, follows the applicable Government budget procedures, and is entitled to meagre budgetary allocations to the Ministry of Constitutional Affairs and Good Governance. These have been woefully inadequate leading to a chronic state of under-funding. These procedures and allocations are not based on a scientific and realistic evaluation of the needs of the Ministry nor are they justifiable on equitable grounds vis-à-vis the treatment accorded to other departments.

(iii) Personnel Needs

The office of DPP has no staff of its own at the moment. It still relies on law officers from the ZAGC. As has been pointed out, the terms and conditions of service and the incentives scheme for ZAGC are poor. There is a need therefore for the DPP to give the question of staff recruitment, training and retention a serious consideration. The need for reviewing the terms and conditions of service applicable to public law officers cannot therefore be understated. Without improved terms and conditions it will be difficult to attract competent staff to work in the new establishment.

(iv) Office Space

The Office of DPP is currently located in the ZAGC, virtually only one office. The office therefore lacks all the basic requirements of an office of its status. There are plans already for the renovation of one building at Migombani, Zanzibar, which will serve as DPP office. The cost estimates for the renovation, equipment and materials required appear below in the financial implication of the plan of action for the DPP's office. The immediate needs of the Office of DPP in terms of equipment are: 2 cars (1 for Unguja and another for Pemba), 2 pieces of heavy duty photocopiers; 6 computers and printers; 2 binding machines, 3 scanners, LAN facilities and Internet facility. On a long-term basis the Office of DPP will need photocopy machines, overhead projectors and accessories for its in-service training facilities; transport and assistance in establishing forensic examination facilities. This will be identified in the proposed comprehensive needs assessment study for the legal sector institutions.

(v) Training Needs

A central strategy for the upgrading of the legal sector and in particular, the office of the DPP, is the training of its personnel to meet the challenges of the new

prosecutorial role and the supervision of a unified and civilianised national system of prosecution. The Office of DPP needs to develop expertise in the following critical areas:-

- i. The prosecution of white collar crimes in particular fraud and corruption including money laundering and other financial crimes.
- ii. Drug trafficking
- iii. Sexual offences

In the medium-term, the Office of DPP can do with short-term field attachment in Tanzania Mainland at least for two months for four (4) officers to begin immediately.

The training needs are both for long and short-term training. The training needs assessment proposed for the whole legal sector will dwell into the details of the kind of training needed for every institution in the legal sector including the Office of the DPP. The training requirements for the Office of the DPP are as follows:

Year	Short Course	Long/Postgraduate
2003	6	1
2004	8	2
2005	11	4

Short-term training is needed in the following areas:

- Fraud and corruption cases including money laundering and other financial crimes for six (6) officers
- Drug trafficking cases for four (4) officers
- Sexual offences for four (4) officers
- Administration of criminal justice for four (4) officers from the DPP's Office, Court, Police and Ministry)

The Office of DDP could benefit tremendously from the services of the International Law Enforcement Academy (ILEA), which was officially opened on March 15th this year in Gaborone, Botswana. The Academy, covering all of Southern Africa, has trained about 108 Tanzanians and more than 500 law enforcement officials from African countries since its inception in 2001. According to the US Embassy spokesperson, this year the Embassy expects to have an additional 80 to 100 Tanzanian law enforcement officers trained at ILEA (*The Guardian*, Thursday, March 13, 2003 “Law enforcement centre set for opening in Botswana” at p.5). The Office of DPP in Zanzibar should not miss out at this golden opportunity.

The ILEA Gaborone was set up under the leadership of the US Federal Law Enforcement Centre (FLETC), whose parent organization is now the US Department of Home Land Security. It provides training for middle managers in criminal justice fields from countries that are members of the Southern African Development Community (SADC). The core curriculum of ILEA Gaborone follows the model developed in the successful ILEAs in Budapest, which was established under the leadership of the US Federal Bureau of Investigation (FBI) in 1995 and Bangkok, which was opened under the leadership of the US Drug Enforcement Administration (DEA) in 1998. Another ILEA based in New Mexico serves as an academy for graduates of other ILEAs. The ILEA Gaborone provides courses on a wide range of law enforcement skills: counter-terrorism, forensics, basic case management, fighting organized crime, supervisory police training, police strategy, narcotics identification and evidence handling, customs interdiction, illegal immigration, and public corruption, among others.

RECOMMENDATIONS

(78) It is recommended that the Revolutionary Government of Zanzibar (RGoZ) should ensure that the process of civilianisation is instituted without further delay and that the appropriate legislation should be enacted to regulate the proposed system of civilian prosecution in the office of the DPP.

(79) It is recommended also that the RGoZ should ensure that as soon as possible it prepares and tables before the House of Representatives a specific legislation to implement section 56A(10)(a)-(e) of the Constitution of Zanzibar with regard to the powers and functions of the DPP, with a provision in the new legislation empowering the DPP:

- to call for any file from the Police for his perusal.
- to seek any relevant information necessary for the performance of his duties from any person, office or institution.
- to order investigation or further investigation of any case.
- To specify the grounds, in writing or orally, whenever he enters a *nolle prosequi* in consonance with modern trends, which subject prosecutorial discretion to public scrutiny or judicial review.

ACTION PLAN DPP's OFFICE

Activity	Time Frame	Responsibility
Organizational, institutional reforms in order to provide appropriate institutional framework for the civilianisation of the prosecution system	Within 5 years	RGZ, DPP, AGC, Police, Judiciary
Interim improvement of terms and conditions of service	Within 1 year	RGZ
Preparation of comprehensive training programme and allocation of appropriate budgetary resources	Within 1 year	DPP, RGZ
Procurement of books, equipment and materials	Within 1 year	DPP, Donor support
Implementation of training programme	Within 3 years	RGZ, Donor support
Expansion or construction of office facilities for DPP and its branch office in Chake Chake, Pemba	Within 1 year	RGZ, donor support
Review of Terms and Conditions of Service	Within 2 years	RGZ
Preliminary action towards civilianisation of prosecution service	Within 1 year	RGZ, donor support
Establishing forensic services	Within 2 years	RGZ, Donor support
Review of Laws relating to administration of justice	Within 1 year	RGZ, Donor support
Formulation of Penal and Sentencing Policy	Within 2 years	RGZ, Donor support
Formulation of Policy on Treatment of Offenders	Within 2 years	RGZ, Donor support
Review of System of Administration of Criminal Justice	Within 2 years	RGZ, Donor support
Printing of Laws on Administration of Criminal Justice	Within 1 year	RGZ, Donor support

6.7 OFFICE OF MUFTI OF ZANZIBAR

6.7.1 BACKGROUND

(i) Legal Status of the Office of Mufti

The Office of the Mufti of Zanzibar is a statutory creature. It is established by the Office of Mufti Act (No.9 of 2001). Previously, the functions of the Mufti under the Commission for Wakf and Trust Property. However, historically the Chief Kadhi had a mandate to deal with issues, which are now the concern of the Office of Mufti. The enactment of the Kadhi's Courts Act in 1985, the Commission for Wakf and Trust Property Act in 1980 and the Office of Mufti Act in 2001, envisages a clear separation of functions between judicial and religious matters. However, this is not entirely the case as the Chief Kadhi who is the Head of the Kadhi's Courts is also a member of the Ulamaa Council – a body of Islamic religious scholars which is chaired by the Mufti. Kadhi's courts are constitutionally recognized as a judicial organ under section 99 of the Constitution of Zanzibar.

(ii) The Mufti and Functions of Office of Mufti

The Mufti is a Presidential appointee and is the head of the office of Mufti. The qualification for appointment are a Zanzibari, who in the opinion of the President of Zanzibar, "is qualified and has adequate knowledge in Islamic "shariah" and other religious matters" and "command of respect among Islamic scholars." The Mufti is assisted in his daily work by a Deputy Mufti, also a presidential appointee and located in Pemba. According to the Office of Mufti Act the Deputy Mufti has to have the same qualifications as the Mufti.

The functions and powers of the Mufti are clearly stipulated in the founding legislation. These are:

- to give “fat-wa” on any issue raised to him relating to any Islamic question, which need to be decided;
- to keep record of all “fat-wa” issued by his office;
- to settle any religious dispute arising among Muslims and any religious dispute arising between Muslims and other religions in consultation with other leaders of that other religions;
- to organize Islamic research and prepare curriculum of education for ulamaa in Zanzibar;
- to approve lecturers of Islamic religion from outside Zanzibar;
- to coordinate and supervise the preparation of lectures, workshop, seminar and other Islamic activities;
- to control and approve the importation, supply and translations of all Islamic books;
- to coordinate the activities of various Islamic groups within Zanzibar;
- to coordinate and announce the sighting of a new moon;
- to coordinate and supervise the activities of all mosques of Zanzibar and to keep records of all mosques and Ulamaa of Zanzibar;
- to approve the registration of Islamic Societies in accordance with the Societies Act of 1995.

It is clear from the above provision that the Mufti has a co-ordinating as well as decision-making role. Clearly, some of the functions of the Office of the Mufti violate the provisions of religious liberty and the freedom of assembly and association, which are guaranteed in the Constitution of Zanzibar. The Mufti is statutorily mandated to work “hand in hand” with the Office of Chief Kadhi, who administers Islamic law in cases concerning Islamic personal status matters involving Moslem parties, and the Executive Secretary of the Wakf and Trust Commission, who administers wakf and inheritance property. The Mufti serves on the Wakf and Trust Property Commission in the capacity of Chairman. The Office of Mufti also conducts reconciliation among parties for matters, which fall under its jurisdiction as stipulated in the founding legislation.

(iii) Secretary to the Mufti

Administrative matters for the Office of Mufti are handled by Secretary to the Mufti, who is also appointed by the President in consultation with the Mufti. In order to qualify for appointment as a Secretary a person must hold sufficient knowledge in Islamic shariah and public administration. The Secretary to the Mufti handles the day-to-day administration of the Office of the Mufti and also serves as principal assistant to the Mufti. The Office of the Mufti currently has a work force of 23 both for the Unguja and Pemba offices. The Office of the Mufti has four units, namely: Administration; Fat-wa; International Relations; and Research.

(iv) The “Ulamaa” Council

The Mufti may seek the opinion of some “ulamaa” of Zanzibar in any particular issues before giving a “fat-wa” that is, the final decision of the Mufti on controversial issues brought to him for decision. An “Ulamaa” is a religious scholar who has adequate knowledge of various Islamic religious matters. According to the Regulations for the Ulamaa Council, Notice No.98 of 2002, there are two Ulamaa Councils, one for Unguja and another for Pemba. The Mufti is the Chairman of the Ulamaa Council and the Chief Kadhi is a member in the Council.

6.7.2 PROBLEMS AND ISSUES

(a) Constitutional implications of the Office of Mufti

The Constitution of Zanzibar of 1984 as amended recognizes the equality of every person before the law and religious liberty. The main element of rule of law, which is one of the components of good governance, is equality and protection of

all persons the law without discrimination. The Constitution of Zanzibar prohibits any authority from making any provision that is discriminatory either of itself or in its effect. Furthermore, it is prohibited by the Constitution of Zanzibar for one person to be discriminated against by another person or any authority acting under any law or in the discharge of the functions or business of any state office. It means that the state cannot for example make a law declaring the Ten Commandments in the Bible or the Holy Q'uran for that matter to be part of the laws of Zanzibar. This would most probably be challenged as being unconstitutional for it touches on the basic pillar of the modern nation-state: secularism.

The state of Zanzibar is a secular one. However, it enjoins state support for the establishment, management and funding of but only one particular religious denomination at the expense of all others. In this regard the President of Zanzibar is by state law empowered to appoint leaders of one religious establishment – the Mufti and the Secretary to the Mufti in the Office of the Mufti. The leaders of this otherwise purely religious institution draw their salaries from government coffers, which is the tax- payers' money. They are therefore salaried civil servants. The funds for running the Office of the Mufti come directly from the Government coffers through the annual budget estimates, which are presented by the Ministry of State, President's Office, Constitutional Affairs and Good Governance and approved by the House of Representatives. The Office of the Mufti prepares its own budget and submits it to the Minister responsible for religious matters for his approval. The Minister is also empowered by the founding legislation of the Office of the Mufti to make regulations for the effective carrying out of legislation.

While ascribing to idea of freedom of worship and the distancing of state functions from supporting the establishment, administration and funding of religious institutions, it would be wise if this issue would be considered within the larger constitutional and human rights premise. Although some quarters may be

tempted to argue strongly that the Islamic religion in Zanzibar is not only a faith but also a way of life for the majority of the Zanzibari people, this does not dissuade others from arguing against the support by the state of only one form of religion at the expense of the other minority religious groups, which could be seen as discrimination and a clearly violating the provisions of the Constitution of Zanzibar on religious liberty and separation of state, law and religion. Recognizing and supporting only one form of religion in a country with plurality of religious groups may amount to suppression of the minority religious denominations, all of which are equally entitled to protection before the law.

The doctrine of separation, which is enshrined in the Constitution of Zanzibar, does not allow for any room for the functions of religious bodies or the organizational hierarchy of such bodies within the structure of the secular state as it is the case for example with Islamic states such as Iraq, Iran and Pakistan. Furthermore constitutional provisions, which separate the affairs and management of religious bodies from state functions in effect, create a wall of separation between state and religion. It means that religion is a matter between human beings and their creator, to whom they owe account for their faith or worship and that the legislative powers of the Government reach their actions only, and not their opinions or belief.

It would therefore be wise for the state in Zanzibar to try and maintain secular neutrality in matters as private as worship within the constitutional scheme by leaving all religious organizations and affairs within the realm of “civil society”, rather than trying to control them through state law. Religious organizations like all other non-governmental organizations should be required to register and allowed some space to operate and freely conduct their religious activities without any form of state interference unless there is a breach of the laws of Zanzibar. The legislature in Zanzibar should not attempt to make any law respecting the establishment of religion or religious institutions, or prohibiting its free exercise so long as the laws of Zanzibar are respected. Religion is voluntary, and cannot

and ought not to be forced. Religious bodies as such have nothing to do with the state except to obey its laws and to strengthen its moral foundation; the state has nothing to do with religion except to protect the property of religious bodies and religious liberty. The state must therefore be equally just to all forms of belief and unbelief which do not endanger the public safety.

The guarantee of religious liberty in the Constitution of Zanzibar is a sign of high level of tolerance for religion. However, tolerance is a concession, which may be withdrawn; it implies a preference for the ruling form of faith and worship, and a practical disapproval of all other forms. Religious liberty, which is a positive force is regulated by law. Equally, the Constitution of Zanzibar protects freedom to irreligion and infidelity, but only within the limits of the order and safety of society. Religious liberty, which is orderly exercise of religious duties and enjoyment of all its privileges, compliments civil liberty. It is freedom in religion, not freedom from religion, which we should strive at achieving, as true civil liberty is freedom in law, and not freedom from law.

(b) Personnel and Training Needs

The Office of Mufti has a workforce of about 23, out of which only one holds a Masters degree, 3 hold a first degree and one holds a diploma. The rest are low cadre employees who are secondary school leavers. Of the 4 administrative sections earmarked in the organization structure of the Office of the Mufti, three have been filled already and one is still vacant. The building housing the Office of Mufti is relatively in a good condition but requires a facelift and equipping with modern office facilities and equipment. Office furniture satisfies only 75% of the requirements. The Office of Mufti has 1 Computer (not working), one photocopier (not working), 2 manual typewriters (working), 1 telephone (disconnected for failure to settle bills).

(c) Office Space

The Office of Mufti is housed in an apartment rented from a private person. Search for a place to build a new office apartment is at an advanced stage. The existing office building has neither facility for library nor relevant reading materials.

RECOMMENDATIONS

- (80) **It is recommended that the law establishing the Office of the Mufti be reviewed to harmonise it with constitutional provisions on religious liberty, freedom of speech, assembly and association as well as separation of religion and state in line with the doctrine of separation of powers enshrined in the Constitution of Zanzibar**
- (81) **It is also recommended that the Office of the Mufti should be left to operate independently as a non-governmental entity and not fall under the portfolio of the Minister of State, President's Office, responsible for constitutional affairs and good governance or any other Ministry.**
- (82) **It is also recommended that the President should desist from appointing leaders of religious institutions and organizations.**
- (83) **It is further recommended that religious organizations should be free to manage their own affairs, source own funding and elect own leaders and should not be entitled to state subventions.**

6.8 COMMISSION FOR WAKF AND TRUST PROPERTY

6.8.1 BACKGROUND

(a) The Legal Status of the Commission

The Commission for Wakf and Trust Property was established vide Act No. 5 of 1980. The founding legislation for the Commission consolidates the functions of two Commissions, the Commission for Wakf and the Commission for Trust Property respectively. These two Commissions previously were governed by two separate legislations and were being managed as separate state institutions. The Commission for Wakf and Trust Property also took over the functions of the Commission for Wakf and Public Trustee. The Commission is a self-managing state institution with its own official seal. It has all the semblance of a body corporate as it can sue and be sued and can own and dispose off property as well as enter into contractual relations with other persons. The Commission is statutorily enjoined to meet at least once every month or any other period as the Minister responsible for religious matters may determine.

(b) Composition of the Commission

The Commission for Wakf and Trust Property is composed with seven, a Chairman and not less than six other members appointed by the Chairman of the Revolutionary Council from among Islamic religious leaders and Kadhis. The Executive Secretary to the Commission is also appointed by the Chairman of the Revolutionary Council in consultation with the Commission. The Executive Secretary is the Chief Administrator responsible for the day-to-day administration of the Commission including the implementation of financial regulations and reporting on the activities of the Commission at its meetings.

The Commission employs its own staff and is empowered to establish Regional, District and area Committees, which are entrusted with the performance of the activities of the Commission in their respective areas. Each Committee has a Chairman and not more than six members appointed by the Commission. The Executive Secretary complains that the Commission is overstaffed and that there is a need for a manpower survey to be conducted to look into the matter so as to rationalize between the workforce and activities of the Commission.

(c) Functions of the Commission

The functions of the Commission for Wakf and Trust Property are to manage: (a) wakf property; (b) trust property; and (c) deceased persons' property. Previously the Commission used also to manage pilgrimage trips, Idd salat, Idd Council, receive zakat, charitable donations and gifts for running Islamic religious activities. These have now been shifted to the Office of Mufti. The Commission has six sections namely: (1) Inheritance; (2) Wakf; (3) Administration and Personnel; (4) Islamic matters; (5) Accounts; and (6) External Relations.

The immediate needs of the Commission are:

- a. Renovation/rehabilitation of the existing building
- b. Training particularly in Information Technology
- c. Rehabilitation of the Registry
- d. Computerisation of the registration system – the Commission administers about 430 buildings and 12 farms in Unguja
- e. Review of the governing legislation
- f. Legal training
- g. Equipment – 2 Computers, 1 printer, 1 photocopier and a fax machine.

PROBLEMS AND ISSUES

(i) Capacity to make decisions affecting property rights

The Commission deals and make decision with regard to property rights. The founding legislation for the Commission is however, wanting for details on the proper functions of the Commission with regard to its quasi-judicial powers. Reading the provisions of section 9 of the Commission which gives an opportunity for a person aggrieved with its decision to appeal to the High Court, it seems that the Commission has by implication the capacity to render decisions affecting the property rights of the people. According to section 9 of the Act, any person aggrieved by the decision of the Commission may appeal to the High Court.

The Commission does not have a strategic plan in place yet and has already placed with the parent Ministry its recommendations for major changes in the organizational structure.

RECOMMENDATIONS

- (84) It is recommended that the Commission for Wakf and Trust Property should operate as a body corporate as stipulated in its founding legislation.**
- (85) It is recommended also that the Act establishing the Commission should stipulated very clearly that it in case a legal dispute arises in relation to the matters it is empowered to deal with, this has to be referred to the appropriate judicial body with authority to handle such disputes – that is, the Kadhi's Courts.**

(b) Independence of the Commission

The founding legislation while claiming that the Commission is a body corporate and exercises independence in its functions, at the same time it entrusts the powers of appointing the Members of the Commission with the Executive. For example, the President appoints both the Chairman and the other members of the Commission including the Executive Secretary to the Commission.

Furthermore, according to section 11 of the Act, the Chairman of the Revolutionary Council who also happens to be the President of Zanzibar, can give general directions to the Commission with regard to the running and executing its work in matters which the Chairman of the Revolutionary Council perceive to affect “national interest” and the Commission will have to heed to such a directions. It is not entirely conceivable what “national interest” is going to be affected in matters purely personal and religious as wakf and trust property. By and large “national interest” is like an “unruly horse” it can take you anywhere and escapes any concrete definition or determination.

RECOMMENDATIONS

- (86) It is recommended that the Executive should desist from exerting direct influence on the appointment of members of the Commission and its operations.**
- (87) It is recommended also that any person currently serving on a judicial position should not qualify to become a member of the Commission in any capacity.**

6.9 THE OFFICE OF THE REGISTRAR GENERAL

BACKGROUND

The Office of Registrar General handles a host of multifaceted functions ranging from the registration of births and deaths to NGOs and companies. Initially the office used to be called the Administrator General until 1985 when its title changed to that of the Office of Registrar General. The office also used to deal with the administration of wakf and trust property, which were transferred to the Commission for Wakf and Trust Property in 1980. The President appoints the Registrar General. There is also a position of Deputy Registrar, which has fallen vacant following the retirement of the incumbent and has yet to be filled.

The Office of Registrar General oversees a host of legislations regulating the following functions:

- (1) Registration of Documents (A1 mortgage for bank loans; A2 inheritance and wills for non-Moslems); A3 sale agreements and wakf deeds, gifts and leases; and A4 Dis-mortgage)
- (2) Registration of Intellectual Property Rights (IPRs) – patents, industrial designs, copyrights and trademarks
- (3) Administration of estate of non-Moslem deceased persons
- (4) Registration of marriages and divorces
- (5) Registration of business names
- (6) Registration of public enterprises – which is to shift to the Treasury
- (7) Registration of Non-Governmental Organisations
- (8) Registration of births and deaths

6.9.2 PROBLEMS AND ISSUES

(i) Strategic plan and organization structure

The Office of the Registrar General has yet to prepare its strategic plan. It relies on the Medium Term Expenditure Framework Guidelines issued by Treasury to prepare its annual work plan and budget estimates.

The Office of Registrar General is “packed” with too many functions. The organizational structure of the Office was reviewed last year with a view to streamline its functions for more accountability and creating efficiency. The new structure comprises of nine (9) Units, each to be headed by an Assistant Registrar. Each unit will have sub-units.

The following Units were proposed:

- (1) Registration of NGOs;
- (2) Registration of Companies and Business Names;
- (3) Registration of Intellectual Property;
- (4) Registration of Births and Deaths and Non-Moslem inheritance;
- (5) Registration of Documents (A1-A4 above) including marriages and divorces;
- (6) Attorney (Law);
- (7) The Chief Accountant;
- (8) Statistics; and
- (9) Personnel and Administration.

The registration of land titles will be taken out of the functions of the Registrar General and placed under the Office of Registrar of Land Titles established by the 1992 Land Tenure Act. The registration of enterprises will also be shifted from the Office of Registrar General to the Treasury. However, despite these envisaged

measures still the Office of Registrar General deals with too many functions. The structure of the office needs further review and streamlining.

(ii) Personnel Needs

The number of skilled personnel in the Office of Registrar General is minimal and getting heads for its proposed nine (9) Units is going to be quite a monumental task for the Registrar. The Office currently has a total of 52 members of staff out of which 10 are working directly under the Local Government handling the registration of births and deaths.

(iii) Scheme of Service

The Office of Registrar General does not yet have a scheme of service in place. However, the Registrar hinted that he is working very closely with BRELLA – the executive agency entrusted with the registration of companies and intellectual property on the Mainland to get some ideas on developing a scheme of service for the proposed organisational structure of the Office of Registrar General.

(iv) Training Needs

The Office of Registrar General does not have a training policy in place and funding for the training of its members of staff is a major problem. Currently there are about six (6) members of staff attending various courses at various institutions in and out of Zanzibar. The immediate training needs for the Office is to train at least one lawyer for every unit which deals with legal matters.

(v) Equipment and facilities

The Office of Registrar General has made some efforts to have an Information System in place. It has an Internet service subscribed to two companies and has

installed a WIPO Net Kit for easy of communication exchange particularly on registration of Intellectual Property Rights. A member of staff was trained in Zimbabwe to manage the system. However, internally the Office does not have a computer network for ease of registration and maintaining a data bank.

(vi) Computerisation of registration systems

The Office of Registrar General has acquired three computers and its registry staff has started entering data relating to births. However, the automation of registration of births is a slow and painstaking exercise, which calls for time and massive injection of funds indeed. This would greatly save the births and deaths registration documents, which are currently stored in a very dilapidated room, from the threat of extinction due to poor storage conditions. However, despite all these, in Sub-Saharan Anglophone Africa, Zanzibar has been able to attain a 75% success in registration of births and deaths! The secret behind this success story lies on the use of District Registrars and Shehas in the registration of births and deaths in their respective areas without people having to travel all the way to a central institution for the exercise.

(vii) Office facilities, equipment and materials

The Office of Registrar General lack library facilities and does not have the requisite legal materials. A room has however, been identified for housing the library facility but needs some renovation and furniture.

The main problem facing the Office is non-availability of form B1 from the Government Press in Zanzibar. B1 is the form, which Shehas use to register births in their local areas of jurisdiction before they submit them to the Registrar General for purposes of issuing Birth Certificates. As a result the Registrar General had to import these forms from the Mainland.

(viii) Building facilities and office space

The building housing the Office of the Registrar General, which was built more than one hundred (100) years ago is highly dilapidated and in a shocking state of disrepair. The building is shared with the Commission for Wakf and Trust Property. The roof of the building is leaking and therefore in need of extensive repairs. Currently office space is sufficient but with the new organizational structure in place definitely the need for more office space to accommodate new staff cannot be ruled out. The new office space will also require office furniture and equipment.

The immediate needs for the Office of Registrar General are:

- (1) Training both long and short term
- (2) Renovation/rehabilitation of the existing office building
- (3) Office equipment and facilities
- (4) Library and Registry facilities
- (5) Binding of registration documents
- (6) Complete automation of the system of registration of births and deaths - this could start with few districts as a pilot project the results be replicated in other areas and finally covering the whole country, basing on the experience of Uganda.
- (7) Computerisation of the marriage and divorce registration system
- (8) Review of existing laws administered by the Office of Registrar General, which are outdated, particularly by providing law penalties thus discouraging compliance.

RECOMMENDATIONS

(88) It is recommended that that the needs assessment team proposed for the whole legal sector also look into the needs of the Office of Registrar General and make appropriate recommendations for action.

(89) It is recommended that the Revolutionary Government of Zanzibar explore the option of merging the Commission for Wakf and Trust Property and the Office of Registrar General to form a single autonomous government agency.

ACTION PLAN WITH RESPECT TO OTHER GOVERNMENT LEGAL OFFICES

Activity	Time Frame	Responsibility
Organizational structure and institutional reforms for the Commission for Wakf and Trust Property and Office of Registrar General	Within 5 years	RGZ, Office of Mufti, Commission for Wakf and Trust Property, Office of Registrar General
Interim improvement of terms and conditions of service in the Commission for Wakf and Trust Property and Office of Registrar General	Within 1 year	RGZ
Preparation of comprehensive training programme and allocation of appropriate budgetary resources	Within 1 year	Commission for Wakf and Trust Property, Office of Registrar General, RGZ
Procurement of books, equipment and materials	Within 1 year	Commission for Wakf and Trust Property, Office of

		Registrar General, Donor support
Implementation of training programme	Within 3 years	RGZ, Donor support
Expansion or construction of office facilities for Commission for Wakf and Trust Property, Office of Registrar General	Within 1 year	RGZ, donor support
Review of Terms and Conditions of Service for the Commission of Wakf and Trust Property and Office of Registrar General	Within 2 years	RGZ
Review of Laws relating to establishment of Office of Mufti and Commission for Wakf and Trust Property	Within 1 year	RGZ, Donor support

6.10 THE LAW REVIEW COMMISSION

6.10.1 BACKGROUND

The case for an intensive and far-reaching programme of law reform in Zanzibar is compelling. The reform process in Zanzibar might be complicated by the existence of a mix of the English common law, Islamic law and customary law. The need for law reform has been reinforced by the work of the 1991 *Presidential Commission on Single Party or Multiparty Systems in Tanzania* (the Nyalali Commission), which identified a number of Zanzibar legislations which were incompatible with the new constitutional order and therefore appropriate subjects for repeal or reform. Although the current situation in Zanzibar presents a fertile ground for law reform, the machinery for law reform has not been particularly effective and/or is totally non-existent.

6.10.2 PROBLEMS AND ISSUES

The Law Review Commission Act, which established the Law Review Commission of Zanzibar is, on the whole, satisfactory in its coverage. The productivity of the Commission however, has been undermined by the total absence of membership. The last Chairman left the country about a year ago. We found it very difficult even to trace the office premises of the Commission, which suggests that it is nonexistent. Technically, the Law Review Commission of Zanzibar could be said to be dead although the law establishing it has yet to be repealed! In view of this we recommend as follows:

RECOMMENDATIONS

- (90) It is recommended that serious and urgent efforts should be made by the Revolutionary Government of Zanzibar to revive the Law Review Commission, which is a vital institution for good governance by appointing its Commissioners and providing it with full time members of staff.
- (91) It is recommended further that the Revolutionary Government of Zanzibar secure office accommodation for the Law Review Commission with adequate office equipment, materials and other facilities necessary for its effective functioning.
- (92) It is recommended also that the Revolutionary Government of Zanzibar should commit a substantial budgetary allocation to the Law Review Commission in the coming financial year to cater for salaries and running expenses.

ACTION PLAN FOR THE LAW REVIEW COMMISSION

Proposed Action	Time Frame	Responsibility
Strengthening the Commission - appointing Commissioners	Within 1 year	RGZ
Ensuring budgetary allocations for the Commission to meet the cost of office accommodation, equipment, books, and other materials	Within 2 years	RGZ, donor support
Employ law researchers and other members of staff	Within 2 years	RGZ, donor support
Secure office accommodation	Within 1 year	RGZ
Training for members of the Commission and staff	Within 3 years	RGZ, donor support

6.11 COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE

6.11.1 BACKGROUND

Attempts have been made in many African countries including Tanzania, to consciously foster constitutionalism and develop a culture of respect for human rights by setting up independent human rights institutions with responsibility of educating the public about the Constitution, instilling a new culture of constitutionalism, promoting awareness of human rights and generally assisting members of the public in the protection of their fundamental and constitutional rights. The URT Government established its first national human rights institution - the Commission for Human Rights and Good Governance in 2000 vide the 13th Constitutional Amendments to the Union Constitution. The founding legislation for the Commission, the Commission for Human Rights and Good Governance Act (Act No.7 of 2001 as amended by Act No.16 of 2001) extends the mandate of the Commission to Tanzania Zanzibar. The Commission has seven Commissioners who were appointed by the President of the United Republic of Tanzania in 2002 on the basis of equity between Tanzania Mainland and Tanzania Zanzibar. Of the seven Commissioners, three including the Vice Chairman hail from Tanzania Zanzibar.

The establishment of the Commission was a result of the recommendations of the Legal Task Force of the FILUMP Project that there should be established in Tanzania an institution to deal with broad questions of mal-administration as well as address the larger issue of violation of human rights. In the opinion of the Legal Task Force, the amalgamation of human rights and administrative justice issues in one institution avoids the proliferation of institutions dealing with similar matters. Previously matters of abuse of public office were being handled by the Permanent Commission of Enquiry (PCE) - the first Ombudsman on the African

continent, which was operating both on the Mainland and in Zanzibar. The PCE was established by the Permanent Commission of Enquiry Act of 1966, which was repealed by the Commission for Human Rights and Good Governance Act No.7 of 2001. Legal Task Force had recommended the functions of the PCE be incorporated in the proposed Commission for Human Rights and Administrative Justice (CHRAJ) following closely the Ghanaian model. The Government of Tanzania however, opted for the Commission for Human Rights and Good Governance (CHRAGG) instead.

The establishment in Tanzania of the Commission for Human Rights and Good Governance in 2001 hallmarked a number of efforts from civil society organizations, both from the Mainland and in Zanzibar as well as public institutions. The drafting of the founding legislation of the Commission benefited heavily from the recommendations of various stakeholders.

6.11.2 PROBLEMS AND ISSUES

(a) Controversy over the Mandate of the Commission in Zanzibar

The authority of the Permanent Commission of Enquiry (PCE), which was established under section 129 of the Union Constitution, included Tanzania Zanzibar. Section 3 of the PCE Act of 1966 specifically stated that the Act applied to Mainland Tanzania as well as Tanzania Zanzibar. This position has been repeated in section 3 of the Commission for Human Rights and Good Governance Act No.7 of 2001. The intention of the drafters of the Commission for Human Rights and Good Governance Act was to have a single national human rights institution for the whole of the Union in keeping with the international obligations of the URT Government to implement international human rights instruments, which it has ratified and/or acceded to. Furthermore, the Commission's founding legislation in keeping with the spirit of the uniformity in matters of human rights throughout the URT it recognizes the "Union formula" in the appointment of the

top leadership for the Commission. The Act stipulates very clearly that if the Chairman of the Commission comes from one part of the Union, the Vice Chairman has to hail from another part of the Union and vice versa. The current Vice Chairman of the Commission is from Zanzibar.

The Commission for Human Rights and Good Governance is responsible for investigating human rights violations and issues of mal-administration either on its own initiative or on receipt of a complaint. In terms of mal-administration, the Commission can investigate or enquire into complaints concerning alleged abuse of power, injustice or unfair treatment in relation to both public sector and private sector officials and institutions. The Commission cannot investigate complaints or institute any proceedings against the Presidents of URT and Zanzibar, both of whom have constitutional immunity against court proceedings under the respective constitutions.

The extension of the mandate of the Commission for Human Rights and Good Governance to Tanzania however, raises a constitutional problem particularly with regard to the applicability in Zanzibar of laws passed by the National Assembly on non-union matters. The argument is based on the interpretation of the constitutional principle that a law passed by the National Assembly regarding non-union matters, which extends to Tanzania Zanzibar has first to be ratified by the House of Representatives before it applies in Zanzibar. This principle is borne out both in the Union Constitution and Constitution of Zanzibar respectively. The argument is predicated on the fact that human rights and good governance matters do not come under the purview of the list of “union matters”, which are scheduled in the Union Constitution.

According to section 64(1) of the Union Constitution, the National Assembly has legislative powers in respect of all other matters concerning Tanzania Mainland. Legislative authority for non-union matters for Tanzania Zanzibar is vested in the House of Representatives as per section 64(2) of the Union Constitution.

According to section 64(4)(a) of the Union Constitution, a law enacted by the National Assembly can apply to Zanzibar if among other things such law states so expressly; or such law concerns union matters as per section 64(4)(c) of the Union Constitution. It seems that the framers of the Union Constitution did intend a very clear demarcation of legislative competence between the National Assembly and the House of Representative with regard to union and non-union matters respectively.

The Commission's founding legislation was passed by the Union Parliament (the National Assembly), which is established under section 62(1) of the Union Constitution. The Union Parliament draws its membership both from the Mainland and Zanzibar. Section 64(3) of the Union Constitution provides *inter alia*, that any law enacted by the National Assembly concerning any matter, which is under the jurisdiction of the House of Representative would be void and of no effect. According to section 64(2) of the Union Constitution legislative powers in Tanzania Zanzibar regarding non-union matters is vested with the House of Representatives. According to section 64(3) of the Union Constitution, the House of Representatives has no legislative competence with regard to matters which fall under the jurisdiction of the National Assembly and vice versa.

The list of "Union matters" in the First Schedule to the Union Constitution does not include human rights and good governance issues. Accordingly, the Union Parliament cannot enact a law regarding these matters and extend its application to Tanzania Zanzibar. Such law would, by virtue of section 64(3) of the Union Constitution, be void *ab initio*. Accordingly even a law enacted by the National Assembly regarding union-matters cannot automatically extend to Tanzania Zanzibar unless the House of Representatives has passed a law to that effect. Section 132 of the Constitution of Zanzibar, provides thus:

132.-(1) *Hakuna sheria yo yote itakayopitishwa na Bunge la Muungano ambayo itatumika Zanzibar mpaka sheria hiyo iwe ni kwa ajili ya mambo*

ya Muungano tu na ipitishwe kulingana na maelekezo yaliyo chini ya vifungu vya Katiba ya Jamhuri ya Muungano.

(2) Sheria kama hiyo lazima ipelekwe mbele ya Baraza la Wawakilishi na Waziri anayehusika.

(3) Pale sheria ndogo inapoundwa kwa mujibu wa uwezo uliowekwa chini ya kifungu cha (1) na (2) cha sheria hii itatumika tu pale itakapotimiza shuruti zote zilizowekwa kwa matumizi ya Sheria Mama kama ilivyoanishwa katika kifungu hiki.

The above provision in effect stipulates three conditions for the Acts (and subsidiary legislation made thereunder) enacted by the Union Parliament to apply to Zanzibar:

- (i) That the subject matter of the said Act is a union matter;
- (ii) That it has been enacted by the Union Parliament in accordance with the relevant provisions of the Union Constitution; and
- (iii) That the said Act is tabled before the House of Representatives by the Minister concerned.

The *Consultants' Report on Constitutional, Electoral and Judicial Reform in Zanzibar* noted that condition (ii) raises a constitutional issue because is not in the Union Constitution. In their view if the tabling is meant to be a condition precedent, it is inconsistent with the Union Constitution in which case the Union Constitution will take precedence and recommended that in order to avoid conflict, the provision should be revisited (*Consultants' Report on Constitutional, Electoral and Judicial Reform in Zanzibar*, 2000 at p.30). However, according to section 64(5) of the Union Constitution, a law enacted by the House of Representatives would violate the Union Constitution only if it concerns union-matters.

Despite the express constitutional provisions regarding the impact of the applicability of Union law on non-union matters in Zanzibar, one thing is very clear: the violation of human rights and the insecurity of public sector employment regardless of unethical or corrupt behaviour is not confined to Tanzania Mainland or Zanzibar indeed it is common in many developing and developed countries. However, inappropriate and outdated disciplinary procedures are known to seriously undermine public confidence in government. Furthermore, mal-administration and human rights violations do not respect territorial boundaries nor do they abide fine distinctions such as “union” and “non-union” matters. These are matters, which cut across and need concerted efforts by each and every individual and institutions regardless of territorial affiliation.

RECOMMENDATIONS

(93) It is strongly recommended that the Revolutionary Government of Zanzibar extend of the mandate of the Commission for Human Rights and Good Governance to Zanzibar by enacting then necessary legislation to that effect and without any modification for the following reasons:

- **Human rights violations and contravention of principles of good governance neither respect territorial boundaries nor artificial distinction between “union” and “non-union” matters or offices.**
- **New public institutions should not be created just for the sake of it. The must deliver services efficiently and effectively. Why?**
 - **The founding legislation of the Commission ensures that there is no political influence in the performance of the functions of the Commission.**
 - **The Commission has office accommodation in Zanzibar with full-time skilled and experienced staff.**

- **There assurance of funding both from the URT and external sources.**
- **However, the Revolutionary Government of Zanzibar is not prevented from opting for a new institution for Human Rights and Good Governance. This will however, entail huge costs both in terms of its creation and operation, including**
 - **Long process of preparing a Bill for an Act to establish the body with regard to its functions, powers and organizational structure**
 - **Acquiring office accommodation and facilities**
 - **Securing equipment and materials**
 - **Recruiting and training its own staff**

ACTION PLAN ON THE RECOMMENDATIONS FOR COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE IN ZANZIBAR

Proposed Action	Time Frame	Responsibility
Operationalising the Commission in Zanzibar (drafting and tabling enabling legislation)	Within 1 year	RGZ
Strengthening the Commission's Zanzibar Office	Within 1 year	RGZ, CHRAGG
Appointing Assistant Commissioner for Zanzibar Office of the Commission	Within 1 year	URT, RGZ
Rehabilitating office accommodation for the Commission in Zanzibar and providing office equipment, books, and other materials	Within 1 year	RGZ, CHRAGG, donor support
Recruiting and employing more staff for the Commission's Zanzibar Office	Within 2 years	RGZ, CHRAGG
Training for members of the Commission Zanzibar Office and staff	Within 3 years	URT, CHRAGG, donor support

6.12 LEGAL EDUCATION AND TRAINING

6.12.1 BACKGROUND

In this section we allude to some of the main legal training problems in Zanzibar together with an indication of some of their shortcomings as well as recommendations.

(a) Legal Training Institutions

The institutions providing legal training programme in Tanzania Mainland and Zanzibar are as follows:

- (a) The Faculty of Law (FoL) of the University of Dar es Salaam currently offers a four-year LL.B programme and offers teaching in Postgraduate Diploma, LL.M; and Ph.D. The Faculty supervises and validates a Certificate in Law in four centres including one in Zanzibar.

The Faculty of Law of the University of Dar es Salaam has reviewed its programme and changed the period of study from three to four years based on the semester system. After the completion of three years of study, the students are allocated in law offices throughout the country in the fourth year to pursue an intensive and supervised internship programme after which they are required to prepare reports for evaluation.

- (b) The Faculty of Law and Shariah (FoLS) of the Zanzibar University (ZU) at Tunguu, a private University, also runs a four-year LL.B programme. The Programme is tailored to suit the particular circumstances of Zanzibar and offers a mixture of common law and Islamic law courses amounting to 54 units on different aspects. The Faculty has seven (7) full time lecturers and not less than four (4) part time lecturers.

- (c) The Open University of Tanzania (OUT) runs an LL.B programme
- (d) The University of Mzumbe (UoM) [formerly the Institute of Development Management (IDM)] in Mzumbe-Morogoro used to run a specific law course for Primary Court Magistrates and an Ordinary Diploma (ODL) course, but now has a full-fledged Faculty of Law, which offers a three-year LL.B as well as a two-year Diploma programme.
- (e) The University of Iringa at Tumaini (UIT), a private University, has a Faculty of Law, which runs a three-year LL.B programme.
- (f) The Institute of Judicial Administration (IJA) at Lushoto, Tanga runs a two-year Diploma in Law programme for Primary Court Magistrates and a one-year Certificate in Law course for court clerks.
- (g) Some law teaching for non-lawyers takes place in a variety of other institutions, including the Police College at Kurasini in Dar es Salaam, the Institute of Finance Management (IFM) in Dar es Salaam, the Cooperative College at Moshi, the Dar es Salaam School of Accountancy at Kurasini in Dar es Salaam, the National Institute of Accountancy in Arusha, the Nyegezi Social Training Centre in Mwanza, and the Social Welfare Institute in Dar es Salaam.

PROBLEMS AND ISSUES

(i) Identification of Needs

The Faculty of Law and Shariah at Zanzibar University currently has about 200 students pursuing a four-year LL.B degree course. Out of this student population, 123 are Zanzibaris. The first batch of the LL.B graduates about 19 is expected to graduate August this year. Out of this number, 10 are female students. The Faculty started offering the LL.B course in 1999.

A good number of the Primary Court Magistrates currently on post need some form of upgrading training.

RECOMMENDATIONS

(94) It is recommended that the interim provision of postgraduate vocational training for those obtaining the LL.B be improved pending the establishment of the proposed joint Law School.

(95) It is also recommended that a large-scale programme of upgrading of existing PCMs, and of training Kadhis and court clerks currently in post be established.

(96) It is also recommended that the legal training of those already in the system should be upgraded and continuing legal education be provided as well as filling the gap in post-LL.B training.

(97) It is recommended that the details of the training programme for the legal sector as a whole be articulated more clearly in the proposed training needs assessment for the legal sector.

ACTION PLAN ON THE RECOMMENDATIONS FOR LEGAL EDUCATION AND TRAINING

Proposed Action	Time Frame	Responsibility
Establishment of joint Law School	Within 3 years	URT, RGZ
Creating an Upgrading and Training Programme for Serving Magistrates and Kadhis	Within 1 year	RGZ
Establishing Continuing Legal Education Programme	Within 2 years	URT, RGZ

6.12 NON-GOVERNMANTAL ORGANIZATIONS

This section gives a brief account of the policy and legal basis for civil society organizations; addresses some of the problems and issues with regard to such organizations; and makes appropriate recommendations.

6.12.1 BACKGROUND

The Zanzibar Country Economic Memorandum of March 2003, which was prepared by the Economic Research Bureau for the Ministry of Finance and Economic Affairs of the Revolutionary Government of Zanzibar, devotes a whole Chapter (7) to a discussion on the NGO Sector. The Report underscores the fact that the emergence and growth of the “not for profit” organizations otherwise known as civil society organizations has been one of the most significant trends in international development. Civil society organizations are crucial stakeholders in good governance as they play a critical role in helping to amplify the voices of the poorest people in decisions that affect their lives, improve development effectiveness and sustainability and in holding governments and policy makers publicly responsible and accountable. CSOs have also played an important role of sensitising citizens at grassroots level and hence complement government efforts

aimed at ensuring effective participation of the populace in the development of their society.

NGOs in Zanzibar are registered under the *Societies Act* No.6 of 1995, which is the main legislation governing and regulating civil societies. Prior to the 1964 Revolution there was no legislation to define and regulate NGO activity. Immediately after the Revolution, the Government repealed the Societies Decree and made some provisional and temporary arrangements to register civil society organizations, which lasted until 1995 when the new civil society organization legislation was promulgated.

The policy and regulatory ministry for NGOs in Zanzibar is the Ministry of State, President's Office, Constitutional Affairs and Good Governance, which has a special NGO Unit. According to the Ministry, as of October 2002 there were about 203 registered NGOs and CBOs in Zanzibar, out of which 54% are members of the Association of Non-Governmental Organizations in Zanzibar (ANGOZA) (Zanzibar Country Economic Memorandum, 2003:53). NGOs in Zanzibar can be members of ANGOZA, an organ created in 1995 as an umbrella organization for the civil societies.

6.12.2 PROBLEMS, ISSUES AND RECOMMENDATIONS

(i) Lack of an NGO Policy

There is no NGO policy yet. However, efforts are being made by the Government to have such policy in place in the not too distant future. Despite the absence of such policy, the Government has shown some degree of tolerance toward NGO activity in Zanzibar. The adoption of an NGO policy will however, go a long way toward ensuring a more conducive environment for the operation of NGOs and thus provide the necessary basis for preparing a new NGO legislation.

(ii) Outdated NGO Law

The law governing NGOs in Zanzibar is outdated as it does not take into account current trends and development in the NGO movement worldwide. The law aims more at regulating and controlling NGO activity and does not take into account best practice principles.

(iii) Concentration of NGOs in urban areas

Although the NGO sector is one of the fastest growing sectors in Zanzibar, NGO activities have tended to be concentrated in urban areas. Furthermore, the distribution of NGOs even among urban areas is not even. There is relatively high concentration of NGO activities in urban areas in Unguja than in Pemba. According to the Zanzibar Country Economic Memorandum Report, out of a total of 203 NGOs registered in Zanzibar by December 2002, most of them (about 170 equivalent to 84%) were operating in Unguja compared to just 33 NGOs (or 16%), which were based in Pemba (Ibid. p.54). Consequently, the influence and impact of NGO activity in rural areas where it is critical in addressing good governance and human rights issues such rural poverty and HIV/AIDS is very minimal. There is a need for NGOs to focus more in rural areas.

(iv) Lack of capacity among NGOs

There are some notable deficiencies among local NGOs in terms of human and other resources, which have to be addressed with the assistance from donors and the government.

APPROXIMATE FINANCIAL ESTIMATES FOR THE LEGAL SECTOR² -

Million US\$

AREA	BUILDINGS	EQUIPMENT	TRAINING	OTHERS	TOTAL
Court System (Judiciary)	5.6	3.2	1.0	0.5	10.3
Legal Aid and Dissemination of Legal Information	0	0.3	0.3	0.1	0.7
Attorney Generals Chambers	1.2	0.3	1.8	1.4	4.7
Director for Public Prosecution	2.9	0.2	1.4	1.1	5.6
Office of Registrar General	0.3	0.4	0.5	0.4	1.6
Commission for Wakf and Trust Property	1.2	0.3	0.1	0.1	1.7
Law Review Commission	1.1	0.4	0.7	0.1	2.3
Commission for Human Rights and Good Governance	1.2	0.2	0.3	0.1	1.8
TOTAL	13.5	5.3	6.1	3.8	28.7

² Based on FILMUP and updated figures derived from self-assessments from AG, DPP and Judiciary

7. THE ELECTORAL SYSTEM

Zanzibar was the first country in the Eastern African region to have had elections for a legislature. In 1957, when Kenya was under a 'state of emergency', elections under a 'tripartite system' were still to be promised for Tanganyika, and Uganda was in political crisis as a result of the banishment from the country of the Buganda King, Zanzibar held its first general elections under a common roll system. The elections were for six unofficial members, with the male suffrage having to satisfy property and educational qualifications. Political parties, religious organisations and independent candidates contested in this election.

Zanzibari males of the age of 25 and above could vote, and when the day of voting came in July 1957, 87% of the 39,833 registered voters did vote. Those elections were described at the time "as having been probably the most peaceful in constitutional history". The Legislative Council (Elections) Decree 1957 provided for elections to be held three years after the first ones in 1957, but in April 1960 the Decree was amended to allow for the postponement of the elections for one year.

A Constitutional Commissioner was appointed in 1960 to propose the necessary constitutional changes before new elections were held. In making recommendations for Zanzibar, Sir Hillary Blood had Singapore in mind:

"What has happened in Singapore is a pointer to what could and should happen in Zanzibar. I see Zanzibar in due course as an internally self-governing state.... I believe that development on Singapore lines should be the aim in Zanzibar, and it is with that in mind that I make recommendations."

His far-reaching proposals included the majority of elected members in the legislature and the introduction of a Ministerial system. The country was divided into 22 constituencies.

The elections held in January 1961 had a total number of 92,479 voters, more than 100% increase from the previous elections. This was because the age for one to qualify was reduced from 25 to 21, women were granted the right to vote, and the property and

income requirements were relaxed. The citizenship requirement disqualified 962 men and 391 women in the whole country, and the residence requirement whereby one must have stayed in the country (and not necessarily in a constituency) for a continuous period of 12 months also barred a number of potential voters. One voter though who was absent from Zanzibar for two months and was thus disqualified, appealed to the courts. The Magistrate

“allowed the appeal on the grounds that he was in a position to return and resume residence in the Protectorate and that, during his absence, he was in a position to return and resume residence at any time, and that therefore he did not lose continuous residence” [Zanzibar Protectorate, 1961].

The Elections Supervisor stated at the time

“that a person, who had been away on an educational course for several years and had only just returned to the Protectorate, could not be accepted, but others who had made spasmodic journeys to the mainland and elsewhere for private purposes, could not properly be turned down, unless their period of absence was very considerable” [Zanzibar Protectorate, 1961].

The elections held in January 1961, on the basis of Sir Hillary Blood’s recommendations, brought a stalemate, with no party able to form a government. New elections were held in June of the same year, and this resulted in riots where a number of people were killed. The last elections before formal independence were held in July 1963. The 1964 Revolution did not envisage the holding of early elections in its project, thus Zanzibaris stayed for 22 years without holding elections.

The first elections after the 1964 Revolution were held in 1985. These elections were under a one-party system. A legislation was passed by the House of Representatives in 1984 [Elections Act No.11 of 1984] to establish the legal basis for such elections. The Zanzibar Constitution establishes the Zanzibar Electoral Commission and sets out its functions, and the Elections Act stipulates the structure of the Commission. The Commission has two basic tasks, namely to conduct the election of the President of Zanzibar, constituency members of the House of Representatives, and city and district councillors and to provide civic education to the general public. At the direction of the

House of Representatives it can also review the number and boundaries of constituencies. The Commission had a chairperson and six members, all of which were appointed by the President with no indication as to the sources from where he drew those members.

In 1992, Tanzania adopted a multi-party system. As a result of that the Electoral Act of Zanzibar had undergone six amendments since then [Act No. 8 of 1992; Act No. 14 of 1992; Act No. 5 of 1995; Act No. 3 of 2000; Act No.3 of 2001; and Act No. 12 of 2002]. The fact that there has always been a very high turn out of voters in every election since 1957 shows the great importance Zanzibaris attach to the elections. In 1961 riots resulting in deaths and destruction of property were the aftermath of elections; and no doubt the killings in Pemba in January 2001 can be attributed to what happened in the year 2000 elections.

R 7.1 It is therefore imperative that a sound system based on a well-articulated and simple-to-understand law be put in place. All political actors, election administrators and the general public must have the same understanding on that legislation.

What has been agreed in the '*Muwafaka*' between the main political parties, CCM and CUF, and stipulated in Act No.12 of 2002 that the two parties have representation in the Electoral Commission is fine as a temporary arrangement to build confidence, but cannot be considered as a long lasting solution. In a multi-party system where all political parties are equal, and in a situation where there is no guarantee that the present two main parties will continue to have the hold and strength that they enjoy now, it is not correct to have a law based on what can only be a temporary situation.

The Electoral Commission as the body entrusted with the responsibility of running the elections in the country has to enjoy the confidence of the political parties and the general electorate. Members of the Commission and the staff serving in it have to be people of impeccable character. The Commission must be seen also to possess professional competence, and to be really neutral, impartial and independent.

R 7.2 In this regard therefore once the May 2003 by-elections and the year 2005 elections are over the composition of the Commission has to be looked into anew. This recommendation is based on the hope that the present confidence building

measures will produce a situation whereby political parties would not find it necessary to require representation in the Commission for them to have confidence in the Commission. One hopes that it would be possible to create an independent body enjoying the confidence and trust of all political actors.

The electoral system that Zanzibar has adopted of 'first-past-the-post' is just one of the many systems that the world has. There are many merits to this system, especially if the numbers of voters in constituencies do not very much vary. It makes no sense if one constituency has 10,000 voters and another one has only 2000. But the major demerit of this system is that one might have a party with a majority of seats in a legislature but not a majority of votes in the country. This happened in the Zanzibar elections of January 1961, June 1961 and July 1963, and that is why ASP was of the strong view that the system was deliberately targeted against it and resorted to the overthrow of the Sultan's government. It may also happen, as it did happen in the Zanzibar elections of 1995, whereby the difference of votes between the two main parties is too narrow, and yet one party takes everything. The Nyalali Commission and the group of experts that advised Inter-Party Committee after the '*Muafaka*' of 1999 recommended the adoption of both the 'first-past-the-post' system and a proportional representation.

R 7.3 It might be good idea if this is tried. It is also strongly suggested that a constitutional and electoral mechanism be found whereby parties would be required to share power once they reach a percentage thrash-hold of votes and a minimum number of 10 elected seats.

This would hopefully reduce political tension in the country, cement national unity and cohesion, would make every one have a sense of involvement, and allow people to concentrate on national development.

The residential requirement has been one of the major controversies in the Zanzibar elections. In the pre-revolution elections political parties did accuse each other of transplanting voters, either from one constituency to another, or from outside Zanzibar. In an age whereby absentee voters and postal voting are acceptable, it is surprising that one's right to vote should be subject to residential requirement. In an island like Zanzibar where the movement of people from one place to the other either because of trade,

education or work is constant, imposing a residential requirement for a voter would tantamount to denying one his/her constitutional right. One finds no rational reason as to why this condition was also imposed in the case of Union elections in Zanzibar and not in the case of Union elections on the Mainland. What it tantamounts to is that there are two different criteria used in the same election.

R 7.4 It is recommended that a residential requirement be removed as a condition for one to register as a voter in Presidential, House of Representatives or local government elections.

Voter education is essential in conducting elections. In a society where illiteracy rate is high, the use of radio, television, posters and public meetings becomes necessary. While it is the responsibility of ZEC to conduct voter education, it should not be left to it only. Political parties, NGO's, religious bodies, professional organisations and others should understand that it is their civic responsibility to impart voter education to their compatriots. What ZEC could do is to prepare materials, manuals, posters, etc., containing messages that it wants given to the people, and then engage NGO's and other resource persons that can do that work.

Since the inception of multi-party politics, there has been a lot of discussion on allowing independent candidates to stand for elections. There was even a petition by Rev Mtikila before the High Court of Tanzania to allow independent candidates to run in the elections, which was successful. But the Union Government, instead of appealing to the Court of Appeal of Tanzania, decided to go to the Union Parliament to strengthen the relevant constitutional provision barring independent candidates from contesting in the elections. The fact that this issue keeps recurring in the debates shows the keen interest that the public has on the matter.

R 7.5 Time has come for independent candidates to be allowed to stand in the general elections.

Democracy is expensive, and as the joke goes, if you want a cheap way then try tyranny. Running an election, even of a sports club, is not a cheap thing. A number of countries in Africa are not able to meet the expenses of running their own national or local government elections. Many of them depend on donor support in this exercise. But if

there is any area where national effort must manifest itself then it is in this one. It is now known that after every five years, save in the cases of deaths, resignations or incapacity of individuals holding elective posts, there would be general elections.

R 7.6 The government might find it difficult to come up with all the financial resources required in running the elections in the year of elections itself. It could be planned to spread the allocation of such resources over a period of five years before the elections.

One hopes that with the establishment of a Permanent Register and the introduction of an ID to every Zanzibari the costs of running elections in the future would be minimised.

The National Electoral Commission of Tanzania uses ZEC as its agency in running the Union elections in Zanzibar. This does raise a number of problems. First it seems that the residential stipulation required under Zanzibar electoral law has also been imposed on the Union electoral law but specific only to a voter in Zanzibar. Second, the staff and premises where elections are conducted are the same. Third, if NEC decides to extend its registration period or the voting time, as it happened in 1995, ZEC is not bound to follow that. Four, when the Zanzibar and Union elections are held on the same day, as was the case in the year 2000, and run by the same institution, any mistake would affect both.

R 7.7 Reports of elections observers in 1995 and 2000 have strongly suggested that ZEC conducts only the Zanzibar elections, and NEC takes full charge of the Union elections.

There are also indications that NEC does not bear the full costs of the Union elections in Zanzibar.

ZEC has its head office in Unguja and a sub-office in Pemba. The small building where the Commission is housed in Unguja has been given by government for free use, though repair and maintenance work are the Commission's responsibility. The offices in Pemba are rented from the Zanzibar State Trade Corporation. The Commission has a staff of 25 people with the Director of Elections as its chief administrator. Though the Commission has two members who are law graduates and have been in the profession for a long time, but the Commission itself does not have a lawyer of its own though such a post exists in

the establishment of the Commission. Unlike the House of Representatives or the Judiciary which have their own service commissions, ZEC does not have one and gets its staff on secondment from government.

The independence of the Commission seems to be undermined by first putting it under the Office of the Chief Minister instead of allowing it to be completely on its own; and second, by making it get its financial disbursements from the Chief Minister's Office. In fact the Director of Elections seems to be a sub-accounting officer, the full accounting officer for ZEC being the Principal Secretary to the Chief Minister's Office. In the perception of people this puts ZEC to be a department in the Chief Minister's Office.

R 7.8 There is need to separate ZEC from the office of the Chief Minister, make it an independent institution, reporting directly to the House of Representatives and getting its funds from the Consolidated Fund. It should also be able to negotiate and get funds and material support from donors provided such assistance does not compromise its independence and impartiality.

Delienation of boundaries can have a major impact in an election, and could determine the elections results. The addition of a constituency in Pemba in the June 1961 elections worked against the ASP; and the merger of Mkunazini na Malindi constituencies into a Mji Mkongwe constituency in the 2000 elections worked against CUF. In the business of demarcating boundaries, creating new ones or merging the existing ones, a scientifically-based criterion must be established and be seen to be transparent. Otherwise it would be seen to be just gerrymandering! One hopes that the period available before the year 2005 elections would be effectively used to correct all the wrongs that have accumulated over a long period of time.

People can trust an electoral system when it is seen to be neutral, not tailored to work for a particular political actor, transparent and democratic; and the institutions created to enforce the system are impartial and independent. Anything less than that would create tension and might lead to violence. Zanzibaris do not need to be told that!

ZANZIBAR ELECTORAL COMMISSION

WORK PLAN FOR VARIOUS ACTIVITIES³

(in US\$)

ACTIVITY	2003	2004	2005
Training of Professional Staff	60,000	30,000	30,000
1 Seminar per year for Commissioners	20,000	20,000	20,000
6 Seminars for Elections Officers	-	-	120,000
Office Machines/Information	150,000	-	-
Printing Unit Facilities	70,000	-	-
Transport	20,000		
Construction of New Building			
* Office Complex	3,000,000		
<ul style="list-style-type: none">• Furniture• Administrative Requirements			

³ Self assessment by ZEC

8. THE HOUSE OF REPRESENTATIVES

Before the revolution in 1964, Zanzibar had had an uninterrupted existence of a legislature for 38 years. The first legislative council was established in 1926. After the revolution the legislature was abolished and the Revolutionary Council became a legislative, executive and judicial organ. The Independence Constitution itself was abrogated, and the country was ruled by decrees. Fifteen years after the revolution, on 5th October 1979, the Revolutionary Council passed the Zanzibar Constitution that established a House of Representatives as the country's legislature. The House, which had only 10 directly elected members out of 109, started to function on 14th January 1980.

In 1984 a new Zanzibar Constitution was promulgated, and Chapter V of the said constitution establishes the House of Representatives. At present the House consists of 81 members, of whom 50 are directly elected, 10 appointed by the President, 5 regional commissioners sitting as ex-officio members, 15 special women members selected on proportional basis, and the country's Attorney General sitting as an ex-officio member. The House elects the Speaker. According to Article 63 of the Constitution, the President is also part of the House and a bill once passed by the House cannot become a law until assented to by the President.

Apart from the Speaker who is elected by the Representatives from either amongst themselves or from outside the House, there are also a Deputy Speaker and a Chairman who come from within the House. The government side in the House produces a Leader of Government Business and the opposition also produces its own leader. There are also party chief whips for every political party represented in the House.

Article 86 (2) of the Zanzibar Constitution empowers the House of Representatives to set up standing orders and rules for its functioning and operation. Such standing orders do exist. Under Rule 102 of the House, there had been established standing committees of the House. Members to the committees are appointed by the Speaker after looking at the Representatives' preferences and each committee elects its own chairperson. There is an understanding that in every committee there should be at least one woman representative. At present there are seven standing committees. In a number of countries such

committees are supposed to be the heart of a democratic parliament. They not only debate and scrutinise government bills and proposals, but on their own also initiate proposals. They also invite experts both within government and outside, pressure groups and lobbyists to come before them with specific issues; if they are not invited, they can demand the right to be invited. It is here that civil society organisations and private sector may play a very effective role in exacting accountability and transparency from the government. Quite often these committee meetings are held in public in the presence of the mass media. Before any bill or proposal is presented to a plenary session of parliament, it has to be thoroughly discussed by a relevant standing committee.

There are at present 99 members of staff of the House of Representatives, almost two thirds (61) of whom are people with no educational certificates at all. Only 7 are university graduates. In the case of the Pemba office of the House, of the 19 people stationed there, 13 are people with no education certificates at all, and there is not a single university graduate. The Clerk to the House is the chief administrative officer of the institution.

When the House of Representatives was established in 1979 no thought was given as to where it will be situated. What used to be a People's Club building meant for dancing and other social activities was turned into a legislature. Not only were the facilities in it inappropriate for such an august body, the surrounding environment too could not bring about a serene atmosphere for serious thinking and vibrant discussions. There is no space for two or three committees to meet simultaneously. House officials are congested in tiny offices, and there is no library, reading room or a place where Representatives can sit over coffee to exchange ideas. What was meant to be a temporary measure has now become a permanent feature.

Rule 141 of the House establishes a five-member service commission of the House, the Speaker being the chairman and the Clerk to the House being the secretary of the Commission. The idea for establishing such a commission being that the House will employ its own staff under its own terms and regulations. What still exists though is that the members of staff are recommended to the House from the central government, and

can either be recalled or transferred back to government. This makes a person in such a situation to have a double loyalty.

A practice has developed since the time the House was established for it to rotate its sittings between Unguja and Pemba. This was for political reasons, though it did not make any financial sense. When the House meets in Pemba, it means that the Speaker and his staff all have to move to Pemba, and senior government officials and other functionaries have also to go to Pemba. The costs of holding one session in Pemba are more than holding it in Zanzibar Town. Whether this system still makes a political sense is a debatable issue. But there are strong views within the House that the system should be discontinued, and that the House should have all its meetings at its headquarters in the Zanzibar Town.

A legislature in a democratic society plays a very critical role in ensuring that governments are accountable to the people, and that good governance and transparency are observed. But for a legislature to be able to play its role effectively, its members need to be trained not only on the workings of the legislative body, its rules, etiquettes, etc., but also on the Constitution, the budget, and matters that are unlikely to be brought before the House. They need to know what is happening not only in the constituencies they represent, but also in the country in general; they need also to keep abreast with the developments in the world, and to know how they impact on Zanzibar, and Tanzania.

The House would require not only a library of its own, stocked with books, journals and periodicals on parliamentary affairs and other topical issues, but standing committees would need research assistants that would help the members broaden their horizons on matters under discussion. The elected members of the House would need offices in their constituencies where they could meet their constituents on a regular basis and hear out their problems and concerns. These offices should not be in party premises, because once elected a member represents the whole constituency and not the party that sponsored him/her.

In several countries, once a parliament is elected and procedures of electing the Speaker and taking the oath of office are over, the House goes into an orientation seminar where

judges, economists, experts on parliamentary matters and others, come to talk to them. This is augmented further during the lifespan of the House by exchanges of visits to other parliaments through the African Parliamentary Union, the Commonwealth Parliamentary Union or the Inter-Parliamentary Union.

In order to encourage public discussion and involvement in matters of national importance and international issues that might be of interest to Zanzibar, and Tanzania, the House on its own can initiate seminars, conferences, colloquia, etc., where experts and other targeted groups or the general public are invited. The House can also encourage NGO's, public corporations, professional bodies and private sector institutions to come and interact with them. There has developed now a perception that one can only have an audience with the House, even if it is for the Representatives own educational benefit, if one is prepared to pay for their sitting allowances. NGO's in Zanzibar like Society for the Blind, WALEMAVU, JAZ, ZLSC, ANGOZA or Zanzibar Law Society, which have serious issues that they would like to discuss with the Representatives, cannot afford such a financial bill.

Even though the country is under a multi-party system, the House of Representatives in a way still operates as a one-party institution. In its composition so far it has members only from one political party, and it would take time for members' attitudes also to change. The House would need to interact more with people of different views and perceptions.

The following recommendations are made to strengthen the House to be play its rightful role as a third arm of the state.

RECOMMENDATIONS

R 8.1 The idea of a President being part of a legislature is not healthy for a democratic development. It undermines the concept of separation of powers. It confirms the assertion of academics that in Africa there has developed an imperial presidency. The Nyalali Commission had earlier on recommended that once a bill is passed by a legislature, it could be signed by the Speaker to become a law. There are countries where this is done.

R 8.2 The House of 81 Representatives is too big for a population of less than a million. The costs of maintaining such a big number is too enormous. There is no serious reason why the Regional Commissioners should sit in the House. Elected representatives can represent the constituencies and the regions, and Ministers can answer for the government. The Mainland Regional Commissioners have stopped sitting in Parliament since 1995, and it does not seem that the Union Parliament in any way has suffered as a result of their absence. A country like Botswana with a population of 1.5 million and wealthier than Zanzibar has a National Assembly of 40 members and a House of Chiefs of 15 members. The Palestine National Council, which is the legislature of the Palestinian Authority has a membership of 80 in a population of 2.5 millions. Denmark with a population of 5 millions has a parliament of 179 members which, if translated to the size of the Zanzibar population, would mean a parliament of 35 members.

R 8.3 The President has powers to appoint 10 members to the House, and together with 5 Regional Commissioners, the President thus appoints almost a fifth (18.75%) of the House. Over a period of time there has been an erosion of the original concept of granting the President the powers to appoint people to the House. The original intention in the Independence parliament of Tanganyika had been to allow the President to appoint to the House people with no interest in partisan politics, professionals, retired civil servants, priests and Imams, and others respected in society so that they could help the House. The idea had never been to increase the majority of a ruling party in the House, or for the President to get Ministers from amongst the appointed members. In recent years the practice in Tanzania has been for either the President to appoint people who failed in the elections or to increase the majority of his party in the House. There was also a case in Zanzibar where 8 out of 10 Presidential appointees became Ministers. It is strongly recommended that the President should have no powers to appoint people to the House. Should it still be found necessary for the President to retain such powers, then the number of those he/she could appoint be reduced to five only, and then a criterion be set up as to the pool from where he/she can draw such members. Perhaps a thought can be

given to going back to the original intentions but to also include the disabled, the blind and other disadvantaged sections of the society.

R 8.4 It is suggested that the post of a Speaker of the House be left out of the domain of partisan politics, that is any Zanzibari who is eligible to be a member of the House can contest for the post whether or not he/she is sponsored by a political party. For the position of a speaker such a requirement of party sponsorship is not necessary, though for a foreseeable future it might not happen for somebody not sponsored by a political party to win such a position. It is suggested also that once one is elected to the position of a speaker, he/she should not be allowed to occupy a leading position in a political party. Once elected, the speaker is representing all the members of the House, is expected to personify the House, and to stand for the interests of the House, and to be governed by the country's Constitution and the standing orders of the House.

R 8.5 A House is where different socio-economic and political groups contest for power. It is also from the House where a President draws his/her Ministers. It might be necessary therefore to set a minimum education level for one to attain to qualify to being a member of the House. Such a requirement exists in a number of countries.

R 8.6 Members of the House need training on parliamentary matters, socio-economic, political and cultural issues, international affairs; they need orientation seminars, exchange visits, and more interaction with the communities in the country.

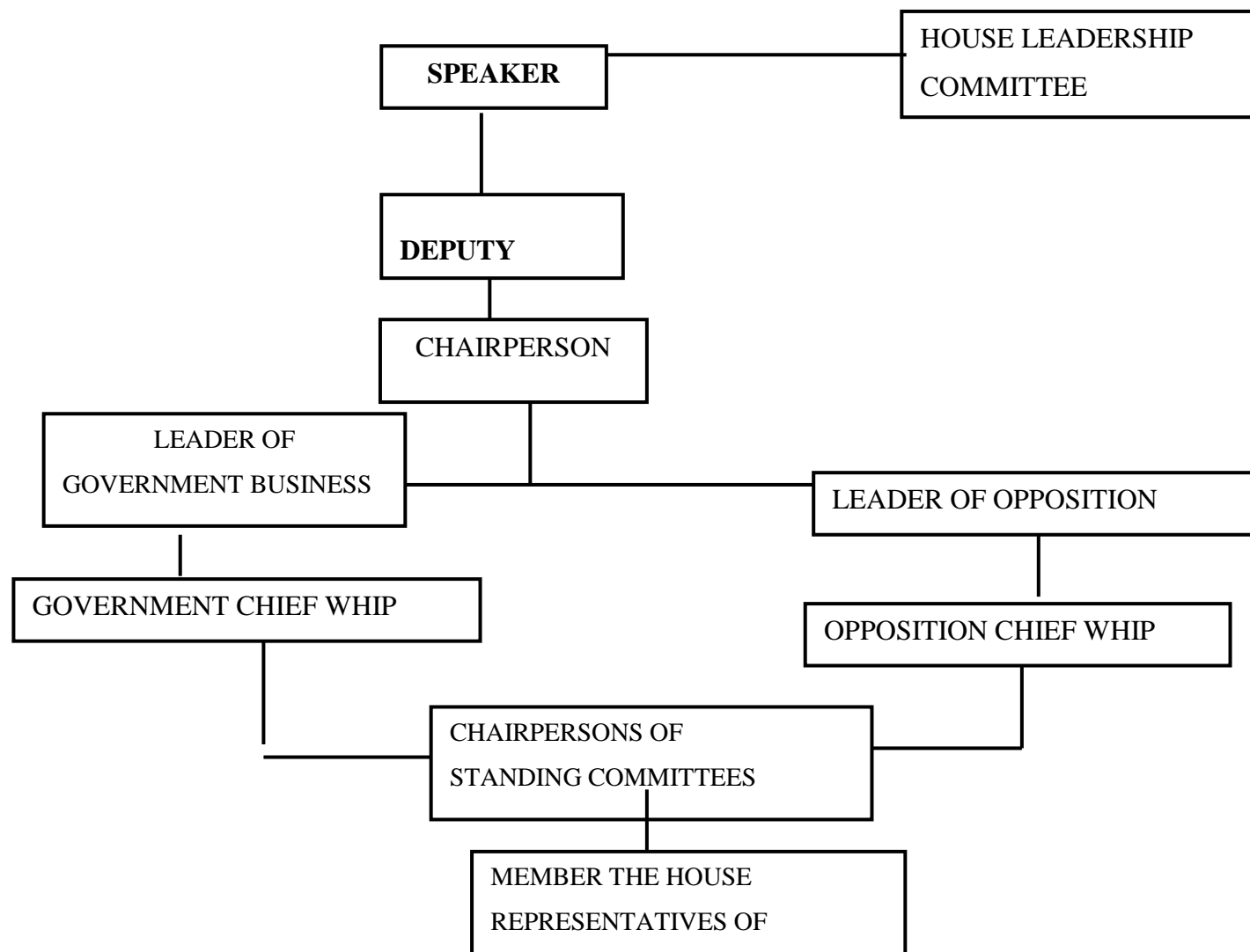
R 8.7 The standing committees of the House must be strengthened by providing them with proper secretariat and university graduates to work as research assistants. The proposed bills need to be submitted to them a long time for thorough discussions and consultations to take place.

R 8.8 There is a real overstaffing in the administration of the House. This in fact increases inefficiency in the institution. Efforts should be directed on retaining only a minimum non-professional staff and increase the number of professional staff.

R 8.9 Staff training is necessary. Members of staff serving as secretaries or research assistants to the standing committees would need to specialise according to the committees to which they are attached. Every member of staff, from the Clerk to the House to a registry assistant, must be computer literate.

R 8.10 The House of Representatives needs a building of its own, with modern facilities. The present premises are not fit to accommodate such an august body. The proposed building does not need to be ultra-modern. It can be a modest one but with the prestige and stature of a legislature, and equipped with modern facilities like computers, photocopiers, a printing unit, recording facilities, a library, reading room, committee rooms, facilities for the press, rooms for party caucuses, etc. The structures must be within spacious grounds.

HOUSE OF REPRESENTATIVES ZANZIBAR



**COMPOSITION OF THE HOUSE OF REPRESENTATIVES AFTER 8TH
AMENDMENT TO THE 1984 ZANZIBAR CONSTITUTION**

REPRESENTATION	NUMBER REQUIRED	PRESENT NUMBER	MEN	WOMEN
Elected Representative	50	33	30	03
Woman seats	15	10	-	10
Presidential Appointees	10	07	06	01
Regional Commissioners	05	05	05	-
Attorney General	01	01	01	-
<u>Total</u>	81	56	42	14

HOUSE OF REPRESENTATIVES

Work Plan for various activities

(in US \$)

Activity	2003	2004	2005	Responsible
1.1 Training of Professional Staff	97,875 120,000	120,000		HOR
1.2.4 Seminars for Representatives	30,000	30,000		HOR
1.2.4 Seminars for staff	200,000	200,000		HOR
1.4.2 Study Tours for Representatives (South Africa, Botswana, India, Mauritius)	10,000	10,000		HOR
1.5.2 Study tours for Speaker (UK, South Africa)				HOR
2.1 Office machines and information devices		324,316		HOR
3.1 Printing Unit Facilities		77,631		HOR
4.1 Equipment for Hansard section	174,760			HOR
5.1 Library Requirements		308,574		HOR
6.1 Sound system equipment	14,778			
7.1 Transport	458,875			HOR
8.1 Construction of the New Building <ul style="list-style-type: none"> • Office complex • Hostel construction • Furniture 		5,696,446		HOR

• Administrative requirements				
9.1 Rehabilitation Work for Present Premises	239,166			RGZ
10.1 Repairs and Maintenance	20,000	30,000	30,000	RGZ

9. STRATEGIC PLAN

9.1 INTRODUCTION

The Zanzibar Vision 2020 and the Zanzibar Poverty Reduction Plan have pointed out the way that Zanzibar is going to develop in the coming years. These plans are based on an understanding that internal material resources are to be mobilised, people's efforts are to be exerted and international support sought in order to tackle the development challenges facing society. There has also been a realization that all that has to be premised on a governance framework that would relate development. To show its commitment to the attainment of good governance, the Zanzibar Revolutionary Government has established a specific Ministry to deal with the issues of governance. This Ministry is to play a pivotal role in the whole governance situation in the islands.

The last time governance issues were reviewed was more than forty years ago when the colonial administration introduced a Ministerial system of government. Since then there took place not only a revolution and the country following a one party system, but a number of radical constitutional, legal and political changes including reversing to a multi-party system have also been witnessed, yet there has not been any comprehensive review of the governance framework. It is commendable that the Zanzibar Revolutionary Government has decided to commission such a study now.

At present good governance is not only considered as necessary in any serious development effort, but acceptability of a state by the rest of the international community and its ability to attract aid and get understanding depends on how it meets the criteria of good governance and democratic behaviour. It is commendable that the Zanzibar Revolutionary Government recognises and appreciates the principles of good governance. In the same vein it is equally important that the principles of good governance as enunciated in Chapter Three are mainstreamed and implemented.

9.2 VISION AND MISSION

The **vision** of the Government of Zanzibar is of a prosperous and modern country characterized by high rates of economic growth, social unity and cohesion, and national well being. Within the above context the vision of the Ministry of State, President's Office, Constitutional Affairs and Good Governance is of high performance, reputable and dynamic ministry that sets a national, and regional example of excellence in efficient and effective provision and coordination of good governance and public service.

The **mission** of the Government of Zanzibar in general and the Ministry of State, Presidents Office, Constitutional Affairs and Good Governance is:

- To ensure the prevalence and institutionalisation of the rule of law and respect for human rights.
- To ensure the continuation and strengthening of a democratic political system anchored by strong representative and participatory institutions and processes.
- To work towards increasing transparency in the conduct of public affairs.
- To increase accountability in society including accountability of leaders and public officials and institutions for their actions and omissions.
- To ensure efficient and effective functioning of public institutions, and agencies, including optimum delivery of essential public services.

Strategic Objectives

1. Improved legal framework including review of the constitution and other laws related to good governance.

2. Improved and streamlined law enforcement organs especially the Judiciary, Director of Public Prosecutions, Tribunals, Prisons, etc.
3. Improved, streamlined, and strengthened institutions of central administration including the Civil Service and independent agencies e.g. the office of the Controller and Auditor General.
4. Improved systems and practices of transparency, accountability, and ethics in the conduct of public affairs.
5. Improved, streamlined, and energized Local Government system.
6. Improved and strengthened system of representation and Office of the House of Representatives.
7. Improved delivery of essential public services including education, water, health and agricultural inputs.
8. Improved and strengthened civil society participation in public affairs.
9. Increased and strengthened public service infrastructural and logistical capacity including buildings, computers and other office equipment, communication and information systems, vehicles and other means of transportation.
10. Improved public service human resources and management including acquiring skills in critical areas, training, and rationalization.
11. Improved and streamlined systems of coordination between the union and Zanzibar governments especially in areas of finance and institutional cooperation.

12. Improved systems of electoral democracy including composition and functions of the Zanzibar Electoral Commission.

9.3 ROLE OF THE MINISTRY

The Ministry of State, President's Office, Constitutional Affairs and Good Governance (MS, PO, CA&GG) was formed in November 2000. At that time however, the Ministry had no specific policy to guide it in achieving good governance. There are a number institutions, which fall under the portfolio of the Ministry, including “old departments” – such as the Judiciary, the Attorney General's Chambers and Law Review Commission, the Controller and Auditor General, the Registrar General's Office, the Wakf Commission, and the Mufti Office, and “new departments” – including the recently created Office of Director of Public Prosecutions and the proposed Leadership Ethics, Anti-Corruption and Human Rights bodies respectively. The Ministry has been charged with the responsibility of preparing and coordinating good governance issues, which are cross-cutting.

9.3.1 Strategic Analysis

This section covers the stakeholder analysis, the internal organization analysis of the Ministry of State, President's Office, Constitutional Affairs and Good Governance and other good governance institutions, benchmarks, and external environmental analysis.

9.3.2 Stakeholder Analysis

Stakeholders in the Zanzibar Good Governance Strategic Plan (ZGGSP) fall into five broad categories namely, the Government, both at the central and local levels, the employees of the coordinating ministry, the various ministries and departments and good governance institutions under the portfolio of the Ministry; the general public; civil

society organizations and the donor community. For the Revolutionary Government of Zanzibar in general and the Ministry of State, President's Office, Constitutional Affairs and Good Governance in particular to be able to achieve the overall vision and mission set out in this Plan, there is a need to address the stakeholder expectations as outlined below.

Stakeholder	Expectation/Interest	Relative power to influence vision/mission achievement
The General Public	<ul style="list-style-type: none"> ▪ Contribute to the achievement of the Good Governance Strategic Plan, the Zanzibar Vision 2025 objectives and Poverty Reduction Strategies creating a system of delivery of justice that is free, fair, accessible, speedy, and transparent ▪ Encourage the promotion of and creation of a sustainable culture of respect for human rights, principles of good governance, democracy and enforcement of rule of law and constitutional principles ▪ Being educated on their human rights and duties and principles of good governance ▪ Transparent and fair allocation and use of public resources ▪ Zero tolerance of corruption and accountable leaders 	High
Employees	<ul style="list-style-type: none"> ▪ Competitive and attractive conditions of service and working environment ▪ Career advancement and development of work skills ▪ Job security ▪ Training 	High
Civil society organizations	<ul style="list-style-type: none"> ▪ Independence and autonomy of good governance institutions to be maintained and respected ▪ Promotion, protection and enforcement of human rights and abiding by principles of good governance such as transparency, accountability, integrity, legitimacy and efficiency and effectiveness in the delivery of public services 	Medium
Donor Community	<ul style="list-style-type: none"> ▪ Judicious use of resources and achievement of vision/mission ▪ Promotion, protection and enforcement of human rights and principles of good governance 	Medium

9.2.3 SWOT Analysis

The SWOT Analysis presented here, deals specifically with the Ministry of State, President's Office, Constitutional Affairs and Good Governance, but also touches generally also on the broad based governance issues discussed in the Report. Given its relative location the Ministry of State, President's Office, Constitutional Affairs and Good Governance (MS, PO, CA&GG) will definitely be instrumental in the coordination of the implementation of the Plan. Through a SWOT analysis, the following were identified as being the strengths, weaknesses, opportunities of and threats to the Ministry and other good governance institutions.

9.4 Internal Organizational Analysis

Organization and Management

Currently the Ministry of State, President's Office, Constitutional Affairs and Good Governance has a very heavy portfolio. It includes that of the Judiciary, the Office of the Attorney General (ZAG), the Office of Director of Public Prosecution (DPP), the Office of Mufti (OM), the Office of Registrar General (RG) and the Commission of Wakf and Trust Property (CW&TP). The Office of the Controller and Auditor General also used to be under the Ministry's portfolio but has now been given separate and independent existence. Despite this, the arrangement creates an "organisational burden", which may make the task of coordinating the implementation of this Plan quite cumbersome. The Report makes some pertinent recommendations on streamlining the structure and operations of the Ministry so as to improve its performance both in terms of resource utilization and capacity to coordinate and manage the good governance process.

Policy-making and day-to-day Management

The Directorate of Administration and Management within the Ministry of State, President's Office, Constitutional Affairs and Good Governance, which is headed by a Director (a Postgraduate Diploma holder), is charged with the general implementation of all matters pertaining to good governance. In that regard the Ministry has created the following units:

- (ii) NGOs management and coordination unit
- (iii) Planning and Training Unit
- (iv) Civic Education Unit
- (v) Information, Statistics and Information Technology Unit

However, the above units are yet to be given the requisite working tools and technical staff to enable them to carry out their respective functions more effectively and efficiently. The Ministry is highly deficient in terms of qualified and skilled staff. For example out of the total workforce of the Ministry which currently stands at 66, only four (4) hold degrees; four (4) Advanced Diplomas; One (1) a Post Graduate Diploma; Two (2) Ordinary Diplomas; and Three (3) Certificates. The rest of the work force is constituted by secondary and primary school leavers (Form II – 2; Form III – 15; Form IV – 19; Form VI – 1; Primary School – 9. The Ministry suffers from a serious problem of over-staffing of un-trainable staff and inadequate number of skilled personnel. Furthermore, monitoring and evaluation procedures are poor and inconsistent and neither is there a proper staff performance appraisal system in place.

It seems very clearly that there is lack of clear and comprehensive staff training and development policy. In the absence of such a policy the Ministry has proposed a long-term training for 20 members of its staff and an equivalent number for short-term training. The Ministry intends however, is seeking to train 6 members of its staff

immediately for the long term and 4 for the short-term as well as organize a study tour for 2 members of its staff. There is no indication as to the specific areas of training proposed. However, from the nature of things and the current staff disposition in the Ministry, the technical aspects of implementing the Plan calls for a strong need for technical assistance to the proposed Good Governance Coordination Unit.

The Minister of State in the President's Office is in charge of all the constitutional affairs and good governance issues and has ministerial responsibility for all the good governance institutions under his portfolio. The Ministry constitute the policy-making body in so far as constitutional affairs and good governance issues for the Revolutionary Government of Zanzibar are concerned. The Permanent Secretary (who is an LL.B degree holder) carries out the day-to-day management activities of the Ministry. The Permanent Secretary is also the Deputy Attorney General. The PS is assisted by a team of personnel in the division of Accounts, Personnel and Administration department. There is no unit within the Ministry specifically charged with coordinating good governance issues for Zanzibar. The Report recommends the establishment of such a unit.

Key Issues on the organization and management

The key issues outlined below have been identified as a result of a quick survey that was carried out by the Consultants during the initial stages of the preparation of the Plan to determine the key areas of internal management in the Ministry and other good governance institutions that need improvement/strengthening. While some of the issues may be specific to the Ministry, a majority of them are relevant to the other good governance institutions. The survey elicited the following results and prioritization of problem areas under the seven broad titles of: **Institutional Governance, Management Practices, Human Resource, Financial Resource, Service Delivery, External Relations and Sustainability.**

Institutional Governance

- Lack of clear and comprehensive staff training and development policy
- Lack of strategic plans (clear achievable objectives and strategies)
- Lack of regular surveys of stakeholder needs
- Lack of clear-cut managerial hierarchy particularly in the Judiciary
- Lack of constitutionally or legally designated Deputy Chief Justice

Management practices

- Inadequate or lack of organizational structures with clearly defined lines of authority and responsibilities
- Inadequately defined personnel policies, schemes and practices
- Lack of information system for data gathering, analysis and dissemination of information
- Inadequate resources and operational plans
- Lack of effective monitoring and evaluation systems (performance appraisal mechanisms)
- Lack of regular examination of activities (self assessment)
- Minimal supervision of subordinate courts by Regional Magistrates due to logistical problems
- Lack of known system of recruitment, performance evaluation procedures or staff inventory

Human resources

- Lack of staff training and development plans
- Inadequate description and staff performance appraisal systems
- Lack of initiative and self motivation among staff
- Lack of competitive salaries and motivation schemes
- Lack of proper staff performance appraisal system
- Poor and/or inconsistent monitoring and evaluation procedures

- Critical shortage of qualified and skilled staff
- Understaffing and overstaffing in some areas
- Poor educational standards of the support staff
- Poor conditions and terms of service

Financial Resources

- Lack of adequate procurement and inventory control systems
- Lack of adequate budgetary authority to responsibility centres
- Unjustifiable under-funding

Service Delivery

- Lack of sectoral expertise that is credible and recognized by all stakeholders
- Inadequate provision of structures, personnel and skills for outreach activities
- Lack of regular impact assessment of service delivery systems
- Lack of basic equipment, ranging from basic office facilities to tools and equipment
- Lack of information and communication technology infrastructure
- Dilapidated office buildings
- Poor and/or lack of library facilities
- Lack of requisite legal materials
- Inadequate and/or lack of office space

External Relations

- Weak networking and coordination of decision and policy makers in ministries and departments with regard to good governance issues
- Limited dissemination of Ministry's vision/mission and policies to the general public
- Lack of strong links with media and other bodies including NGOs

Overall Internal Organizational Strength and Weaknesses

Strengths

The overall internal strengths derive from the following:

- Location of the Ministry in the President's Office
- Leadership and staff commitment in fostering good governance and economic development
- Strong political will to deal with good governance issues
- Limited pool of seasoned staff in "old" departments such as the Civil Service Department, the Judiciary, the Office of the Attorney General, the Office of Registrar General and the Wakf Commission
- Process in place to elaborate on division of functions and responsibilities within good governance institutions
- People's awareness and expectations on rights and democratic principles is high
- Support from development partners

Weaknesses

The overall internal weaknesses derive from the following:

- Outdated and obsolete legal framework
- Poor or lack of accountability of leaders both at the central government and local governments
- Insufficient financing of local governments to provide basic services
- Lack of clear division of responsibilities between central government, the regional and district administration, and local governments
- Duplication of Government Offices based on geographical allocation between Unguja (Zanzibar) and Pemba (Chake Chake)
- Lack of infrastructure at most of the Pemba offices
- Inadequate logistics and equipment

- Uncompetitive conditions of service
- Low key collaboration with critical good governance institutions in Union Government
- Restrictive and overburdened organizational structures
- Insufficient/inadequate skilled staff
- Slow adaptation to changed working environment
- Overstaffing of un-trainable staff

External Environmental Analysis

Several environmental factors may affect the work of the Ministry of State, President's Office, Constitutional Affairs and Good Governance directly or indirectly. The effect of these factors either present opportunities or threats to the attainment of the vision and achievement of the mission and organizational survival and sustainability. The major environmental factors, which affect most organizations, are political, economic, socio-cultural and technological. The following factors can have the greatest direct impact on the coordinating role of the Ministry in implementing this Plan.

(a) Political and Government Factors

Bureaucratic Red Tape and Attitude

As a coordinating Ministry, fear of bureaucratic red tape and indifference in attitude among policy makers towards the implementation of the Plan is an issue that naturally comes up for consideration.

Stability of Government

The more stable the Revolutionary Government of Zanzibar the more entrenched will be the democratic culture. With the isolated events of January 27th 2000, Tanzania boasts

one of the most stable political systems on the African continent South of the Sahara. With the advent of the Muafaka and its subsequent implementation, adherence to good governance principles and respect for the rule of law, democracy, constitutionalism and human rights seems to be growing daily and the future is seen as a period of continued stability in the two islands of Unguja and Pemba.

Public Expenditure

The Revolutionary Government of Zanzibar intends to reduce public expenditure through the introduction of improved budgetary and expenditure control methods to ensure better resource allocation and utilization, including the introduction of cash budget system, which authorizes the disbursement of approved budgetary money on a quarter basis. This however, will have an impact on the implementation of the Zanzibar Good Governance Strategic Plan. The Ministry of State, President's Office, Constitutional Affairs and Good Governance and other ministries and departments will have to find appropriate responses to this trend through addressing their own efficiency and effectiveness in the use of the subvention obtained from the government to implement the Plan.

(b) Economic factors

Economic growth/GDP trends

The economy of Tanzania Zanzibar has stagnated over the past few years. This trend however, is expected to change as political stability persists, more investments are attracted and the economy is liberalized. As the economy grows, the standards of living of the people of Zanzibar will improve and Government revenue is also likely to improve too. With growth in government revenue, the Ministry like all other good governance institutions is likely to benefit through increased and sustained budgetary allocation from the Consolidated Fund.

(c) Social-cultural factors

Birth rate, age and sex structure of the population

Last year Tanzania conducted her national census the second since independence. The results of the census indicate a growth in the birth rate thus adding more people to the population and leading to increasing number of people seeking justice. It appears that in Zanzibar women are in the majority and the trend is likely to continue in the future. More specialized programmes will have to be designed to cater for governance issues affecting women and children specifically, and to encourage women to be aware of their legal rights and to seek justice when their rights are infringed upon.

Training and education

Currently, there has been a growth in the provision of educational facilities by the State and the private sector. With this the Zanzibar population is expected to become more literate and a more literate society will make the work of the Ministry and other good governance institutions easier as public education becomes more facile and the public appreciates better the role of the Ministry and other good governance institutions. An educated population also is likely to be more vocal in terms of their advocacy for and expectations of democratic institutions. Thus growth in education and training will help in entrenching the rule of law, respect for human rights and democratic culture in the future and adherence to principles of good governance.

Ethical pressures

The people of Zanzibar are now becoming more concerned about accountability, probity and transparency in public office. With the liberalization of sources of information and the airwaves (private print and electronic media) more and more scandals of mal-administration are now being revealed to the public. In view of this, the Ministry and other good governance institutions will be facing greater pressures in the future to consistently maintain a system of public administration that is transparent, non-partisan,

free and fair to all parties concerned. Accountability for public funds will also be part of the pressures to be expected. These pressures are already coming from NGOs.

(d) Technological factors

Technology has revolutionized the way work is done in all sorts of organizations currently. With the rapid growth in information and communication technology (ICT) particularly, which has literally turned the world into a global village, more efficient and effective ways of doing things can be guaranteed for the future. Hence the application of modern technology by the Ministry and all other good governance institutions in their work processes will be expected to have a tremendous impact on their ability to meet the needs of the stakeholders.

Opportunities and Threats in the environment

On the basis of the environmental analysis, it has been established that the following represent the opportunities and threats in the environment:

(i) Opportunities

- Local (leaders) and international goodwill (UNDP and other willing and able donors)
- Government policies supportive of good governance, rule of law, democracy and human rights such as the Zanzibar Vision 2020 and the Zanzibar Poverty Reduction Plan
- Government ratification and accession to human rights treaties
- Emerging good governance and cooperation bodies
- Donor support
- Presence of NGOs
- Improved information technology availability
- Increasing laws on human rights and administrative justice
- Increasing numbers in schools

- Stable constitutional and democratic order particularly the CCM/CUF Accord and the 8th Constitutional Amendments

(ii) Threats

- Unusually high public expectations
- Luke warm government attitude to enforcement of human rights and adherence to principles of good governance and constitutionalism
- Increasing incidences of human rights violations and contravention of principles good governance (corruption and nepotism)
- Increasing number of cases of conflict over public resources allocation and use
- Increasing operational costs due to inflation and low budgetary allocation
- Envisaged retrenchment of civil servants and private sector employees following civil service reforms and restructuring of public enterprises
- Donor support dependence
- Existence of inherited, outdated and obsolete legal regulations and traditions
- Slow adaptation to a changed working environment

Overall Performance

The Revolutionary Government of Zanzibar has achieved some of its intended objectives towards good governance by undertaking the following interim measures:

- The establishment of the Ministry of State, President Office, Constitutional Affairs and Good Governance as an agency in the implementation of good governance in Zanzibar.
- In order to fulfil its mission to coordinate the implementation of good governance, the Ministry has created certain units to tackle specific areas such as NGOs management and coordination, planning and training, civic education and information, statistics and Information Technology.
- The formation of a Technical Committee to review governance issues
- The drawing of a Zanzibar Good Governance Plan.

- The creation of the Office of Auditor and Controller General as an independent government authority.
- The establishment of the Office of the Director for Public Prosecution
- The drafting of a legislation extending the mandate of the Commission for Human Rights and Good Governance to Tanzania Zanzibar
- Preparations for the establishment of the Office of Registrar General as a separate independent department
- The drafting of a legislation to review the law establishing the Office of Mufti
- The establishment of a Joint Financial Commission

9.4 ACTION PLAN

In order to implement the vision and mission outlined earlier, it is necessary to address the many issues and recommendations outlined in the analytical part of this report in a systematic manner. The Action Plan is divided into three sections:

1. A prioritisation of the specific recommendations made in the analytical part of the report (chapters 4 to 8),
2. A proposed timetable for implementation of the strategy,
3. A tentative budget for the Action Plan.

9.4.1 Prioritisation of Recommendations

The detailed presentation of issues and recommendations are outlined in five chapters of this report:

Chapter 4. Central Government,

Chapter 5. Local Government, Regional and District Administrations,

Chapter 6. Judiciary, MoCAGG and Civil Society

Chapter 7. Electoral System,

Chapter 8. House of Representatives

The report makes a large number of specific recommendations within each of the five areas – in total 139. However, this report cannot be considered to be the definitive final

work on governance in Zanzibar. The Report strongly recommends that in-depth studies be conducted in a number of areas such as: Constitutional Reform; Local Government Reform; Public Sector Reform; and Legal Sector Reform.

The specific recommendations within each of the five above areas are outlined in the table below. These can again be categorised into three broad categories:

Category A. Recommendations regarding key policy or legal issues that RGoZ can make without additional studies. These recommendations are of a high priority in terms of urgency and importance.

Category B. Recommendations regarding further analytical works that needs to be undertaken in order to inform RGoZ decision making on revision of laws and policies. These recommendations imply some external assistance and are of a high priority and urgency. We provide reasonable accurate estimates of the costs involved.

Category C. Recommendations regarding capacity building in the form of training, equipment and office accommodation etc. These are of secondary priority and more detailed analyses are necessary before a complete, reliable and prioritised work plan and budget can be made for all the issues covered in the entire Strategic Plan. Preliminary and indicative cost estimates are however provided in the respective chapters

While it is important to ensure overall co-ordination of all governance reforms through Inter-ministerial co-ordination mechanisms and the Ministry of Good Governance and Constitutional Affairs itself, it is also relevant to observe that some degree of autonomous management of the above mentioned key elements of reform is necessary. Within each of the five areas it is thus possible to identify a particular degree of prioritisation and scheduling of activities. This is tentatively discussed in the separate chapters, a final prioritisation and scheduling is however subject to further consultations and decisions by RGoZ.

The Table below summarises all key recommendations of the report. The last two columns of the table indicate where in the report a more elaborate discussion of the particular recommendation can be found and the level of priority (Category A, B or C recommendations).

No	Recommendation	Section Reference	Category
Chapter 4 Central Governance			
4.1	The composition and roles of the Revolutionary Council, their relationship to the President and the House of Representatives should be clarified	4.3	A
4.2	Modalities for allowing the President to appoint to his cabinet people who are not members of the council should be explored	4.3	A
4.3	The position of the Secretary to the Revolutionary Council should be strengthened	4.4	A
4.4	The cabinet secretariat should be strengthened through provision of additional human resources, skills and infrastructure.	4.4	C
4.5	The capacity of the head of the Civil Service should be increased	4.4	C
4.6	The Principal Secretary (Ikulu) should be his Chief Assistant	4.4	A
4.7	The Ministry of State, Finance and Economic Affairs and the Ministry of State Regional Administration and Local Government should be removed from the Office of the President and stand on their own.	4.4	A
4.8	Union Laws should be reworked to accommodate the various forces presently under PO-RALGSD	4.4	B

No	Recommendation	Section Reference	Category
4.9	A Civil Service census should be carried out in order to establish the real number of employees of the civil service	4.4	B
4.10	A Study should be undertaken to establish the actually required establishment of the service.	4.4	B
4.11	A retrenchment exercise should be carried out	4.4	C
4.12	Civil Service General Orders, Scheme of Service, comprehensive job descriptions, employee performance appraisal systems and guidelines for promotion should be developed. The present mechanisms for vetting of civil servants should be re-examined.	4.4	C
4.13	A Comprehensive Civil Service Reform Programme should be designed and undertaken, to address inter alia pay reforms.	4.5	B
4.14	Review of relevant laws and the Constitution regarding the Civil Service Commission should be speeded up	4.6	B
4.15	Composition of the Civil Service Commission to be revisited	4.6	A
4.16	Study of Zanzibar administrative culture to be carried out	4.7	B
4.17	Work on legislation for OCAg to be speeded up for the office to become independent and effective	4.8	B

No	Recommendation	Section Reference	Category
Chapter 5: Local Governance			
5.1	A thorough study should be carried out regarding a rationalisation and democratisation of local governance structures. The output of the study should be a proposal for comprehensive local government reform policy to be tabled Cabinet.	5.8	B
5.2	Modalities for increased local accountability of sub-national governance structures should be addressed as part of the above-proposed study.	5.8	B
5.3	Appropriate mechanisms for local governance funding should be developed subsequent to a rationalisation of the structures	5.8	B
5.4	Modalities of financing community based projects be harmonised into one, with a clear role for local governments and greater transparency and accountability	5.8	B
5.5	Arrangements for local government elections to be improved	5.8	A/B
5.6	A comprehensive capacity building plan for the Ministry (PO-RALGSD), the regions, districts and local governments should be designed as soon as overall Policy for LG reforms is decided upon.	5.8	B

No	Recommendation	Section Reference	Category
5.7	A compressive Local Government Development Programme should be embarked upon as soon as the overall Policy for LG reforms is decided upon. In addition to capacity building and continued refinements of policies, such a programme should include a modality for development funding of local governments (rehabilitation and construction of small scale infrastructures for communities – water, health, education etc).	5.9	C
Chapter 6: The Judicial System			
6.1	Functions of the MoCAGG to be streamlined and focus on policy development and monitoring.	6.1.1	A/B
6.2	A Good Governance Co-ordination Unit be established within the Ministry	6.1.1	A
6.3, 6.5	A Law on Ethics should be passed -	6.1.3	B
6.4	Procedures for public declaration of assets by leaders be developed	6.1.3	B
6.6.	Code of Ethics to be passed for the Public service	6.1.3	B
6.7	Laws and regulations be strictly enforced	6.1.3	A
6.8	Responsibilities of officers, ministers, and parastatal directors and board members should be clearly defined	6.1.3	A/B
6.9 – 6.13	The appointment of judges should be depoliticised and their terms of service be improved	6.2.2	B

No	Recommendation	Section Reference	Category
6.14	Matters of court administration be left to a cadre of specially trained court administrators	6.2.2	B
6.15-6.17	The respective jurisdictions should be rationalised and the professional competence of the magistrates and Kadhis be enhanced.	6.2.2	B
6.18-19	Judiciary should develop and adopt a coherent training policy for all staffs	6.2.2	B
6.20	A Resident judge should be appointed for Pemba	6.2.2	A
6.21	A Study of human resource management should be undertaken for the judiciary	6.2.2	B
6.22-6.25	Children's rights <ul style="list-style-type: none"> • Review of all laws relating to children be carried out, • Review of system of juvenile courts, • Training of relevant staff dealing with children and young people, • Probation system be revamped 	6.2.2	B/C
6.26	Constitution and criminal Procedure decree to be amended to allow an accused person in a criminal trial to have representation of his/her choice.	6.2.2	B/C
6.27 – 6.28	A review to be undertaken of all the procedures of criminal trials	6.2.2	B
6.29	Budgetary provisions for the judiciary be substantially increased.	6.2.2	C
6.30 – 32	Terms and conditions for the judiciary be reviewed and improved	6.2.2	B/C
6.33 – 6.36	Physical facilities for High courts and magistrate courts be upgraded	6.2.2	C

No	Recommendation	Section Reference	Category
6.37-38	A Zanzibar Council of Legal Education (ZACLE) should be established and determine all aspects of applications for admission to the bar.	6.3.3	B/C
6.39-43	A system for postgraduate vocational legal training should be established. A joint GoT and RGOZ Law school should be established to play a key role in this regard.	6.3.3	B/C
6.45-47	Mechanisms should be established to discipline advocates who acts unprofessionally	6.3.3	B/C
6.48-6.49	Specialisation and continuing legal education should be ensured	6.3.3	B/C
6.50	An independent office for ZLS should be established	6.3.3	C
6.51 – 6.54	Short and long term measures for legal aid be implemented	6.4.2	C
6.55-58	Legal Literacy programme be launched and implemented	6.4.2	C
6.59-6.60	Appointment of ZAG to be streamlined	6.5	A
6.61	ZAGC funding to be increased	6.5	A
6.62-64	The position of Deputy Attorney General within ZAGC and MoCAGG should be clarified	6.5	A
6.65-66	A unit of justice, constitutional and human rights affairs should be established in the office AGC	6.5	A
6.67-68	Terms and conditions of service for ZAGC be reviewed	6.5	B
6.69-6.74	A training needs assessment for the legal sector as a whole should be carried out – short and long term training programmes be implemented	6.5	B/C

No	Recommendation	Section Reference	Category
6.75-6.77	Office upgrading and retooling of ZAGC should be undertaken	6.5	C
6.78-6.79	Legislation for regulation of civilian prosecution in the office of the DDP should be enacted.	6.6	A/B
6.80-6.83	The law establishing the office of the Mufti should be reviewed in order to harmonise it with Constitutional provisions on religious liberty, freedom of speech, assembly and association as well as separation of religion and state. Religious institutions should be autonomous and not receive state subventions.	6.7	A/B
6.84-6.85	The Commission for Wakf and Trust property should operate as a body corporate. The Act should stipulate that legal disputes are to be handled by Kadhis court.	6.8	A
6.86-6.87	The independence of the Commissions should be guaranteed through proper procedures for appointment of its members.	6.8	A/B
6.88	The recommended need assessment (training) for the legal sector should cover the Office of the Registrar General.	6.9	B
6.89	It should be explored if it is feasible to merge the Commission for Wakf and Trust Property and the Office of Register General into a single autonomous government agency.	6.9	B
6.90-6.92	The Zanzibar Law Review commission should be revitalised and be provided with adequate budgets, office upgrading and retooling.	6.10	A
6.93	RGoZ should extend the mandate of the Commission for Human rights and Good Governance to Zanzibar, by enacting the necessary legislation to that effect.	6.11	A

No	Recommendation	Section Reference	Category
6.94 – 6.97	A training programme should be developed for the legal sector as a whole	6.12	B/C
Chapter 7: Electoral System			
7.1	A well articulated and simple to understand electoral law should be put in place and effectively disseminated to all political actors and stakeholders.	7	A/B
7.2	The composition of ZEC should be reviewed	7	A/B
7.3	The idea of including elements of proportional representation should be pursued. A Constitutional and electoral mechanism should also be put in place to ensure that parties are required to share power once they reach a minimum percentage of votes and no less than 10 elected seats.	7	A
7.4	Residential requirement should be removed as a condition for one to register as a voter in Presidential, house of Representatives or local government elections.	7	A
7.5	Independent candidates should be allowed to stand in general elections.	7	A
7.6	Financial resources for well conducted elections should be accumulated in government budget well in advance of the electoral year	7	A
7.7	ZEC should only be responsible for Zanzibar elections, whereas NEC takes full charge of the Union elections.	7	A
7.8	Autonomy of ZEC should be ensured	7	A

No	Recommendation	Section Reference	Category
Chapter 8: House of Representatives			
8.1	The President should not be part of the legislature	8	A
8.2	The House of Representatives is too big – there is no need for the Regional Commissioners to sit there.	8	A
8.3	The powers of the President to appoint members of the House of Representatives should preferably be abolished – or at least curtailed.	8	A
8.4	The Speaker of the House should be left out of the domain of partisan politics.	8	A
8.5	A minimum education level should be set for members of the House.	8	A
8.6	Members should receive training and orientation in order to perform more effectively.	8	B/C
8.7	A proper secretariat should be established to support the house and its standing committees	8	B/C
8.8	A rationalisation should be undertaken of the staffing structure for ammunisation of the House.	8	B/C
8.9	Staff training should be undertaken	8	C
8.10	The physical environment of the House of the Assembly should be improved and a new building possible sited.	8	C

6.4.2 Time Schedule

	2003	2004	2005	2006	2007
1) Review and Action on all Category A Recommendations					
2) Undertake all key policy and legal reviews (Category B recommendations)					
3) Detailed capacity building needs assessments (Category B)					
4) Full scale capacity building programmes (training, infrastructure upgrading etc – category C Recommendations)					

Detailed proposals regarding the timing of key activities such as studies and needs assessments are included in the five-year budget presented below.

6.4.3 Budget Requirements

A draft budget for the implementation of priority activities of the Five-year strategic plan is enclosed below. The budget presents reasonably accurate estimates of the costs for the key policy and legal reviews as well as for the various studies for detailed training needs assessments. Subsequent capacity building plans needs however to be based on those detailed studies as well as prior policy decisions. Thus it is impossible to provide detailed estimates for such activities envisaged to be undertaken from 2005 and beyond.

The separate chapters provide assessment of the cost implications for more comprehensive capacity building, including some assessments of support to infrastructures. These estimates are mainly based on self-assessments by the participating institutions and need in our view to be further scrutinised before RGoZ make final; prioritisations. The total budget of the legal sector alone is thus estimated to more than 28 million US\$ (see table end of chapter 6). The budget enclosed below budget for what we recommend as key priority activities only: provision is made for continued analytical works, the necessary studies for more detailed capacity building assessments as well as some priority capacity building activities.

PRIORITY BUDGET FOR GOOD GOVERNANCE BY OUTCOME AND ACTIVITIES

Activity	Implementer(s)	2003	2004	2005	2006	2007	TOTAL
Outcome 1- Enhanced capacity of MoGGCA to Co-ordinate and lead Governance Reforms in Zanzibar							
Develop 5 year Strategic Plan	MOCAGG						
Staff training and systems development		60,000	50,000	50,000	50,000		
sub-total		60,000	50,000	50,000	50,000		210,000
Outcome 2 - Reformed Public Service							
Review of Public Sector Wage Bill and Pay issues	CSD	100,000	0	0			
Design of Civil Service Reform programme			100,000				
Capacity Building Plan for Civil service Commission			50,000				
Strengthen capacities for Reform Management			150,000	100,000	100,000		
Public Service Training programme			0	100,000	100,000		
sub-total		100,000	300,000	200,000	200,000		800,000
Outcome 3 - Improved Local Governance							
Local Government Reform Policy	PO-RALGSD	0					
Revise legislation, procedures and manuals		0	160,000	100,000	100,000		
Capacity Building plan for Ministry, Regions, Districts		0	20,000				
Training and retooling of Ministry		0	10,000	10,000	10,000		
Training and retooling of districts and councils		0	50,000	150,000	300,000		
		0	240,000	260,000	410,000		910,000

Outcome 4 - Improved Access to Justice							
Law Review	MCAGG		50,000	50,000	50,000		
HRD Plan for judiciary		50,000	50,000	50,000	50,000		
Plan for rational upgrading of physical structures		25,000					
Legal Aid and literacy programme			25,000	50,000	50,000		
Strengthened Attorney Generals Office			50,000	50,000	50,000		
Strengthened Office of the Mufti			25,000	25,000			
Strengthened Office of Registrar General			25,000	25,000			
Strengthened Director of Public Prosecutions			50,000	50,000	50,000		
sub-total		75,000	275,000	300,000	250,000		900,000
Outcome 5 - Improved Electoral System							
Establish Permanent Voters Register	ZEC						
Staff Training			30,000	30,000			
Seminars for Commissioners			20,000	20,000			
Upgrade printing facilities			70,000				
Seminars for Election Officers				120,000			
Upgrade Transport facilities		20,000					
sub-total		20,000	120,000	170,000	-		310,000
Outcome 6 - Improved House of Representatives							
Establish Secretariat	HoR		100,000	250,000			
Training of Staffs			60,000	60,000			
Training and study tours for Members of the House			75,000				
sub-total		-	235,000	310,000	-		545,000
Outcome 7- Stenghtened Union Secretariat							

Undertake needs assessment and capacity building		-	100,000				
sub-total		-	100,000	-	-		100,000
Outcome 4.8 - Improved Police and Prisons							
Undertake needs assessment and cap building		-	50,000	50,000	50,000		
sub-total		-	50,000	50,000	50,000		150,000
Grand Total			1,320,000	1,290,000	910,000	0	3,715,000

9.5 SYNCHRONISATION OF THE GOVERNANCE SYSTEM

Tanzania is a single sovereign state with two governments. The Union Government has jurisdiction on Union matters over the whole country and the Zanzibar Revolutionary Government has jurisdiction on the non-Union matters in Zanzibar. The existence of separate Ministries of Health, Agriculture, Transport, Communications, etc., puts an emphasis to this point. In the past the link between the Union Government and the Zanzibar Revolutionary Government was the Zanzibar President for he was not only the chief executive with regard to Zanzibar but was also the principal adviser to the Union President on matters regarding Zanzibar. His removal now constitutionally from being the Vice-President of the Republic and therefore the principal advisor to the Union President on matters regarding Zanzibar has meant that there is no direct constitutional link between the two governments.

In matters of governance it is important that the two governments not only regularly exchange ideas and synchronize their actions, but that they should at times be seen action in unison. Even though matters of human rights might not be seen to be a Union matter, but it is the Union Government that is signatory to the international human rights instruments, and the international community holds the Union Government to be responsible in implementing the provisions of those conventions in Tanzania. Therefore it is important in area like this that there be a synchronization of activities.

The other area is that of leadership ethics. Political leaders in Tanzania emanate from political parties, which are pan-territorial. The selection bodies within political parties that selects leaders for elective posts in the Union Government are one and the same as those that select leaders for elective posts in the Zanzibar Revolutionary Government. It is different, of course, with regard to senior government officials. But would it not be a good idea to expect of the same ethical standards from all political and government leaders from both sides of the Union? It might make a good sense if matters of anti-corruption and leadership ethics are dealt with jointly.

Now that members of the Joint Financial Commission have been appointed, one hopes that the debates of the past will cease. Instead this new situation will give rise to a more positive development whereby really joint efforts will be exerted at sharing the costs and the benefits of running Union institutions.

ANNEXES

- 1) TOR for consultants to develop the Strategic Plan on good Governance,
- 2) Bibliography,
- 3) Institutions Visited and Persons interviewed,
- 4) Proposed TOR for Local Governance Reforms

ANNEX 1: TERMS OF REFERENCE FOR THE CONSULTANTS TO DEVELOP THE STRATEGIC PLAN ON GOOD GOVERNANCE IN ZANZIBAR (SPGG)

BACKGROUND:

Democracy and good governance are the key pillars towards building a sustainable and equitable society. In terms of public administration, they are the underlying factors for effective, efficient and accountable government which can consequently draw and implement proper policies for economic, political and social development.

A number of political and social factors have, for some years now, made it difficult for good governance to be instituted in Zanzibar. However, with time, efforts made by the existing Government in building a harmonious society are very encouraging and supported by the population.

Zanzibar, under the rule of the existing Government, is determined to strengthen the level of governance as a means of enhancing social, political and economic development. In the implementation of this initiative, the Government has established a Ministry dealing with constitutional affairs and good governance. Some of the main functions that the Ministry is charged with include: the entrenchment of the basic freedoms and rights of all groups and individuals in the fundamental law of the land, supremacy of the rule of law, existence of an independent judiciary, the separation of power, popular participation through constitutionally enriched local government, community forums, traditional assemblies, independent media, etc.

Since its inception in November 2000, the Ministry has formulated its development vision which focuses mainly on those areas that offer opportunities for Government to fulfil its' desire to improve performance of its development institutions and the creation and strengthening of good governance. In addition to this, the Zanzibar Poverty Reduction Plan (ZPRP) attributes good governance to: accountability, transparency and efficiency, legal framework, popular participation in decision-making process, and freedom of movement, association and expression. All these are consistent and supportive of main goal of Vision 2020 which spell out that the strengthening of good governance systems is essential for any poverty eradication initiatives.

While the Ministry of State, President's Office, Constitutional Affairs and Good Governance is charged with the responsibility of coordinating all good governance activities, it is still faced with great challenges. Although the current Government has made significant contribution to the Ministry, its needs are still extensive and the workload ahead is very intensive. There are urgent needs in terms of human resources, office infrastructure, equipment, communication and transport. In addition, there is an urgent need to build strong pillars in the way forward towards good governance and reforms in the local government system, civil service, financial discipline, the public service delivery system, and the improvement, strengthening and streamlining the current law enforcement institutions.

With such a workload as stated above, the most essential first step is to develop a Strategic Plan on Good Governance (SPGG) in Zanzibar. The SPGG would outline the work programme for the next years, clearly identifying the current capacity gaps and present a detailed capacity building programme in all the targeted areas. Furthermore, the SPGG should be able to clearly indicate the most optimum actions to be undertaken in terms of institutional, operational and legal framework as well as resources (in terms of human, financial and timeframe) required for the implementation of the required actions.

The Zanzibar government, through the Ministry of State, President's Office, Constitutional Affairs and Good Governance, would like to request for technical assistance to draft the SPGG. UNDP has committed itself to finance a consultancy under its support for the Strengthening Participatory Democratic System in Tanzania.

DUTIES AND RESPONSIBILITIES

The overall objective of this consultancy is to assist the Ministry of State, President's Office, Constitutional Affairs and Good Governance with the drafting of the SPGG. Specifically, the duties and responsibilities of the consultant(s) can be described as follows: -

1. To review the Ministry's vision on good governance to determine whether it is adequate or needs to be improved and to suggest areas of such improvement;
2. To review various studies and projects conducted or undertaken so far on various areas of good governance in order to determine whether they are relevant under the

existing circumstances or need to be improved and suggest areas of such improvement;

3. To assess administrative, operational, institutional and legal framework of various institutions to be covered under the SPGG in order to determine their capability in terms of human as well as financial resources;
4. To provide a detailed inventory of the current capacity of the Ministry of Constitutional Affairs and Good governance and all the other stakeholders to be involved in the SPGG;
5. To facilitate a SWOT analysis with the Ministry and all the other key stakeholders to be involved in SPGG, detailing a profile on all the requirements in terms of human resources, office infrastructure, equipment, communications and transport;
6. To develop a capacity building programme, detailing the budget required and giving an indication of the possible government contribution;
7. To work with Ministry and all the other key stakeholders staff to draw up the outline of their activities, needs and priorities particularly those related to the implementation of ZPRP;
8. To develop a more detailed work programme and costing for the implementation of the priority areas in the next 5 years, giving an indication of the possible government contribution. Identify and recommend areas that need immediate action, also indicating costing;
9. To identify areas which need further comprehensive studies for the purpose of determining administrative, institutional and legal changes required to be made;
10. To identify any long-term technical assistance required and to suggest TOR for such assistance;
11. To make concrete recommendations on closer collaboration in term of coordination between the Ministry and the other Stakeholders;

12. To examine the legal framework governing the governance operations in Zanzibar and to assess whether the current legal framework is adequate to enable the Ministry to play its role as coordinator of governance;
13. To make concrete recommendations on the synchronization of the governance system in Zanzibar and on the Mainland;

OUTPUTS:

The Consultant(s) will have to produce the following outputs:

1. An inception report, setting out an interpretation of Terms of Reference, to be produced within the first week of the consultancy;
2. A report outlining the results of the capacity assessment including the results of the **SWOT** (Strengths, Weakness, Opportunity and Threats)
3. A draft strategically oriented plan for the SPGG for the next 5 years i.e. 2002/3 – 2006/7, with clear priorities and in line with national focus.
4. A detailed work programme encompassing the activities of the key stakeholders and including a budget proposal for the implementation of the SPGG;
5. An outline of the activities that require urgent action and the cost implication;
6. Draft TOR for any long-term technical assistance required for the implementation of the SPGG.

CONSULTANT'S PROFILE:

1. The assignment requires the services of a number of all-round professionals in the area of governance but specifically in the following components:
 - i. Public Administration, Management and Coordination (Also to be the team leader)
 - ii. Parliamentary and electoral processes;
 - iii. Local Government and Civil Society Participation
 - iv. Public sector reform;
 - v. Legal sector reform;

- vi. Public Financial system;
- 2. They should have not less than 10 years experience in developing countries, preferably in Africa. Excellent Communication skills in English, good facilitation skills, diplomacy and tact are essential attributes. Knowledge of and experience in Tanzania, particularly Zanzibar is desirable. Adequate knowledge of Swahili would be an added advantage.
- 3. If the consultants are a non-Tanzanian, they will be expected to partner with Tanzania consultants.

METHODOLOGY AND MANAGEMENT:

- 1. The Consultants will work and consult very closely with the Principal Secretary and all other key staff in the Ministry of Constitutional Affairs and Good Governance and in close collaboration with all the other stakeholders whose components will form the SPGG. The Ministry will have to appoint a focal point who will work with the consultants for the entire duration of the consultancy and will act as the consultants' liaison officer.
- 2. The consultants will be based at the Ministry of Constitutional Affairs and Good Governance and will be assisted on the day-to-day basis by the UNDP Programme Officer based in Zanzibar. The UNDP Assistant Resident Representative in charge of Governance based in Dar es Salaam will provide overall guidance at crucial stages of the consultancy.
- 3. The consultants will use a mix of methods including document review, interviews, small group discussions, SWOT analysis and other participatory techniques as well as workshops.
- 4. Consultations could also extend to the Mainland if in the course of the consultancy this is seen as adding value to the final product. The idea is to get all groups of the population involved right from the beginning so as to strengthen the ownership of the process.

TIMEFRAME:

The consultancy will last no more than six working weeks and will commence no later than the second week of September 2002 and end not later than the third week of October. The consultants will present an inception report within the first working week of the consultancy. All outputs are to be delivered within the consultancy period.

REMUNERATION:

Depend on the UNDP established rates for local as well as international consultants

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ANNEX 3: INSTITUTIONS VISITED AND PERSONS INTERVIEWED

	Name	Organization	Position
1	Hon. Hamid Mahmoud Hamid	Judiciary	Chief Justice of Zanzibar
2	Hon. Idi Pandu Hassan	Attorney General's Chambers	Attorney General of Zanzibar
3	Hon. Omar O. Makungu	Ministry of Constitutional Affairs and Attorney General's Chambers	Principal Secretary and Deputy Attorney General
	Mwinyiusi A Hassan	Ministry of Good Governance and Constitutional Affairs	Director
4	Hon. Mbarouk Salim Mbarouk	High Court Zanzibar	Registrar
5	Mr. Othman Masoud	Office of Director of Public Prosecution	Director of Public Prosecution
6	Mr. Omar D. Shajak	Ministry of Youth, Employment, Women Development and Children	Principal Secretary
7	Mr. Said Vuai	Judiciary Zanzibar	Chief Accountant
8	Mr. Ahmed Miskry	Attorney Generals Chambers Zanzibar	State Attorney
9	Mr. Said Hassan Mzee	AGC Zanzibar	State Attorney
10		District Court , Chake Chake	District Court Magistrate

11	Mr. Hussein Makame Hussein	District Court, Konde, Pemba	District Magistrate In-Charge
12	Mr. Kombo Rashid Kombo	District Kadhi, Micheweni, Pemba	District Kadhi
13	Mr. Hamis Ibrahim Abdallah	Kadhi's Appeal Court, Pemba	District Appellate Kadhi
14	Mr. Haji Ibrahim Haji	Primary Court, Konde, Pemba	Primary Court Magistrate
15	Mr. Nassor Suleiman Nassor	High Court, Pemba	Administrative Officer
17	Mr. Kayangi	Regional Magistrate Court, Unguja	Regional Magistrate
18	Mr. Mwampashi	Regional Magistrate Court, Pemba	Deputy Registrar and Regional Magistrate
19		Kadhi's Court, Unguja	Assistant Chief Kadhi
20		Kadhi's Court, Unguja	Assistant to the Assistant to Chief Kadhi
21	Mr. Abdallah Ramadhan Waziri	Registrar General's Office, Unguja	Registrar General
22	Sheikh Fadhil Suleiman Soraga	Office of Mufti	Secretary to Mufti
23	Sheikh Said Nassor Seif	Office of Mufti	Previous Executive Secretary
24	Sheikh Shibli Makame	Office of Mufti	Head of Administration
25	Mr. Suleiman Tawakal	Government Press	Director
26	Mr. Khamis Abdul Hamid	Commission for Wakf and Trust Property	Executive Secretary
27		Faculty of Law, Zanzibar University	Dean

28	Mr. Iddi Ramadhan Mapuri	Labour Commission	Labour Commissioner
29	Mr. Ali Abdi Shahid	Labour Commission	Vocational Training
30	Mr. Seif Juma	Labour Commission	LO Reg. Employment Dept.
31	Mr. Hafidh	Labour Commission	Programme Officer
32	Ms Salma Saleh	Zanzibar Trade Union Confederation (ZATUC)	Secretary General
33	Ms Sinat Juman Ali	Zanzibar Local Government, Public Service and Water Workers Union (ZALGWU)	Secretary General
34	Ms Jinah Hassan Silima	Zanzibar Union of Public Health Employees (ZULPHE)	Secretary, Unguja
35	Ms Rihi Haji Ali	Trade Union for Industrial and Commercial Workers (TUICOZ)	Secretary General
36	Mr. Nassor Khamis	Practising Advocate, High Court of Zanzibar	Chairman, Zanzibar Law Society
37	Mr. Hamidu Mbwezeleni	Practising Advocate, High Court of Zanzibar	Secretary, Zanzibar Law Society
38	Mr. Said Hassan Mzee	Practising Advocate, High Court of Zanzibar	Zanzibar Law Society
39	Mr. Godwin Mutahangarwa	Zanzibar Legal Services Centre	Programme Coordinator
40	Prof. H. Othman	Zanzibar Legal Services Centre	Chairman
41	Ms Nuru Ngazy	Zanzibar Legal	Administrative Officer

Services Centre

Name	Designation
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Ministry Regional Administration, Local Government and Special Departments

Hassan H. Wambi	Principal Secretary Regional Administration
Makame Vuai Simai	Director of Planning and Administration
Khamis H. Jecha	Director of Regional Administration & Local Govt.
Juma M. Chande	Planning Officer
Asha H. Salmin	Community Development Officer
Rajab H. Juma	Planning Officer
Mohammed A. Ahmed	Planning Officer (Town West)
Abdul Rahman H. A. Mnoga	Senior Local Government Officer

Haji Machano	Advisor to the Minister
Juma Kassim Assed	Planning Officer (Pemba Office)

Chake Chake Regional Administration

Hanuna Ibrahim	Regional Administrative Officer
Rashid Suleiman	Planning Officer

Zanzibar Municipality

Mabrouk Jabu	Director – Municipal Council
Ramadhani Juma Muhsin	Head of Solid Waste Management
Mzee K. Juma	Head of Dept. of Labour Construction & Environment

Wete Town council

Kombo Hamadi Yussuf	Town Clerk
Rashid Saleh Rashid	Accountant
H Faki Juma	Administrator

Micheweni District Council

Hamsi Shame Hamadi	Secretary to the Council
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Hamadi Mbaruk Ali	Administrative Officer
Seif Ismail Seif	Accountant
Bimise Yusuf Juma	Cashier

Micheweni District Administration

Jabu Hamisi Mbwana	District Administrative Officer
Hamari Omari	Cashier

Sustainable Zanzibar Project

Sheha Mjaja Juma	Project co-ordinator
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Urban West Regional Commissioner

Hon. Abdalla Mwinyi,	Regional Commissioner, Urban/West
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Ministry of Good Governance and Constitutional Affairs

Othman Masoud	Director of Public Prosecution
Mwinyiusi A Hassan	Director

Zanzibar Electoral Commission (ZEC)

Hon Abdulrahman M. Jumbe	Former Chairperson
Mr. Khamis Ali Ame	Director of Elections
Mr. Kassim Kadu Massego	Elections Officer
Mr Mbaruk Hassan Mwinyi	Assistant Elections Officer
Mr Idrissa Haji Jecha	Information Officer

Civil Society

Rajab Abdalla	Journalist Association of Zanzibar (JAZ)
Issa A Suleiman	Zanzibar Farmers and Fishermens Association
Hassan Juma	Changamoto – CEO
ANGOZA	WALEMAVU
NGO Resource Centre	ZLSC
ZAYADESE	

West Rural District – Local council

Mr Lupindo	Chief Executive Officer
Mr Mukajiy	Planning and Administration Officer

Central Governments

Jafari Ali Juma:	Chairman Civil Service Commission
Jumbe Ibrahim:	Secretary Civil Service Commission
Ali Vuai:	Director Civil Service Department
	The Controller and Auditor General
Mr. Raphael	Principal Secretary Ministry of Finance and Economic Affairs
Mr Y. O. Mzee	Principal Secretary – Chief Minister’s Office
Ms Aziza J Ali	Ministry of Finance & Economic Affairs

Zanzibar Electoral Commission

Hamisi Ali Ame	Director
Mubarak Hassan Mwinyi	Assistant Elections Officer
Kassim Kadu	Chief Elections Officer
Idrissa Haji Jecha	Information Officer

Civil Service Retirees

Ali Khamis	Ali Abdallah
Ali Khatib	Salim Mzee
Taimur Saleh	

NGOs

ANGOZA	ZLSC
WALEMAVU	JAZ
ZAYADESE	NGO Resource Centre

House of Representatives

Pandu Kificho	Speaker
Chande	Clerk to the House
Ali Shamhuna	Rufeya Mbaruk

House of Representatives – members

Amina Salim Ali	Hafidh Ali
Hafsa Said Khamis	

Muafaka Commission

Fatma Fereji

Vuai Ali Vuai

Asha Abdalla Juma

Joseph Kilangi

Other key informants

Dr Muhammed G Bilal

Former Chief Minister

ANNEX 4: PROPOSED TOR FOR LOCAL GOVERNMENT REFORMS

1. Background

In recognition of the current problems with the existing administrative set-up: the division of roles and responsibilities between the central government, the regional administration, district administration and the local governments, the Revolutionary Government of Zanzibar has decided to undertake a review of the system in its entity.

2. Overall objective

The overall objective of the study is to analyse in detail and propose reform options for the entire sub-national system of governance: Regional Administrations, District Administrations and Local Governments.

This will address the overall institutional framework as well as human resources and financial issues. The work should feed into the overall Five Year Strategic plan under the Ministry for Good Governance and be firmly co-ordinated with other reform initiatives – in particular the public sector reform.

3. Tasks

- 1) Review existing legislation pertaining to regional administration, district administration and local governments,
- 2) Review the current functions and responsibilities assigned different levels of administration as described in law and actually undertaken by central and local government at regional, district and sub-district level. The analysis should be based on review of work procedures for management of development planning and recurrent functions of key sectors such as health, education, agriculture, water, roads as well as general functions related to planning, finance, personnel management, and community development.

- 3) Review the current patterns of financing services through central and local governments (central government transfers and local governments own revenue). The review will include both capital and recurrent expenditure financing.
- 4) Review the current personnel assignments in view of deconcentrated and/or delegated functions and finances (overview of required and actual staff and qualifications),
- 5) Recommend where relevant:
 - a) Changes in overall institutional framework,
 - b) Changes in local government and related legislation,
 - c) Changes in revenue sharing arrangements, fiscal transfers and financing of services,
 - d) Proposals for reform strategy

4. Methodology

The assignment will combine

- Technical review of existing legislations and practices, and
- Presentation of technically viable reform options (empirically backed) with
- Relevant stakeholder consultations at community, ward, district, regional and central levels, which as relevant involves government employees, local government employees, politicians, CSOs and informed individuals.

The consultants will report to the Principal Secretary MRALGSD and a reference group established by the Ministry, which will be composed of relevant technical staff from central government ministries and technical advisory services from UNDP.

The consultants will on a full time basis work with one technical person assigned by MRALGSD.

5. Outputs

- a) Inception report after 10 working days,

- b) Various draft reports for consultative reviews as deemed relevant,
- c) Paper on Policy Reform Options for presentation to workshop,
- d) Local Government Reform Policy Paper for House of Assembly

6. Consultancy inputs

The consultants will require the following expertise and skills:

- Public administration,
- Public finance,
- Local government administration, planning and financing,
- Swahili,

The consultants will have a minimum of five, preferably ten, years of relevant post graduate work in the above fields. Academic qualification will at a minimum be Masters Degree and preferably Ph.D.

A team with the relevant mix of skills and experiences will be assigned the task. The team should preferably not exceed 2-3 persons.

The scope of professional input is estimated as 100 man days.