



NEEDS ASSESSMENT REPORT

HOLISTIC ASSESMENT
OF THE JUDICIARY OF
ZANZIBAR





HOLISTIC ASSESSMENT OF THE JUDICIARY OF ZANZIBAR

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ABBREVIATIONS AND ACRONYMS

A.G	Attorney General
ADR	Alternative Dispute Resolution
BRADEA	Basic Rights and Duties Enforcement Act, Cap. 4 (Mainland Tanzania)
CAG	Controller and Auditor General
Cap.	Chapter of the Laws
CAT	Court of Appeal of Tanzania
CCA	Chief Court Administrator
CHRAGG	Commission for Human Rights and Good Governance (Zanzibar)
CJ	Chief Justice
CMS	Court Management System
COVID-19	Corona Virus Disease of 2019
CSOs	Civil Society Organizations
CUS	Court Users Survey
DMC	District Magistrates Court
DPP	Director of Public Prosecutions
DTP	Digital Tanzania Project
FGDs	Focus Group Discussions
FILMUP	Financial and Legal Updating Project
FY	Financial Year
G.N	Government Notice
HCZ	High Court of Zanzibar
HoL	House of Representatives (Zanzibar)
Hon.	Honorable
HRBA	Human Rights Based Approach
HRDs	Human Rights Defenders
IAJ	International Association of Judges
IAP	International Association of Prosecutors
IBA	International Bar Association
ICMS	Integrated Case Management System
ICT	Information, Communication and Technology
IEC	Information, Educational and Communication
IJA	Institute of Judicial Administration
IJA	Institute of Judicial Administration
IPA	Institute of Public Administration
JDBS	Judicial Dashboard System
JIFA	Judiciary Institute of Africa
JSC	Judiciary Service Commission
KIIs	Key Informant Interviewees

LRCZ	Law Review Committee of Zanzibar
LSZ	Law School of Zanzibar
M&E	Monitoring and Evaluation
M&E	Monitoring and Evaluation
MDAs	Ministries, Department and Agencies
NAS	Needs Assessment Survey
NAZ	National Archive of Zanzibar
No.	Number
NPA-VAWC	National Plan of Action to End Violence Against Women and Children
OECD	Organization for Economic Co-operation and Development
OPRAS	Open Performance Review and Appraisal
PDMU	Procurement and Disposal Management Unit
PMC	Primary Magistrates Court
Prof.	Professor
PSC	Public Service Commission
PWDs	Persons with Disabilities
RAMD	Records and Archives Management Department
RC	Regional Commissioner
RMC	Regional Magistrates Court
S/N.	Serial Number
SACCOS	Saving and Credit Cooperative Society
SMZ/ RGoZ	Serikali ya Mapinduzi ya Zanzibar/ Revolutionary Government of Zanzibar
SOPs	Standard Operating Procedures
SP	Strategic Plan
SWOs	Social Welfare Officers
TAWJA	Tanzania Association of Women Judges
THRDC	Tanzania Human Rights Defenders Coalition
TOR	Terms of Reference
TOR	Terms of Reference
TRA	Tanzania Revenue Authority
TZS	Tanzania Shillings (USD 1 = TZS 2,330, approximation)
UDHR	Universal Declaration of Human Rights of 1948
UK	United Kingdom
UN	United Nations
UNDP	UN Development Program
URT	United Republic of Tanzania
WB	World Bank
ZAECA	Zanzibar Anti-Corruption and Economic Crimes Authority
ZIPA	Zanzibar Investment Promotion Authority
ZLR	Zanzibar Law Report
ZLS	Zanzibar Law Society
ZPPDA	Zanzibar Public Procurement and Disposal Authority
ZRB	Zanzibar Revenue Board

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Much appreciation to all stakeholders who volunteered their time and shared their opinions to the assessment team in March and April 2022. The stakeholders consulted during this study included His Excellence First Vice President of Zanzibar; His Lordship Chief Justice of Zanzibar; the Honorable Chief Kadhi and his team; the Honorable Judges of the High Court; the Honorable Director of Public Prosecutions of Zanzibar; the senior officers at the Attorney General Chambers; the Honorable Registrar of the High Court of Zanzibar; the Regional and District top leaders; the Shehas; the Honorable Magistrates and Kadhis; the law enforcers; the senior officers at several ministries; the practicing advocates; some of the political parties leaders; the representatives of civil society organizations; academicians; groups of community members; etc.

The team also acknowledges the financial support from the Foundation for Civil Society that facilitated the entire process of this mission including publication of this report.

PREFACE

Over the years the Judiciary of Zanzibar has executed a noble mission of delivering justice services to all in professional ways. The Judiciary has managed to do so in collaboration with numerous stakeholders including the civil society organizations and the private sector. A huge support from the government has rendered it possible.

In order to ensure that the justice service delivery reflects the needs of service seekers in a particular period of time, this Judiciary initiated a number of institutional reforms including the most recent one of digitalizing case management system – which is still ongoing at pilot level. There has also been a legal backup of the reform processes including for instance an enactment of the Judiciary Administration Act of 2018, which among other things, establishes the Judiciary Service Commission with relatively wide mandates to guide institutional reforms and operations of the Judiciary.

All these reforms have resulted into improvement of judiciary services such as increased number of Judges, Magistrates, Kadhi and other officers. The over 100% increase of the national budget in this (2022/2023) financial year to more than TZS 17 billion is unprecedented. The Judiciary is optimistic that the positive gesture to support the judicial reform shown by the leadership of His Excellence President of Zanzibar will result into a scaled-up reforms.

This report presents key findings, analysis and recommendations by a team of independent consultants on the areas which the Judiciary of Zanzibar will need to focus on in order to enhance the reform processes. The Judiciary is committed to implement all recommendations to the extent that it would manage through own efforts and supports from stakeholders like the THRDC.

The Judiciary of Zanzibar extends appreciation to all individual persons and institutions who have made it possible for this study to be completed. Moreover, as a way forward, the Judiciary calls for all stakeholders to join hand in supporting realization of all aspirations transcribed into the Strategic Plan that is formulated as an implementing mechanism of the recommendations of this report.

Finally, the Judiciary of Zanzibar respectfully appreciates the suggestion made by the President of Zanzibar on Law Day on 7th/ 02/ 2022 which, to a large extent, instigated a need for this comprehensive assessment.

.....
His Lordship Khamis Ramadhan Abdallah Shaaban

CHIEF JUSTICE

Judiciary of Zanzibar

ZANZIBAR

August 2022

EXECUTIVE SUMMARY

0.1 INTRODUCTION

This is a report of the needs assessment (survey) initiated by the then Acting Chief Justice of Zanzibar now Chief Justice the Judiciary of Zanzibar.¹ The study which was carried out between March and April 2022, mainly sought to identify gaps and needs in the Judiciary of Zanzibar for the purpose of coming up with specific recommendations to ignite strategic and comprehensive reforms of the justice delivery system and access to justice in Zanzibar, particularly at the Judiciary level.

As part of ensuring that there are advancements in the whole justice delivery system and respect of human rights, the Judiciary of Zanzibar in partnership with the Tanzania Human Rights Defenders Coalition (THRDC) engaged the services of the independent consultants to conduct the said survey.

The assessment methodology in this study involved literature review, including analysis of the laws that govern justice delivery and judiciary administration in Zanzibar (and beyond), regulations and other relevant legal materials as well as national policies e.g. the Zanzibar Development Vision 2050. Observation and lessons from the ongoing and completed cases were used as part of data collection.

Primary data were gathered through intensive consultations with relevant stakeholders whereby at least 300 individual persons representing more than 40 institutions² were consulted in all regions of Unguja and Pemba between March and July 2022. Out of those consulted, 123 (41%) were females and the remaining, 178 (59%) were males. At least 65% of interviewees were lawyers; and, the remaining ones (35%) were individual persons with different levels of educational backgrounds.³ A set of interview guides were used – which transcribed the main and specific objectives of the study as well as the analytical frameworks. Respondents were face to face interviewed as Key Informants (KIIs) and others were in the groups (FGDs).

1 The Judiciary of Zanzibar is a Constitutional organ that was established with the major role of interpreting laws, adjudication of cases, administration and dispensation of justice in accordance with the laws of Zanzibar. It is the only organ vested with authority to decide on civil as well as criminal cases in the isles.

2 They included Office of Vice President; judicial and governmental officials; law enforcers; prosecutors; medical doctors; media; private advocates; Sheha; regional and district administrators; media; academicians; members of the civil society to mention a few.

3 Including economics, teachers, traders, financiers, statisticians, specialists, public administrators, planning officers, clerks, typists, assessors, Ulamaa, gender specialists, Kadhi, etc.

0.2 Some of the Key Findings: Progressive Efforts and Emerging Results

It has generally been found that, the Zanzibar's legal sector, of which the Judiciary forms a large part, has been in constant reforms for so many years and that, there are a number of positive changes happening including: -

- a) An enactment and amendment of the laws to strengthen civil and criminal justice systems such as on anti-corruption, judiciary administration, legal aid service, practices of private advocates, establishment of the offices of DPP and AG, review of the Kadhi court's law, etc.
- b) An increase of the budget to support the justice delivery system by the Judiciary e.g. from TZS 5,036,700,000 in 2014/2015 Financial Year (FY) to TZS 17,363,600,000 in 2022/2023 FY. The rate of disbursement of funds to the Judiciary is also fairly good (above 70%).
- c) An increase of Judges of the High Court e.g. from 6 in 2015 to 13 as of July 2022. Female Judges are 4 (being 31%). For the first time in the country's judicial history, Pemba is now allocated with stationed Judge in-charge.
- d) An increase of Magistrates, Kadhi and other judicial officers e.g. from 81 in 2015 to 105 in 2022. Number of female judicial officers is currently stands at 37%.
- e) An increase of non-judicial officers (other judiciary service workers) e.g. from 321 in 2014 to 363 in 2022. Number of female non-judicial workers being 45%.
- f) Improvement of service delivery whereby at least 100 cases are handled at the High Court per annum; and, more than 400 and 1,000 cases are handled at the Magistrates and Kadhi's courts levels respectively. The special tribunals on land, labour, rent restrictions and taxation are all performing well with hundreds of cases registered and disposed of.
- g) The Judiciary has adopted administrative reforms including initiation of thematic committee to guide reform processes as a result, several changes are emerging including on an installation of digitalized case management system, which is not at the pilot (High Court level).
- h) The Judiciary has also managed to improve or upgrade some of its facilities including the construction of a state-of-art High Court building at Tunguu, Unguja. This court transferred its operation from Vuga, urban area to Tunguu in January 2022.
- i) Adoption and implementation of several institutional guidelines and systems including on procurement, disposition of cases, specialization on handling sexual harassment offices, case flow management meetings, disciplinary committees, etc. The performances of each Magistrate and Judges are tracked

by the Registrar in a form of remitting returns of the cases adjudicated and deliberated in some of the managerial meetings.

0.3 Some of the Key Findings: Perceived Institutional and Operational Challenges

Despite the impressive development and changes happening over period of time, the challenges engulfing internal and external operations of the Judiciary of Zanzibar still outweigh the successes.

Most of such challenges are attributed to financial constraints i.e. insufficient funding. The judiciary fund sanctioned under the Judiciary Administration Act of 2018 is yet to be brought into meaningful operation. Instead, this organ (Judiciary) receives budget size ceiling set by the government apparently based on the national revenue base. Moreover, there are institutional issues including absence of strong monitoring and evaluation system; centralization of administration and financial management; and, perceived incapacity by some of the judicial officers. The latter one is, partly attributed to absence of sufficient on-job training programs.

It is also a concern that, despite the fact that the judiciary service workers (support staff) really perform well their duties, their salaries and other entitlement have not been systematically and sufficiently improved for over years. For instance, since around 2012 till May 2022 when the government announced new salary increments, salaries had remained static. While this positive gesture by the government is commended, a need for reconsideration of salary scheme of all judiciary services workers including who serve under Kadhi's courts, rent restriction, land tribunals, etc. It is also crucial that allowances of the assessors be considered and left to be decided by the Judiciary itself through the Judiciary Service Commission.

An adoption of Judiciary's *Infrastructural Development Plan (IDP)* is suggested in order to address a challenge of facilities which, at the moment, are inadequate and most of them e.g. court buildings are in bad shape. This one (IDP) will need special governmental support. A critical need of this is exuberated by the reality that the Judiciary especially at lower levels operate in unpleasant conditions including absence of residential houses and means of transport for the judiciary service workers.

In terms of delivery of justice, quite positive changes are observed including presence of some efforts to digitalize the case management system; speedy disposition of cases; and, designation of special courts (proceedings) on sexual offences and illicit drugs. However, much more reforms are desired including the need to establish mechanism of handling human rights related cases.

In conclusion, the assessment team observed that, the proposed reforms are coherent with the national development agenda especially as spelt out under the Zanzibar Development Vision 2050 (ZDV2050). The Judiciary of Zanzibar is ready to adopt and implement some reforms which will have even more direct relevancy to the realization of the aspirations of this national's blue print. For instance, specialization on handling cases on matters of tourism and blue economy are just some of the strategies to the said cohesion. Therefore, a support to the intended reform is actually a direct implementation of most of the ZDV2050.

0.4 General Recommendations

In order to address the identified challenges of the Judiciary of Zanzibar in performance of its mandate as bastion of justice, various specific recommendations for strategic reforms have been proposed in each section of this report. Below are general ones:-

- a) It is of essence that Zanzibar justice system exhibits dynamism and changes for better so as to keep in touch with the needs of the society and contribute to the aspired economic development of the country by discharging its mandate effectively. In this regard, it is proposed that its Strategic Plan should align with the Zanzibar Development Vision 2050.
- b) The Judiciary of Zanzibar should ensure efficiency and effectiveness of its interventions by complying with the principles of good governance such as transparency and accountability, adopting sound judiciary managerial and administrative systems e.g. M&E mechanisms, digitalization of its operations (especially on case management), enhancing accessibility of its services and aligning to international human rights obligations.
- c) Specialization or enhancement of skills for judicial officers is highly recommended e.g. understanding and acquiring the arbitration skills, maritime laws, tourism, blue economy, etc.
- d) Remuneration of non-judicial staff and lowest cadre of judicial staff should be streamlined to remove the existing discrepancies.
- e) The use of Information Technology in justice delivery be given prominence at all levels to address the challenges brought about by manual case management system among others.⁴

4 Comprehensive adoption and institutionalization of ICT in case management system and judicial operations generally. This needs a specific and sufficient budget line. The ICT should be designated as an independent division or department coordinated by the director and supporting units on (a) software development; (b) information security; and, (c) network plus business support.

- f) Financing of the Judiciary should be relooked into to enable the Judiciary of Zanzibar enjoy financial guarantee in the implementation of the programs and activities which are usually budgeted for. The effective operationalization of the Judiciary Fund is highly recommended.
- g) A need to relieve the High Court from being a court of original jurisdiction even for trivial matters. Instead, the judicial eco-system should be encouraged by creating or empowering lower courts especially on land, Kadhi, etc. matters. The High Court should remain to be an organ of highest level of specialty for critical matters and a superior judicial body that reviews the work of lower courts and tribunals only.
- h) In the same vein, a need to embrace mechanisms of handling human rights cases e.g. establishing constitutional court, develop human rights enforcement law (procedural law), creating proper appeal mechanism for constitutional/human rights cases and grounding the judiciary hierarchy to the grassroots e.g. establishment of lower Kadhi and land courts below district courts level and devising procedures of handling small claims.
- i) The need to enhance further capacities of the judiciary service officers through the induction training and continuous legal education programs. Moreover, the judiciary should have the capacity to produce homemade precedents and records e.g. Zanzibar Law Reports (ZLRs), Year Books, Legal Digests, scholarly researches, etc.
- j) Effective operationalization of disciplinary mechanisms for all judiciary service workers and the assessors. Also, convenient ways for the judiciary service users to lodge complaints against the conduct of such workers.
- k) There is a need for holistic reforms of the entire legal sector that will also cover other actors who are involved in the administration of criminal and civil justice. This has reference to the Kadhi's courts, Police, Prison, Attorney General Chambers, Tax Tribunals, Land Tribunals, Law Review Commission of Zanzibar among others.
- l) A need for Zanzibar to formulate and implement comprehensive legal sector policy framework e.g. to link justice delivery systems with national development strategy (at micro and macro levels).
- m) Implementation of all other specific recommendations (actions points) indicated in enclosed herewith as Annex II.

1.1 BACKGROUND INFORMATION

This report presents the key findings, analysis and recommendations on the full diagnostic assessment of the structure, system, procedures and operations of the Judiciary of Zanzibar. The holistic review of the Judiciary was carried out between March and April 2022 in Unguja and Pemba, Zanzibar.

This initiative, as it is explained further under sub-part 2.2 of this report, is part of the efforts adopted by the Judiciary of Zanzibar in recent months whereby, on 29th November 2021, the then Acting Chief Justice of Zanzibar (now the Chief Justice), His Lordship Mr. Justice Khamis Ramadhan Abdallah Shaaban (CJ) formed five special committees for the purpose of advising him on the proper reforms that are supposed to be undertaken. These committees are comprised of a total of 55 judicial officers from the Judiciary of Zanzibar. The five committees formed were on reform; research, monitoring and supervision; statistics and ICT; Judiciary rules; and, training. The initiative draw some interest to various stakeholders including the Tanzania Human Rights Defenders Coalition (THRDC), which sponsored this review.

Apparently, the CJ, Hon. Shaaban's decision on the judicial reform is intended to align the Judiciary with ongoing global efforts. That is, Zanzibar just like any other State or its institutions cannot just sit back and relax while watching as other countries of the world forge ahead by improving their ways of providing services to their people. This assessment is one such initiative taken to address the said mischief and it seeks to improve the justice system in Zanzibar.

The standards at which any judiciary should perform its functions are universal - the same nationally and internationally. These standards constitute the core values of quality judiciary, namely, independence, impartiality, integrity, propriety, equality, competence and diligence.

The Zanzibar judiciary desirous of matching the Judiciaries of the world found it very important to conduct a self-evaluation exercise with a view to providing quality services to the people during execution of its mandate as a judicial organ of the State. The duties of the Judicial branch in addition to checking the abuse of power by the Executive, include interpreting state laws, settling legal disputes, punishing violators of the law, hearing civil cases, protecting individual rights granted by the state constitution and determining the guilt or innocence of those accused of violating the criminal laws of the state.

Justice and fairness as core values of the Judiciary require the Courts to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The focus of the Zanzibar Judiciary when commissioning this assessment was on the search for ways to achieve the establishment of an effective judiciary, such as integrity, independence, transparency and securing access to justice, as well as the role of the Judiciary in supporting the growth of both intra and transnational commerce.

These are the tenets upon which this assessment was based. The assessment pays tribute to the contributions of the various key players who were interviewed and is a record of the digested discussions and the diverse viewpoints and experiences that were shared on various judicial issues during interaction with respondents.

1.2 OBJECTIVES OF ASSESSMENT

1.2.1 Main Objective

This Needs Assessment Survey (NAS) mainly sought to identify the needs (areas for further improvements) in the Judiciary of Zanzibar for the purpose of coming up with specific recommendations on strategic reforms e.g. on the justice delivery system in Zanzibar.

1.2.2 Specific Objectives

Specifically, the NAS was intended: -

- i) To identify gaps in the case management system of the Judiciary of Zanzibar.
- ii) To map the needs related to the use of information, communication and technology (ICT) in case management and other judicial functionalities.
- iii) To identify needs related to human resource within the Judiciary.
- iv) To analyze existing training and continue education strategies for both judicial and non-judicial officers and recommend possible areas of improvement.
- v) To establish possible solutions for fast-track of cases including increase of the number of trial courts and enhancing access to the same.
- vi) To assess the current system of documentation and record keeping within the Judiciary.
- vii) To map out physical access of the Judiciary by reviewing existing Judiciary's facilities in Zanzibar.
- viii) To assess the capacity of the Judiciary to address human rights issues, constitution issues and application of international standards.
- ix) To evaluate the perception of the court users on services provided by the Judiciary.

- x) To consider the capacity of the Judiciary to address pressing and common social challenges such as child abuse, gender-based violence (GBV), etc.

1.3 SCOPE OF ASSESMENT

This was full institutional and operational diagnosis of the Judiciary of Zanzibar. It has considered internal and external operations (i.e. structures, systems, guidelines and functions) of the Judiciary in line with the laws and public policy governing the legal sector in general. The ordinary courts, Kadhi's courts and tribunals have all been assessed.

Specific key areas which the terms of reference (TOR) directed to be given a due attention in this NAS were: -

- i) Case management system.
- ii) The use of ICT in justice delivery.
- iii) Research and monitoring.
- iv) Finances of the Judiciary.
- v) Documentation and record keeping.
- vi) Human rights and constitutional cases.
- vii) Judiciary, public and other stakeholders' engagement strategies.
- viii) Human resource of the Judiciary of Zanzibar.
- ix) Trainings and continuous education.
- x) Court premises.
- xi) Disciplinary organs within the Judiciary.
- xii) Gender policies.
- xiii) Applications of international standards.
- xiv) Laws and regulations governing the Judiciary.

1.4 ANALYTICAL FRAMEWORKS

The NAS was guided and considered different frameworks as basis of analysis, conclusions and recommendations made in this report. All these frameworks (mentioned below) are practical and not theoretical guides for this nature of assessment.

- i) Usual evaluation criteria (OECD DAC criteria or standards on external evaluation⁵): because this was an institutional and operational assessment of the structures, systems, guidelines and functioning of the Judiciary. Such criteria are relevancy, coherence, effectiveness, efficiency, impact and sustainability.

⁵ See: OECD, Evaluation Criteria. Available online via:
<https://www.oecd.org/dac/evaluation/daccriteriaforevaluatingdevelopmentassistance.htm>

Table 1.1: DAC Criteria Guided the NAS of the Judiciary of Zanzibar

S/N.	Criteria	Issues Considered during NAS
i.	Relevancy	Is the Judiciary of Zanzibar doing the right things e.g. in line with its statutory mandates and other criteria (mentioned below)? That is, the judicial operational structures and systems or procedure relevant to the context and prevailing needs of Zanzibar? Enabling and disabling factors? What added value does the Judiciary bring to the national development? Are there synergies sought with other ongoing initiatives within the country (Zanzibar) and globally e.g. UN efforts on access to justice?
ii	Coherence	
iii	Effectiveness/ Results	Is the Judiciary achieving its objectives through the operations being undertaken? e.g. based on its statutory mandates stipulated under the laws and Constitution of Zanzibar of 1984? What results (outcomes and impact levels) have been achieved so far/ not achieved? What lessons and good practices can be learnt from the results achieved/not achieved of the judicial interventions?
iv.	Efficiency	Does the Judiciary of Zanzibar receive sufficient resources? Are the resources being utilized according to the plans e.g. budgets of a particular financial year? What has been the role of various stakeholders in supporting the Judiciary? Were the design and organization of the Judiciary being efficient? What lessons and good practices can be learnt from the way the Judiciary is currently structured?
v.	Sustainability	To what extent can the efforts and effects of the judicial plans be sustainable e.g. unshakable?
vi.	SWOC	Considering the strengths and weaknesses (internal factors); and, the opportunities and challenges (external factors) which influence positively or adversely the functioning of the Judiciary of Zanzibar.

Source: TOR and Consultants, March 2022.

- ii) The human rights-based approach (HRBA): which propagates observance of principles like the rule of law; transparency; accountability; equality; equity; access to justice; participation; inclusion; benefits; and, protection, promotion and remedy on legal rights.

- iii) Legal instruments on judiciary administration (national and international ones): which, as said earlier on, require observance of the standards constituting the core values of quality Judiciary, namely; independence, impartiality, integrity, propriety, equality, competence and diligence.

Table 1.2 below summarized national and international instruments on the standard operation of the judicial systems.

Some of International Standards (UN, Human Rights Council, etc.)	Some of National Standards (Zanzibar)
· Universal Declaration of Human Rights of 1948.⁶ · Basic Principles on the Independence of the Judiciary of 1985.⁷ · Bangalore Principles of the Judicial Conduct of 2006.⁸ · Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems of 2012.⁹ · Guidelines on the Role of Prosecutors of 1990.¹⁰ · Basic Principles on the Role of Lawyers of 1990.¹¹	· Constitution of Zanzibar of 1984. · Constitution of the United Republic of Tanzania of 1977. · Judiciary Administration Act of 2018.¹² · Civil Procedures Decree, Cap. 8. · Criminal Procedure Act of 2018.¹³ · Kadhi's Court Act of 2017.¹⁴ · Legal Aid Services Act of 2018.¹⁵ · Public Service Act of 2011.¹⁶

6 Article 10 of this Declaration is on Judiciary.

7 Endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

8 Endorsed by the Economic and Social Council in ECOSOC resolution 2006/23.

9 General Assembly resolution 67/187 of 20 December 2012.

10 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

11 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

12 Act No. 11/2018.

13 Act No. 7/2018.

14 Act No. 9/2017.

15 Act No. 13/2018.

16 Note: other service commissions established under Section 33(1) of this law are the Public Service Commission; the House of Representatives Commission; and, the Special Departments Service Commission. Under Section 33(2) of this law, the President of Zanzibar may establish any other service commission where deems necessary.

- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of 1998.¹⁷
- Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers of 2020.¹⁸
- Equality and Non-Discrimination of Persons with Disabilities and the Rights of Persons with Disabilities to Access Justice of 2018.¹⁹
- Integrity of the Judicial System of 2014.²⁰
- Principles Governing the Administration of Justice through Military Tribunals of 2006.²¹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa of 2005.²²
- Public Finance Management Act of 2016.²³
- Zanzibar's Children Act of 2011.²⁴
- Government Proceedings Act of 2010.²⁵
- Office of A.G Chambers (Discharge of Duties) Act of 2013.²⁶
- Office of Public Prosecutions Act of 2010.²⁷
- Certain Leaders Retired Benefits Act of 2003.²⁸
- Public Procurement and Disposal of Public Assets Act of 2016.²⁹
- Land Tribunal Act of 1994.³⁰
- Records and Archives Management Act of 2002.³¹
- Zanzibar Tax Appeals Act of 2006.³²
- Evidence Act of 2016.³³

17 General Assembly resolution 53/144 of 9 December 1998.

18 Human Rights Council resolution 44/8 of 14 July 2020.

19 Human Rights Council resolution 37/22 of 23 March 2018.

20 Human Rights Council resolution 25/4 of 27 March 2014.

21 Reference: UN E/CN.4/2006/58.

22 African Commission on Human and People's Rights, 2005.

23 Act No. 12/2016.

24 Act No. 6/ 2011.

25 Act No. 3/2010.

26 Act No. 6/2013.

27 Act No. 2/2010. For instance, Section 23 of this law provides for an establishment of Consultative Committee. It is established for the purposes of providing efficient administration of criminal justice and prosecution service. Members of this committee include the Minister (legal affairs), Judge of the High Court, DPP, Commissioner of Offenders Educational Centre, Deputy DPP, Registrar of the High Court, Chief Government Chemist, Chief Medical Officer and Representative of ZLS.

28 Act No. 5/2003.

29 Act No. 11/2016.

30 Act No. 7/1994.

31 Act No. 3/ 2002.

32 Act No. 1/2006 (Revised Edition of 2013).

33 Act No. 9/2016.

- iv) Professional guidelines as proposed by a number of credible institutions: There are several international professional association on legal matters including the International Association of Judges (IAJ); the International Association of Prosecutors (IAP); and, the International Bar Association (IBA).

All those have issued some guidelines on effective judicial administration and the legal sector in general. Such guidelines include:

- a) IAJ's Universal Charter of the Judge of 2017.³⁴
- b) IBA's International Principles on Conduct for the Legal Profession of 2011.
- c) IBA's Standards for the Independence of the Legal Profession of 1990.
- d) IBA's Minimum Standard of the Judicial Independence of 1982.
- e) Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence of 1998.

1.5 METHODOLOGY OF DATA COLLECTION AND ANALYSIS

1.5.1 Approaches and Tools

The assessment involved conducting of literature review, including analysis of the laws that govern justice delivery and judicial administration in Zanzibar, regulations and other relevant legal materials as well as national policies e.g. the Zanzibar Development Vision 2050. A list of reviewed documents is attached herewith at the back pages of this report.

Moreover, observation and lessons from the ongoing and completed cases were used as part of data collection. Primary data were gathered through intensive consultations with relevant stakeholders mentioned in Table 1.3 below. A set of interview guides were used – which transcribed the main and specific objectives of this assessment as well as the analytical frameworks (indicated above).

There respondents were interviewed as Key Informants (KIIs) and in the groups (FGDs), whereby a total of 11 FGDs were organized in Unguja and Pemba. The KIIs involved Office of Vice President; judicial and governmental officials; law enforcers; prosecutors; medical doctors; media; private advocates; Sheha; regional and district administrators, etc.

³⁴ Adopted on 17 November 1999 and updated on 14 November 2019 by the International Association of Judges (IAJ).

1.5.2 Sampling Size and Criteria

Despite the fact that the primary focus of this assessment was on the Judiciary of Zanzibar, however, with a view of deepening understanding issues pertaining judicial operation, different actors in legal sector were consulted. Those included representatives from the ministries, departments and agencies (MDAs) of the Revolutionary Government of Zanzibar (RGoZ or SMZ); the House of Representatives (HoL); private sector; civil society organizations (CSOs); trade unions; media; and academicians. The judiciary services workers consulted include the judicial and non-judicial officers of the High Court of Zanzibar; all levels of magistrates and Kadhi's courts; different tribunals; etc. of all regions of Unguja and Pemba.

The sampling criteria included (i) representation of all cadres of judicial services workers in terms of portfolios or units or departments; (ii) consideration of gender aspects of all respondents in terms of sex, disability status, etc.; (iii) geographical representations; (iv) levels of the courts e.g. district and regional magistrates' court, district and appellate Kadhi's courts, etc.; (v) types of courts and tribunals e.g. on children, land, taxation, commercial, industrial, etc.; (iv) experience in judicial practices e.g. of practicing advocates, *vakil* and paralegals; statutory mandates of a particular respondents e.g. on law review, human rights, financing of the Judiciary, legal aid services, etc. The Judiciary of Mainland Tanzania was also consulted to consider some cross-breeding factors e.g. learning about its adoption of digitalized case management system.

A total of 301 individual persons representing more than 40 institutions were consulted. Out of those consulted, 123 (41%) were females and the remaining, 178 (59%) were males. At least 65% of interviewees were lawyers; and, the remaining ones (35%) were individual persons with different levels of educational background including economics, teachers, drivers, procurement, accountants, ICT specialists, public administrators, planning officers, clerks, typists, assessors, security persons, *Ulamaa*, gender specialists, Kadhi, etc. Table 1.3 below summarizes types and number of interviewees consulted between March and July 2022.

Table 1.3: Types and Number of Interviewees Consulted for Assessment of Judiciary of Zanzibar

S/ N.	Categories of Interviewees			Number of Interviewees				
	Main Categories	Sub-Categories	Unguja		Pemba		Sub- Total	
			Males	Females	Males	Females		
i.	Judiciary and Quasi-Judiciary Organs. ³⁵	Office of Chief Justice		3	-	1 ³⁶	-	4
		Office of Chief Kadhi		3	-	-	-	3
		High Court Judges		3	1	-	-	4
		Chief Court Administrator		1	-	-	-	1
		Registrar and Assistants		2	-	1	-	3
		Magistrates ³⁷		3	1	4	-	8
		Kadhi ³⁸		3	-	1	-	4
		Magistrates [Children Courts]		-	1	-	-	1
		Magistrates [Land Courts]		2	1	-	-	3
		Tax Tribunals		1	1	-	-	2
		Assessors.		7	1	1	-	9
		Others:	Planning	-	2	-	-	2
			Procurement	-	1	-	-	1
			Statistics & ICT	2	-	1	-	3
			Clerks	1	1	1	1	4
			Receptionists	-	1	-	1	2
			Typists	1	1	-	2	4
			Attendants	-	1	1	2	4
			Sub-Total of Judicial Interviewees:			32 (71%)	13 (29%)	11 (65%)
Total No. of Judiciary Service Workers Interviewed in Unguja and Pemba: M= 43 (69%), F=18 (31%)								

35 Combined judicial and non-judicial officers serving in different level of judicial organs.

36 Interviewed Assistant Registrar who acted on-behalf of the Judge in-charge of Pemba.

37 Combined here both Regional, District and Primary Courts' Magistrates of Unguja and Pemba. All were consulted in different regions and districts.

38 Combined here Kadhi's Courts of both levels in Unguja and Pemba.

ii.	Executive Organs	VPOs	VPO1	1	-	-	-	1	
			VPO2	3	1	-	-	4	
		RC & DC Offices			3	1	1	-	5
		Prisons ³⁹	Officers	1	1	4	3	9	
			Inmates	4	2	3	2	11	
		Police Officers					1	-	1
		CHRAGG Officials			1	-	-	-	1
		State Attorneys			-	1	2	1	4
		DPP				1			1
		Shehas			2	1	1	-	4
		Other MDAs ⁴⁰			3	1			4
	Sub-Total of Executive Organs Interviewees:			18	09	12	06	45	
Total No. of Executive Organs Interviewed in Unguja and Pemba: M= 30 (67%), F=15 (33%)									
iii.	Other Key Stakeholders	Private Lawyers		5	1	1	1	8	
		Political Parties		8	1			9	
		Paralegals and Vakils		2	1	2	2	7	
		NGOs (Societies)		15	15	11	10	51	
		Academicians		1				1	
		Media			1	2	4	7	
		Trade Unions		2	19	16	17	54	
	Sub-Total of Stakeholders' Interviewees:			33	38	32	34	127	
Total No. of Key Stakeholders Interviewed in Unguja and Pemba: (43%), F=72 (57%) M= 55									
iv.	Community Members.	Traders, teachers, bodaboda commuter drivers, street vendors, fishers, etc. ⁴¹		23	9	3	5	57	
v.	Individual who shared views during validation.	From various sectors including judiciary officers, law enforcers, Shehas, CSOs and media.		10	3	4			
Total No. of Communities and Other Stakeholders Interviewed in Unguja and Pemba: M= 40 (71%), F=16 (29%)									
	Grand Total:			116 (39%)	72 (24%)	62 (21%)	51 (17%)	301	

Key: M=Males, F=Females, VPO=Vice President Office

³⁹ Meaning the Offenders Educational Centers of Zanzibar.

⁴⁰ Other ministries, department and agencies of the State.

⁴¹ Consulted in groups e.g. kind of focus group discussions on the streets and market places where they were working for gain.

A month long of field consultations involved traveling in all regions and some of the districts of Unguja and Pemba. In Unguja, total of 188 (females being 38%) were interviewed, while in Pemba, the interviewees were 113 (females being 45%). Five (5) days against 14 days were spent in Pemba and Unguja respectively.

Data collection was done by two external consultants, one being the retired Judge of the High Court of Tanzania who is also a Law Professor at Tumaini University Makumira. The second consultant was an Advocate of the High Court of Tanzania with vast experience in organizational development. The duo was assisted by one of the Judge of the High Court of Zanzibar.

As such, the conclusions and recommendations in this report are based on the independent consultants' opinion and those of interviewees met at the sampled locations. The Judiciary of Zanzibar is therefore exonerated from any liability.

1.5.3 Ethical Consideration in Data Collection and Analysis

Despite being an internal process which was coordinated by one of the pillars of the State, yet all administrative procedures governing researches and related interventions were adhered to, including securing a study permit from the Office of the Vice President of Zanzibar. Moreover, all consultations at institutional levels were carried out after the permission of the head of such institutions. Study ethics including confidentiality and informed consent have all been considered. The names and descriptions of all interviewees are concealed.

1.5.4 Data Analysis (Processes and Presentations)

The types of data collected were mainly qualitative – with exception of some statistical information on the budget and number of judicial service works presented in subsequent parts of this report. Therefore, being predominantly qualitative data, an analysis followed the thread.

An authentication of data collected was done through two ways, namely triangulating data collected orally against the written reports; and, validating pieces of data through phone calls, emails, etc. to implementing partners and other sources. The release of this report took longer than initially scheduled due to this reason.

1.6 LIMITATIONS OF THE ASSESMENT PROCESS

The nature, objectives and design of this assessment suggested a need for broad and inclusive consultations of all stakeholders in justice sector. At least 90% of the targeted categories of stakeholders were consulted between March and April 2022 in Unguja and Pemba. A few remaining ones including some of the religious institutions, governmental departments and political parties couldn't be physically reached despite all the efforts. Time line could not allow further attempts to reach them. However, almost all of them were involved in the validation of the initial draft of this report and a few others sent their written responses.

The limitation of time did not also allow physical consultation and learning of issues from other jurisdictions e.g. Mainland Tanzania. However, the assessment team secured a bunch of relevant reference materials from the websites of the Judiciary of Tanzania, Judiciary of Kenya and other countries.

PART TWO

CONTEXTUAL ANALYSIS ON ZANZIBAR'S LEGAL SECTOR

2.1 INTRODUCTION

There are socio-economic, political and other factors which influence the types and pace of reforms of the legal sector at large and the Judiciary of Zanzibar in particular. An understanding of such underlying factors could deepen the understanding on the nature and status of judicial reforms; and therefore, to have well thought recommendations.

This part presents a brief analysis of the context including highlight of the historical background of the legal or judicial sector reforms. This is intended to appreciate early efforts and also, to learn from the best practices or failures of the reform initiatives. This part has three sections on history of changes; the underlying policy perspectives on the legal sector; and, the coherency of the intended judicial reforms in line with national and international standards. The reasoning of arguments and recommendations of all subsequent parts of this report relies on this contextual analysis as well as analytical frameworks (part one of this report).

2.2 RUNDOWN OF LEGAL SECTOR FRAMEWORK AND REFORMS: 1800S TO 2022

The Zanzibar's legal sector, of which the Judiciary forms a large part, has been in constant reforms for so many years. A lot of positive changes are on records; but, challenges e.g. on judicial administration still outweigh the successes earned so far. Looking forward, there is a promising future especially by considering recent progressive changes this sector has been adopting e.g. through legislation.

2.2.1 Initial Legal Reforms 1830s – 1860s

According to numerous literature reviewed⁴² in the course of this assessment and also during consultations with seasoned lawyers based in Zanzibar, the history of Zanzibar's legal system dates back over a 150 years. For instance, despite the fact

42 For instance: Abayo Law Firm (2009). Legal Sector Reform in Zanzibar – Concept Note. Available online via: <https://studylib.net/doc/9048161/legal-sector-reform-in-zanzibar--a-concept-note> And Also: UNDP, Situational Analysis (of Zanzibar). Undated. Available online via: <https://info.undp.org/docs/pdc/Documents/TZA/Prodoc-%20LSR-%20Part%201.pdf>

that the Sultan of Oman who adopted Zanzibar as his empire in 1830s did not establish any formal legal system, yet, the country engaged legally with a number of foreign traders through certain form of territorial agreements e.g. with the United Kingdom (Treaty of 1839), France (Treaty of 1944), etc.

In 1861 the United Kingdom (UK) established a British Consular Court,⁴³ which had powers to handle all cases of civil and criminal nature over British nationals (subjects) in the Sultan territories of the East Africa. Through the said treaty (1839), the British crown had powers to extend English laws to the British subjects. Through this avenue, the crown extended to Zanzibar a number of Indian laws, English laws, principles of common law, etc. to Zanzibar. However, Sultan had powers to legislate for his subjects in Zanzibar.

2.2.2 Introduction of Dual Legal System 1890s – 1950s

Nearly 40 years later (in 1897), formal Sultan court system for his subject was established. The courts were essentially applying Islamic law, which was pronounced as fundamental law of Zanzibar. At this point then, there was a **dual legal system**.

Later on, in 1920s when British took over Zanzibar, the two systems were blended (streamlined) in the form of British and Islamic legal frameworks, existing to date (with some modifications). From this period, the court system was well developed in terms of structures and operation. Some of the court buildings e.g. in Pemba which are in use to date were constructed from 1920s or 1930s – according to one interviewees.

2.2.3 First Post-Revolution Judicial System: 1960s

The legal framework, including on judicial administration that governed Zanzibar for over hundred years was overhauled after the 1964 revolution. In lieu thereof, a new framework was adopted to reflect the context that prevailed during the time. The essence was to expedite socio-economic and political reforms. In those years, 1960s, the Peoples Courts, High Court and Supreme Council were introduced. No lawyers were allowed to appear in these courts and the rules of procedures or evidence were not applicable. An enormous legal expert told the assessment team in March 2022 that, cases were adjudicated by officers who were not law graduates. Further reforms were therefore unavoidable. Therefore, the deliverance of justice was almost haphazardly done.

⁴³ One of the laws governing such courts was the Domicile Act of 1861 of UK.

According to the same literatures, apart from challenges associated with professionalism there were also several other in terms of infrastructural and operational capacities of the justice machineries including the Judiciary. For instance, there were insufficient number of qualified judicial officers.

2.2.4 Second Post-Revolution Judicial System: 1980s

The second post-revolution legal sector reform was in 1985. This was necessary because the country, Zanzibar, amended its 1979 constitution a year earlier through the Act to Amend the Constitution of Zanzibar of 1984.⁴⁴ In the same year, the Constitution of Zanzibar of 1984 was adopted. It provided for High Court of Zanzibar. Article 93(2) of the then version of the constitution stated that, High Court was constituted by Chief Justice and two other Judges of the High Court. The CJ was a presidential appointee as it is a case to date. The two Judges were also to be appointed by the President of Zanzibar after consultation with the 'judicial recruitment commission'.⁴⁵ Therefore, the High Court of Zanzibar was constituted by only 3 Judges. There was also in 1984 the Constitution (Consequential, Transitional and Temporary Provisions) Act of 1984⁴⁶ adopted to aid implementation of the reforms.

The Constitution of Zanzibar of 1984 provided (and still provides) for supremacy of the court in dispensation of justice. In order to operationalize the constitutional directives, several laws (relevant to the assessment at hand) were amended and new ones formulated in 1984 and 1985. Those include:-

- i) Penal Decree (Amendment) Act of 1984.⁴⁷
- ii) Election Act of 1984.⁴⁸ Repealed.
- iii) High Court Act of 1985.⁴⁹
- iv) Kadhi's Court Act of 1985.⁵⁰ Repealed.
- v) Magistrates Courts Act of 1985.⁵¹
- vi) Constitution of Zanzibar (Amendment) Act of 1985.⁵²
- vii) Penal (Amendment) Decree Act of 1985.⁵³

44 Act No. 2/1984. This Act was assented by the then President of Zanzibar, H.E Ali Hassan Mwinyi on 5th March 1984.

45 Article 93(4) of this constitution. This commission was termed as 'TumeyaWajiriya Mahakama.'

46 Act No. 6/1984.

47 Act No. 10/1984.

48 Act No. 11/1984.

49 Act No. 2/1985.

50 Act No. 3/1985.

51 Act No. 6/1985.

52 Act No. 9/1985.

53 Act No. 10/1985.

2.2.5 Third Post-Revolution Judicial System: 1990s and 2000s

The third major post-revolution initiative on the reform of the legal sector was in 1992. It was styled as the Bomani Task Force under the Financial and Legal Updating Project (FILMUP),⁵⁴ funded by the World Bank (WB).⁵⁵ It covered Zanzibar as well. A full version of the FILMUP report was not immediately obtained. But a summary of it shows that, quite useful recommendations were made including a need to establish the Office of the DPP in Zanzibar.

The project's implementation, which commenced around 1994 was stalled on part of Zanzibar because the donor pulled out on ground of being dissatisfied with democratic election. Ever since, a holistic approach to legal sector reform in Zanzibar remained stalled.

Despite the fact that FILMUP did not materialize fully on part of Zanzibar, this country took own initiatives especially from 2000s to improve further the legal sector. Such efforts include an enactment and review of substantive and procedural laws including on evidence, civil procedure, criminal procedure, Office of DPP, Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA), judicial administration, etc. (all of which are extensively discussed in this report). So many laws relating to administration of justice were enacted or reformed from 2000s. They include:-

- i) Establishment of the Office of Mufti Act of 2001 (No. 9/2001).
- ii) Zanzibar Judicial Service Commission Act of 2003 (No. 13/2003). Now repealed.
- iii) Commission for Human Rights and Good Governance (Extension) Act of 2003 (No. 12/2003).
- iv) Government Proceeding Act of 2010 (No. 3/2010).
- v) Office of Director of Public Prosecutions Act of 2010 (No. 2/2010).
- vi) Zanzibar Anti-Corruption and Economic Crimes Act of 2012 (No. 1/2012).
- vii) Zanzibar Commercial Court (High Court Division) Act of 2013 (No. 9/2013).
- viii) Attorney General's Chambers (Discharge of Duties) Act of 2013 (No. 6/2013).
- ix) Evidence Act of 2016 (No. 9/2016).
- x) Kadhi's Court Act of 2017 (No. 9/2017).

⁵⁴ Note: On legal component, this project was intended to upgrade the legal sector through: (i) training and limited office and computer equipment; and (ii) revision and publication of the laws of Tanzania; and, (c) studies including a legal sector study to prepare a detailed strategy for the development of the legal sector.

⁵⁵ Read more details through: World Bank, Tanzania – FILMU. Available online via: <https://documents.bancomundial.org/es/publication/documents-reports/documentdetail/895911468129890599/tanzania-financial-and-legal-management-upgrading-filmup-project>

- xi) Establishment of the Zanzibar Electoral Commission Office of 2017 (No. 1/2017).
- xii) Legal Aid Act of 2018 (No. 13/2018).
- xiii) Judiciary Administration Act of 2018 (No. 11/2018).
- xiv) Criminal Procedure Act of 2018 (No. 7/2018).
- xv) Penal Act of 2018 (No. 6/2018).
- xvi) Law School of Zanzibar Act of 2019 (No. 13/2019).
- xvii) Zanzibar Law Society Act of 2019 (No. 13/2019).
- xviii) Presidential Affairs Act of 2020 (No. 3/2020).
- xix) Advocates Act of 2020 (No. 1/2020).
- xx) Office of the Grand Mufti of Zanzibar of 2021 (No. 4/2021).
- xxi) Several constitutional reforms.⁵⁶
- xxii) A number of amendments.⁵⁷

The 2000s reforms were more on thematic systems e.g. targeting specific civil or criminal justice reforms (in terms of operations or institutionalization of the same).

On part of the judiciary, an enactment of the said 2003 judiciary administration law can be regarded as one of the remarkable reforms in recent years prior to an enactment of 2018 similar legislation (discussed extensively from subsequent part of this report). In addition to the 2018 judicial reform, this assessment suggests for the reform of the whole legal sector. One of the necessary issues to address should be on access to justice.

Therefore, the assessment at hand, which is technically a ‘full-diagnostic’ process, is the major initiative after the stalled 1990s reforms processes and some initiatives made from 2000s. However, this one is not holistic of all actors of the legal sector. It predominantly focusing on the Judiciary of Zanzibar.

2.3 POLICY DIRECTIVES ON LEGAL SECTOR: *CASE OF VISION 2050*

It is imperative that Zanzibar justice system exhibits dynamism with time and changes for better so as to keep in touch with the needs of the society, implement the current agenda and policy of the government and ultimately contribute to the aspired economic development of the country by discharging its mandate effectively. The government has embarked on economic development project giving impetus

⁵⁶ Namely; the Sheria ya Mabadiliko ya Nane Katika Katiba ya Zanzibar ya 2001 (No. 2/2001); the Sheria ya Mabadiliko ya Tisa Katika Katiba ya Zanzibar ya 2002 (No. 8/2002); the Sheria ya Mabadiliko ya Kumi ya Katibaya Zanzibar ya 2010 (No. 9/2010); and, the Sheria ya Mabadiliko ya Kumi na Moja ya Katiba ya Zanzibar ya 2016 (No. 8/2016).

⁵⁷ Including; the Written Laws (Miscellaneous Amendments) Act of 2003 (No. 4/2003); the Criminal Procedures (Amendment) Act of 2004 (No. 7/2004); the Penal Decree (Amendment) Act of 2004 (No. 6/2004); the Offenders Education (Amendment) Act of 2007 (No. 3/2007); the Anti-Money Laundering and Proceeds of Crimes (Amendment) Act of 2022 (No. 1/2022); and, the Land Tribunal (Amendment) Act of 2008 (No. 8/2008).

to blue economy, industrial development and attraction of foreign investors among others. To attain these goals reliance will be on the existence of a credible justice system to be manifested by independent judiciary as the backbone as it is explained further below.

2.3.1 Alignment with the Zanzibar Development Vision 2050

The blueprint of the country's development agenda for the next thirty (30) years is the **Zanzibar Development Vision 2050**. This vision document has several developmental targets, one of which is on the governing institutions and public services. The strategic direction envisaged here is to uphold transparency, accountability and the rule of law in government and society, supported by an efficient and competent bureaucracy for public service delivery.

The aspirations in realization of this thematic area and whole of the Zanzibar Development Vision 2050 are indicated under Paragraphs 4.4.1 to 4.4.7 of this vision document. Some of the most relevant aspirations in this regard are:-

- i) Effective implementation and enforcement of policies and laws, reinforced by high engagement with key stakeholders through regular reviews and M&E mechanisms to improve governance and the rule of law (Aspiration 4.4.1).
- ii) Highly efficient, knowledgeable and competent public servants who provide strengthened public services alongside greater service digitalization and performance management (Aspiration 4.4.2).
- iii) High ethical conduct and accountability of public leaders and civil servants in line with a zero-tolerance policy on corruption and its roots as well as mobilizing public participation against corruption (Aspiration 4.4.3).
- iv) Strong civil and criminal justice framework and infrastructure with highly accessible legal services for all under an effective judiciary system, including a focus on child justice through community rehabilitation programmes for child offenders (Aspiration 4.4.4).
- v) Strong democratic and over-sighting organs with continued government commitment to upholding human rights and participatory democracy, reflecting relevant international conventions and the needs of the time where applicable (Aspiration 4.4.5).
- vi) Continued adherence and alignment to relevant international conventions, treaties and declarations that support Zanzibar's development aspirations through effective coordination with the URT, development partners and the international community at large (Aspiration 4.4.6).

Key Performance Indicators 2020 – 2050 (ZDV 2050)

Indicator	Baseline 2019	Target 2030	Target 2040	Target 2050
Proportion of government (incl. Judiciary) services digitalized				
Proportion of the public satisfied with public service				
Job satisfaction rate of public employee (incl. of Judiciary).				
Corruption perceptions index (world ranking)				
Proportion of people receiving legal aid services				
Proportion of civil and criminal cases disposed ⁵⁸				

Source: Zanzibar Development Vision 2050, Page 67.

Based on this Vision 2050, there a number of actions which the Judiciary will have to take in order to make itself relevant (coherent) to the national strategic direction and therefore, directly or indirectly contributing to the development of this country. Those include to ensure efficiency and effectiveness of its interventions; compliance to the principles of good governance such as transparency and accountability; adopting sound judicial managerial and administrative systems e.g. M&E mechanisms; digitalization of operations (especially case flow management); enhancing accessibility of its services; and, an alignment to international human rights obligations.

Moreover, innovations such as inclusive approaches and adopting some measures to engage in blue-economy are emphasized in this Zanzibar Development Vision 2050 (as a way of contributing to the Zanzibar's macroeconomic indicators).⁵⁹

The national development agenda e.g. on economic development is transcribed into legal frameworks for effective implementation. For instance, in recent years, the country has enacted a number of pro-economic development laws including the ones governing taxation, investment promotion,⁶⁰ land, clove production, insurance, tourism, etc. All these are subject to judicial interpretation when a need arises.

⁵⁸ Note: In accordance with the prevailing guidelines

⁵⁹ This include e.g. to have specialization or judicial skills on maritime trade and transportation; fisheries development; tourism development; resource extraction e.g. oil and gas; cross border trades; etc.

⁶⁰ For instance: Zanzibar Investment Promotion and Protection Act of 2004 (Act No. 11/2004). Section 3(1) establishes the Zanzibar Investment Promotion Authority (ZIPA) as the focal point and facilitator of the investments in the country. Section 23(1) of this law requires disputes on investments to be settled amicably or through arbitration. Section 23(2) permit invocation of the Arbitration Rules of the United Nations Commission on International Trade Law or International Center for Settlement of Investment Disputes. However, parties to the case have liberty to choose their dispute settled under the Zanzibar's judicial system (Section 23(3)).

2.3.2 Some Suggestions on Policy Directives

It is anticipated that, as the private sector grows due to current conducive trade and investment policies, the Judiciary would be approached by litigants to resolve disputes relating to investment concessions. This is why, **specialization** or an **enhancement of needed skills** is highly recommended e.g. understanding the arbitration skills of such cases as it is stipulated under Section 23(3) of the Zanzibar Investment Promotion and Protection Act of 2004.⁶¹

The country, Zanzibar, lacks **specific and comprehensive legal sector policy framework** e.g. to link justice delivery systems with national development (at micro and macro levels). The Judiciary of Zanzibar can engage with relevant ministries for them to initiate formulation of the said policy. Issues pertaining access to justice and judicial services should be given earnest attention in this policy's contents.

2.4 ZANZIBAR'S LEGAL CONTEXT WITHIN UNION OF TANZANIA

Zanzibar forms part of the United Republic of Tanzania (URT) but enjoys some autonomy and a certain degree of independence in the manner it operates definite issues which are categorized as non-union matters including the judiciary except the Court of Appeal (CAT) in which case appeals from the High Court of Zanzibar go to CAT. In other words, Zanzibar is given a great deal of autonomy to determine its laws and legal institutions, including its constitution.⁶²

Thus only CAT has jurisdiction over both Zanzibar and Mainland Tanzania. Otherwise, the two sides operate two distinct judiciaries up to High Court level with different court systems that draw inspiration from Common Law system.⁶³

It is on this account that Zanzibar court system unlike Mainland Tanzania embraces Islamic courts (Kadhi's courts) that adjudicate Muslim family cases such as divorces, child custody and inheritance.

However, there have been, in practice many ways in which Zanzibar and Mainland Tanzania adopt common legal interventions e.g. legal sector reform through FILMUP (discussed above) and an extension of the mandates of the national human rights institution (CHRAGG) to Zanzibar⁶⁴ even if human rights is not explicitly

61 Act No. 11/2004.

62 The Constitution of the United Republic of Tanzania of 1977 recognizes the right of Zanzibar to establish its court structures with their jurisdictions under the Constitution of Zanzibar of 1984. See Part IV, High Court of Zanzibar, of Chapter Five of the URT Constitution of 1977.

63 The common law system as imported from UK the colonial master is judge-made law. It is a system made up of judgments handed down in cases adjudicated on disputes brought by people, whether natural persons (individuals) or legal persons (for example, companies). In common law legal traditions, judges are bound by the decisions of higher courts and also by the rules of precedent, which require rules laid down by the court in previous cases to be followed unless they were wrongly decided.

64 As it is further explained in the coming parts, the Commission for Human Rights and Good Governance (CHRAGG) operates both in Mainland Tanzania pursuant with the CHRAGG Act of 2001; and, in Zanzibar, pursuant with CHRGG (Extension) Act of 2004 (Act

indicated as one of the union matters. Moreover, a number of laws and policies have been formulated to complement each side of the union including on the national plans of action to end violence against women and children (NPA-VAWC) which are found both in Mainland Tanzania and Zanzibar.

2.5 RECOMMENDED ACTIONS ON LEGAL SECTOR LANDSCAPE

As it will be discussed further in part three of this report, issues pertaining the reform of the Judiciary of Zanzibar are coiled up in a way that, a complete and comprehensive or rather, **meaningful reform will need to be multi-sectorial and multi-dimensional**. That is, there is a need to consider also reforms of other actors in criminal and civil justice systems including the Kadhi's courts and quasi-judicial tribunals. Otherwise, there would be imbalance of standards amongst the actors because performance of the Judiciary in terms of speedy disposition of cases, for example, depends on the performance of other actors such as investigators and prosecutors in criminal offences.

Attempts of previous reforms of the Judiciary and whole legal sector e.g. the FILMUP did not work out successfully because of over-dependence on financial support from outside. For instance, the World Bank dropped from supporting Zanzibar in FILMUP initiative in 1996 on the claims said above. However, this would not have been a case if the RGoZ had its financial contributions into the processes. It is a good lesson going forward with regard to the intended judicial review at hand – that, the government of Zanzibar should own and finance the reform processes.

3.1 INTRODUCTION

This part presents an analysis and findings of the internal or institutional capacities and operations of the Judiciary of Zanzibar. The strengths and weaknesses in relation to financial, human and other resources are highlighted and suggestions are made in each of those three categories of resources. There is also a consideration on the extent to which ICT or digital technology is being embraced by the Judiciary as a way of, among other benefits, enhancing the case management system.

The part is divided into four main sub-parts namely; financial management, human resources, facilities and gender mainstreaming as one of cross-cutting issues the assessment team has proposed for consideration. Legal gaps on all these plus specific suggestions are also presented here in this part.

3.2 OVERVIEW OF THE RECENT EFFORTS ON INSTITUTIONAL REFORMS

As said earlier on, this assessment and its findings are actually building up onto already existing efforts intended to improve the performance of the judiciary. The most recent ones, which have also instigated this process at hand happened in 2021. It is noted that, immediately after being appointed as Acting CJ (Ag.CJ) of the Judiciary of Zanzibar in October 2021, the Honorable Ag.CJ adopted a number of institutional measures in a form of ‘quick-wins’ actions. The Ag. CJ formed five thematic committees, namely:-

- i) Advisory committee.
- ii) Reform committee.
- iii) ICT committee.
- iv) Rules committee.
- v) Training committee.
- vi) Supervision committee.

Some of notable changes are already emerging as a result of these reforms including an expedition of some cases due to specialization in handling cases e.g. of sexual harassments; and, ongoing installation of ICT system at the High Court level (Unguja), which is being supported by UNDP Tanzania.

Secondly, gathering of statistical data from the magistrates' courts has been improved. There is a devised Database/ Dashboard which operates manually but semi-digitalized. For instance, each magistrate is required to fill-in the return forms and submit them to the Registrar of the High Court of Zanzibar on daily basis. The filling-in of the form is currently done manually as the ICT systems are yet to be operationalized down to the other courts and tribunals. A full complete and functional Judiciary Statistic Dashboard System (JSDS) is recommended.

Thirdly, efforts to cement ties with actors in the legal sector e.g. several meetings with the private advocates; Attorney General (A.G) chambers; the Office of Director of Public Prosecutions (DPP); CSOs e.g. THRDC, etc.

Fourthly, have initiated cross-breed exchange of knowledge and skills on matters pertaining judiciary administration e.g. invited a long serving female Judge from the Mainland Tanzania to come and share her views on some reforms. Moreover, clerks and secretaries of the Judiciary of Zanzibar were recently involved in 'study visit' to Mainland Tanzania where they interacted with their colleagues and learn in practical ways.

The review at hand expands from these initial efforts. The committees (mentioned above) could be the implementing mechanisms of the recommendations made in this report.

3.3 STRUCTURE OF THE JUDICIARY OF ZANZIBAR

3.3.1 Courts' Dual Systems

The judicial structure of Zanzibar is dualistic because it embraces of ordinary and Kadhi's courts. The legal system support both. The later, Kadhi's court is established under the Kadhi's Court Act of 2017⁶⁵ which repealed and replaced the 1985 similar legislation.⁶⁶ The court have exclusive jurisdiction in Islamic law cases on personal status matters. It is structured into district and appellate levels whereby the ultimate hierarchy of its appeal is the High Court of Zanzibar (HCZ).

⁶⁵ Act No. 9/2017.

⁶⁶ It was the Kadhi's Act of 1985 (Act No. 3/1985).

On the other hand, the ordinary court structure comprises of the Court of Appeal of Tanzania (CAT), the HCZ and its two divisions; Regional Magistrates Courts (RMC); District Magistrates Courts (DMC); and, Primary Magistrates Courts (PMC).

The CAT is established under Article 117 of the Constitution of the United Republic of Tanzania of 1977 (URT Constitution). This court, CAT, has jurisdiction over Mainland Tanzania and Zanzibar. The HCZ is also a constitutional creature. Articles 114 and 93 of the URT Constitution and the Constitution of Zanzibar of 1984 respectively provide for the establishment and mandates of HCZ. This High Court has two divisions,⁶⁷ namely the Industrial Court established and operating under the Zanzibar Industrial Court Act of 1994;⁶⁸ and, Section 80(1) of the Labour Relations Act of 2005;⁶⁹ and, the Commercial Court established under the Commercial Court Act of 2013.⁷⁰

There are other courts subordinate to the HCZ, namely; RMC; DMC; and, PMC established and governed by the Magistrates Court Act of 1985.⁷¹

3.3.2 Management of the Judiciary

The Judiciary of Zanzibar is headed by CJ of Zanzibar, who is administratively assisted by the Chief Court Administrator (CCA) and the Registrar of High Court overseeing adjudication related matters. There is also a Chief Kadhi assisted by Deputy Chief Kadhi. Both of these officials are appointed by the President of Zanzibar upon recommendation of the Judiciary Service Commission (JSC). The Registrar is assisted by Deputy Registrars including those of Kadhi's Courts.

Section 7(4) of the Judiciary Administration Act of 2018⁷² mandates the CCA to be the 'head of the general administration of the Judiciary' (i.e. the Chief Executive Officer of the Judiciary). On the other hand, Section 8(3) of the Kadhi's Court Act of 2017 states that, *'Chief Kadhi shall be the head of Kadhi's Court and be responsible for the overall supervision of Kadhi's court.'*

A line of mandates between these two senior officers is (very) delicate; and therefore, inclined to be a cause for conflicts due to high chances of overlapping mandates.

67 Section 3(1) of the High Court Act of 1985 (Act No. 2/1985) was amended in 2013 through the Written Laws (Miscellaneous Amendment) Act of 2013 (Act No. 8/2013) to allow High Court having 'various divisions.'

68 Act No. 2/1994 as amended in 2013 through the Written Laws (Miscellaneous Amendment) Act of 2013 (Act No. 8/2013).

69 Act No. 1/2005.

70 Act No. 9/2013.

71 Act No. 6/1985.

72 Act No. 11/2018.

The said JSC is established under Article 102 of the Constitution of Zanzibar of 1984; Section 33(1)(b) of the Public Service Act of 2011;⁷³ and, Section 11(1) of the Judiciary Administration Act of 2018. Its powers are conferred on to it by the Public Service Act of 2011; and, partly by Section 12 of the Judiciary Administration Act of 2018. The powers of JSC include appointment, confirmation, promotion and discipline of judicial officers (through Employment Advisory Committee).

3.3.3 Statutory Challenges Associated with the Judiciary Administration

The legal frameworks governing JSC and Public Service Commission (PSC)⁷⁴ do not give JSC full mandates to decide on the affairs and operation of the Judiciary. For instance, unlike the Public Service Act of 2011 which pronounces the PSC as an independent and autonomous in terms of, *inter alia*, execution of its functions,⁷⁵ the Judiciary Administration Act of 2018 (e.g. under Section 11 which pronounce constitutional establishment of JSC) does not have this legal tone for the JSC.⁷⁶ Instead, key components of JSC's establishments and operations are subjected to PSC and its law. Section 11(2) of this law directs that, the composition of JSC 'shall be provided in the Public Service Act of 2011'.⁷⁷

Therefore, the JSC seems not to be a fully authoritative organ of the Judiciary. Its composition, functions and some of its decisions are subject to the PSC. For instance, decisions on disciplinary matter from JSC can be appealed against to the PSC.⁷⁸ Subjecting JSC into the mandates of PSC could mitigate the independence of Judiciary as one of the pillars of the State.

It is also a concern that the chairmanship position of JSC was removed from the CJ. It is not as it used to be under the repealed Judiciary Service Commission Act of 2003. Section 3(1)(a) of this repealed the law that mentioned CJ as chairperson of the judicial service commission. Therefore, currently, the CJ lacks sufficient and direct control on the functioning of the commission.

Administrative meetings e.g. of JSC are not periodically or systematically organized. Note Section 8(1)(b) of the Judiciary Administration Act of 2018 requires the CCA to submit quarterly report on the administration of judiciary to the CJ and the JSC.

73 Note: other service commissions established under Section 33(1) of this law are the Public Service Commission; the House of Representatives Commission; and, the Special Departments Service Commission. Under Section 33(2) of this law, the President of Zanzibar may establish any other service commission where deems necessary.

74 Note: PSC is a constitutional creature under Article 116(1) of the Constitution of Zanzibar of 1984 as amended. Its establishment is also stipulated under Section 17 of the Public Service Act of 2011.

75 See: Section 17(2) of the Public Service Act of 2011.

76 On account that the PSC is regarded as an umbrella Commission of all Commissions (see clarification below).

77 Section 34(2) of the Public Service Act of 2011 provides for the composition of the JSC, namely; the Chairperson (being High Court Judge) appointed by CJ; representative from A.G; representative from Zanzibar Law Society (ZLS); and, not more than three other members appointed by CJ.

78 Pursuant to Section 10(4) of the Judicial Administration Act of 2018. If a person is aggrieved by the decision of CPS, he or she can appeal further to the Labour (Industrial) Court.

The Judiciary Administration Act of 2018, under Section 10, allows appointment of the Assistant Court Administrators (ACA) in ‘every region.’ The ACAs are appointed by the JSC in consultation with the CJ. The ‘region’ in the context of this law is not defined e.g. means Regional Magistrate Court or on basis of governmental administrative units. It is also observed that, the qualifications of ACAs are not stipulated in this law. Moreover, such administrators have not yet been appointed on reasons of financial constraints. The law is also silent on a requirement of ACA in Pemba’s High Court.

Information Box: The ‘heavy top’ approach of the judiciary administration

Apart from the position of the CCA, the Judiciary Administration Act of 2018 does not provide for other posts (on administration side). Therefore, it imposes a ‘heavy top’ approach of judiciary administration on part of administrative matters. A leaf can be borrowed from the text of the Administration of the House of Representatives Act of 2019, which governs the administration of the legislature in Zanzibar and sanctions departmentalization. Section 19(1) of this law provides, inter alia, that there shall be departments, divisions and units to be recommended by the Office of the House and approved by the Public Service Commission for the better performance and efficiency of the functions of the legislature.⁷⁹

Moreover, on this same matter, Section 23 of the Public Service Act of 2011 sanctions the PSC to establish department and units of this Commission as it may determine. It is important that the Judiciary Administration Act of 2018 contains similar provisions because establishment of departments and units has financial implications in terms of recruitment of human resources and other expenses.

The Commercial Division of the High Court does not have own stand-alone structure. It therefore operates within the High Court’s Main Registry (where the Judge in-charge of this Division) is found. The only indicators signifying presence of this Division are the Judge in-charge, the Register Book and the Assistant Registrar. For purposes of convenience of record keeping and all other chains of case management on commercial matters, a specific building for this Division is needed.

As general observation, some legal and political elites were of the view that, the Judiciary of Zanzibar is yet to become jealous of its constitutional power as one of the pillars of the State. The perceived influence of an executive arm of the State e.g. in appointment of judicial officers and control of the JSC were repeatedly mentioned as indicators of the lost independence. On part of practice too, same observation were mentioned e.g. ferrying of a group of certain religious leaders to

⁷⁹ Section 19(1) lists the departments of the House of Representatives to be on: (i) administration and human resources; (ii) business of the House; (iii) legal advice; (iv) finance and planning; (v) supervision business of the House; and, (vi) coordination in Pemba.

Mainland Tanzania while offences alleged to have been committed by those leaders actually happened in Zanzibar. Moreover, the Judiciary of Zanzibar is perceived as lacking ‘international gate-way’ e.g. to access different opportunities at the international communities including within the commonwealth block. The desired judicial independence according to the elites is the one which is vividly seen by its features and qualities and not simply ‘theoretical.’

On the other hand, while ordinary courts have hierarchical flow beginning from the primary court e.g. ward or Shehiya level, the Kadhi’s courts lack primary and regional courts. Instead, they have district and appellate levels. The pecuniary jurisdictions of these courts are also not well articulated under the laws. As such, district Kadhi’s courts could determine cases involving billions of money. Moreover, filing fee for all cases regardless of monetary value of the claim is TZS 5,000. This was also said to be ‘proportionally incorrect.’ It is also the same challenge facing the land tribunal. As a result, the **judicial eco-system** which would have allowed litigants to navigate through justice options from lower level is not possible in some courts and tribunals.

3.3.4 Recommended Actions on Judiciary Structures and Administration

- i) The appointment of the CCA by the President of Zanzibar should be based on the recommendation of the JSC. The CCA should be a person with legal background on top of administrative or managerial skills.
- ii) The appointments of the Chief Kadhi, Deputy Chief Kadhi and members of the three members of the Appellate Kadhis as well as district Kadhi should be based on the recommendations of the JSC to the appointing authorities.⁸⁰ The Ulamaa Council, which currently recommends such appointments to the President (pursuant to Section 10(1) of Kadhi’s Court of 2019) is not yet a statutory body. If it is necessary that the recommendations on appointment should come from this Council, then, it has be regularized in a form of the law.⁸¹ Otherwise, it is a good legal practice that the appointment of the Registrar of Kadhi’s Court is subjected to the JSC.⁸²
- iii) The requirement of having Ulamaa (as assessors) at the High Court level on matters originating from Kadhi’s courts is an ideal. However, owing to the technicalities of proceedings at the High Court level, it is suggested that, the assessors for this court should be individual

80 Pursuant to Section 10(1) of the Kadhi’s Court Act of 2017, the President of Zanzibar is an appointing authority of the Chief Kadhi, Deputy Chief Kadhi and members of the three members of the Appellate; while, the Chief Justice is an appoint authority of the district Kadhi (as per Section 11(1)) of the same Kadhi law.

81 For instance can opt for an amendment of the Kadhi’s Court Act of 2017 to provide for the formation, composition, ethical standards, operation, etc. of the Ulamaa Council.

82 Section 12(1) of the Kadhi’s Court Act of 2017.

persons with degree in Sharia (Islamic law) e.g. Kadhi. The Ulamaa do not necessarily have a degree in Sharia.

- iv) Powers of the CJ as stipulated under Section 23(2)(a) of the Judiciary Administration Act of 2018 should include a call from submission of returns of disposition of cases even from Kadhi Court because CJ is the head of the whole Judiciary of Zanzibar which include Kadhi's Court.
- v) The Ethics Committees under Sections 34 and 35 covers all judicial and non-judicial officers except the CCA, Chief Kadhi and Deputy Chief Kadhi. These too have to be subjected to ethics as they are part of the judiciary administration. There is also no mention on where the Regional Judicial Officers could be taken into task.
- vi) The form and contents of a complaint should be indicated in the Judiciary Administration Act of 2018 e.g. must be in writing, signed by the complainant, deducing type or nature of allegation with evidence, etc.
- vii) Moreover, procedures of handling the complaint by the committee (including appeals) should be indicated for clarity purposes.
- viii) In relation to that, there is a need to devise complaint mechanism for courts' service users e.g. suggestion boxes (manually or electronically). A need for different avenues to lodge complaints is suggested e.g. electronically, papers, orally, etc.
- ix) Recommendations on the review of benefits of the judicial and non-judicial officers should be made to the President and not 'government' as it provided for under Section 14 of the Judiciary Administration Act of 2018. This could give weight to the recommendations made.⁸³
- x) A need to formulate code of ethics against which disciplinary measures can base on.
- xi) The 'heavy-top' approach of judicial administration as stipulated under the Judicial Administration Act of 2018 should be changed by introducing statutory departmentalization of the office of the CCA. The Judiciary Administration Act of 2018 should clearly provide for an establishment of division, units, sections, directorate, etc. for an effective performance of the Judiciary.

83 Borrowing a leaf from Mainland Tanzania e.g. under Section 31(1) of the Judiciary Act of 2011 (of Tanzania). Section 32 of this law guides the President of URT on how he/ she can make decision on proposed salaries or allowances or terminal benefits recommended by the Mainland's JSC. Therefore, the Zanzibar's law should be more practical on this and other aspects.

- xii) A clear legal mandates between CCA and Chief Kadhi is needed. The practical way is to allow Kadhi's Courts to have a fully functional structure e.g. include own chief or assistant administrator (reporting to CCA) and systems similar to those of ordinary courts.
- xiii) The powers and mandates of the JSC including its composition and on disciplinary matters should not be subjected to PSC or any other executive organ of the State in order to safeguard the independence of the judiciary and its full freedom to decide on its professional affairs.
- xiv) Regarding the Judiciary Fund (Section 39(3) of the 2018 law), the overall administration and control of the Judiciary Fund shall be to the CCA or CJ and not to the Accounting Officer to be appointed by the Paymaster General. This is for giving the Judiciary of Zanzibar full control of its funds. A need to operationalize the Judiciary Fund is also highly emphasized.
- xv) Section 44 of the Judiciary Administration Act of 2018 requires the CCA to manage the Judiciary Fund in accordance with the Public Finance Management Act of 2016⁸⁴ and the Public Procurement and Disposal of Public Assets Act of 2016.⁸⁵ This is fine. However, an amendment could be made on this provision to allow the JSC to make internal financial regulations (in consultation with the Minister responsible for finance). This would enhance proper management and financial control of the operation of the Judiciary Fund e.g. some forms of flexibility on expenditure where a need arises. Note Section 66(1) of the Judicial Administration Act of 2018 allows the JSC to make regulations for administration of the Judiciary.
- xvi) The Judiciary Administration Act of 2018 does not provide for a platform where all judicial and non-judicial officers could meet e.g. through their representatives from different departments. In other jurisdictions like Mainland Tanzania, their judiciary administrations have **Judiciary Services Workers' Council** chaired by the CJ. It is noticed that, the workers in the Judiciary of Zanzibar do have a lot of issues of concern but they do not have a formal platform to share them out.
- xvii) Needed is a specific court structure for the Commercial Division of the High Court instead of being 'hosted' into High Court's main registry. This is for convenient purposes of the litigants and also, to ensure effective case management system of this important Division for the country's economy. Alternatively, if this arrangement is

84 Act No. 12/2016.

85 Act No. 11/2016.

important as a way of having one stop center (OSC) of all specialized court's divisions, then, it would have been appropriate if a wing or floor within the High Court building is allocated for such divisions. The specialization should not be only in papers, but physically seen.

- xviii) Kadhi's courts should have hierarchical flow beginning from the grassroots level similar to what the ordinary courts have (e.g. primary court).
- xix) There is a need to determine the pecuniary jurisdictions of the Kadhi courts.
- xx) A number of regulations pursuant to provisions of the Kadhi's Court Act of 2017⁸⁶ are desired and have been awaited for long time e.g. regulations on personal status (matrimonial, *tarak*, etc.), regulations on the civil procedures for instance on matrimonial issues, etc. Needed some funds to complete the process of formulating the regulations.

3.3.5 Other Pertinent Issues on Judiciary Structure

3.3.5.1 About the *Quasi-Judicial Organs (Tribunals and Boards)*

The Judiciary structure include also the quasi-judicial organs on land, taxation, labour and rent restriction. Ideally, the quasi-judicial organs are supposed to embrace and apply simplified procedures in their operations in order to hasten adjudication of the matter e.g. mostly through mediation. Therefore, strict application of the judicial rules e.g. technicalities in determination of disputes should not be invoked. They are supposed to make decisions on question of the law in simplified procedures and therefore, hasten dispensation of justice.

As said earlier on, Zanzibar has quasi-judicial organs on land, labour, rent restriction and tax matters.

3.3.5.2 *Land Tribunal*

The land courts are governed by the Land Tribunal Act of 1994.⁸⁷ This law commenced functioning in 2006, being twelve (12) years later. It was amended in 2008.⁸⁸ The intension of having this legal framework was to hasten adjudication of land disputes⁸⁹ in a simplified ways (as quasi-judicial model or function) – to

⁸⁶ On this, main provision is Section 7 of the Kadhi's Court Act of 2017 which states that, '*the Chief Justice in consultation with the Chief Kadhi, shall make rules of procedures to be applied in the Kadhi's Court.*'

⁸⁷ Act No. 7/1994.

⁸⁸ Via the Land Court (Amendment) Act of 2008 (Act No. 1/2008).

⁸⁹ Impliedly indicated under Section 13 of the Land Courts Act of 1994 (Act No.7/1994).

avoid or mitigate legal technicalities in settlement of land disputes as said earlier on. However, contrary to this intention, the land courts do apply almost all legal technicalities as stipulated under the Civil Procedure Decree, Cap. 8 of Zanzibar.

The Chairperson of the Land Courts is also Regional Resident Magistrate, who is accountable to the CJ as an appointing authority. The disciplinary measures on the conduct of this quasi-judicial organ taken to JSC. This is a good practice compared with other jurisdictions whereby their land tribunals have almost direct command from the executive arm of the State e.g. on appointment of the tribunals' chairpersons. Mainland Tanzania is a good illustration on this.

The land courts are available in all five (5) regions of Zanzibar – three being in Unguja and two in Pemba. They are located at Mwanakwerekwe for Urban West Region; Koani for South Region; Gamba for North Region; Machomane (inside the Land Commission's premises) for Chakechake); and, in Wete at a place near the Regional Hospital.

Information Box: Absence of lower levels of land courts negates possibilities of exhaustion of legal remedies and separation of small claims from complex disputes

The land courts' geographical jurisdiction starts directly from the regional level instead of starting from ward or district levels. In this way, parties to the case have limited opportunities of appeal. Appeals from the land courts are channeled directly to the High Court. Absence of lower land courts' structures down to the district levels logically means that, all disputes regardless of the pecuniary jurisdiction will have to be entertained at the regional level. This reality negates a global trend of having specific focus on 'small-claim.'

There are seven (7) Magistrates serving in the land courts of whom 2 (being 29%) are females. The courts have a total of 54 non-judicial officials including the clerks, typists and receptionists, of whom 42 (78%) are in Unguja and the remaining 12 (22%) are in Pemba. The court assessors are 20 in total, of whom 12 (60%) are in Unguja and 8 (20%) are serving on part of Pemba. There is only 1 female assessor who is stationed in Unguja. Therefore, at least 95% of assessors are males. There is no any specific rationalization for this gender parity.

There are challenges of salaries, allowances and other entitlements for the workers of land courts – almost same as what other judiciary service workers. The common ones were on low salary scales and absence of special allowance for the typists owing to the nature of their work (challenging one). This matter is extensively discussed in subsequent parts of this report.

Information Box: ‘Assessors’ allowances as an issue of concern

As for the assessors of land courts, it is noted that, they do not have salaries but paid merely allowances in the tune of TZS 322,000 per month.⁹⁰ Pursuant to Section 5 of the Land Courts Act of 1994 (cited earlier), the rates of allowances of the assessors are decided by the Minister for Lands (not the Judiciary). The latest instrument on assessors’ allowance was issued as Legal Notice No. 90 of 2020. There is no clear legal directives on the duration within which the Minister could decide on the increment of assessors’ allowances. Moreover, the assessors are not entitled to medical or other benefits. It seems that, this is the case because they are not regarded as judicial officers (Section 5(4) of the said land courts law. This seems to be a bit confusing also because the appointing authority of the assessors is actually the CJ pursuant to the Land Court (Amendment) Act of 2008 (Act No. 1/2008).

As for the adjudication of cases, total of 196 land disputes cases were lodged in these courts between January and December 2021. This gives an average of **28 cases for each Magistrate** in these courts **per annum**; which is also similar to an average of **1 case for each Magistrate per month**.⁹¹ More than 3,820 land dispute cases were received by the Land Courts since its operationalization in 2006. Table 3.1 below shows more details.

Table 3.1: Number of Land Cases Filed and Status of Adjudication (2006/2007 – 2021/2022)

Area	Case Lodged	Cases Decided	Cases Pending
Unguja	2,247	2,119	128
Pemba	1,576	1,516	60
Total:	3,823	3,635	188

Source: Land Courts’ Records, 2022.

Total of 3,823 cases were received during this period (past 15 or 16 years) of which 59% were from Unguja and 41% from Pemba. Ninety-five percent (95%) of all cases were decided meaning that, only 5% were pending for adjudication. Pemba’s side recorded 96% of completed cases during the same period while Unguja had 94% level of completion of cases during this period.

⁹⁰ This being TZS 20,000 per a day as sitting allowance plus transport fare.

⁹¹ The lowest number of cases handled by a Magistrate per annum was 10 cases; while the largest number of cases handled by the Magistrate per annum was 36 cases during the said period.

Relatively speedy dispensation of justice e.g. out of 196 cases lodged in 2021, 107 (56%) were decided as of December 2021 and only 89 (44%) were pending at the end of the year.

The land courts as special tribunal ‘hang’ without having lower level land tribunals (i.e. in order to nurture and implement the judicial *eco-system*) or **land division** at the High Court level. Appeals from these regional based land courts are preferred to the High Court (general registry). At the High Court level, the confusion sometimes arises on the application between Civil Procedure Decree, Cap. 8 and the laws governing land matters.

Specific Recommendations on Land Courts

- i) The need for amendment of the Land Tribunal Act of 1994 e.g.:-
 - o For it to reflect the current contexts having been in operation for nearly three decades.
 - o Simplifying procedures especially to mitigate legal technicalities. Application of the Civil Procedure Decree, Cap. 8 of Zanzibar should be replaced by new procedural rules formed exclusively for these courts. Section 44 of the Land Tribunal Act of 1994 can be invoked to devise procedural rules for the land tribunals.
 - o The need to have lower layer of land tribunals e.g. district land tribunals and then regional land tribunals in order to give litigants possibilities of seeking redress in exhaustive manner.
 - o The need to establish the **Land Division at High Court** level as it is a case for the commercial and industrial matters. A specific law on this could be ideal. Having specific Division on Land at the High Court level would address the challenge of inconsistency of precedents on land matters. Hence, a good number of cases are brought to the Land Tribunal for re-trial (*denovo*).
- ii) The need for centralizing land dispute settlement processes to land courts/tribunals only. Currently, some of the disputes were administratively channeled and entertained administratively by the executive arm of the State. However, when the settlement fails and things get tougher it is when such disputes are taken to the court/ tribunal. The assessment team was informed that, some of the cases are channeled to judicial process at the time when the same have already been distorted in terms of evidence, etc. This happens to the detriment of the reputation of the Judiciary especially when it fails to ‘fix the mess.’

- iii) The need for some staff e.g. public relations officer; procurement officer; information and communication officer (Pemba); accountant (Pemba); and, additional ICT officers. Also, the need to finalize digitalization of case management system as it is discussed further in the coming sections of this report.
- iv) The need to establish clear disciplinary mechanisms of assessors. Currently, the Chairperson (as a chief administrator) of the land tribunal normally uses ‘individual wisdom’ e.g. rules of natural justice where a concern on ethical issues against the assessors arises.
- v) Allowances and other entitlements of the assessors should be improved further from currently TZS 322,000 per month. Further, decision on assessors’ salary or allowance increments should be made by the Judiciary (JSC) instead of the Minister for Lands because assessors are serving the judiciary even if Section 5(4) of the Land Courts Act of 1994 terms them as not being judicial officers.
- vi) Need for addressing gender parity in the land tribunal for instance, only 1 out of 20 assessors is a female.
- vii) All other recommendations discussed further in coming sections of this report.

3.3.5.3 Rent Restriction Board

The Rent Restriction Board (RRB) is established and operates under the Rent Restriction Act, Cap. 98⁹² of the Laws of Zanzibar. This is a nearly 7 decade’s legislation, came into operation in 1953. However, it was amended twice in recent years.⁹³ The law is applicable to all dwelling (residential) houses and business premises.

Total of 96 cases (disputes) were referred to the Board (RRB) between 2018 and 2022, being an average of 19 cases per annum. The highest number of cases filed per annum was 26 in 2021, while the lowest number of cases filed per annum was 12 in 2018. Table 3.2 below shows more details.

⁹² Section 5 of the Rent Restriction Act, Cap. 98 establishes the RRB.

⁹³ Through the Written Laws (Miscellaneous Amendment) Act of 2013 (Act No. 8/2013); and prior to that, the Rent Restriction (Amendment) Act of 1987 (Act No. 3/1987).

Table 3.2: Number of Cases Files and Adjudicated in the Rent Restriction Board (2018 – June 2022)

Status	Years					Total
	2018	2019	2020	2021	2022	
Cases Filed	12	16	24	26	18	96
Cases Completed	11	10	18	14	1	54
Pending Cases	1	6	6	12	17	42

Source: *Judiciary of Zanzibar, Data as of 30th June 2022.*

The paces or rates of disposition of such cases in 2018, 2019, 2020 and 2021 were 92%, 62%, 75% and 54% respectively. This being an average pace of 71% per annum. However, such data could not be accurate if some indicated as being pending are re-recorded for the succeeding year.

This Board does not have its own permanent and sufficient office building or space. Currently, the Board's proceedings are held at the Peoples Palace conference room, Forodhani area, Urban West, Unguja. Sometimes, the proceedings are postponed because the venue is occupied for other events. It is a good news that the Board has now been given a specific office space from June 2022. However, this facility is yet to be furnished. Therefore, it is still impossible to organize proceedings in this new space.

There was a challenge of delayed payments of allowance of the Board's members. However, from January 2022, the trend has changed whereby, such allowances are paid on time and almost systematically.

Thirdly, the law governing this Board (cited above) requires a quorum of Chairperson of the Board, Secretary of the Board and at least three (3) other members. If one member misses for any reason, the case is adjourned. Moreover, if one of the members excuses him or herself for any reasons, the hearing of the case starts afresh. These are some of the attributing factors to the delay of cases in this Board.

Fourthly, the Board's hearing meetings are limited to only 3 per month on part of Unguja and 1 per month on part of Pemba. The Board also do not have sufficient working facilities e.g. even a single computer, which makes it a challenge to issue judgments and proceedings on time.

Fifthly, the legal technicalities applicable in ordinary courts can be invoked by the RRB in determining matters before it. For instance, Section 9(2) of the Rent Restriction Act, Cap. 98⁹⁴ of the Laws of Zanzibar states that inter alia, the Board shall have powers to order persons to attend and give evidence, administer oaths and order the discovery or production of documents *'like manner as in the proceedings before the High Court.'* This seems to negate the essence of having quasi-judicial mechanisms as it is explained elsewhere in this report.

Sixthly, while the said Written Laws (Miscellaneous Amendment) Act of 2013⁹⁵ amended Section 6(1) of the Rent Restriction Act, Cap. 98 to substituting the mandates of appointing authority of the Chairperson of RRB from the President of Zanzibar to the Chief Justice of Zanzibar (in consultation with the JSC), Section 6(3) on the appointment of the Vice Chairperson erroneously remained to the President of Zanzibar.⁹⁶ This stance drew an attention of the High Court (HC) of Zanzibar in a case of ***Zubeir Joseph Daud vs. Andrew Alphonse Katema, High Court of Zanzibar, Civil Appeal No. 74 of 2021***,⁹⁷ whereby it was, indeed, observed that, the amendment erroneously did not consider subsection 3 of section 6 of this law (Rent Restriction Act, Cap. 98). As such, the Court advised the Attorney General of Zanzibar to consider amending the whole of Section 6.

Specific Recommendations on Rent Restriction Board

- i) The legal frameworks governing rent restrictions and land in Zanzibar should be merged to allow adjudication of rent related matters in the land courts (proposed to be 'land tribunals'). Matters pertaining house rents could be incorporated into the laws governing land.
- ii) The powers and operations of the Rent Restriction Board should be more on quasi-judicial in nature instead being engulfed with legal technicalities. Therefore, if the suggestion above is not feasible for the time being, then the Rent Restriction Act, Cap. 98 should be amended to remove all legal technicalities and instead, focus more on ADR procedures. Moreover, the amendments should also consider other challenges attributing to the delay of cases including a requirement of quorum discussed earlier.

⁹⁴ Section 5 of the Rent Restriction Act, Cap. 98 establishes the RRB.

⁹⁵ Act No. 8/2013

⁹⁶ The said provision (Section 6(3) of the Rent Restriction Act, Cap. 98 states that, *'the President may appoint either generally or for any particular period a Deputy Chairman who may not be a member of the Board to act as the Chairman of the Board in absence or inability of the Chairman to perform his functions.'* [Emphasis supplied]. The 'President' is defined under this law to mean the President of Zanzibar.

⁹⁷ It was adjudicated and judgment delivered by Hon. Kazi, J. on 24th March 2022 at High Court of Zanzibar.

- iii) Section 6(3) of the Rent Restriction Act, Cap. 98 should be amended to confer powers of an appointment of the Vice Chairperson to the Chief Justice of Zanzibar instead the President of Zanzibar. The 2013⁹⁸ amendment of this law erroneously skipped this provision.
- iv) Institutional challenges facing the operations of the Rent Restriction Board e.g. delayed allowances, lack of office space, lack of working facilities, etc. should be addressed. There is also a need to have permanently located Rent Restriction Board's operation on part of Pemba. There is a need to have specific budget and office premises for this Board as the government has done for the Tax Appellate Board.⁹⁹
- v) Despite the fact that the Rent Restriction Board is one of the longest existing judicial organs in Zanzibar, its visibility is not well known based on a random of consultations with the community members (held in April 2022). Therefore, it is suggested that, visibility strategies should be adopted as suggested for the whole of the Judiciary of Zanzibar.

3.3.5.4 Tax Board and Tribunal

Taxation matters are also subject to special tribunals in Zanzibar termed as the Tax Appeal Board (TAB) and Tax Appeal Tribunal (TAT). These two are quasi-judicial bodies. The TAB is well constituted and independent even in terms of premises within which its businesses are being conducted. The TAT is chaired by the High Court Judge. Appeals from the TAT go to the Court of Appeal of Tanzania.

The efficiency of the TAB is satisfactory. One of the clients interviewed in March 2022 at Unguja told the assessment team that, *'the board acts professionally and swiftly ... despite the complexity of tax matters.'* Between 2013 and 2022 (being a decade of operation), the TAB received a total of 102 cases of which 61 (being 60%) were completed at the time of this needs assessment in March 2022. The government has invested quite tremendously in the development of this Board. For instance, unlike other quasi-judicial organs, the TAB has been allocated with its own budget line since 2019/2020 FY. It has own office in which it conveniently transacts its affairs. These efforts by the government are commended and encouraged to continue and reach all other tribunals.

The trend of each particular year was not immediately obtained. Apparently, there is a need to put more efforts to ensure that tax disputes are settled within shorter period of time because of their direct implication to the country's national economy.

98 Via: Written Laws (Miscellaneous Amendment) Act of 2013 (Act No. 8/2013).

99 This Board has its own Budget since 2019/2020 FY.

As for the jurisdiction of tax board, it is established that, Section 5 of the Zanzibar Tax Appeals Act of 2006¹⁰⁰ is on the jurisdiction of the TAB. Section 5(a) of this law in particular provides that, this Board has mandate *‘to hear and determine any dispute referred to it under the provisions of this Act arising from the tax laws administered by the Zanzibar Revenue Board and the Tanzania Revenue Authority.’*

On the other hand, Section 7 of the Tax Revenue Appeals Act, Cap. 408 provides that, the Board (Tax Revenue Appeals Board) *‘shall, subject to Section 12 have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.’*

Section 2 of the Tax Revenue Appeals Act, Cap. 408 directs that, this law, is applicable to Mainland Tanzania as well as in Zanzibar. Here, there is an obvious contradiction especially because the tax, being part of revenues, is a union matter. Therefore, it is legally technical for the Zanzibar Revenue Board (ZRB) to entertain matters involving the Tanzania Revenue Authority (TRA) – which, contextually, is the union entity.

It is also noted that, despite the fact that incidents of tax evasion are happening in Zanzibar, instituting suits against such cases has not been done. It is claimed that, the country lack sufficient investigatory and prosecutorial skills on tax matters. As suggested elsewhere in the report, this too is a capacity gap to be addressed.

There was also a concern pointed out that cases involving tax matters tend to delay in TAB or TAT, some even for more than 10 years. For instance, a case of one ***Masaad Break Vs. Commissioner General of TRA***,¹⁰¹ has taken more than 6 years.

Specific Recommendations on the Tax Board and Tribunal

- i) There is a need to synchronize the two laws i.e. the Zanzibar Tax Appeals Act of 2006¹⁰² and the Tax Revenue Appeals Act, Cap. 408 in order to iron out any possible contradictions.
- ii) The need to make it clear on procedural matters for instance inconsistency of applying mediation or arbitration in determination of similar cases. The rules governing procedures should be reconsidered on stakeholders’ recommendations.

¹⁰⁰ Act No. 1/2006 (Revised Edition of 2013).

¹⁰¹ Proper citation was not secured.

¹⁰² Act No. 1/2006 (Revised Edition of 2013).

- iii) Criminal-related cases on taxation e.g. tax evasions have not been dealt with these tribunals. Those needs consent of the DPP because the Zanzibar Revenue Board (ZRB) cannot prosecute. There is a need for the ZRB to engage the office of DPP on criminal-related matters.
- iv) The need to hasten disposition of tax disputes, the current pace of 60% can be improved further by addressing all challenges attributing to delay of tax cases in the Board or Tax Appeal Tribunal.

3.3.5.5 Administrative Arrangements between Judiciary of Zanzibar and CAT

The relationship between the Judiciary of Zanzibar and CAT is a statutory or constitutional ones as said earlier on. Appeals from the High Court of Zanzibar for all other matters except the ones relating to Kadhi's Court, are preferred to CAT.

There are quite progressive efforts made to ensure that, the CAT operates conveniently in Zanzibar. One of commendable efforts is the allocation of some chambers within the newly constructed High Court building at Tunguu area, Unguja. There are at least four rooms equipped with some facilities including rockers. The CAT incur expenses for the purchase of its own stationery, retention of staff e.g. clerks and upkeep of the Justices of the Appeal when they visit Zanzibar for the proceedings. Other expenses e.g. utilities are borne by the Judiciary of Zanzibar as part of managing this court structure.

There are some concerns on the accessibility of CAT services because of very limited schedule the court has in Zanzibar. Its physical availability in terms of judicial proceedings is only once per annum (around November or December). Therefore, an appeal made in January has to wait for a year before being entertained by CAT. The delay of justice is quite evident.

Secondly, the appeal files (records) are periodically but not systematically ferried to CAT head office in Dar es Salaam once received from clients. However, there is usually a delay of dispatching such files or records to CAT. For instance, the last time such files were taken to Dar es Salaam was November 2021, which was almost six months at the time when this assessment was conducted in April 2022. The delay of dispatching the files or records to CAT is mainly attributed to insufficient budget to cover transport fair and subsistence allowance of the court officer from Zanzibar. In some instances, the officers responsible for dispatching the files dig from their own pockets to finance the trips. Securing a refund is a critical challenge.

Thirdly, it is a concern that, such sensitive files or records are being dispatched through a marine transport (which is less secured) instead of air transport.

Specific Recommendations on CAT

- i) Apparently, there is a need for the Judiciary of Zanzibar to allocate sufficient budget for this aspect as it has adverse implications to the rights and welfare of the people – who remain behind bars for a long time just to wait for the fate of their appeals to be dealt with.
- ii) Secondly, there is a need for the CAT to increase at least three seating sessions in Zanzibar e.g. January, June and December in order to speed up hearing of the appeals for the interest of justice. If possible ICT could be used to aid CAT's hearings from remote.

3.4 INTERNAL SYSTEMS, PLANS AND PROCEDURES

3.4.1 Case Management Systems

In this context, case (flow) management systems (CMS) include both the processes and resources managed altogether to ensure effective handling and disposition of cases. It also includes M&E e.g. tracking systems of the progress and results. The processes include filing, registration, assignments, service of summons, documentation and trial procedures an conclusion (disposition) of the case in courts of law. This sub-section considers a situation on the ground of all these components (not in chronologic order). Apart from field data collected, an empirical study on the same subject matters recently conducted by one Dr. Zakayo N. Lukumay (undated)¹⁰³ has been considered and had its findings extensively relied on.

The case management systems – on both civil and criminal matters is generally perceived as easy to use; but, somehow slow and bureaucratic. For instance:

- i) A process of filing civil suit entails a number of sub-procedures including presentation of a plaint, an assessment of filing fees, entries to the register book and referencing (numbering) of the case file. The use of digitalized filing system would have made almost all sub-procedures done under the same spot (e.g. clerk or registry).

103 Zakayo N. Lukumay (Undated). The Report on the Study on Case Management System for Zanzibar. This report was shared to the evaluation team by the Judiciary of Zanzibar in April 2022.

- ii) The entry to the register books¹⁰⁴ is also done manually. It is observed that, the books are huge in order to tape all needed information. This appears to be tiresome process for the clerks. Such special books are not available everywhere. The supply of such books in some of the courts e.g. Pemba has been limited in such a way that, the clerks had to use counter books which are hand-labeled. Being smaller than standard or ‘official’ Register books, the hand-written ones are easy to loosen and slit pages aside. The last time when official Register books were brought to this place was in 2018 (half a decade ago).



See above photo here

The assessment team saw some of such (counter) books in use with some of the pages already detached

It is easier to have unified Register if the same is digitalized. This will also simplify indexing of all case categories into one Register and updating of information e.g. results of the case. The digitalized Register will also allow different users at the same time and therefore, save time.

Folders used as case files are also not brought on time and in required quantity. Therefore, the clerks innovatively use A4 papers, which are not durable and do not keep documents in a good order. Also to shelf papers without folders is a challenge.

- iii) Lots of movements involved e.g. presenting the plaint, going to the cashier to pay fees and go back to the clerk handling the filing. A lawyer told the assessment team that, this process normally takes around 30 hours depending on the queue at the Registry or cashier. It is proposed that, electronic payment of fees should be introduced and that, there could be a flat rate of filing fees for all types of cases in order to shorten the procedure e.g. clerk's assessment of the fees to be paid.

¹⁰⁴ There are four types of register books kept at the main Registry of the court which are; the Civil Case Register; the Civil Appeal Register (From primary to Districts court and Regional Courts); the Probate Cause Register; and the Dispatch Register.

- iv) An assignment of the file to the Magistrate or Judge who will handle the trial is also said to be unduly long (sometimes). The suggestion was to have CJ's circular indicate time limit within which a case file should be assigned to the adjudicator. There was also almost similar suggestion on the time-limit within which a Judge or Magistrate is supposed to write and pronounce judgement after completion of hearing of the case. In other jurisdictions including Mainland Tanzania, the court devised own rules setting time limits.

For the same reasons mentioned earlier on (absence of digitalized or web-based management systems), the case records in all courts are perceived to be outdated and therefore, unreliable. For instance, shorthand recording¹⁰⁵ of proceedings is said to have been unreliable (sometimes) because some of the narrations made during the hearing of the cases are skipped or erroneously jotted down.

Secondly, typing of lengthy or bulk bundles of the papers plus illegible handwriting of some of the Magistrates and Judges, makes it difficult for the typists to complete their work on time. *'This is why we really need some allowance ... our eyes, neck nerves and all other backside pain a lot because of undue concentration to try read and understand the scripts ... sometimes, even Magistrates could not read their own handwriting ...'*, said one of the typists interviewed in April 2021, Pemba.

Typing of proceedings takes a lot of time due to the reasons said earlier on (e.g. insufficient number of computers and bulkiness of the hand-written proceeding papers from the Judges and Magistrates. Delayed typed copies of proceedings and judgements tend to delay appeals of the cases. It can take some months for these two documents to be completed and taken to the appellate courts.

3.4.2 Approaches to Case Management: *Small against Complex Claims*

Another challenge is on the approaches to case management, which does not segregate small-claims against complex law-suits. The small or simpler claims (on civil matters) can be disposed of through mediation (one of the forms of ADR) or other simpler process separate from the mainstream judicial case management system. In this way, the court's attention would be focused more on complex suits. Same Civil Procedure Decree, Cap. 8 can be used, but after being amended to widen the scope of alternative dispute resolution (ADR) beyond arbitration as it is provided for under Section 66 of this law.

105 The legal frameworks e.g. Section 394 of the Criminal Procedure Act of 2018 sanctions the use of handwriting. It states that shorthand notes of proceedings that shorthand notes may be taken of the proceedings at the trial of any person and a transcript of such notes shall be made if the court so directs, and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial.

In other jurisdictions like the United Kingdom (UK) and United States (USA),¹⁰⁶ there are specific courts for small-claims established as specialized tribunal created by statute.¹⁰⁷ Such courts have specific duties and powers on small-claims e.g. small amounts of money. The procedures of such courts are significantly inexpensive, speedy and simple unlike the ordinary courts.

3.4.3 Suggestions: Feasible Approaches of Handling Small-Claims

- i) Zanzibar has already legal and institutional frameworks which could accommodate adjudication of small claims proceedings without reinventing much more new judicial system (which is unrealistic). For instance presence of the Civil Procedure Decree, Cap. 8 which allow some forms of ADR; and, presence of several tribunals, could accommodate this approach. However, an enactment of specific law on ADR e.g. mediation and arbitration law is more ideal.
- ii) Alternatively, ordinary court can devise management system which segregate small claims against complex law-suits e.g. from registry point.
- iii) Moreover, the best option for the time being could be transforming Primary Courts to become Small Claim courts. The 2018's changes in which almost all criminal proceedings were removed from Primary Courts is commended.
- iv) Therefore, apart from widening Primary Courts' pecuniary jurisdictions, these courts should be vested with powers to handle small claims.¹⁰⁸

3.4.4 Some Efforts to Digitalize the Case Management

There is a huge desire of the Judiciary towards paperless services by taking an advantage of the advanced technology on ICT application in Zanzibar. There is also ongoing Digital Tanzania Project Tanzania (DTP), which is supported by the World Bank (WB).¹⁰⁹

106 For instance see: John S. Bradway, 'Benefits, Functions and Procedures of Small-Claims Courts.' Duke University, Durham, N. C. Accessed on 9th June 2022 via:

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5418&context=faculty_scholarship

107 For instance, the UK has the **Civil Resolution Tribunal Act, Cap. 25**. Section 2(1) of this law provides for the categories of claims which can be adjudicated pursuant to this law. Those include 'small claims.' That law seems to be read together with the recently enacted law termed as the **Small Claim Act, Cap. 430**. A quick glance into it shows that, this law does not connote an establishment of specific courts or tribunals on small claim, rather, pursuant to Section 2(1) of the Small Claim Act, Cap. 430 such claims can be lodged to conventional e.g. provincial courts. The said provision provides that, '*the purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.*'

108 Consider reflecting small-claims the justice system at large as this would involve amendment of some laws and have financial implications. As feasible option now, the judiciary can designate within its machineries special arrangement for small-claims e.g. as it has done for sexual harassment cases. Before considering any of such options, a thorough factual survey or needs assessment is high recommended.

109 The project development objective is to increase access to affordable, high quality internet services for government, businesses and citizens and to improve the government's capacity to deliver digital public services.

Information Box: About the Digital Tanzania Project

This is the ten (10) years project being implemented throughout the United Republic of Tanzania (2020-2029) under the coordination of the two ministries.¹¹⁰ The project has three components namely, (i) the Digital Ecosystem pillar - seeks to create an enabling digital environment to allow the productive use of ICTs in Tanzania; (ii) the Digital Connectivity pillar - seeks to close the digital gaps in access of digital connectivity and services and further lower down cost of internet access in the country; and, (iii) the Digital Government Platforms and Services pillar – aimed at accelerating digitally driven economic and social development for innovation, job creation and service delivery to the citizen. This will be accomplished through building of the core infrastructure and capacity necessary to support digital public service delivery and to enhance the efficiency of the government's internal operations. At the time of this review, there was ongoing baseline study to establish the needs. Such study involved Zanzibar as well.

So far, the Judiciary of Zanzibar, especially at the Unguja's High Court level, has made some efforts on digitalization of its services. For instance, there is ongoing processes termed as the Integrated Case Management System (ICMS) which is supported by the UNDP Tanzania.¹¹¹ The ICMS is installed in collaboration with the Synergy International System (as an expert). However, (i) it is currently limited to only registration of cases and not fully-automated system; and, (ii) it is claimed to be super-imposed system design and therefore insufficiently reflecting the local context/ needs of the Judiciary.

All these positive progresses on digitalization of the judiciary operations and services have to be supported by institutional ICT policy or guidelines which will offer guidance on a number of issues including storage of data, communication arrangements, use of Judiciary's equipment, back-up systems, intra and inter-connections, e-libraries, e-proceedings or e-case management generally as it discussed further in other parts of this report.

Moreover, owing to the technological advancement that Zanzibar experiences like the rest of the world; and, learning from the adverse effects an outbreak of COVID-19, use of electronic procedures in the generality of case management becomes unavoidable. The Zanzibar's Criminal Procedures Decree, Cap. 8; and,

¹¹⁰ It is coordinated (in Tanzania) by the Ministry of Works, Transport and Communication (MWTC) and President's Office Public Service Management and Good Governance (POPSMGG).

¹¹¹ This was still at a pilot level at the time of this assessment in April 2022. The pre-testing of the web-based model was being done at the High Court, Tundu, Unguja. The plan is to complete installation of the system at this court and then, do the same for the rest of the court premises upon availability of funds. It looks that UNDP's support would not be larger enough to cover all courts in the country.

the Evidence Act of 2016¹¹² both sanctions procedures of recording and admitting electronic evidences. The extent to which these laws are exhaustive on electronic evidence is something needing a separate analysis, of which, this assessment encourages this to be done soon.

Be it as it may, it could be more useful if the country will enact a specific and comprehensive law on electronic transactions and ensure that, existing procedural laws are amended to reflect need for electronic case management.

Mainland Tanzania, if it is worth pointing it out here, began transformation to digitalized case management system long time ago. A progress has reached and almost all stages of case management are currently digitalized. For instance, a number of courts have already been installed with electronic display boards (electronic bill board system) in which cause-lists are now made electronically.¹¹³

3.4.5 Suggestions of Case Management

Recommendations on case management generally

- i) The need to conduct case management meetings in systematic and periodic ways e.g. to have annual calendar of the meetings.¹¹⁴
- ii) The need for align M&E systems between JSC and other stakeholders with oversight statutory mandates e.g. statutory meetings under the Office of A.G Chambers (Discharge of Duties) Act of 2013;¹¹⁵ the Office of Public Prosecutions Act of 2010;¹¹⁶ and the ones under the Judiciary Administration Act of 2018. Both, in a way, address issues pertaining case management (among others).
- iii) The need for feedback mechanisms of the Judiciary functions e.g. Annual Progress Reports of the Judiciary of Zanzibar with narrative and statistical information such as on a number of cases adjudicates; status of pending cases; recruitment and retention of judiciary service workers; financial records; development projects of the Judiciary e.g.

112 Act No. 9/2016.

113 Apart from cause-lists being displayed on the billboards, they e-system do also register, track actions, create reports and display the schedule. The Mainland's Judiciary was assisted by the Investment Climate Facility for Africa (ICF). The same could be of help on part of the Judiciary of Zanzibar.

114 Note: The experience shows that such meeting are unsystematically conducted. For instance, on part of Pemba, the meeting was conduct in March 2022 and before that, the last one was in May 2021. The records of the previous meetings were not found. However, it is a good practice that from now on, the Judge in-charge will be having monthly meetings with all Magistrates. The kick-start meeting on this arrangement was on 2nd March 2022. These are management and not case flow meeting though, discussing also about statistics of status of cases adjudicated.

115 Act No. 6/2013.

116 Act No. 2/2010. For instance, Section 23 of this law provides for an establishment of Consultative Committee. It is established for the purposes of providing efficient administration of criminal justice and prosecution service. Members of this committee include the Minister (legal affairs), Judge of the High Court, DPP, Commissioner of Offenders Educational Centre, Deputy DPP, Registrar of the High Court, Chief Government Chemist, Chief Medical Officer and Representative of ZLS.

construction; outreach services; etc. The reports should be pushed in a form of books and electronic format. This will enhance transparency of the judicial functions. Moreover, a summary of Swahili and disability sensitive versions should also be published and disseminated.

- iv) Need for quicker ways of sharing information out for public consumptions e.g. through electronic newsletters, social media platforms and website. Therefore, the Judiciary is advised to establish and maintain its social media, website and other forms of information outlets. The need for support of the national budget of the RGoZ e.g. have it financed through the 2023/2024 financial year; or, seek a special budgetary support from the government owing to its importance. There is a need to purchase enabling system control; gadgets for judicial and non-judicial officers; trainings on the use of e-services; etc.
- v) As for ZLS in particular, there is a need to have the Bench-Bar working relationship e.g. via case management committees or other forums. The proposed **Bench-Bar case management committee** or **forum** especially on the delay of disposition of civil cases.¹¹⁷ This forum could also include representatives from CSOs e.g. THRDC's members who are legal aid service providers.

Recommendations relating digitalization of case management

- vi) The need for extended support of UNDP Tanzania on web-based/digitalized case management and record systems throughout the country (Zanzibar). Additionally, the government of Zanzibar should commit itself to allocate sufficient funds to finance this initiative for the next financial year.
- vii) The proposed web-based case management should not only be 'intra' i.e. linkage of digital systems between courts and their departments e.g. High Court and all other subordinate courts, but also to be 'inter'(integrated interface) i.e. between the Judiciary of Zanzibar and other key legal sector's actors e.g. the Office of DPP, Office of A.G and ZLS. It is a good gesture on this that the Office of DPP has already installed the computerized case management system (6 years ago). The Judiciary and other actors in this sector should do the same. The proposed 'inter' system should be linked also with CAT (and Judiciary of Mainland Tanzania e.g. for administrative relationship).

117 The Bench-Bar relationship could also work on other matters including supports to continuous legal education and judicial education proposed elsewhere in this report. During each meeting, the two sides will be deliberating on situation and solutions about the caseloads and backlog of civil cases. Note: criminal cases have other different forums under the Office of DPP Act of 2010.

- viii) The need for a wide-ranging automated case management system which would, among other activities, helps on the case-tracking, case-planning, management of records e.g. documents, scheduling of cases e.g. hearing and support of all other judicial activities including administrative ones e.g. M&E to generate reminders of deadlines, etc.
- ix) The need for modern recording gadgets and accessories for recording and transcribing the proceedings.
- x) The need for orientation trainings to Magistrates and Judges on digitalized systems of recording proceedings.
- xi) Ensure that, all judicial organs are covered by this initiatives e.g. to have not only e-filing and e-documentation, but also e-proceedings and intra-nets across registries.
- xii) Ensure that these initiatives are aligned with the said DTP. The Judiciary of Zanzibar should seek to understand entry points for the proposed alignment.
- xiii) The need for specific and comprehensive law on electronic transactions.
- xiv) The need for trainings of Magistrates, Judges and other judiciary service workers on the use ICT in judicial service provision e.g. on management of electronic equipment in recording proceedings, interpreting cases involving electronic transactions, etc.
- xv) The need for institutional ICT policy or guidelines which will offer guidance on a number of issues including storage of data, communication arrangements, use of Judiciary's equipment, back-up systems, intra and inter-connections, e-libraries, e-proceedings, e-meetings, etc.
- xvi) The ICMS requires an interplay of multi-stakeholders in legal sector and simultaneous process in order to have balanced paces and standards. Therefore, it has to be holistically done in terms of involving all key stakeholders especially the Office of DPP; A.G Chamber; ZLS; Police; ZAECA; Mufti Office; Offenders Education Centre; head of Social Welfare Officers (SWOs); CHRAGG;¹¹⁸ CAT; and, others including the CSOs offering legal aid services.

118 The Commission for Human Rights and Good Governance (CHRAGG) operates throughout the United Republic of Tanzania. In Zanzibar, it operates pursuant to the Commission for Human Rights and Good Governance (Extension) Act of 2003 (Act No.12/2003). Note that, CHRAGG is a constitutional entity. It operates also under the Commission for Human Rights and Good Governance Act of 2001. The core mandates include promotion, protection and enforcement of human rights and good governance in Tanzania. There a lot of entry points which Judiciary can work with CHRAGG e.g. on enforcement of CHRAGG's decisions; addressing issues which CHRAGG has raised on Judiciary through its statutory annual report; training on human rights and good governance; addressing delay of criminal cases involving inmates; outreach programs e.g. public awareness on laws and procedures, etc.

- xvii) An adoption of digitalized judicial practices including case management will definitely necessitate some legal reforms especially of procedural laws governing criminal and civil suits. For instance:-
- o Criminal Procedure Act of 2018 (No. 7/2018): The need to sanction service of summons electronically through available mechanisms including mobile phones and email; Online hearing of witnesses¹¹⁹ e.g. through available virtual platforms in lieu of physical attendance of the court's proceedings; and, recording of evidence and other proceedings;¹²⁰ The Judiciary should follow a thread of installing video conference facilities albeit in some courts. It is good practice that the Office of DPP has got this facility installed already.
 - o Civil Procedure Decree, Cap. 8: A possibility of presenting the plaint electronically;¹²¹ summonses of the parties to the case electronically;¹²² hearing and recording of evidence/ witnesses;¹²³ etc.

The suggestions above on law reform to incorporate digital technology in case management are feasible. For instance, it is already done under the Zanzibar's Children Act of 2011¹²⁴ specifically through its Children's Courts Rules of 2015.¹²⁵ Rule 15(2)(f) of the 2015's Rules stipulates that, an '*effective case management includes making use of relevant information technology.*'

If the amendments of the procedural laws to reflect digitalization in case management could not be feasible at the moment, the Judiciary can make use of a number of avenues the CJ has under the Judiciary Administration Act of 2018; Civil Procedure Decree, Cap. 8; etc. For instance, Sections 109 and 110 empower CJ to form Rules Committee and make rules. Those one could include on electronic summons, hearing of witnesses, recording of proceedings, etc.

119 Amendment of Section 179 of the Criminal Procedure Act of 2018.

120 Amendment of Sections 200, 205 and 394 of the Criminal Procedure Act of 2018.

121 Amendment of Section 19 and Order IV of the Civil Procedure Decree, Cap. 8.

122 Amendment of Section 20 to 23 and Order V of the Civil Procedure Decree, Cap. 8.

123 Amendment of Sections 55 to 58 of the Civil Procedure Decree, Cap. 8. Moreover, Order XXI and XXX of this law on hearing of suit and examinations of witnesses, require the physical presence of witnesses for evidence purposes. These too and others could be amended accordingly.

124 Act No. 6/ 2011.

125 Being the Legal Supplement (Part II) to the Zanzibar Government Gazette Vol. CXXIV No. 6574 of 10th July, 2015.

3.5 FINANCIAL RESOURCES AND MANAGEMENT

3.5.1 Planning and Financing Trends of the Judiciary

Funding is the most critical issue of concern facing the Judiciary of Zanzibar, just like it is a case in other public institutions. Almost all challenges facing the Judiciary e.g. salary increments of the judicial services workers, infrastructure, etc. are associated with inadequacy of funds. Inadequacy of funds for an institution is normally attributed to a number of factors, some being poor planning, inefficiency of financial management and limitation of the ceiling of the national budget. All these possible scenarios were considered during the assessment.

As for the first one on planning, the assessment team was informed that, the Judiciary's budget framework (estimates) is needs-based and also, considers the national budgetary thrust or factors including the Mid-Term Development Strategy of 2021-2025 (MTDS);¹²⁶ and the Zanzibar Development Vision 2050. The needs-based approach basically considers the core and routine functions of the Judiciary. Moreover, the budgeting flow of previous financial year e.g. estimates against actual disbursement do also inform the planning process on how much should be budgeted in a particular year.

The financing of the Judiciary is governed by several laws including the Public Finance Management Act of 2016;¹²⁷ Public Procurement and Disposal of Public Assets Act of 2016;¹²⁸ etc., but specific one in this context is the Judiciary Administration Act of 2018. Sections 39 to 44 of this law provides for the financial provisions. As said earlier on, there is established Judiciary Fund under Section 39 for receiving of funds from the government sources. Section 40 allows the Judiciary to receive lawful grants from other sources. Moreover, Sections 41 and 42 allow the Judiciary to prepare its own budget and negotiate the same to the Treasury.

All these have been done by the Judiciary. However, as said earlier, only around 70% of its estimated budget lines are endorsed.

On the other hand, the rate of disbursement of funds from actual budget ceiling approved is at an average of 90% and above. The challenge though is on disbursement of funds for recurrent expenditures (OC).¹²⁹ Table 3.3 below illustrates financing trends of the judiciary for over nine years.

¹²⁶ The MTDS came into being after the evaluation and recommendations on the implementation of the Zanzibar Strategy for Growth and Reduction of Poverty III (2016-2020), commonly termed as MKUZA III.

¹²⁷ Act No. 12/2016.

¹²⁸ Act No. 11/2016.

¹²⁹ Example only 67% of the O.Cs. in 2019/20 FY was actually disbursed/ paid.

Table 3.3 Financing Trends of the Judiciary of Zanzibar (FYs 2014/2015 – 2022/2023)

FYs	Approved Budget by the Government/ Ceiling		Actual Disbursements in Each FY	
	Amount (TZS)	Increase/ Decrease Rates – from Previous FY	Amount (TZS)	Percentage
2014/2015	5,036,700,000	[N/A]	4,519,522,207	90%
2015/2026	5,143,100,000	106,400,000 (2.1%)	4,685,710,150	91%
2016/2017	5,438,778,300	295,678,300 (5.7%)	5,370,374,150	99%
2017/2018	6,996,601,200 ¹³⁰	1,557,822,900 (28.6%)	6,576,413,655	94%
2018/2019	6,725,200,000 ¹³¹	-271,401,200 (-3.9%)	6,537,107,388	97%
2019/2020	7,849,900,000 ¹³²	1,124,700,000 (16.7%)	7,576,299,493	97%
2020/2021	7,926,200,000	76,300,000 (0.9%)	6,069,834,125	77%
2021/2022	8,246,000,000 ¹³³	319,800,000 (4.0%)	7,548,307,058	92%
2022/2023	17,363,600,000 ¹³⁴	9,117,600,000 (110.6%)	[not yet]	N/A

Source: Judiciary of Zanzibar, June 2022.

Before the 2022/2023 FY, the amount of approved budget in a particular year compared to the immediate previous FY was fluctuating between 0.9% and 28%. The FYs 2017/2018 and 2019/2020 recorded much higher increase of at least 28% and 16%. However, a drop by almost 4% happened in 2018/2019 FY.

¹³⁰ Salaries and other entitlements of the judiciary service workers were around 70% of this total budget.

¹³¹ Salaries and other entitlements of the judiciary service workers were around 60% of this total budget.

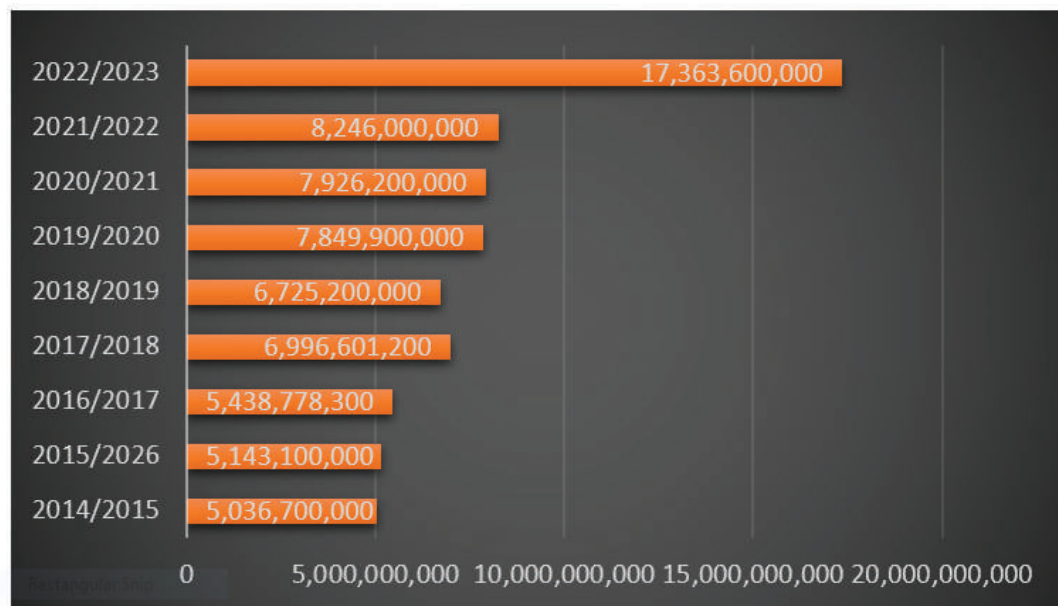
¹³² Salaries and other entitlements of the judiciary service workers were around 56% of this total budget. The Kadhi Courts were allocated total of TZS 1.6 billion which was equivalent to nearly 21% of this total budget.

¹³³ Kadhi Courts were allocated total of TZS 1.2 billion which was equivalent to around 15% of this total budget.

¹³⁴ Kadhi Courts were allocated total of TZS 1.26 billion which was equivalent to around 8% of this total budget.

The budgetary size growth for past eight (8) years – till 2021/2022 was TZS 3,209,300,000, being an average of TZS 401,162,500 million per annum between 2014/2015 and 2021/2022 FYs. Figure 3.1 below shows same data but in graphic form for easier understanding of the trend flow over years.

Figure 3.1: Graphic of Financing Trends of the Judiciary of Zanzibar (FYs 2014/2015 – 2022/2023)



Source: Transcribed from Figure 3.3 above.

An outburst of almost 111% evidenced in current FY (2022/2023) as indicated above is therefore unprecedented probably in the whole history of the Judiciary of Zanzibar.

As for a concern on Judiciary's budget ceiling against what is ultimately approved, it is noted that, Section 41(1) of the Public Finance Management Act of 2016 requires the Minister (of finance) to issue ceilings to Budget Institutions e.g. Judiciary and require them to prepare their annual budgets. Based on this and pursuant to Section 41(2) of this law, such institutions submit to the Paymaster General their annual budgets which, among other items, include detailed estimates or revenues covering fees and charges under their responsibilities; estimates of recurrent and development expenditures; and, annual plans and procurement plans. However, in practice, things seem to be done differently. That is, as said earlier on, the Judiciary send its annual estimate first, send it to the government for scrutiny and then, an approved ceiling is communicated back.

On that, it is suggested that, in order to avoid unnecessarily re-working of the budget, the government should be issuing first the ceiling and then, the Judiciary works on the budget based on the ceiling of a particular FY.¹³⁵ Otherwise, a good gesture shown by the government of doubling budget estimate compared with previous years is highly applauded and encouraged to continue.

3.5.2 Concerns on Rigidity of the Public Finance's Rules and Disbursements

Another concern was said to be on the limitation of the budget re-allocation. According to the interviewee at the Judiciary, re-allocation of funds remained (i.e. savings) in previous quarter is not allowed (in practice).

However, Section 50(1) of the Public Finance Management Act of 2016 states that an Accounting Officer for a public institution may utilized a saving in a main program of a vote towards the defraying excess expenditure under another main program within the same vote unless it is directed otherwise. But, again, transfer of appropriated fund is prohibited if it is for reallocation to another public institution or for capital expenditure.¹³⁶

Other issues of concern regarding the budgeting include: (i) delay of disbursement of funds e.g. O.C. from the government even for 2 months;¹³⁷ (ii) disbursing the amount of funds which do not consummate the actual needs e.g. of planned activities in a particular month or quarter;¹³⁸ (iii) having expenditures of unbudgeted activities e.g. relocation of the High Court to Tuguu in January 2022 was not budgeted for 2021/ 2022 FY; and, (iii) mixing up Kadhi Courts' budgetary portions with the general budget.

3.5.3 Highly Centralized Financial Management

Another institutional disquiet observed was that, the lower courts do not have even petty cash in their premises. Therefore, such courts could not even decide on small procurements e.g. of a ream of paper which is less than TZS 15,000. The Judiciary's budget is highly centralized. A case is different on part of Mainland Tanzania whereby each court has its own budget even if there is no planning officer or an accountant. This helps to manage small expenditures instantaneously whenever a need arises.

¹³⁵ As it is recommended further in this sub-section of the report, the CJ and CCA should seek an audience with the government regarding the critical concerns of under-cutting of the budget estimates, low ceiling and delayed disbursements.

¹³⁶ It is suggested that the Judiciary's relevant officers should seek further clarification from the Ministry on this because Section 50 of the said law seems to allow reallocation.

¹³⁷ The O.Cs. are supposed to be disbursed monthly. But, usually the Judiciary needs on quarterly basis due to the nature of its function.

¹³⁸ For instance, the monthly budget for the Judiciary is between TZS 300 million and TZS 400 million or around TZS 1 billion per a quarter. But, the disbursement per a month could be only TZS 100 million which is equal to 30% of expectation.

The Judiciary lacks resource mobilization strategy. Therefore, it wholly and exclusively depending on the government coffers – through the Judiciary Fund. This is a case even if Section 40(1) of the Judiciary Administration Act of 2018 allows this organ to (solicit and) receive grants from lawful sources.

There was a suggestion from some of the stakeholders proposing that, since the Judiciary do generate revenues from its operations e.g. filing fees, legal consultation services like attestation of documents, etc., it would have allowed under the law to retain some percentages for its internal use instead of remitting 100% of the revenues collected to the treasury (government). However, this was seen as improper as would make the Judiciary to be perceived as the ‘revenue collector’ instead of justice deliverer. There is a room to deliberate further on this especially because the Judiciary is currently in dire needs of funds to execute developmental projects including digitalization of the case management system.

3.5.4 Obligations on Budgetary Allocation for Kadhi’s Courts

There is also a concern on budgetary allocations for Kadhi’s Court as it is hinted elsewhere in this report. It seems that, the statutory requirements of financing to this Court as they are made under the Kadhi’s Court Act of 2017 have not been complied in fullest.

On that, Section 28(1) of this 2017’s law makes it explicitly that, *‘the Kadhi’s Court shall hold its own budget Vote through which all the funds appropriated or accrued for the use of the Kadhi’s Court shall be disbursed.’* This has not been a practice as the assessment team was informed. Instead, all judiciary funds are wholesomely disbursed by the government. However, the planning office normally endeavor to seek funding priorities from the Office of Chief Kadhi on periodical basis.

Furthermore, Section 28(1) of the Kadhi’s Court Act of 2017 requires the Paymaster General to appoint an accounting officer for the Kadhi’s Court Vote. It is also a requirement that, the Accountant General should allocate adequate staff to undertake the accounting work for the Vote. According to sub-section 3 of this provision, the funds for this Court shall include the money appropriated by the House of Representatives in each financial year; and, grants, donation and other funds received by the Kadhi’s Court from other eligible sources.

It is unfortunate that the said provision (Section 28(1) of the Kadhi’s Court Act of 2017) has also not been fully implemented. Instead, the Kadhi Court’s budget is channeled through the Judiciary’s general budget and that, there is no mechanisms of ensuring that such funds are exclusively spend for Kadhi’s Court. Instead, this court receives its ‘share’ through a cutting modality. That is the court normally

receive maximum of TZS 10 million per quarter regardless of whatever their plan demands in a particular duration.¹³⁹

3.5.5 Compliance with Good Governance Principles on Financial Management

Lastly, on judicial budgeting are the concerns on participation and transparency in financial management generally. It seems that, there is inadequate involvement of judicial and non-judicial officers including Kadhi's Court in the budgeting process, preparation of the quarterly cash flows and procurement plans.¹⁴⁰

The incomes and expenditures are not posted on notice boards or even shared electronically as it is a practice in other public offices. This situation rises unnecessary assumptions that the planning or finance departments are reluctant to approve expenditure requests from various departments.

3.5.6 Enhancement of Judiciary's Planning Portfolio

The need to restructure the planning portfolio of the Judiciary in order to enhance its performance was also raised up during the consultations. Currently, the portfolio has got quite competent officers but they are only at the headquarters level of the Judiciary. Lower courts do not have such officers. Hence, preparation of cash flows and procurement plans is handled at headquarter level only.

Moreover, the planning department lacks crucial units like on M&E, policy and research. All these units do not have personnel. The statistic unit is operational – at headquarters level only. The statisticians lack sufficient working tools and appropriate software to digitalize their work.

The human resource department is currently managed by only 2 staff for the whole Judiciary of this country. Apparently, failure to address some of human resources-related issues e.g. allowances and salary increments could be linked with this perceived low capacity (i.e. quantity not quality).

3.5.7 Suggestions on Financial Management – Generally

It is suggested that, the budgetary allocation should be 60% for case management generally; and, 40% for other (e.g. recurrent) expenditures. Currently, the formula is not certain.

¹³⁹ Footnotes for FYs 2019/2020; 2021/2022; and 2022/2023 of Table 3.1 above shows actual budgetary allocations and percentages of the Kadhi Courts, which is between 8% and 20.5% of the total annual budget of the Judiciary of Zanzibar.

¹⁴⁰ The cash flows and procurement plans are supposed to be prepared on quarterly basis pursuant to Section 46(3) of the Public Finance Management Act of 2016 (Act No. 12/2016).

There is a need to improve participation and transparency in budgeting and financial management. Sharing of financial reports e.g. through notice boards (within the judiciary) or through internal memos is highly recommended. Moreover, financial reports should be deliberated in JSC's management meetings.

The CJ and CCA should seek an audience with the relevant Ministry to discuss the low trend of judicial financing e.g. consistence under-cutting of the annual estimation; delayed disbursements; and other pertinent issues including delayed payments of arrears the judicial and non-judicial workers.

The Judiciary (including Kadhi's Court) needs to devise the resource mobilization strategy as one of the deliverable outputs under the intended Strategic Plan of the Judiciary.

The Judiciary and the government should comply and implement the requirements of Section 28 of the Kadhi's Court Act of 2018 on financing of Kadhi's Court. Apparently, there would be a need for this Court to have its own Assistant Accountant who, may be, report to the Chief Accountant of the Judiciary.

The need for each court to have own budget unlike the current situation whereby the Judiciary's budget is so much centralized. The lower courts do not have even petty cash and therefore, they could not even decide on small procurements e.g. of a ream of paper which is less than TZS 15,000.

The need to have assistant planning officers in lower courts who will be responsible for preparing cash flow and procurement plans at those levels. Currently, budgeting and financing of lower courts is based on a request made at a particular time. The cashiers who are available in most of the lower courts could be designated as assistant planning officers.

3.5.8 Procurement and Disposal of Public Assets within the Judiciary

The Judiciary of Zanzibar, being one of the public procurement and disposal entities is obliged to abide with the governing law on this field, which is termed as the Public Procurement and Disposal of Public Assets Act of 2016.¹⁴¹ Amongst other requirement, this law requires the public entities (Judiciary inclusive) to form the Tender Board; and, the Procurement and Disposal Management Unit (PDMU).¹⁴² Indeed, the Judiciary has done all these.

¹⁴¹ Act No. 11/2016.

¹⁴² Section 24(b) and (C) of the Public Procurement and Disposal of Public Assets Act of 2016.

3.5.8.1 Staffing Base of PDMU

As said earlier on, the PDMU is understaffed. There are only three (3) professional officers of this field for the whole of Judiciary of Zanzibar.¹⁴³ Pemba has one designated officer on procurement who is not a professional.

The PDMU lacks extended arms down to the lower courts. As such, those ones, lower court and Pemba's side could not even procure minor items.

3.5.8.2 Minor Value Procurement and Other Procurement Processes

Moreover, even if such levels would have been given the mandates, still, the Judiciary lacks guidelines on what constitutes minor value procurement.¹⁴⁴ In practice though, TZS 1 million and below constitutes 'minor procurement.'

The Judiciary, at headquarters level (Tunguu) has established a tender board and it is operational. All categories of procurements e.g. direct, open bidding and restrictive or selective biddings are considered. However, composition of the tender board has to, strictly, abide with Section 27 of the Public Procurement and Disposal of Public Assets Act of 2016. Moreover, there is a need to ensure that tender boxes are made available at the lobbies of the courts.

Currently, the procurement process is centralized. Even lower courts could not engage into this at their respective areas of operation. This has said to be a concern by staff in the magistrate and Kadhi courts. They could not procure even minor value items like papers as said elsewhere in this report.

3.5.8.3 Compliance with the Procurement Legislation

Another concern on procurement is perceived laxity of abiding with the Public Procurement and Disposal of Public Assets Act of 2016. For instance, the procurement plan is not strictly followed up. There are diversions e.g. in relation to procurement of goods and services which were not pre-decided under the procurement plan. For instance, the procurement plan can indicate purchase of a table or chair; but, eventually, the fund allocated for such item is diverted for air ticket, fuel, etc.

¹⁴³ They were four. But, one of them was reshuffled to another public institution just recently (this year). A random reshuffling of professional working in the Judiciary was said to be happening time to time. The Judiciary should find ways of 'restricting' its staff from being reshuffled because it takes a lot of time to orient new ones every time the reshuffles happen.

¹⁴⁴ Section 76 of the Public Procurement and Disposal of Public Assets Act of 2016 provides for the minor value or micro procurements.

Haphazard decisions on procurements are actually against the Public Procurement and Disposal of Public Assets Act of 2016. Instead of diverting procurement plans, the judicial officers could invoke Section 67 of the said law which allows emergence procurements.

It is also a challenge that, despite the presence of full functional PDMU, purchases of some items e.g. on vehicles are done without being sanctioned by this Unit (PDMU). The allegations of forging internal memos e.g. signatures by some staff were flagged out. The chain of endorsement of an item to be procured has to go first to PDMU and then to the Accounting Officer. This has to be adhered to as it is the requirement of the law.

3.5.8.4 Refresher Courses on Procurement Practices

Other areas needing further improvements in relation to procurement is on-job trainings. The practice requires professional procurement officers to attend periodical refresher courses offered by the Zanzibar Public Procurement and Disposal Administration (ZPPDA) – commonly termed as ‘*Mamlaka ya Manunuzi*.’ In courses, these professionals normally learn contemporary issues in this field e.g. standard bidding documents (which tend to change all the time).

The Ministry of Finance also offers some trainings especially on new regulations passed. However, the Judiciary does not make arrangement for the officers to attend the courses. The potential risk on this is to fall prey of audit sub-standards which the CAG normally questions.¹⁴⁵

3.5.9 Suggestions on Procurement Practices by the Judiciary

- i) The need to constitute and operationalize the Judiciary’s Tender Board in line with the relevant laws, particularly, consider restrictions made under Section 27(4) of the Public Procurement and Disposal of Public Assets Act of 2016 on the composition of tender boards.
- ii) The evaluation committee should also be made available.
- iii) The hang-over of procurement practices existed prior to the institutionalization of PDMU has to stop immediately as would put the Judiciary into unnecessary query with the oversight authorities especially the CAG. Strict adherence of the law should be ensured.

¹⁴⁵ Note: Section 34 of the Establishment of the Office of Controller and Auditor-General Act of 2003 (Act No. 11/2003) is specifically on the CAG’s examination of the Judiciary. This provision mandates the CAG to examine the accounts of the courts and other related books and records. The CAG also considers whether or not the fees, fines and executions livable by the courts are duly collected and promptly brought to account. Section 56 of the same law puts a requirement of ensuring accuracy of records (and procedures).

- iv) Development of procurement plan should be in a form of inclusive process – getting on board the PDMU, planning department, representative of Chief Kadhi and Registrars.
- v) Ensure that the procurement plan is strictly followed up. The diversions should be prohibited. Currently, purchases of goods and services do not necessarily bound to follow the procurement plan. For instance, the procurement plan can indicate purchase of a table or chair; but, eventually, the fund allocated for such item is diverted for air ticket, fuel, etc. Haphazard decisions on procurements are actually against the Public Procurement and Disposal of Public Assets Act of 2016. Instead of diverting procurement plans, the judicial officers could invoke Section 67 of the said law which allows emergence procurements.
- vi) Decentralization of managerial operations on part of Pemba and lower courts especially with regard to planning, human resource management and procurement. Moreover, guidelines on minor procurements should be devised.
- vii) Making an arrangement of all procurement officers to attend refresher courses especially those offered/ organized by the ZPPDA and Ministry of Finance. A specific budget on this should be allocated annually.

3.6 HUMAN RESOURCES AND DEVELOPMENT

The quantity and quality of human resources of the Judiciary of Zanzibar were said to be insufficient factors for the performance it envisages. Other critical factors pointed out by the stakeholders interviewed were on the ‘motivation’ and ‘confidence’ of the judiciary service workers in discharging their statutory mandates. The recruitment and deployment of the judiciary service workers are governed by several laws, most relevant ones being the Public Service Act of 2011; the Judiciary Administration Act of 2018; and, the Employment Act of 2005.

3.6.1 Overview of Human Resources Development

The laws require preparation of salary schemes and also, the Five Year Human Resource Plan. An observation on salary schemes have already been extensively presented elsewhere in this report. Regarding the human resource plan, which among other things supposed to indicate the quantity and quality of workforce needed e.g. ratio of judicial officers needed against the demand (clientele base), this

one too has already been prepared and shared since March 2022 to the government for appropriate actions. It is hoped that, owing to the current trend e.g. increased budget for the Judiciary in 2022/2023 FY, proposed new salary scheme and all other pending human resource issues will be considered.

As it is further illustrated below, the country, Zanzibar, has progressed quite well on the recruitment of judicial and non-judicial officers for past ten years. An overall average of increased officers between 2012 and 2022 is around 30%. However, salary increments and other entitlements have not been fully considered – as it is explained further below. Despite the fact that the judicial and non-judicial officers demonstrate impressive job in supporting the Judiciary to discharge its functions, much more is desired to motivate and capacitate the officers. For instance, on-job trainings are unevenly made available to some staff. The performance of the officers is not adequately assessed and therefore, capacity gaps are generally not being addressed. It is from all these and other challenges that a comprehensive human resource capacity development plan is recommended (among several other recommendations). Below are more details on the recruitment trends against the workload of the judicial officers.

3.6.2 Recruitment Trends and Workload of Magistrates and Kadhi

A number of judicial officers has steadily increased over period of time. This is highly commended. Currently, there are 105 judicial officers (excluding Judges), of whom 37% are females. Compared with six years ago, at least 20 officers have been increased. The highest number of judicial officers happened within six years was 112 in 2021. The transfer, reshuffling and retirement are mentioned to have been attributing factors to a decrease of staffing base by 6%.

The Table 3.4 below explains more. It indicates a number of judicial officers' recruitment trends over past ten (10) years (except Judges).

Table 3.4: Number of Magistrates, Kadhi and Legal Officers (2012 – 2022)

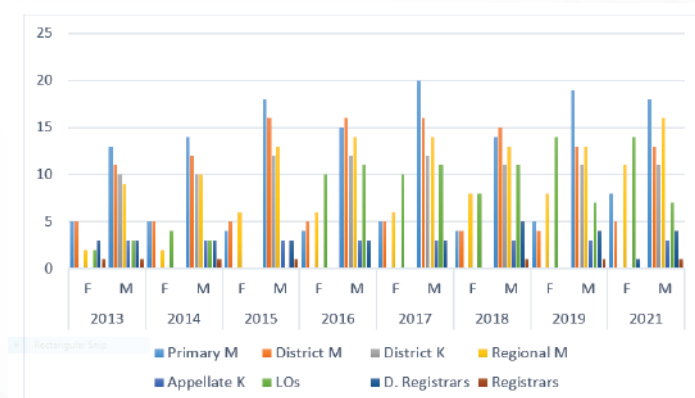
Workers	2013		2014		2015		2016		2017		2018		2019		2021		2022	
Gender ➡	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M
Primary M	5	13	5	14	4	18	4	15	5	20	4	14	5	19	8	18	7	10
District M	5	11	5	12	5	16	5	16	5	16	4	15	4	13	5	13	6	11
District K	0	10	0	10	0	12	0	12	0	12	0	11	0	11	0	11	0	12
Regional M	2	9	2	10	6	13	6	14	6	14	8	13	8	13	11	16	11	19
Appellate K	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3
LOs	2	3	4	3	0	0	10	11	10	11	8	11	14	7	14	7	14	7
D. Registrars	3	3	0	3	0	3	0	3	0	3	0	5	0	4	1	4	1	4
Registrars	1	1	0	1	0	1	0	0	0	0	0	1	0	1	0	1	0	0
Total (Sex):	18	53	16	56	15	66	25	74	26	81	24	73	31	71	39	73	39	66
Grand Total:	71 (F=19%)		72 (F=22%)		81 (F=19%)		99 (F=25%)		107 (F=24%)		97 (F=25%)		102 (F=30%)		112 (F=35%)		105 (F=37%)	
Increase %	11.8%		0.7%		5.9%		10%		3.9%		-4.9%		2.5%		4.7%		-3.2%	

Keys: M = Magistrates, K = Kadhi, D = Deputy, LOs = Legal Officers, F=Females, M=Males, N/A=Null

As said earlier, the recruitment of the judicial officers has been steadily but a bit unsystematic e.g. filling the gaps of retired or transferred judicial officers. For instance, based on the data indicated in Table 3.4 above, number tremendously hiked by almost 40 staff between 2013 and 2017, but dropped by 10 staff in 2018. It is same trend (up and down) between 2019 and 2022. There is also a concern of having a few number of female judicial officer – with an overall average of 24% between 2013 and 2022. Figure 3.2 below shows in graphic format the number of magistrates, Kadhi and legal officers.

Figure 3.2: Graphic Presentation of Number of Magistrates, Kadhi and Legal Officers (2012 – 2022)

Source: Transcribed into graphic format from Table 3.4 above.



As for the workload there were around 426 pending cases in the Magistrates' Courts as of March 2022 when this assessment was carried out. Based on a number of Magistrates (e.g. Regional Magistrates are 26) at that moment, it meant that, each Magistrate had an average of 85 cases to adjudicate per annum. This could mean, an average of 7 cases per a month.

There is no specific assessment-criteria on the immensity (weightiness) of the case per each Magistrate or Kadhi of Zanzibar and there is no any precise formula to make an assessment. However, the situation in other jurisdictions could aid offering a broad picture. For instance, on part of Mainland Tanzania, one (district or regional) Magistrate has an average of more than 250 cases per annum (being more than 20 cases per month). Therefore, the Mainland's workload is thrice as much compared to Zanzibar's one (i.e. Magistrates' workload).

On the other hand, the workload of some of the Kadhi's courts is perceived to be 'heavy.' For instance the Mwanakweleke's District Kadhi Courts registers at least 1,000 cases per annum. Owing to a number of Kadhi, who are only 4, it means that, each Kadhi handles at least 250 cases per annum (same as Magistrates on part of Mainland Tanzania).

Recommendations of Recruitment and Workload of Magistrates and Kadhi

- i) At least 20 Kadhi and 10 Magistrates (of different levels) are needed in order to make the work easier. There are at least 20 legal officers (see Table 3.4 above) who can be upgraded to become very good Magistrates because they have already sufficient experience of working as judicial officers.
- ii) A specific capacity needs assessment is recommended to establish actual needs for each Magistrates' and Kadhi's Court.

3.6.3 Trends of Appointments and Workloads on the Judges of the High Court

A number of Judges of the High Court of Zanzibar has increased by 10 from the first 3 which were stated in the constitutional amendments of 1984.¹⁴⁶ A senior lawyer told the assessment team in March 2022 that, having 13 Judges from only 3 in 1980s and 1990s is actually a progress especially when this trend is viewed in line with demand-side of the High Court services.

The positive gesture by the President of Zanzibar to adhere to the needs of the Judiciary is commended. Table 3.5 below indicated the trends of appointment of Judges of the High Court of Zanzibar for past ten (10) years.

¹⁴⁶ Mentioned in part two of this report.

Table 3.5: Number of Judges of the High Court of Zanzibar 2012 – 2022

Judges	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Males	4	4	4	6	6	7	5	6	8	9
Females	2	2	2	2	2	2	3	3	3	4
Total:	6	6	6	8	8	9	8	9	11	13
% of Females:	33%	33%	33%	25%	25%	22%	38%	33%	27%	31%

Source: Judiciary of Zanzibar, July 2022.

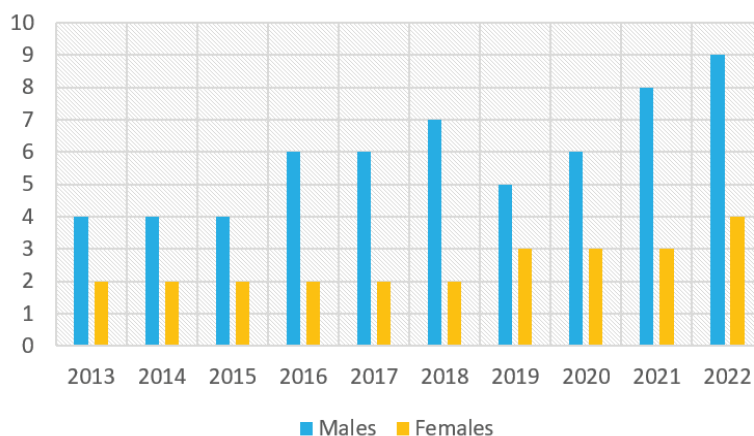
As for the workload, each Judge has an average of 100 cases to adjudicate and that, an average of 3 decisions are made by each Judge per a week. Therefore, there is not heavy workload (may be if compared with the situation on the Mainland Tanzania). However, same Judges are designated to take several responsibilities inside and outside the Judiciary e.g. some of them heading some committees, commission, in-charge of the some divisions of the High Court, etc.

Further, as stated earlier there has been a trend of taking away original jurisdiction over some cases from subordinate courts and vesting it on the High Court as a trial court. This has enormously increased the workload on the part of the High Court Judge as they spend much time dealing with the cumbersome trial procedures such as adjournments on account of non-attendance of witnesses, etc.

At the time of data collection for this report in March and April 2022, the deficit of Judges was said to be 2. Therefore, initial draft of this report had a recommendation on additional 2 Judges. However, at the time when this report was being finalized in July 2022, three Judges were appointed and sworn in by the President of Zanzibar. Therefore, the recommendation on an increase of 2 more Judges was pre-empted and surpassed by this positive move by the President of Zanzibar.

The number of Judges has steadily been increased over years. For instance, within these ten (10) years (2012 – 2022) the number was doubled by 100% as the Table above shows. However, a number of female Judges remained to be around 30% (as an overall average). Figure 3.3 below shows in graphic form the trend of appointment and retention of judges on basis of gender.

**Figure 3.3:
Graphic
Presentation
of Number of
Judges of the
High Court of
Zanzibar 2012 –
2022**



Source: Transcribed from Table 3.5 above.

The highest percentage of female Judges was 38% in 2018. But the hike seemed to have been attributed to the decrease in number of male Judges. Otherwise, as Figure 3.3 above shows, there has been consistent gender gaps between male and female Judges. Despite the fact that gender parity amongst Judges has no any adverse implication in the delivery of justice, consideration of the parity is necessary for realization of the global and national gender policies especially on aspects relating to women inclusion and empowerment in decision making bodies.

The number of cases for High Court Commercial Division lodged in 2011 were only 11; and, only 2 for 2022 (as of 16th March 2022). One Judge is assigned to manage this division. Having around 10 commercial-related cases per annum which are eligible for adjudication by this Division, could mean having an average of 1 case per month. Therefore, on this too, a question of workload seems to be insignificant for the time being. However, as the private sector expands, possibility of legal wrangles between parties becomes high.

Pemba's side has got only one (1) stationed Judge who also serves as an in-charge of the High Court. Obviously, there is a need of at least 2 more stationed Judges in order to hasten disposing of cases in Pemba as well. However, before that, there is a need to ensure that, there are decent residential houses (accommodation) and working environments for the Judges unlike the current situation whereby this is not really a case.

Moreover, there is a need to have legal directive on the mandates of the Judge in-charge of Pemba. It is established that, the Judiciary Administration Act of 2018¹⁴⁷ of Zanzibar has defined under Section 3 ‘Judge in-charge’ to mean the ‘*Judge in-charge of the High Court or Division of the High Court.*’ Apart from this definition, there is no any other mention of the same (in-charge) including on the operation of the High Court in Pemba. This could mean that, the position of Judge in-charge on part of Pemba is more of being administrative than legal in terms of defining his/her mandates.

In other jurisdiction, the Judge in-charge’s mandates and functions are stipulated under the law to make the position statutorily safeguarded. For instance, the Mainland Tanzania’s Judiciary Administration Act of 2011¹⁴⁸ categorically make recognition and some mandates of Judges in-charge e.g. of regional based High Court registries.¹⁴⁹

3.6.4 Recruitment Trends of Non-Judicial Officers

As for the non-judicial officers these are the majority of all judiciary service workers in Zanzibar. There has been quite notable efforts to cover staffing gaps for the over years e.g. from 321 total officers in 2014 to at least 360 in 2022.

The laws mentioned earlier on do not sanction the Judiciary to recruit own staff based on its needs. Therefore, the recruitment trend much depends on the ability of the government to do so for a particular year (based on the requests from the Judiciary). The Judiciary does not have also control on the retention of its staff. Meaning that, they could be reshuffled at any time as the PSC or other relevant governmental agency would deem necessary to do so.

Information Box: *Some opinion on staffing: Need for CCA who has legal background*

This assessment gathered some opinions on staffing base and trend, whereby, some of the stakeholders suggested that the mandates of judiciary services workers should be left to the hands of the JSC in order to get competent persons with sufficient understanding of the functions and operation of the Judiciary. There was also a suggestion on the qualifications of non-judicial officers e.g. on top managerial positions such as the Chief Court Administrator (CCA). The

147 Act No. 11/2018.

148 Act No. 4/2011.

149 The Judges in-charge of regional registries of the High Court (same as registry in Pemba) are vested with some administrative and disciplinary powers. For instance, under Section 51 of this Mainland’s Judicial Administration Act of 2011, is on the establishment of District Ethics Committees. Here, the Judge in-charge has several mandates vested on him/her including an appointment of two judicial officers to serve in the said committee (Section 51(1)(e)); and, powers to suspend a Magistrate if there is a disciplinary issue against that Magistrate (while the matter is pending in the District Judicial Officers Ethics Committee (Section 51(5)).

stakeholders suggested that such positions especially of CCA should have a person with legal background albeit at elementary level. There is a feeling that, having someone at that position who does not have sufficient legal background makes it a challenge for the administration sides to fully appreciate and address pertinent issues e.g. on case management system including payment of witnesses on time, etc. Persons who have no legal background could not easily understand the sensitivity of such issues in the administration of justice.

Despite this positive trend, the deficit of workers is relatively enormous as all key departments or portfolios are understaffed. For instance, the planning department is staffed by only 2 workers, based at the High Court, Tuguu. The procurement and disposal management unit (PDMU) is also staffed by only 2 officers. The planning department misses key units and staff e.g. on research, policy and M&E. The planning and PDMU are not fully institutionalized on part of Pemba and in lower courts. The Table 3.6 below indicates a number of non-judicial officers' recruitment trends over past nine (9) years.

Table 3.6: Number of Non-Judiciary and Other Judicial Officers 2012 – 2022

Workers	2014		2015		2016		2017		2018		2019		2021		2022	
Gender ⇒	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M
Clerks	20	33	23	34	23	34	35	52	35	52	37	52	41	52	41	61
Typists	39	0	40	0	40	0	42	0	32	0	32	0	44	0	43	0
Receptionists	3	0	0	3	0	3	3	0	4	0	5	0	4	0	4	0
Statisticians	2	2	3	2	3	3	3	3	2	4	3	4	4	4	4	4
Security	0	30	0	38	0	38	0	37	0	37	0	43	0	41	0	41
Cleaners	17	27	15	47	15	45	15	45	15	44	16	45	24	38	29	38
Drivers	0	7	0	19	0	19	0	19	0	19	0	26	0	26	0	26
Finance	4	7	5	5	6	3	6	3	8	3	8	3	6	3	5	3
Procurement	0	1	1	1	1	1	1	1	1	1	4	1	4	2	4	2
ICT	2	2	5	5	5	5	4	5	4	5	4	6	4	6	4	6
Planning	3	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0
Others	58	59	62	68	63	70	63	69	63	70	14	...	74	78	74	78
Total (By Sex):	128	129	136	185	138	184	139	182	130	183	148	128	167	198	165	198
Grand Total:	257 F=50%		321 F=42%		322 F=43%		321 F=43%		313 F=42%		276 F=54%		365 F=46%		363 F=45%	
Increase %	-1.3%		11%		0.2%		-0.2%		1.3%		-6.3%		14%		-0.3%	

Source: Judiciary of Zanzibar, July 2022.

According to the statistics presented above (Table 3.6), a number non-judicial officers has increased by 106 in nine years (2014 – June 2022). The highest percentage increase was in 2021 (14%); while, the highest percentage of decrease was by 6% in 2019. As suggested elsewhere in this report, there is a need to conduct a thorough job-assessment in order to ascertain an actual need of staffing base. Judiciary services workers interviewed were of the view that, despite an increase of staff, still in all the departments, a deficit is relatively enormous.

The deficit of staff especially based on some professions e.g. procurement, statistics, M&E, planning, internal auditing, drivers, etc at the High Court level is severe on part of Pemba. For instance, it is noted that, due to the deficit of relevant professions in Pemba, an individual staff employed as statistician, also work as a cashier, statistician, clerk of the Kadhi's Court and driver at the same time – but with the same salary. The land tribunals do also face same staffing challenges. Technically, in management, this poses a possibility of underperformance.

Moreover, despite the fact that the Kadhi Court's Act of 2017 connotes presence of semi-independent operational structures liked to the mainstream one, at the moment, it is not a case. For instance, as said earlier on, the Kadhi's court misses key operational units albeit at the headquarters level e.g. own finance and account unit, etc.

Other key divisions or departments or units which are missing and would have added value in the efficiency or effectiveness of the judicial administration are:-

- i) Case management division or unit.
- ii) Judicial supervision division or unit e.g. monitoring of performance of all courts.
- iii) ICT division or unit.
- iv) Record management division or unit e.g. responsible for publication of ZLS, etc.
- v) Information, education and communication division or unit e.g. public relations.
- vi) Library services e.g. stocking law books into all lower courts.
- vii) Estate development and management e.g. renovation and construction of courts.

3.6.5 Management Units to Lower Courts

The management of human resource in terms of enabling it contributing efficiently to the functions of the Judiciary is challenged by absence of sufficient structure down to the lower courts and tribunals. That is, the Judiciary does not have fully

functional management units e.g. planning, procurement, M&E, etc. In this regard, the Pemba's side and lower courts could not even make minor procurement – which is around TZS 1 million and below.

In Pemba, there is designated procurement officer, but not a skilled one (not professional). There is no guidelines for what constitute minor procurement and the way this could work out as said earlier on.

3.6.6 Action Plans for Judiciary's Staff

It is also a concern that, despite of the under-staffing challenge, the staff work without specific action plans e.g. with defined performance indicators and objectives to realized over a particular period of time. The routine works are therefore done on basis of usual practice and not being result-oriented.

Again, absence of sound M&E systems could be linked with this critical administrative challenge. The work plan would have guided the Judiciary not only reaching out targeted milestones in terms of performance, but also, to have collaborative efforts of executing responsibilities even for the portfolios which are currently under-staffed.

3.6.7 Suggestions on Enhancement of the Staffing Base and Performance

- i) The need to conduct capacity needs assessment to ascertain actual deficit of labor force (job evaluation) in the Judiciary; and then, address the critical challenge of under-staffing basing on the actual needs.
- ii) Establishment of all key units or divisions e.g. on researches; policy; M&E; case management, ICT, record management, information, education and communication; library services; estate development and management; etc. and, operationalize the same in terms of recruiting officers and developing guidelines.
- iii) Decentralization of managerial operations on part of Pemba and lower courts especially with regard to planning, human resource management and procurement.
- iv) The need for developing results-based action plans for all judicial and non-judicial officers. The proposed plan will guide the officers to be goal and impact-oriented. The plans will be deduced from the Strategic Plan's results framework to be developed as suggested in this report.

3.6.8 Salaries and Other Entitlements for Judicial Workers: Some of Practices

The remunerations and other entitlements of the Judiciary workers have remained static for quite sometimes. It is informed that, the last time when most of the judicial and non-judicial officers received salary increment was around 2012.

3.6.8.1 Scheme of Services

The scheme of services mentioned in the Judiciary Administration Act of 2018 is almost inconsequential in this regard. However, it is a good progress that a new scheme of service for the judicial services workers have already been proposed and a process to submit it to the PSC as an ‘apex’ Commission¹⁵⁰ of all Commissions was ongoing at the time of this assessment in March 2022.

3.6.8.2 Concerns on Allowance, Refunds and Payments of Statutory Expenses

There are claims of some of the staff who had their allowances scrapped to lower rates (i.e. from TZS 50,000 to TZS 30,000 per month) on the ground of the Ministry responsible for legal affairs being shifted from the President’s Office. Moreover, it is a concern that the workers have been using own pocket money without being refunded for official assignments. *‘Requesting and securing petty cash for transport from the administration here is very hard ...’*, said one of the workers at High Court, Tundu.

There are also some claim of delayed or non-payment of statutory expenses the judiciary workers are entitled to be paid before transfers. This one looks to be serious matter as even Judges are not spared from the flaws.

It was gathered from consultations that, a flat rate of TZS 500,000 is purportedly paid for a worker transferring from one duty station to the other regardless of the distances e.g. between Unguja and Pemba. If this is the case, then, it is really far below the usual statutory rate of around TZS 3 million.¹⁵¹

Additionally, this is the case even for sitting allowances the Judges or Magistrates with an extended jurisdictions are entitled. For instance, the last time the sitting allowance was paid for hearing cases in one of the High Court divisions was in September 2021 – being more than seven (7) months delay as of the time when this assessment was carried out.

¹⁵⁰ In the view of the Public Service Act of 2011. Note that, the PSC is also a constitutional creature under Article 116(1) of the Constitution of Zanzibar of 1984 as amended.

¹⁵¹ This includes transport fare, daily subsistence allowance of seven (7) days and an allowance for relocating the family.

3.6.8.3 Other Statutory Entitlements

Other statutory entitlements the Judges, Chief Kadhi, Deputy Chief Kadhi, Registrars, Magistrates and other judiciary officers are entitled but not being paid include the outfit allowances; security packages at office and residential areas (for Judges only); health insurance coverage (for all); payments in relation to annual leaves; etc.

The scheme of services which consider the rank of public servants against the salaries and other entitlements they deserve is not systematic. For instance, Magistrates of the same academic qualifications and working experiences are paid differently – and the salary gap is huge e.g. between Regional or District Magistrates and Primary Court Magistrates. It is the same trend even for non-judicial officers in the judiciary services. It is proposed that, a synchronization of the salary scale should be considered.

Payment of risk-allowances due to the nature of work of some of the judicial workers e.g. typists have remained to be a long-overdue demand.

3.6.8.4 Entitlements of Judges and Chief Kadhi

Unlike other Judges in commonwealth countries (and Chief Kadhi in Kenya), the Zanzibar's Judges and Chief Kadhi have limited entitlements e.g. absence of security arrangements.¹⁵²

However, their retirement benefits are governed by the Certain Leaders Retired Benefits Act of 2003.¹⁵³ The leaders eligible for the benefits under this law are the CJ of Zanzibar,¹⁵⁴ Judges,¹⁵⁵ DPP,¹⁵⁶ Chief Kadhi and Mufti of Zanzibar.¹⁵⁷ Other officers in judicial service including the Registrar and CCA do not have this special treatment.

The executive side, particularly some of the leaders have the Political Leaders Retirement Benefits Act of 2012.¹⁵⁸ Section 2 of this law defines 'benefits' to include the pension, gratuity, winding-up allowance and any other award granted under the provisions of this law. The political leaders are mentioned to be the President, Vice President, A.G, Minister, Deputy Minister, Speaker of HoLs, Deputy Speaker of HoLs and a Member of HoLs.

¹⁵² The Kadhi do also adjudicate sensitive cases which some are relatively risky e.g. on Wakfu and trustee of billions of money.

¹⁵³ Act No. 5/2003.

¹⁵⁴ Section 3(1) of the Certain Leaders Retired Benefits Act of 2003.

¹⁵⁵ Section 4(1) of the Certain Leaders Retired Benefits Act of 2003.

¹⁵⁶ Section 5 of the Certain Leaders Retired Benefits Act of 2003.

¹⁵⁷ Section 6(1) of the Certain Leaders Retired Benefits Act of 2003.

¹⁵⁸ Act No. 2/2012.

3.6.8.5 Invocation of the Public Service Act of 2011 over the Judiciary Service Workers

Another issue of concern is on the application of the Public Service Act of 2011 over the judiciary service workers. This law ‘lumps’ the judiciary service workers with other public servant without considering the peculiarity of the working environments of the judiciary. For instance, normally there are court vacations during Holy Ramadhan and December.

Moreover, there is a tendency of shuffling judiciary staff even without consultation with the JSC or CCA or CJ. For instance, just recently, the procurement officers were transferred to other places without prior consultations with the Judiciary.

It is a good gesture that the Government of Zanzibar has, from the coming financial year, increased salaries of public servant by between 15.6% and 19%. Meaning that, a salary of the servant (employed in 2019) who was receiving a minimum wage of TZS 300,000 (like most of the court clerks, typists, secretaries and Primary Court Magistrates) will now start earning TZS 347,000.¹⁵⁹ This seems to be a long-awaited glory because the low cadre judicial and non-judicial officers had their entitlements e.g. allowances and salary increments stalled for a long time.

3.6.8.6 Salary Gaps between Judiciary and Non-Judiciary Officers

The concerns are also on the salary gaps between judicial and non-judicial officers; and, proportionality of level of education against the positions some of the judicial staff are holding. An allegation of recruitment of Magistrates who are not law degree holders is already stated elsewhere in this report. It is claimed that, other cadres too e.g. administration have this challenge ‘condoned.’

Moreover, it is alleged that, the head of human resource department is a diploma holder while the assistants are degree holders. All these need to be reconsidered in ongoing salary or scheme of service’s restructuring.

3.6.8.7 Perceived Effects of Low Salaries and Other Entitlements

Low salaries, absence of statutory allowance, motivation strategies and poor working conditions all together fertilize (breeding grounds for) an occurrence of malpractices (unethical practices) amongst the judicial and non-judicial workers. Allegation of corruption and over-charging of some fees were heard in all locations sampled for this assessment. For instance, the clients in need of affidavit are charge even TZS 20,000 instead of only TZS 4,000 as prescribed official fee.

159 Jesse Mikofu, ‘Zanzibar Increases Salaries of Public Servants by up to 19 Percent.’ The Citizen. 9 May 2022. Available online via: <https://www.thecitizen.co.tz/tanzania/news/national/zanzibar-increases-salaries-of-public-servants-by-up-to-19-percent-3809174>

An anonymous office attendant revealed that, as a way of earning some money on top of his salary, him and several other staff who are not trained lawyers do prepare some pleading for the clients and in return, they get paid ‘consultancy’ or ‘professional’ fees ranging from TZS 50,000 and above. All these incomes are not receipted.

Other issues of concern raised included depleted residential houses for judicial officials; and, transport facilities.

3.6.9 Suggestions on Salaries and Other Entitlements

- i) It is suggested that the Judiciary Administration Act of 2018 should have very specific provisions on salaries and allowances for the judiciary workers as it is a case or the Administration of the House of Representatives Act of 2019 (which governs the administration of the legislature in Zanzibar). Part five (being Section 31) of this 2019 legislation covers ‘*salaries and allowances*’ of the House’s workers. It is very explicit in this regard. Similar provision should be made in the Judiciary’s law.
- ii) There is a need to have specific salary scales and schemes for the judicial and non-judicial officers serving in the Judiciary of Zanzibar. Additionally, such schemes i.e. salary scales should be proposed by the JSC as it was a practice prior to 2011. The PSC could only remain with the mandate of endorsing the same basing on the country’s economic status.
- iii) A need for conducting a thorough job-evaluation of the workers in the judiciary services and then, re-grading the salary structures to ensure that different posts are positioned in the correct salary grades according to their job weight or academic qualifications or working experience and other criteria to be proposed by the JSC. The bottom-line here is to ensure equal pay for equal value of work across the judicial service.
- iv) Payment of judiciary workers’ arrears including expenses they had incurred in transfers from one duty station to the other. This assessment has noted government of Zanzibar’s commitment to pay over TZS 1.8 billion in public servants’ arrears.¹⁶⁰

¹⁶⁰ Jesse Mikofu, ‘Zanzibar Increases Salaries of Public Servants by up to 19 Percent.’ The Citizen. 9 May 2022. Available online via: <https://www.thecitizen.co.tz/tanzania/news/national/zanzibar-increases-salaries-of-public-servants-by-up-to-19-percent-3809174>

- v) The need to abide with all labor standards including overtime payments for all judiciary service workers as it is required under Sections 62 to 65 of the Employment Act of 2005.¹⁶¹ Probably, the most viable way is to integrate the overtime payments (i.e. standardized rates) into workers' emoluments. The calculation of rates could be guided by the relevant laws and also, peculiarity of the job descriptions. Some of the staff consistently work beyond time almost every day e.g. most of the judicial officers, their secretaries and assistants, planning officers¹⁶² and typists.
- vi) The need to develop a special professional and managerial cadres e.g. on ICT, trainings, resource mobilization, institutional development experts, etc. in pursuit of the new direction the Judiciary of Zanzibar is heading to. The said cadres should be highly tasked and therefore, well compensated in order to drive the Judiciary to the changes it desire in short period of time.
- vii) The need to decentralize human resource management and accountability down to the regional and district courts (including Kadhi's courts of those levels). This will facilitate a handy response to workers issues of concern e.g. delayed salary increments, etc.
- viii) Encourage an improvement of judicial productivity – as a basis for pay enhancement¹⁶³ e.g. efficiency, effectiveness and maximum utilization of human resource capacities as a way of encouraging more supports from the government and other stakeholders. A role of the Judiciary in the country's economic development is something which have to reflect in the proposed Strategic Plan of the Judiciary e.g. innovating ways of hastening disposition of cases on investments; taxation; tourism; etc.
- ix) An arrangement of the vacations or transfers or reshuffling of the judiciary services workers should be left to the Judiciary itself; or, decided after consultation with the judicial administration.
- x) The need to rescreen entry qualifications of all judicial and non-judicial workers as a way of ensuring that positions are managed by right persons.

161 Act No. 11/ 2005.

162 The Planning Officers receive overtime payments only during preparation of the MTF. This happens once a year though.

163 Note: This is applicable in Mainland Tanzania in all sectors including the Judiciary according to one anonymous informer. It seems to be in line with the directives made under the *Public Service Pay and Incentive Policy of 2010*. However, thorough analysis on this including the pros and cons should be considered especially in line with the principle of an independence of the Judiciary. That is, in discharge of its responsibilities, the Judiciary is not supposed to be induced in any way by anyone unless it is for the good course (Reference: *The Bangalore Principles of Judicial Conduct of 2002*).

- xi) Residential houses for officers e.g. the like of Judges' residential houses constructed in Fumba area, Unguja, etc.
- xii) Devising different approaches of working incentives (motivation) in order to boost-up the performance of the judiciary service workers, for instance:-
 - o Annual retreats, get together events, Judiciary workers' Baraza, etc.
 - o Exchange programs, study tour visits, etc.
 - o Transport e.g. bus for judiciary service workers. A staff said that she uses at least TZS 42,000 per month for transport to and from Tunguu based High Court. This being TZS 1,400 per a returning trip of every day. TZS 42,000 is equal to 25% of this staff's month salary.
 - o Vehicles or fuel allowances to at least Magistrates and Kadhi in-charges of the duty stations.
 - o Establishment of Judiciary SACCOS or arranging soft loans with commercial banks.
 - o Social support schemes e.g. the female workers (some of the secretaries and magistrates) are in an informal group where they contribute TZS 10,000 each month and support each other in case of social need e.g. wedding and funerals ceremonies.
 - o There is need for the CCA to improve his working relationship with judiciary staff right from the cleaner to the Judges. The assessment team received many complaints against CCA who is considered as an impediment to effective performance of the Judiciary and attainment of its objectives.

3.6.10 Capacity Building Programs for Judicial Service Workers

The Judiciary of Zanzibar does not have training scheme for continuous education of all staff in judiciary service. Therefore, they all depend on the academic qualifications they had acquired prior to the judiciary service or personal efforts during the service.

There is also insufficient induction training for newly recruited Magistrates and Judges or even other non-judicial officers e.g. to understand how the judicial system works, case management, etc. Some of these officers do struggle to catch-up with

the required standards e.g. note taking of proceeding; legal analysis; and, drafting of the judgments. Absence of education or capacity development scheme render it difficult also for the Judiciary implement mentorship programs.

It is possible for the Judiciary to replicate the practice of some of the public institutions in Zanzibar like the Ministry of Finance which is said to sponsoring or rather supporting its staff to pursue post-graduate degree programs for up to TZS 7 million.¹⁶⁴

Apart from the newly established Law School of Zanzibar (LSZ) which offers some courses on continuous legal education, the rest of the colleges like Institute of Public Administration (IPA) do not have such course.

A model of Mainland Tanzania's Institute of Judicial Administration (IJA) can be considered in future for the judicial officers to have a platform where they can enhance their judicial skills. Meanwhile, the ZLS can be engaged to design tailor-made courses for the judicial officers basing on their specific needs i.e. capacity gaps.

It is good practice that the Judiciary of Zanzibar is part of the Judicial Institute of Africa (JIFA) coordinated by the University of Cape Town, South Africa. Normally, JIFA conducts kind of needs assessment and then offer needs-based training courses. In most cases, JIFA focuses on newly appointed Judges. The Judiciary can capitalize on this by allocating sufficient budget for its Judges to receive periodical refresher courses even if those could be offered outside the routine calendar of JIFA.

There are also some concerns on the recruitment of the Magistrates. According to some of the interviewees, this has been a perceived challenge for several years. The allegations of corruptions and nepotism prevail. Currently, the law (regulation) require all Magistrates including of Primary Courts to be degree holders. However, this qualification requirement has not been strictly observed according to the interviewees. For instance, it is alleged that, just recently some of the newly recruited Magistrates had no required qualifications in terms of being law degree holders and a concern on the accreditation of colleges they had pursued their studies.

Limited opportunities for on-job learning are claimed to be 'grabbed' mostly by the High Court staff in Unguja. For instance, it is alleged that, just recently, 20 clerks benefited from study visits to Mainland's Judiciary, of whom, only 2 (being 20%) were from Pemba.

¹⁶⁴ Note: The assessment team did not find sufficient time to authenticate this assertion.

3.6.11 Suggestions on Capacity Building Initiatives and Performance

- i) A short term and easy to achieve suggestion is for the judiciary to approach other stakeholders e.g. non-state actors including civil society organizations like THRDC; international partners like UN agencies; and even private sector to sponsor trainings and other capacity building programs including exchange visits. Of course, the Judiciary will need to have mechanisms whereby capacity gaps of the judicial workers will be ascertained on periodical basis.
- ii) The need for Training Policy of the Judiciary of Zanzibar with an aim of enhancing career goals through different modalities e.g. induction trainings for newly recruited or appointed staff; orientation e.g. sessions on familiarization of judicial functionality; and, mentorship e.g. transmission of knowledge or expertise from the senior to junior officers.
- iii) One of the feasible modalities of doing so is for the use institutional appraisal e.g. the Open Performance Review and Appraisal (OPRAS). Currently, there is no any appraisal conducted for any worker in the judiciary service.
- iv) There is also a need for devising institutional (administrative) mechanisms of enforcing performance of Judges and Magistrates. Use of automated M&E system suggested elsewhere in this report could be ideal. The said M&E system is part of the proposed digitalized case management.
- v) A need to have kind of Standard Operating Procedures (SOPs) or Code of Conduct detailing required standards and some administrative measures against the violation of the standards.
- vi) Needed a through scrutiny and screening of Magistrates in the recruitment process. The allegations of recruitment of non-eligible professionals and nepotism are heard all over the places.
- vii) The need to have a Comprehensive Human Resource Capacity Development Plan (CHRCDP) linked to the intended strategic plan. The said CHRCDP will guide the Judiciary administration on ways of ascertaining capacity gaps of its service workers and therefore address the gaps in accordance with the needs.

viii) A need to take some measures to address the capacity needs especially on:-

- Use ICT facilities including computers (all judicial officers).
- Matters pertaining electronic transactions (Magistrates and Judges).
- Matters pertaining Islamic insurance (Kadhi).
- Matters on charitable organizations (Kadhi).
- Matters pertaining human rights or bills of rights (Magistrates and Judges).
- Matters on Islamic banking (Kadhi).
- Matters relating to tourism (Magistrates and Judges).
- Understanding on aspects on blue economy e.g. maritime trade and transportation, fisheries, tourism, resource extraction (oil and gas), etc.
- Settlement of investment disputes.¹⁶⁵
- ADR skills (Paralegals, *Vakils*, Advocates, Magistrates, Kadhi and Judges).
- Cybercrimes (Magistrates and Judges).
- Matters pertaining *wakfu* and trustees (Judges).
- Taxation matters (Judges e.g. chairing Tax Appeal Tribunal).
- Regular trainings on matters relating to ascertainment of fingerprints; DNA; handwriting; drugs; and the like (Magistrates and Judges).
- Emerging trends of use of the crypto currency.
- Skills of writing judgments. There are concerns that some of the judgments are not well-reasoned and lack conclusion or contain unclear orders e.g. on child's maintenance. Therefore, it is difficult to enforce.
- Matters on tourism, oil, gas, clove and blue economy (Magistrates and Judges).
- Regulations of Kadhi's Court e.g. on marriage, *wakfu*, *tarak*, gift, evidence, gender issues, etc. (Kadhi and Judges).

¹⁶⁵ Pursuant to Section 23(3) of the Zanzibar Investment Promotion and Protection Act of 2004 (Act No. 11/2004).

3.7 FACILITIES AND OTHER EFFICIENCY FACTORS

The facilities in this context include the physical structures such as buildings and services attached to those structures including on security management; record management; working tools; etc. all of which are efficiency factors.

It is observed that, the Judiciary of Zanzibar has procured a number of facilities the recent one which is unique is an ongoing installation of digitalized case management system. As said elsewhere in this report, the e-system is half done at the High Court level and in land tribunal. There are plans to connect all courts in Zanzibar with this facility. Construction of the state-of-art High Court building at Tunguu, Unguja send signs of possibility of doing the same on part of Pemba and to all lower courts, including Kadhi's and Land courts.

Despite the isolated efforts observed, it is generally found that, the Judiciary still needs a huge support to address challenges of facilities. As it is suggested further, in terms of buildings, there would be a need to recruit specific officer on estates construction and management to be guided by the Infrastructural Development Plan (IDP).

3.7.1 Courts' Infrastructures and Other Related Facilities

Apart from being a few, most of the Court's structures are in bad shapes (old and dilapidated). The Magistrates and Judges' chambers are also small and furnished with outmoded chairs, tables and cabinets, which do not guarantee confidentiality of courts' records. The Rent Restriction Board does not have specific office space as it is explained in previous chapters. Apart from being dilapidated, most of the courts' premises (listed randomly as stated by stakeholders):-

- i) Lack physical and automated security system e.g. no fences, security guards with detectors, CCTV cameras, etc. This include even the newly constructed and renovated ones.
- ii) Not universally accessible for all gender groups e.g. elderly and persons with disabilities (PWDs) e.g. absence of ramps. This is even a case for modern ones e.g. High Court at Tunguu, Unguja.
- iii) Some hosted in government premises e.g. the District Court of Mkoani, Pemba, is housed within the Town Council's premises. There is no any new court building constructed in Pemba.
- iv) Do not have restaurants. Therefore, workers and clients had to roam around for the food from nearby petty food vendors. They do not have even teapots, water dispensers, etc. for simple meal e.g. breakfast at the office. This is also a case even at the High Court.

- v) Lack prayers' rooms in some courts. The High Court's prayer room is located at the 5th floor where the lift does not reach there.
- vi) Lack of landlines and extension phones e.g. to connect from reception to the rooms, etc.
- vii) Lack lock-up facilities/ cells for inmates brought to the court. This is risk even for the Magistrates and Judges.
- viii) Inadequate or unreliable case record systems. Currently it is manual-based (clarified further below).
- ix) Safety signs e.g. emergency exists, places to assemble in case of fire, etc.
- x) No press-bench for journalists who report on court news.
- xi) Absence of tender boxes in the High Court.
- xii) Inadequate or unreliable documentation procedures. Owing to the challenges of spaces and use of manual systems, some files including of pending cases are humped on the hallways of the court buildings.
- xiii) No first aid kits.
- xiv) No specific waiting rooms for advocates and witnesses.
- xv) Waiting shed with chairs are missing in most of the court buildings.
- xvi) No specific rooms for lactating mothers/ breast-feeding mothers.
- xvii) Service directions e.g. sign boards to indicate locations of the courts.
- xviii) Apart from the High Court at Tunguu, Unguja, the rest of the courts including Kadhi and Land, do not have library rooms. Therefore, access to law books and other materials is an issue of concern. The High Court has quite spacious library space. But it is not stocked with sufficient law materials to make it serviceable to the users including advocates.
- xix) Absence of printing and photocopying services for clients.
- xx) No public address systems in most of the courts e.g. for announcing the names.
- xxi) Insufficient consideration of disasters e.g. pandemic like COVID-19 protocols (?).
- xxii) No fire detection and control systems e.g. fire extinguishers and alarms. No orientation trainings on the same as well.
- xxiii) Courts buildings lack emergence exists in case of emergence.
- xxiv) Insufficient security checking arrangement even at the High Court. Visitors are not searched or screened at the gate or elsewhere before accessing entrance to the judiciary.
- xxv) Insufficient parking areas for the judicial workers and visitors.

Apart from low salaries and poor physical infrastructures, the unpleasant working condition in the Judiciary is further exuberated by absence or inadequacy of working facilities such as computers, printers, scanners, photocopiers, standby generators, vehicles, stationary, cabinets for storage of documents, etc. Quite pity situations were observed in almost all courts premises visited during this assessment in April 2022.

Wete's Case Study: One outdated computer without printer for five courts

The Wete's court building accommodates five courts (i.e. regional, district, primary and Kadhi's courts). They all share one desk-top computer for typing proceedings, keeping some records, etc. The only printer they had was not functional for over six months as of April 2022. The lone computer they have is outdated as it needs more than two hours to start working once switched on. Like other places, this courts' building also do not have stationary. Magistrates have to purchase from their own pockets pieces of papers if they want their work e.g. judgments to be printed. The cleaning equipment including brooms and mopes are not procured on time. The office attendants have to purchase from their own pockets. The fans and air condition are all in very poor conditions.

It is important that each Magistrate, Kadhi, Registrars, Judges, etc. to have one laptop and a printer. Most of these judicial officers are computer literate. These equipment are important for maintaining confidentiality of case records to be decided. The computers are also for researching.

The court rooms are also small and inadequate. In Pemba for instance (where the High Court is located), civil and criminal registries share same tiny room which is equipped with very old and defective chairs, tables and cabinet (rocker). There are only two tables, two chairs and one rocker which is used to keep both civil and criminal files. The room has depleted floor, tiny window and dirt walls. It is almost the same situation all over the country, save a few areas where the court premises have been renovated e.g. Mwanakwerekwe.

3.7.2 Suggestions on Infrastructural Developments

- i) The Judiciary will need to have Operational Plan to map implementation of all what have been suggested above – on improvements of courts' premises. The said plan can be crafted in the form of **Infrastructural Development Plan (IDP)** with time-frame e.g. 5 years. In this way, it will have a very specific attention. The overseer of the plan's implementation would be an officer responsible with Estate Development and Management – suggested elsewhere in this report.

- ii) There is also a need for SOPs or guidelines on exterior security of the courts' premises. Currently, the judicial workers are exposed to several risks as indicated elsewhere in this report.

3.7.3 Records and Archives Management

An effective management of the judicial records include the ability of storing (documenting), protecting (security of records), preserving, retrieving, accessing e.g. on statistical format and even disposition of some records.¹⁶⁶ It include management of the proceedings' records of the cases. The effectiveness and efficiency of record management are important for functionality of the judiciary in generally e.g. case files when needed.

Inadequate or unreliable documentation procedures are attributed by a number of factors including insufficient facilities e.g. office space (rooms) and rockers; insufficient record management skills of some of the officers; and, absence of effective automated or digitalized record management systems.

As for the first one, this assessment observed that, owing to the challenges of spaces and use of manual systems, some files including of pending cases are humped on the hallways of the court buildings (e.g. see the photo here).



The misplacement, lost, damages, etc. of case files were said by the interviewees to be 'common' incidents.

Moreover, an access to some records from the case files sometime takes a lot of time because of manual searching.

The digital record management system would have been a solution to most of the said challenges.

¹⁶⁶ Such records can be in respect of judicial notices, motions, cause-list, calendar, dockets or even administrative correspondence e.g. memos and minutes of the meetings, etc.

Due to the said challenge (absence of automated record management systems), the managerial reporting of the status of disposition of cases from the Magistrates and Judges to the Chief Registrar is normally done manually or electronically e.g. through scanned or pictured or emailed records through private mobile phones. Once the records are received by the Registrar from the judicial officers, are stored in his/ her computer using a word document and not a database. Apparently, this could make it uneasy to process data and producing the same e.g. in a form of statistics when needed.¹⁶⁷ It is also not easy to track progress over period of time.

The need to adopt an **automated or digitalized record management systems** will have to go in hand with deployment of administrators to all courts – in order to manage the system as well as working on other administrative issues including preparation and submission of some reports. This would not only aid the use of digital technology; but also, would cure the current concern that, due to absence of sufficient administrative units at the courts' levels, issues pertaining to administration and staffing of the judiciary at lower courts and Kadhi's courts are not regularly channeled for redress to the High Court. This could one of the attributing factors to the delay of addressing such issues e.g. claims of allowances, supply of stationary, maintenance of the court building, etc.

Apparently, the Judiciary of Zanzibar **will need to have some internal administrative guidelines or policies on records and achieves management in order to standardize and systemize the procedures for effective management.** The proposed guidelines can be linked with the ICT policy already suggested somewhere in this report.

Moreover, the Judiciary of Zanzibar can seek professional assistance from the Records and Archives Management Department (RAMD), which is established under Section 5 of the Records and Archives Management Act of 2002.¹⁶⁸ Section 6(1)(c) of this law mandates RAMD to '*advise on best practices and established standards in record keeping in the public service.*' In Zanzibar, the custodian of an enforcement of this law is the National Archives of Zanzibar (NAZ).

¹⁶⁷ For instance, the CJ does not have an automatic mechanism of retrieving or access such data or information unless the same is requested first from the Registrar.

¹⁶⁸ Act No. 3/ 2002.

3.7.4 Suggestions on Records and Archives Management

- i) Need for digitalized record and achieves management. It could be feasible to start with simple electronic methods like scanning of the document and storing them electronically. This would also simplify file tracing (tracking) process, which appear to be a challenge at the moment.
- ii) Need for construction of specific rooms on records and archives within judiciary premises
- iii) Need to have some internal administrative guidelines or policies on record management in order to standardize and systemize the procedures for effective management. The proposed guidelines can be linked with the ICT policy already suggested somewhere in this report.
- iv) Seek professional advice on record and archive management from the National Archives of Zanzibar (NAZ) as it sanctioned under Section 6 of the Records and Achieves Management Act of 2002.
- v) Appointing a qualified officer as a coordinator of records management activities pursuant to Section 9 of the Records and Achieves Management Act of 2002.

3.8 GENDER MAINSTREAMING IN THE JUDICIARY

3.8.1 Current Trends of Gender Balance

There have not been any concerns on gender sensitivity approach in judiciary administration and operation despite the fact that the Judiciary of Zanzibar does not have Gender Mainstreaming Policy. In terms of gender balance, 36% of the Judges are actually females; while, around 40% of the Magistrates of different levels are females. Table 3.7 below shows a summary of all judicial and non-judicial officers in terms of gender balance.

Table 3.7: Proportionality of Judiciary Officers in Terms of Gender - 2022

Categories N=465 for All Judiciary Service Staff		Sub-Total				
		Per Categories	Females		Males	
			No.	%	No.	%
CJ and Judges of the High Court		13	4	31%	9	69%
Magistrates	Primary	21	11	56%	10	48%
	District	16	5	31%	11	69%
	Regional	30	11	36%	19	64%
	Land Courts	6	1	17%	5	83%
	Children’s Courts	3	2	69%	1	33%
Kadhi	Chief Kadhi& Deputy	2	-	-	2	-
	District	14	-	-	14	-
	Appellate	4	-	-	4	-
Chief Registrar and Other Registrars		5	1	20%	4	80%
CCA and All Non-Judicial Officers		353	165	47%	188	53%
Grand Total:		N=467	200	43%	267	57%

Source: Judiciary of Zanzibar as of 30th June 2022.

Based on the statistics gathered as of 30th June 2022 from the Judiciary, this pillar of State has a total of 465 workers of whom 43% (as an overall trend) are females and therefore 57% are male judiciary service workers. The gender parity seems not to be critical as the margin gap is only 14%. However, adoption of some reforms on gender mainstreaming would reduce further the parity.

The judicial staffs (Magistrates, Kadhi, Registrars and Judges) are 112 (being 24%) of all judiciary service workers of Zanzibar. This means, the non-judiciary service workers are 76% of the total work force. There is no any adverse implication ascertained by the assessment team on this staffing gap between the judiciary and non-judiciary officers. However, a job-evaluation recommended elsewhere in this report should be done.

A consideration of gender aspects in this regard should be broaden because gender mainstreaming is more than balancing number of males and female judiciary service workers in administration and operation; but, considering also the presence of gender-sensitive working environments and services like specific needs of PWDs and children.

3.8.2 Disability-friendly Judicial Services

The country, Zanzibar, was one of the first countries in Africa to enact a specific law on disability rights termed as the Persons with Disabilities (Rights and Privileges Act of 2006).¹⁶⁹ This law was enacted in the same year when the world adopted the UN Convention on the Rights of Persons with Disabilities of 2006 (CRPDs). The Zanzibar's disability law, which is currently under review, incorporates a lot of requirements under CRPDs. Section 12 of the Zanzibar's disability law provides for barrier-free access to public buildings, roads and other facilities of public use; and, Section 15 is on the rights to information and communication.¹⁷⁰

The most relevant provision in this regard is Section 19 of the same law.¹⁷¹ It provides for the right to judicial equality and protection. It states, as reproduced here, that:

'[P]ersons with disabilities have the right to equality before the law and equal justice under the law such as: (a) the right to provision of legal documents in a format accessible to blind and partially sighted persons; (b) the right free of charge to sign language, interpretation services, braille services and physical guide assistance in court rooms and during judicial proceedings and free legal aid; and, (iii) the right to accessible government ministries, judicial services, buildings, courtrooms, law libraries and legal assistance centers.'

The Judiciary of Zanzibar still falls short of complying with the universally accessible judicial services as directed by the Persons with Disabilities (Rights and Privileges Act of 2006). The structures are not disability friendly e.g. missing ramps in most of the court buildings. The pleadings and copies judgments are not in user-friendly language mentioned above. Moreover, the assessment team was informed by one PWDs' organization in Unguja that, the sign language interpreters are very few and generally ignorant of judicial language. Moreover, facilities to print documents in braille format are not easily found.

There was also a concern that most of the cases of persons with mental or intellectual impairments are dismissed due to insufficient evidence or inability to interpret the evidence adduced by the person with such impairments. The Pemba's CSOs members

¹⁶⁹ Act No. 9/ 2006.

¹⁷⁰ Section 15 of the Persons with Disabilities (Rights and Privileges Act of 2006 stipulates that, 'information services and documentation shall be made accessible to different groups of persons with disabilities in such form as (a) braille, tape services and large prints; (b) spoken information and appropriate technologies; (c) interpretation services, personal assistance and guides; (d) sign language; and, (e) accessible computerized information.'

¹⁷¹ That is, the Persons with Disabilities (Rights and Privileges Act of 2006.

told the assessment team that, despite an increase trends of rape and defilement incidents against persons with this form of impairment, they have never heard any perpetrator found guilty. *‘The legal loopholes and low capacity of law enforcement officers render these people free ...’*, said the lady in March 2022 at Pemba.

Owing to all these challenges, it is recommended that:-

- i) The judicial and non-judicial officers should be oriented on disability rights as enshrined in the Persons with Disabilities (Rights and Privileges Act of 2006; and, CRPDs.
- ii) The need for institutional gender mainstreaming policy (of the Judiciary) which will also reflect disability’s requirements in all level of case management.
- iii) The need to comply with all legal requirements stipulated under Persons with Disabilities (Rights and Privileges Act of 2006 or similar law (if this one will be amended soon).

3.8.3 Child-friendly Judicial Services

It is observed that, the Judiciary of Zanzibar in collaboration with other stakeholders have renovated almost all Children’s courts in a child-friendly environments e.g. drawings. There are also designated Regional Magistrates specific for these courts as the Zanzibar’s Children Act of 2011¹⁷² and the Children’s Courts Rules of 2015¹⁷³ require. The child-friendly practices in such courts are observed. This is highly commended to continue. However, further supports to make the judicial environment friendly are required. For instance, television sets e.g. for teleconference, toys, etc.

Secondly, in February 2022, the CJ issued the Circular No. 01¹⁷⁴ proclaiming that every practicing Advocate in Zanzibar must be a *pro bono* lawyer of cases involving children. This is a good headway to judicial sensitivity on children’s rights. However, the practice on this has not been effective so far as most of the Advocates are not complying with the CJ’s directive according to the Magistrates interviewed. Only 10 Advocates (being 4%) out of approximately 250 practicing Advocates¹⁷⁵ do support these cases. There are a number of capacity needs on children’s courts including:-

- i) The need to have specific arrangements for *pro bono* advocates e.g. some incentives including waiver of certain percent of annual subscription fees. This has to be done in collaboration with the ZLS.

¹⁷² Act No. 6/2011.

¹⁷³ Being the Legal Supplement (Part II) to the Zanzibar Government Gazette Vol. CXXIV No. 6574 of 10th July, 2015.

¹⁷⁴ Note: Proper citation will have to be confirmed if necessary.

¹⁷⁵ Female Advocates are estimated to be 60 (around 24%) and male Advocates are estimated to be 190 (around 76%). Actual number of enrolled Advocates was not obtained. A user of this report is advised to contact Zanzibar Law Society (ZLS) for updated and actual statistics.

- ii) Developing some guidelines or standard operating procedures (SOPs) on child-sensitivity handling skills e.g. techniques of interviewing children in a friendly but effective ways. Afterwards, the Magistrates, SWOs, Advocates, Judges, Kadhi, Clerks, etc. should be trained on the same.
- iii) Presence of children's courts in every region. Currently, such courts are available in all Unguja's regions; but, only one (1) in Pemba (located at Chakechake).
- iv) The need to centralize determination of all offences involving children into Children's courts. Currently some offences like abduction and rape involving children can be heard determined by either Children's or Regional Courts (interchangeably). Owing to inadequate documentation system, there are possibility that such cases could start afresh between these courts. Moreover, the inconsistency is observed on some offences with almost similar nature but being handled by different courts. For instance, defilement of children is handled by Children's Court; while rape is supposed to be handled by the Regional Court.
- v) Moreover, Kadhi's Courts should be left only with civil matters involving adults. All cases involving children should be handled by the Children's Court because they have child-friendly environments and legal procedures e.g. presence of SWOs as mentioned earlier.
- vi) There are only 4 Magistrates designated for Children's Court countrywide. In some places, Magistrates serving in Children's Court are assigned to adjudicate cases in other courts. There is no sufficient specialization in this regard.
- vii) The law and rules governing children's courts (mentioned earlier) require the Magistrate to be bound by the opinion of the Assessors in civil matters. Section 18(6)(b) of the Zanzibar's Children Act of 2011 states inter alia that, the judgment or sentence of the court shall follow the finding of the majority of the court if any. However, if the court is equality divided, the judgment or sentence shall follow the finding of chairperson. It is suggested that, the ultimate decision should be left to the Magistrate in order to maintain legal professionalism.
- viii) The need for ADR in some of the cases involving children. Having this will definitely enhance realization of the principle of the best interest of the child. The ADR will also hasten disposition of cases e.g. once a matter is mediated, the court can be involved to register the agreement.
- ix) Needed children's retention facilities, rehabilitation centers and approved schools for children – which are currently missing in offenders education centres (prisons) management of Zanzibar.

On operational side, the Judiciary through CJ's mandates to issues circulars or guidelines can publish guidelines for all judicial bodies on handling of cases involving vulnerable groups like widows, elderly, PWDs and children. The guideline will have to define meaning of vulnerable groups, duration of disposing cases involving vulnerable groups, waiver of court fees to the needs, priority of attending cases involving such groups, etc.

3.8.4 Persons in Incarceration Facilities

The persons in incarceration facilities are also termed as special or vulnerable groups needing specific attention according to numerous international human rights instruments governing prisons' management.¹⁷⁶ The equality of access to justice is one of the fundamental rights provided for under the Constitution of Zanzibar of 1984.¹⁷⁷ The Legal Aid Services Act of 2018¹⁷⁸ offers a very comprehensive framework on legal aid services as a means to access justice of the indigent population, some being inmates. Section 9(1) of this law makes it mandatory for all legal aid service providers (LASPs) to register under this law. Section 21(1) of the legal aid law requires the LASPs to ensure that, indigent persons are provided with high quality, effective and timely legal aid services which include professional and sensitive handling of juveniles, PWDs, elderly and vulnerable people. The inmates automatically fall under the category of 'vulnerable people' because most of them do not have sufficient means to afford services of hired lawyers.¹⁷⁹

Unfortunately, the legal aid services is yet to be officially institutionalized in detention facilities. A male inmate, aging 52 who incarcerated in Unguja's based main offender training centre said that, he waited for proceedings of his case for more than three years. When he finally got then, he asked fellow inmate to prepare the appeal papers. *'The prison officers do help us on these legal processes ... sometimes one has to give money for the papers to be typed in order to lodge the appeal within time ...'*, another male inmate said on 31st March 2022. The prison officers help the inmate out of empathy and not as part of their responsibilities. It works well; but, not systematically and effectively because reference books are not available¹⁸⁰ and that, the officers are not practicing advocates to understand legal technicalities in details. Moreover, there are delays of sending out and receiving judicial notifications - according to the inmates.

176 Such as the Standard Minimum Rules for the Treatment of Prisoners of 1955; the Basic Principles for the Treatment of Prisoners of 1990; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988; the Code of Conduct for Law Enforcement Officials of 1979; the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions of 1989; etc.

177 Article 12(1) of the Constitution of Zanzibar stipulates that, *'all persons are equal before the law and are entitled and are entitled without any discrimination, to protection and equality before the law.'*

without any discrimination, to protection and equality before the law.

178 Act No. 13/2018.

179 This is sanctioned under Sections 24(a) and 33(1)(a) the Legal Aid Services Act of 2018.

180 The offenders training centres do not have law libraries where inmates would have been going to learn and prepare their cases.

Section 35 of the Legal Aid Services Act of 2018 requires the police force, Offenders Education Center or remand homes to designated mechanism for facilitating the provision of legal aid services by the LASPs to accused persons or convicts in custody.

It is recommended that, such facilities, CHRAGG, Parole Board and Director of Legal Aid Services should implement the requirements of this provision. The Judiciary is as well a key partner into this because of its mandate – ensuring effective dispensation of justice e.g. ensuring legal representation.

Otherwise challenges of delay of disposition of cases, restrictions of bail, etc. have attributed to crowding of detention facilities. For instance, on 25th March 2022, the Wete Offenders Training Center had at least 230 inmates while the official carrying capacity of this facility is only 60 inmates. Therefore, the crowding rate is 283.3% above the carrying capacity. At least 60% of the inmates found on that date in this facility were remandees, suspects of sexual offences. More than 50% of the remandees were actually young boys – some being school children.¹⁸¹ Overcrowding apart from being a human rights issue of concern, it is also a policy e.g. addressing pushing factors attributing to an increased delinquency and the need for stern measures e.g. prohibition of bails.

The parole, as one of the strategies to decongest convicts in prisons is working. For instance, during the *Mapinduzi* ceremonies, a good number of convicts are normally get released. However, it is a concern that, unlike Mainland Tanzania where convicts are released on parole twice a year (during *Muungano* and Independence days), in Zanzibar, the convicts are not favored that way. No parole is granted during the *Muungano* on part of Zanzibar. The substantive law governing parole was not known to almost all stakeholders interviewed.

There is a need to ensure that legal aid services are institutionalized within all detention facilities and that, all needy inmates get access to such services unconditionally.

¹⁸¹ Aging between 18 and 30s years.

PART FOUR

EXTERNAL OPERATIONS AND SERVICE DELIVERY

4.1 INTRODUCTION

This part presents key findings on the external operation of the Judiciary of Zanzibar. It is basically a presentation of what numerous stakeholders view the performance of the Judiciary. Presentation of issues gathered from consultation is randomly made.

The issues that arose from consultations were in relation to accessibility of judicial services; challenges on the delay of cases; observation on the specialization within the Judiciary; and, sentencing.

4.2 ACCESSIBILITY OF JUDICIAL SERVICES

The accessibility of judiciary services in this context include not only physical proximity of courts; but also, the civil and criminal technicalities as well as procedures of accessing judiciary services like filing suits; securing copies of court documents like copies proceedings and judgments; etc.

The procedural issues have already been discussed in previous parts of this report e.g. delayed proceedings due to, among other reasons, use of manual case management system. The language (English) and unpredicted procedures e.g. on execution of judgments were all mentioned to be barriers of accessing judiciary services.

As for physical accessibility of the courts, it is established that, all regions in Unguja and Pemba have resident magistrates ('regional') and district courts; but not all other courts e.g. primary courts, land, high court and Kadhi courts. Table 4.1 below gives a summary of availability of courts and tribunals at regional level.

Table 4.1: Physical Availability of Courts and Tribunals – Regional/ District Level

Regions	High Court	Ordinary Courts			Kadhi Courts		Others					Special Courts		Sub-Total:
		Regional	District	Primary	District	Appellate	Children	Land	Rent	Industrial	Taxation	Sexual	Drugs	
Unguja														
UW	X	✓	✓ ¹⁸²	✓ ¹⁸³	✓ ¹⁸⁴	✓	✓	✓	✓	✓	✓	✓	✓	12
SR ¹⁸⁵	✓	✓	✓✓	✓✓✓	✓✓✓	X	✓	✓	X	X	X	✓	✓	14
NR ¹⁸⁶	X	✓	✓✓	✓✓	✓✓	X	✓	✓	X	X	X	✓	✓	11
Pemba														
SP	✓	✓	✓✓	✓✓✓	✓✓✓	✓	✓	✓	X	✓	X	✓	✓	16
NP	X	✓	✓✓	✓✓	✓✓	X	X	✓	X	X	X	✓	✓	10
Total:	2	5	9	11	11	2	4	5	1	2	1	5	5	63

Unguja: UW=Urban West (Vuga, Mwanakwerekwe and Tunguu); SR=South Region (Mwera, Makunduchi and Chwaka); and, NR=North Region (Mfenesini and Mkokotoni).

Pemba: SP=South Pemba (Chakechake, Mkoani and Kengeja); and, NP=North Pemba (Wete and Konde).

The South Region of Unguja has three court buildings, namely; Mwera, Makunduchi and Chwaka. The Mwera Court building accommodates Regional Magistrates Court, the District and the Primary Magistrates Courts as well as the District Kadhi's Court. The Makunduchi Court building accommodates the District and the Primary Magistrates Courts as well as the District Kadhi's Court. The Chwaka Court building accommodates the Primary Magistrates Courts and the District Kadhi's Court. Therefore, this region has total of nine (9) courts being 1 RMC, 2 DMCs, 3 PMC and 3 District Kadhi Courts.

On the other hand, the North Region has two courts building Mfenesini and Mkokotoni. The Mfenesini court building houses Regional Magistrates Court, the District and the Primary Magistrates Courts as well as the District Kadhi's

¹⁸² Located at Mwanakwerekwe, shares the premises with the Primary Court.

¹⁸³ At Mwanakwerekwe, within District Court.

¹⁸⁴ Located at Mwanakwerekwe – different building from District Court.

¹⁸⁵ In this region, there is three court buildings, namely Mwera, Makunduchi and Chwaka areas.

¹⁸⁶ This Region has two courts buildings at Mfenesini and Mkokotoni areas.

Court. The Mkokotoni Court building accommodates the District and the Primary Magistrates Courts as well as the District Kadhi's Court. Therefore, this region has total of seven (7) courts being 1 RMC, 2 DMCs, 2 PMC and 2 District Kadhi Courts.

Some of the courts are overwhelmed by a number of clients e.g. the Mwanakwerekwe District court serves Urban West District and some of the cases from West District because of the accessibility challenge of the West District court. The district court located at the South district serves also clients from the Central district (Unguja).

The appellate Kadhi courts, Rent Restriction Board (RRB) and land courts are scarcely available. The land court is available in all regions but not at district level (it is constituted in this manner by the 1994 statute mentioned earlier); the RRB has its head office located in Unguja. It visits Pemba once per month. Moreover, the children's courts; tax tribunals are mostly available in Urban West region, Unguja.

South Pemba region has court building at Chakechake, Mkoani and Kengeja areas. The Chakechake court building accommodates the High Court of Zanzibar, Regional Magistrate Court, District Court, Primary Court, Appellate Kadhis Court and District Kadhis Court. The Mkoani court building accommodates the District, Primary Magistrates Courts and District Kadhi's Court; while the Kengeja Court building accommodates the Primary Magistrates Court and the District Kadhi's Court.

The North Pemba Region has two Courts buildings which are located at Wete and Konde. The Wete Court building accommodates Regional Magistrates Court, District, the Primary Magistrates Courts and the District Kadhi's Court; while the Konde Court building accommodates the District, Primary Magistrates Courts and District Kadhi's Court.

4.3 JUDICIAL SPECIALIZATION

The legal framework governing the judicial administration in Zanzibar makes the Magistrates and Judges 'generalists.' That is, they can adjudicate all cases brought to their attention. The stakeholders including the judicial officials had different sentiments on a need for judicial specialization. The effect of **quality** and **quantity** of trial of the cases engulfed the discussions on this. Basically, it seems that there are pros and cons of having or not having judicial specialization.

The question of **quantity** (number) of cases against the Magistrates or Judges seems to be insufficient to justify specialization. As said earlier on, the trend shows that one Magistrate hands an average of 85 cases per annum, which is equivalent

to an average of 7 cases per month. The trend of High Court cases per Judge is also relatively small. The only concern could be on Kadhi's court, whereby, some of such courts like of Mwanakwelekwe register at least 1,000 cases per annum for only 4 Kadhi. This means, one Kadhi in this court handles 250 cases per annum, which is equivalent to 21 cases (average) per month.

The pro-judicial specialization side were of the view that, this will enhance quality e.g. of judgments because a Magistrate or Judge will concentrate only a small area of specialty e.g. labour, sexual offences, illicit drugs, criminal, etc. Those who are against the specialization were of the view that, the current number (i.e. quantity factor) of Magistrates and Judges could not allow specialization. Moreover, the current legal framework does not offer sufficient guidance on specialization of trial of civil or criminal cases. For instance, even the recently established Special Court for Sexual Offences (the '*Mahakama Maalumuza Udhalilishaji*'); the *Mahkama Maalumu ya Madawa ya Kulevya*¹⁸⁷ within Vuga RM court; and, the *Mahakama ya Masuala Mseto* (Miscellaneous Case Department) within Vuga's RM court, were merely through a legal notice (under the High Court Act of 1985) and not on specific and comprehensive law to guide on its establishment, composition, procedural matters, registries, etc.

At administrative point of view, specialization in any matter normally increases efficiency e.g. in this context of disposition of cases¹⁸⁸ and guaranteeing high quality of judgments e.g. uniformity application of the laws. However, when it comes to judiciary there a number of prerequisite factors to consider in order to realize the intended efficiency including a need for sufficient number of Magistrates and Judges each with special knowledge and expertise in a specific area of law where he or she will have to serve. There is also a possibility that, specialty of judicial proceeding or court would foster selectivity of practices e.g. opting only some cases with less complications or with good pay.

Recommendations on Judicial Specialization

- i) If specialization is to be sustained, then there is a need to have regulations made under relevant laws to stipulate for procedural matters in order to systemize and standardize the operationalization of special courts or tribunal (if are not amongst the existing ones).

¹⁸⁷ Currently served by 3 Magistrates – Regional Resident Magistrates level.

¹⁸⁸ For instance, before the establishment of the *Mahakama ya Makosa ya Udhalilishaji* at Vuga's RM court in 2015 (need to recheck the year), there were 570 cases. A total of 6 Magistrates were assigned for this special court. Within a very short period of time (less than a year), more than 50% of the cases were disposed. Of course, others ended up being closed because witnesses were not showing up apparently due to the *Muhali* reasons. At least 80 of such cases are associated with constructive or statutory rapes.

- ii) Specialization should be more strategic and well informed by certain criteria e.g. a need to promote national economy such as to have special courts on tourism, blue economic-related matters, small claims, etc.; or, addressing very critical issues e.g. illicit in drugs as growing issue of concern.
- iii) Need to re-visit the decision rendered establishment of the *Mahakama Maalumu za Udhalilishaji*. As said earlier in this report, procedural operation of these courts has attributed to over-crowd of inmates in prisons (offenders training centres) and that, some people use such cases to ‘blackmail’ or fixing up cases against their rival on understanding that the offences are not bailable.

4.4 HANDLING OF SEXUAL OFFENCES: DETERRING EFFECTS OF STERN MEASURES

A loud alarm was sounded over increase of sexual offences and, more critical side of it, on the way such offences are being addressed. Two issues of concern were two; (i) the deterrent effect of the stern measures taken by the State e.g. long-term jail terms; and, (ii) restriction of bails on sexual offences. These two issues have increasingly sparked some debates in public realm.

There are perspectives that, the legal systems (laws and procedures including trials) do not work perfectly in such a way that, the stern measures imposed over these offences have so far remained inconsequential to redress the situation of steadily increase of incidents of sexual offences. The deterrence effects of the legal system have attracted some perspectives of using ‘drastic’ measures like castrating (‘hasi’) the rapists.

There was also a concern that, the investigation and prosecution are relatively weak in a way that most of the perpetrators of sexual offences easily work-out of the courts freely. This is also linked to *Muhali* and some challenges of investigation as well as prosecutions to prove the cases beyond reasonable doubt. Some of the challenges mentions which hinder effective investigation, prosecution and therefore trial of sexual offences were mentioned to include:-

- i) Delay of victims to report their cases e.g. beyond 72 hours which makes it difficult to get swaps for forensic evidence. This is attributed to low awareness and sometimes distances to facilities where the victims could access specialized services.
- ii) Absence of forensic lab and other appropriate facilities in many parts of the country.
- iii) Challenges of securing presence of witnesses in court. Most of the witnesses including those who are needed for expert opinion decline from attending court’s proceedings because they are not being refunded their transport fares (by the judiciary). The influence of *Muhali* is yet another factor.

UNBAILABILITY OF SEXUAL OFFENCES AS BLACKMAILING PLOY

The grant or rejection of bail on sexual offences has taken a different twist in recent years. Such offences have been added on a list of non-bailable offence. Apparently, in a bid to address a growing trend of sexual offences, several affirmative measures (policy and legal ones) were adopted in Zanzibar. The legal measures include reforms of the procedural laws or practices whereby all sexual offences are now not bailable. Moreover, the CJ's discretionary powers to consider granting bail to some of offences depending on the circumstance of a case, have been seized.

The drastic measures taken against increased trend of incidents of sexual offences e.g. unbailability of all sexual offences could be a good idea; but also an opportune leeway of 'blackmail' and 'fixing' for some community members against their rivals. In all places visited including places of incarceration, the public uproar on increased fake claims on sexual offences were heard. The Wete-based prison had over 200 inmates at the time of this assessment in April 2022 of whom 80% were inmates and convicts of claims relating to sexual offence. At least 75% of such inmates were youths aging between 20 and 30s or early 40s years. Only 3 (being 1.5%) were females.

The generalized trend shows that, despite the 'harsh' legal measures on sexual offences, reported incidents of sexual offences were on increase according to the police and journalists. Actual data were not immediately obtained; but, based on the said generalized trend, it is obvious that there is a need to reconsider this matter. Several options were given by stakeholders consulted, including:-

- i) The judiciary should be given back discretionary powers to grant bails basing on the merit of each case. Regulations can be formulated to guide the judiciary on this.
- ii) The age of free consent on sexual offences should be reduced as there a number of girls who intentionally induce males to commit sexual acts – some of them repeatedly in two or three cases the judiciary has invited to determine. However, this suggestion if taken into consideration could spark unnecessary debate nationally and internationally because Tanzania is part of the international legal instruments governing the rights of the child. The instruments like UN Convention on the Rights of the Child of 1989 defines a child as a person below 18 years. The Zanzibar's legal frameworks relating to children's affairs have also adopted this standard e.g. the Law of the Child Act of 2011 of Zanzibar; the Education Act of 1982; etc.

4.5 DELAY OF CASES: DELIVERY OF JUDGMENTS, RULINGS AND ORDERS

4.5.1 Factors Attributing to Delay of Cases

A delay of disposition of cases was mentioned to be the ‘most critical’ issue facing the Judiciary of Zanzibar. This one is attired with accumulated and recurrent caseload and backlog altogether. The days are of three levels as this assessment has observed, namely; (i) prolonged trial attributed by parties to the case e.g. objections and non-appearance of witnesses; (ii) unlimited or unregulated time frame between conclusion of the case and pronouncement of judgments; and, (iii) execution of judgments or making appeals e.g. delayed availability of copies of the proceedings.

Other factors on the delay of cases include (iv) perceived low capacities or rather tendencies of some of the Magistrates and Judges (as well as Kadhi); (v) inadequacy support staff e.g. typists; (vi) inadequate working tools e.g. computers and printers; (vii) use of manual systems e.g. hand-writing to record proceedings; and, (viii) insufficient M&E system.

As for the **M&E system**, the assessment team was informed of the presence of **CJ’s Circular No. 1/2018** on handling of cases whereby, time limit within which trials of the cases were to be completed was indicated. The Circular is said to be valid to date. However, due to some weaknesses on the M&E system, it has not been easy to track down and assess the performance rates of the Magistrates and Judges.

Information Box: Legal framework not put limit within which a judgment if supposed to be pronounced

It is a concern that the current legal framework does not compel a Magistrate or Judge to pronounce his or her decision e.g. judgment, ruling and orders within certain period of time. That is, there is to regulate time between conclusion of the case and when a decision is made. It is purely within the discretion of these judicial officers e.g. having sufficient time to decide on the matters – but undue delays happen to the detriment of justice. There is a possibility that this issue could be sorted out legally but within the Judiciary itself without necessarily engage in legal reform processes of the statutes. For instance, CJ may invoke his or her powers to make internal rules or orders by proclaiming a Circular on timeframe for the delivery of judgments, rulings and orders as well as issuance of copies of proceedings, judgments, ruling, etc.

There is a need to devise enforcement and feedback mechanisms e.g. M&E systems linked to case management – which constantly monitor status of cases; **Judiciary’s client service charter**; and, code of conduct for the judicial officers of Zanzibar. All these should indicate a judicial commitment that pendency of a case in any court would be not more certain period of time; actionable disciplinary measures if the expedition of disposition if the cases is not observed; etc.

Secondly, the Registrars are restricted by the Civil Procedure Act of 2004 from pronouncing judgments. Only Judges or Magistrates are allowed. The Criminal Procedure Act of 2018¹⁸⁹ is silent on this. But in practice, only Judges normally pronounce decisions (delivering judgments). Allowing Registrars to deliver judgments as it is a practice on part of Mainland Tanzania could hasten judicial process albeit at this level of trial. It is the good practice under Kadhi’s Court Act of 2017 that, the Registrar of the Kadhi’s Court is allowed to pronounce judgments made by this court (after being instructed by Chief Kadhi).¹⁹⁰

Thirdly, court process server seems to be overwhelmed by responsibilities as it takes a lot of time to serve summons sometimes. This calls for a need to capitalize on alternative services including service by parties themselves provided they swear affidavits depending on the manner in which service was effected.

4.5.2 Suggestions on Delay of Cases

- i) Needed CJ’s Circular on time frame for the delivery of judgments, rulings and orders as well as issuance of copies of proceedings, judgments, ruling, etc.¹⁹¹
- ii) The proposed Circular needs to have enforcement and feedback mechanism e.g. M&E system embodied as part of the case management. Therefore, the progress on adjudication of the cases will be shared out periodically and systematically e.g. in the form of consolidated¹⁹² annual statistic or progress reports of the Judiciary of Zanzibar.
- iii) Additionally, in order to make the said M&E system ‘binding’ albeit administratively, there is a need to have (i) code of conduct for judicial officers of Zanzibar; and, (ii) clients’ service charter. Breach of the terms of the code and charter should be addressed as disciplinary matter under the provisions of the Judiciary Administration Act of 2018.

¹⁸⁹ Act No. 7/2018.

¹⁹⁰ Section 13(1)(1) of the Kadhi’s Court Act of 2018.

¹⁹¹ In other jurisdictions e.g. Mainland Tanzania, they have such circulars. For instance, Mainland Tanzania have CJ’s Circular No. 1 of 2016 on the Delivery and Issuance of Copies of Judgments, Ruling and Other Court Records.

¹⁹² In terms of all levels of ordinary courts, Kadhi’s courts, tribunals and CAT of the cases emanating from Zanzibar.

- iv) The need for the Judiciary of Zanzibar to devise in written form the performance measurement or rating criteria (PM/RC) guided by a set of indicators or milestones on full cycle of case management. This can be integrated into the proposed M&E framework (system) in order to avoid multiple or parallel systems.
- v) The need for legal amendment to allow Registrar to pronounce (deliver) judgments.
- vi) Also as proposed earlier, there is a need to have or strengthen the Bench-Bar case management committee or forum especially on the delay of disposition of civil cases. This forum could also include representatives from CSOs e.g. THRDC's members who are legal aid service providers.
- vii) Alternative services of summons is required. The use of electronic means is highly recommended.
- viii) Judgments should be in Kiswahili for easier understanding.
- ix) Judiciary should publish a guideline on judicial services and procedures for the general public.

4.6 EXECUTION OF DECISIONS OF THE COURTS

4.6.1 Some Legal Limitations

There are a few concerns on the procedure or practices of executing decisions of the court, main ones being (i) delays of issuing an order to dispose of attached property attributed to numerous objections especially on matters relating to banking and mortgages; (ii) restriction or limitation of attaching government's assets (properties) especially land; and, (iii) some issues on the practices of the Court Brokers and Court Service Servers (CPS).

As for the second limitation, Section 12 of the Government Proceedings Act of 2010¹⁹³ makes some limitations on the nature of reliefs against the government which the Court can order. For instance, under Section 12(3), of this law it is stipulated that:-

'[I]n any proceedings against the government for the recovery of land or other property, the court shall not make an order for the recovery of land or delivery of the property, but in lieu thereof, make an order declaring that the plaintiff is entitled as against the government to the land or property or to the possession thereof and if the government needs that land or property for public purposes, proceedings of termination of such right shall be adhered to subject to the provisions of the Constitution and other relevant laws.'

¹⁹³ Act No. 3/2010.

Moreover, Section 16(4) of this law¹⁹⁴ directs that, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the government of any such money or costs. This provision is interpreted by some of the litigants as being a limitation to execute judgments against the government. Section 12 of the Certain Leaders Retired Benefits Act of 2003¹⁹⁵ also makes some restrictions of executing courts' order. It states, inter alia that, '*the pension, gratuity or other allowances granted under this Act, shall not be liable to be attached or levied upon for or in respect of any debt or claim, except a debt due to the government of Zanzibar.*' The eligible beneficiaries of this law include the CJ; Judges; Controller and Auditor General; Chief Kadhi; and, Mufti of Zanzibar.

It is also observed that, the country does not have litigation fund which would have been utilized as contingency fund on legal matters e.g. payment of state attorneys on extra-duties; costs of litigations; etc.

Suggestion on Execution of Judgments

The need to amend the Government Proceedings Act of 2010¹⁹⁶ and the Certain Leaders Retired Benefits Act of 2003¹⁹⁷ in order to remove the limitations or restrictions on execution of judgments.

The need to establish the **litigation fund (contingency legal fund)** in order to facilitate the government executing its legal obligations relating to the litigations of the matters that it is involved.

4.6.2 Concerns on the Practices of Court Brokers and Court Service Servers

On the third one (see above) it was perceived that, there is somehow insufficient understanding the laws or regulations governing the services of the Court Brokers and CPS in Zanzibar. A purported 'senior' staff of the auction mart could not mention a law he knows which govern their mandates as court brokers.

Some of the issues of concern on these two judicial services were mentioned to be (i) absence of specialized trainings on these fields; (ii) monopolization of the business by one or two brokers e.g. the Kumekucha Auction Mart; (iii) claims of outdated or insufficient rules of executions e.g. attracting a lot of preliminary applications (POs). Therefore, it is really hectic to file applications for execution; (iii) laws governing banking and mortgages are complicated when it comes to

¹⁹⁴ That is, the Government Proceedings Act of 2010.

¹⁹⁵ Act No. 5/2003.

¹⁹⁶ Act No. 3/2010.

¹⁹⁷ Act No. 5/2003.

execution of decrees; (iv) law and rules governing Court Brokers and CPS e.g. the Civil Procedure Decree, Cap. 8 are inadequate or unknown; and, (v) there has no sufficient and systematic mechanisms of monitoring and regulating the court brokers and CPS – despite being sensitive ones and crucial in judicial services. Of course, all these need a separate critical analysis.

As for the last issue of concern, it is noted that, the Mainland Tanzania has been keen to regulate these two service providers by issuing some rules and regulations on periodical basis. The assessment team came across a number of such rules and regulations including the *Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules of 2017*¹⁹⁸ promulgated by the CJ of Tanzania; the *Code of Conduct for Court Broker and Process Servers of 2017* (made by CJ under the 2nd Schedule to these Rules); and, the *Guidelines for the Court Broker and Process Servers of 2019* - promulgated by the Principle Judge of Tanzania.

Suggestion on Practices of Court Brokers

The Judiciary of Zanzibar could borrow a leaf from this practice and ensure that, rules and guidelines on the practices of court brokers and process servers are widely disseminated and regularly updated in consultation with various stakeholders.

4.7 OBTAINING OF SWOs AND WITNESSES IN COURT

The social welfare officers (SWOs) are, technically, part of the judicial officers because the Law of the Child Act of 2011 of Zanzibar and its Children's Court Rules of 2011¹⁹⁹ direct mandatory presentation of SWOs in all suits involving children. The SWOs are also members of the case flow committee supposed to be available in each children's court.²⁰⁰ The SWOs are legal guardians of children whose cases are pending in court. They are also supposed to conduct social investigation which is part of the judicial process.

Despite such mandates and the importance of SWOs in the judicial processes, their presence is not accorded with sufficient value as professional. For instance, only TZS 15,000 is paid to SWO for conducting social investigation – despite the distance e.g. transport fare, etc.

¹⁹⁸ Being G.N. No. 363 of 2017.

¹⁹⁹ Note: It is the Legal Supplement (Part II) to the Zanzibar Government Gazette Vol. CXXIV No. 6574 of 10th July, 2015.

²⁰⁰ Regulation 7(3) of Zanzibar and its Children's Court Rules of 2011.

It is the same concern when it comes to a procurement of presence of experts in court of law like medical doctors. The experts are increasingly becoming hesitant to attend and testify during trial because they do not get paid transport fares and for their valuable time spent. Other witnesses too fail or shy away from appearing before the court on the same reasons. Moreover, some of the witnesses claim to have been intimidated by parties to the case.

Suggestions

- i) The need for the Witnesses and Whistleblowers Protection law.
- ii) Ensuring sufficient allocation of the budget for SWOs, expert and other witnesses.

4.8 MALPRACTICES IN LEGAL SECTOR

4.8.1 Muhali Factor

So much was heard about *muhali* (social impunity) which frustrates a due legal process and justice in Zanzibar. The *muhali* is associated to failure of witnesses to show in the court; distortion of the charge sheet to make a case frail; and, almost all stages of criminal justice system. At the trial level, there are claims of entering *ex-parte* judgments without complying with due legal process e.g. exhausting all possibilities of reaching the other party to the case. Granting and denial of police bonds or court bails are also associated with *muhali*.

Article 56A of the Constitution of Zanzibar of 1984 and Section 9 of the Office of DPP Act of 2010 confer onto the DPP eclectic powers to ensure efficient and effective criminal justice in the country. Therefore such powers could be involved to address allegations of intentional distortion a due legal process.

The authoritative entity on corruption-related matters is the ZAECA,²⁰¹ established under Section 3 of the Zanzibar Anti-Corruption and Economic Crimes Act of 2012.²⁰² Despite being in existence for only a decade, its visibility amongst the ordinary citizens is high. The use of media to raise awareness on anti-corruption and functions of ZAECA seems to be a quite useful way of spreading the awareness message. However, it seems that this authority is still falling short of institutional capacity to address allegation of corruptions including the *muhali* in circles of the legal sector.

²⁰¹ Meaning, the Zanzibar Anti-Corruption and Economic Crimes Authority.

²⁰² Act No. 1/2012.

It is observed that, Section 13(1)(a) of this law mandates ZAECA to receive and investigate any complaint concerning corruption practices in any public or private body. Despite this broad mandate, the performance of ZAECA is perceived to be unsatisfactory by some of the leaders and community members consulted during the assessment. For instance, the ZAECA's office in Wete Pemba is said to be (i) physically inaccessible – located at the third or fourth floor of a building which do not have a lift; and, (ii) its officers are not available in the office most of the time.

There is a need to link efforts albeit administratively between the ZAECA, JSC, Office of DPP, A.G Chamber, Mufti of Zanzibar, Chief Kadhi, police and CSOs to devise a common anti-*muhali* strategy specifically on legal sector. Moreover, the legal or institutional incapacity of ZAECA, if any, should be addressed. This need a separate analysis.

Trainings on ethics, etc. for investigational, prosecutorial, judicial and private practice are needed in order to enhance the **cross-fertilization** within legal sector in general. Those can be offered by the Law School of Zanzibar, IPA, IJA, etc. Reference materials on ethics should be prepared and used all the time when orientation sessions for new Judges, Magistrates, prosecutors, etc. are employed. The proposed trainings should be in the form of continuous legal education (CLE).

In relation to that, ZLS is advised to tightened enforcement of its disciplinary mechanism against private advocates who, some of them, are blamed of being 'highly unethical.' Some of unethical incidents heard all over the places sampled for this assessment were (i) not showing up in court for their clients' cases; (ii) double-dealing e.g. received monies from both sides of the case; (iii) litigating matters which they have direct interest; (iv) over-charging their clients e.g. demand double payment of fees; and, (v) mistreatment of their clients e.g. intimidating them when they ask progress of their cases.

4.8.2 Perceived Uncertainty of Punishments

The Judiciary of Zanzibar does not have much discretion on sentencing. The prescription of offences and penalties under various penal laws is very clear, of which the Judiciary is required to implement accordingly. There was a very few opinion on judicial discretionary powers on sentencing apart from the suggestions of some of the respondent on deterrence effects of punishments provided for under the current legal frameworks. Some of the respondents including Shehas suggested radicalism of sentencing e.g. imposing more severe punishment for habitual offenders of sexual offences.

4.8.2.1 Traffic Offences

One of the concerns on nature of punishment or sentencing was in relation to application of the Road Transport Act of 2003.²⁰³ A group²⁰⁴ of tour drivers located at Stone Town, Unguja, told the assessment team in March 2022 that, the frequently occurring traffic offences are possession of invalid driving license, shorting of routes and requirement of level-seat (for commuter bus drivers). The fining of such offence have been differing in terms of amount of fees to be paid even for the similar offences. According to them, sometimes the court could sentence payment of TZS 50,000 or even TZS 300,000 for same offence. Sections 176 and 177 of the Road Transport Act of 2003 provide for determination of the charges and other issue. It seems that further guidance on fining and sentencing on traffic offences is needed as the Judiciary bears all the blames of ‘haphazard’ fining and ‘force guiltiness.’²⁰⁵ There is a need of setting limitation basing on the schedule of offences.

4.8.2.2 Children’s Law

A concern on sentencing or punishment was raised about the Zanzibar’s Children Act of 2011.²⁰⁶ The law directs a burden of punishment e.g. fine against a child found guilty of an offence to be borne by the parent. Therefore, a child does not sense the burden of his or her criminal liability. An option would be to commit the child offender to the retention or rehabilitation centers, which are currently inadequate in Zanzibar e.g. only one in Unguja and none in Pemba.

Suggestions

There is a need for national penal policy which would also address issues pertaining judicial sentencing e.g. correlation between severe punishment and trends of occurrence of delinquencies. The proposed policy would also address some issues on preventive and control measures of delinquencies.

4.8.3 Challenges of Ferrying Inmates for Judicial Proceedings

Transportation of inmates to and from the courts and offenders training centers (detention facilities) was also observed to be an issue of concern – but not relating to Judiciary administration. Generally, there is a shortage of vehicles to carry the inmates to and from the courts once their pending cases are called for hearing.

203 Act No. 7/2003.

204 Consulted as FGDs.

205 One of the drivers while narrating his side of story said that, *‘ukifikishwa mahakamani, ukikataakosa, unawekwanda nik wa wiki mbili. Ukirudi baada ya muda huo ukakosa mdhamini, unarudi mahabusu tena. Alafu, polisi trafiki ndipo anakuja katika kesi na bado utalipa faini tu ya shilingi hadi laki tatu ...’* That, once a suspect of traffic offence is taken to court, he or she is remanded for two weeks if plead no guilt. Afterwards, if the suspect fails to get someone to bail him or her out, the person is remanded again until when the police traffic officer comes for the case. Yet, a fine up to even shilling three hundred thousand will still have to be paid.

206 Act No. 6/ 2011.

Despite the fact that a suspect becomes in the management of the offenders detention centers once handled to such facilities, yet in practice, ferrying the suspect to and from the court is still being done by the police because (i) the offenders detention centers do not have enough vehicles; and, (ii) it has been a ‘habitual practice’ for over years. Be the arrangement as it could be, there is a need to have (i) sufficient vehicle for offenders detention centers or police to manage the suspects’ transport to and from the court; and, (ii) special vehicles which are safe to carry the suspects unlike the current situation where by the police officers normally use pick-ups which risks their safety and that of the inmates being ferried. There are reported incidents whereby the inmates jumped off the car and ran as they were taken to court.

4.9 DETERMINATION OF HUMAN AND CONSTITUTIONAL RIGHTS-RELATED CASES

Part three of the Constitution of Zanzibar of 1984 covers the protection of the fundamental rights and individual freedom’s right. Articles 11 to 24 detail those rights, which include the rights to equality of people,²⁰⁷ equality before the law,²⁰⁸ right to life,²⁰⁹ freedom of expression,²¹⁰ etc.

4.9.1 Legal Mechanisms on Human Rights and Constitutional Matters

There is no specific law governing determination of cases on breach of human or constitutional rights or when a constitutional matter arises. The most relevant provision could be Article 25A (1) of the Constitution of Zanzibar of 1984, which provides for institution of suits apparently on basic rights and duties enshrined under said provisions. It stipulates that, *‘any person may institute a suit in the High Court if he sees that the Constitution is violated or is being violated or is likely to be violated.’*

Apparently, a procedural law is ought to have been enacted to provide details on how such suit could be moved in the High Court. May be Civil Procedure Decree of 2004 could be used. However, owing to the distinctiveness of constitutional and human rights cases, use of Civil Procedure law can render it difficult for the Judiciary to handle such matters. Mainland Tanzania has the Basic Rights and Duties Enforcement Act, Cap. 4 (BRADEA), which was enacted in 1994 as mechanism of enforcing the infringement of rights and duties stipulated under Part Three of the Constitution of the United Republic of Tanzania of 197.

207 Article 11 of the Constitution of Zanzibar of 1984.

208 Article 12 of the Constitution of Zanzibar of 1984.

209 Article 13 of the Constitution of Zanzibar of 1984.

210 Article 18 of the Constitution of Zanzibar of 1984.

Another main observation from various stakeholders including advocates in Zanzibar is based on the jurisdiction of constitutional cases. For instance, the HC of Zanzibar has under the constitution of Zanzibar original and appellate jurisdiction to determine all cases of human rights/ constitutional petitions. Unlike the Tanzania Mainland, human rights cases in Zanzibar are determined by one Judge and appeal goes to the same court but to be determined by three Judges.²¹¹ Using the same court that determines the case on the first instance for appeal of the same case was questioned by human rights advocates in Zanzibar. According to the findings of this study, until July 2022 there is no any decision on constitutional matters that has been appealed to the level of three judges.

Because there is no specific law on enforcement of human rights or public interest litigation in Zanzibar as provided by Article 24 and 25 of the Constitution of Zanzibar, advocates use normal civil case procedure to institute constitutional petitions in Zanzibar as it was in Tanzania Mainland before enactment of BRADEA. The current practice therefore requires advocates to institute petitions before the high court of Zanzibar after filling a 60 days' notice to the government. The most recent court records indicate that at least four (4) constitutional petitions or public interest cases have been determined by the HC of Zanzibar.

One of the case that was recently decided by the HC and received a public welcome is the case of **Hassan Kornely Kijogoo Vs Attorney General of the Revolutionary Government of Zanzibar Constitutional Petition No.1 Of 2019**. In this case the petitioner challenged the constitutionality of section 151 (4) of the Act No.7/2018. The court found the section to be arbitrary with unreasonable and unnecessary limitations. The law was therefore amended to enforce the decision of the court.

The courts of law participate in shaping the legal framework in country through constitutional petitions. Both the Government and Judiciary of Zanzibar are currently applauded for being positive about human rights petitions that aim to address community concerns over certain issues of public interest such as arbitrary provisions of laws. For instance, the Government of Zanzibar is praised for respecting decisions of the court that requires reviews of the law. Another case that the HC of Zanzibar decided infavour of the public interest is the case of **Advocate Omar Said Shaabani Vs Ag, Miscellaneous Civil Cause No. o2 of 2019**. The Petition Challenged the Constitutionality of section 3(6) of the Land Tenure Act. The court also decided infavaour of the wider community interest by declaring that the last part of section 3(6) of the Land Tenure Act No.12 of 1992 as amended by section 4 of the written Las Mic. Amendment Act No. 1 of 2018

211 Article 24 (3) of the Constitution of Zanzibar of 1984

Zanzibar's legal framework can have its own law without copying challenges and limitations imposed by BRADEA on public interest litigation/human rights cases. The proposed procedural law should maintain the current position of the Constitution of Zanzibar which allows everyone to institute a human rights or constitutional case (Public Interest Litigation) once a need arises. All other limitations like a need of three Judges, exhaustion of other remedies and prove of personal interest could also be disregarded by the proposed law.

On the same tone, some of the legal experts consulted, were of the view that, there is also a need to have the Inquest law (similar to Inquest Act, Cap. 24 of Mainland Tanzania) which will establish the coroner's court and regulate the practices of coroners. A search of whether or not Zanzibar has Inquest law did not yield fruits.

4.9.2 Recommendations of Human Rights and Constitutional Mechanism

- i) A specific law on enforcement of rights and duties enshrined in the constitution should be enacted; alternatively or in addition to this suggestion, special constitutional court can be considered for handling constitutional related matters. This will also address the raised concerns about the mechanism of appealing human rights cases under the current arrangements.
- ii) Judges and Magistrates should be oriented (in a very comprehensive way) on human rights subjects including legal skills and techniques of handling human rights-based cases.
- iii) Needed law to govern inquest/ coroner matters.

4.10 JUDICIARY-COMMUNITY ENGAGEMENT

4.10.1 Major Issues of Concern on Judiciary-Community Relationship

The community members interviewed in March 2022 had three major issues of concern on the Judiciary and legal sector at large, namely; (i) complexity of the legal process when someone wants to seek legal redress even for minor issues; (ii) deteriorating trust in a due legal processes attributed to perceived corruptions e.g. *Muhali*; and, (iii) ineffectual legal system e.g. some forms of crimes like on sexual harassment and child neglect are on increase.

Eventually, a number of criminal cases are either not being reported or dropped along the way before trial level.

4.10.2 Community's Trust in Judiciary

The community trust, confidence and engagement with the judiciary are necessary factors for the promotion of justice in Zanzibar e.g. as a way of addressing arbitrariness in addressing social and legal issues happening in the communities; readiness of the community members to appear for the court when needed as parties to the case or witnesses; as sources of evidence; enforcement of court's decisions; etc. The Judiciary, being a public entity is also accountable to the community whom it relies for support and trust.

A seasoned lawyer told the assessment team that incidents of mob violence and political tensions that occur sometimes in this country are partly attributed to lack of trust in due legal processes.

Some of the political parties' leaders interviewed had the same observation. That, the Judiciary and all other justice machineries need to re-build public trust in legal system. The 'red-flags' pointed out on mistrust with the Judiciary to include the way in which Judges and Magistrates are appointed - claiming that, some of them have 'political genes' due to their previous position in public service; and that, there are periodical 'directives' proclaimed by the executive and political leaders to the Magistrates.

The later was asserted by several judicial and non-judicial officers interviewed. It happens when there is a case which the executive²¹² or political leader has some vested interest, mostly personal ones or matters pertaining road traffic's fines. However, the Regional Commissioner (RC) of one of the regions refuted this claim and questioned the inability of judicial officers to make use of the powers and 'immunities' they have been bestowed by the legal statutes. *'It is a question of competence and inferiority complex that a judicial officer succumbs to purported orders which are not jurisdictional ...'*, remarked the RC in March 2022.

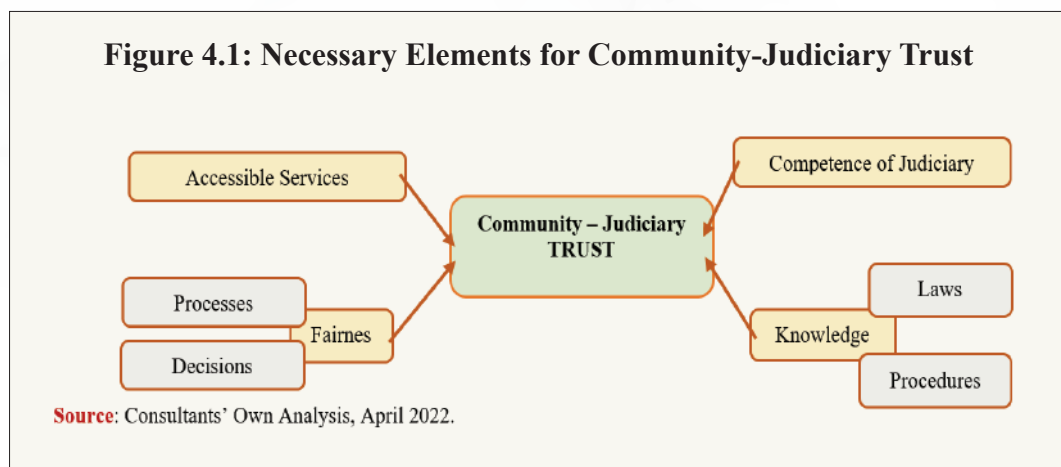
4.10.3 Awareness of Judicial Processes: Building a Trust

Insufficient awareness of procedural laws judicial mandates and the Judiciary Administration Act of 2018 does not offer sufficient avenues for the Judiciary to engage with the public e.g. through some form of outreach programs such as training. The Judiciary-Community engagement has so far been more on fiduciary relationship without a point where the duo can meet 'socially.'

212 Mentioned the alleged officers being RCs, District Commissioners, national security (TISS) and even from political parties. Astonishingly, even Registrars of the courts are on the list of officials alleged to interfere with the decisions of the Magistrates. One Magistrates asserted on 23th March 2022 when interviewed in Pemba that *'final decision of the Magistrate can be overturned by the Registrar on a mere claim of foul made by a litigant.'*

Consultations with the community members in Unguja and Pemba suggest that, majority (93% of 47 interviewed on the street) of public members were unaware or had very limited understanding of the judicial functions e.g. rules and procedures. The CSOs and Office of DPP are mentioned to be more active in offering public awareness education especially through media.

Basing on what the people view the judiciary and the judicial processes, it seems that, judicial trust is circumvented or rather fabricated by four key considerations, namely; (i) perceived **fairness** of the judicial process e.g. full cycle of criminal or civil justice system; (ii) guaranteed **access** to judicial services e.g. friendly services; (iii) perceived **competence** of the judicial officers; and, (iv) awareness and **knowledge** of due judicial processes e.g. civil and criminal procedures. These create **confidence** to use the services. The diagram below summarizes these three components of trust.



The Judiciary Administration Act of 2018 can be amended to reflect a need of community-judiciary engagement as it is a case of the law governing public prosecution. For instance, Section 22(1) of the Office of Public Prosecution Act of 2010²¹³ stipulates, *inter alia* that, this office shall be the government center of excellence in promotion of policies, laws, programs, skills and public awareness in all aspects of criminal justice. Section 22(2) of the same law mentions some strategies to include designing and publication of awareness materials, organize forums, establish training center and offering training programs. An extent to which all these have been accomplished by this office is outside the scope of this assessment. But, suffice to note that, this is an excellent way of engaging with the community. It is important not only for promotion of justice, but also, branding the services of the Judiciary.

213 Act No. 2/2010.

There were also some suggestions on the judiciary-media engagement as well as a need for the Judiciary to invoke its power as ‘justice of peace’ to visit all detention facilities in Zanzibar. A quest for seeing Judges, Magistrates and other judicial officers visiting such facilities was high amongst the prisons officer and inmates interviewed in Pemba and Unguja.

Apparently, the Judiciary of Zanzibar will need to adopt multi-dimensional strategies in order to re-brand its mandate and visibility as an authoritative justice machinery in the country. All the illusions on incapacity to discharge its mandates independently would be clearly.

4.10.4 Suggestions on Judiciary-Community Engagement

- i) The need for the Judiciary to prepare and disseminate public awareness materials (IEC²¹⁴) e.g. a Guideline or Information Pack on Use of Judicial Services (*‘Mwongozo wa Utumiaji wa Huduma za Mahakama’*) – indicating the roles, mandates and judicial procedures on some matters such as procedures of lodging civil suits, evidence, etc.
- ii) As a way of ensuring that the community-judiciary trust remains good, there is a need to conduct periodical court users surveys (CUS) apart from relying on suggestions and complaints lodged in the proposed forms and contents (modalities). The CUS could be undertaken through mobile phones or other means.
- iii) There is also a need to devise Comprehensive Judicial Stakeholders’ Engagement Strategy (CJSSES) which will map out statutory and non-statutory entry points of engaging with various stakeholders, modalities, prioritization, feedback mechanism, intended benefits to earn from the engagements, etc.
- iv) The need to have information, education and communication division or unit to be headed by an information officer or public relations officer of the Judiciary. This portfolio will also be coordinating **judicial-media engagement** e.g. ensuring presence of press-bench in all courts and news feeds to media. Also, special trainings on judicial reporting.²¹⁵

214 That is, information, educational and communication.

215 A journalist based in Pemba told the assessment team that, *‘wanaposoma hukumu zao na kutupa, tunashindwa kuelewa sana, wanatumia maneno ambayo ni tekniko ...’* (*‘when they deliver their judgments and give us copies of the same, we fail to grasp well the contents, they use technical words ...’*). This is why there is a need of specialty in media reporting and some trainings on judicial functions, procedures, legal norms or ethics, etc. There is also a need to engage media as ‘whistle-blower’ of crimes happening in the community and alleged malpractices of some of the judicial officers, investigators, prosecutors, private advocates, *vakils*, paralegals, etc.

- v) Widening Judiciary-community engagement platforms beyond Law Days. The use of mainstream and social media platform is highly recommended; and, this should be budget for. It can be done in corroboration with likeminded entities like CHRAGG. It is therefore important that the Judiciary recruits also an Information and Public Relation Officer (IPRO).
- vi) A need to adopt branding and visibility strategies. The Judiciary should have own logo (not sharing the same with Executive arm of the State); house-style of its publications; etc. The independence of Judiciary should be guaranteed, seen and practiced.

4.11 OTHER MISCELLANIES ISSUES

4.11.1 Observations on Investigation, Prosecution and Trials of Criminal Offences

The main procedural laws governing management of criminal offences are the Criminal Procedures Act of 2004 and the Evidence Act of 2016.²¹⁶ The disposition of the case has been delayed by, among other reasons discussed elsewhere in this report, investigation process. It has been a practice to engage judiciary process while the investigation is still ongoing. In this way, cases remain pending in court for a long time for investigation and prosecution to finalize their sides. On this, it is recommended that, cases should be channeled for judiciary attention after fully completion of investigations.

Secondly, there were some concern on ‘misunderstanding’ of standards needed in criminal justice between the investigators and prosecutors. Each side ‘blames’ the other for some reasons. For instance, the investigators claim that the case-files are returned to them on basis of incomplete evidence with clear guidance on what to beef up. On the other hand, the prosecutor claim that case-files presented to them are, sometimes, incomplete.

Suggestions

- i) The need for standardization of qualities between the investigators and the prosecutors.

²¹⁶ Act No. 9/2016.

- ii) The need for more knowledge of investigatory and prosecutorial skills. For instance, the police suggested to have ‘police science’ for every investigator and also the same (investigators) to attend diploma course on investigation offered at Kidatu Police College, Morogoro region. In this way, the investigators will sharpen their investigatory skills e.g. using problematic approach in interrogating the suspect or witness.

4.11.2 Zanzibar Law Reports

There are concerns that due to absence of well-documented judgments (of High Court as a court of records), the country misses precedents which reflect Zanzibar’s legal context. As a result, there are claims of inconsistency of judicial principles on same matters the judiciary has approached to adjudicate e.g. pertaining maintenance of the children.

Suggestions

- i) Re-publication of the Zanzibar Law Reports (ZLR) after being stalled since 1960s.²¹⁷
- ii) Presence of Law and Case Digests on various matters including gender-related cases. The Tanzania Association of Women Judges (TAWJA) and the UN Women could provide a support on this.
- iii) A need for budget lines within the Judiciary for preparation and publication of ZLR and the digests.
- iv) The need for hard and electronic copies (e-law reports) of the ZLR and the digest.
- v) The need for law report documentation and editorial committee(s).
- vi) The need for establishing Judiciary’s e-library where such law reports and electronic copies of laws, rules, regulations, law digests and all other relevant legal materials will be found. A specific IT specialist with legal background should be hired to manage this platform.

²¹⁷ The first (1st) ZLR was published in 1890 and the last one (8th) was published in 1963. Ever since, no any ZLR has been published for unknown justifications.

4.11.3 Law Review Commission of Zanzibar Act of 1986

The Law Review Commission of Zanzibar Act of 1986²¹⁸ establishes the Law Review Commission of Zanzibar (LRCZ).²¹⁹ Section 4 of the law provides for the function of this Commission which is generally to *'take and keep under review all laws of Zanzibar with the view to its systematic development and reform.'* Despite having this mandate, the LRCZ has itself failed to amend its own law, as it has remained in force for over 35 years. Apparent, it is very outdated piece of legislation. The geo-political and legal contexts have all changed over period of time as it is highlighted in part one of this report.

One of the areas of concern rose by the stakeholders on LRCZ is with regard to its inability to act on its own in a way that, there has been delay of reforming the laws where a need arises. A specific concern was made on the powers of this Commission. For instance, Section 7 requires the Commission to work under the directions (directives) of the Minister responsible with legal affairs and the A.G. However, it can take its own work pursuant to Section 9(1) of the said law.

As the Judiciary of Zanzibar and the legal sector in generally engage in some reforms as suggested in this and other reports, it is crucial that the mandates, powers and operations of the LRCZ be reviewed in order to aid necessarily legal reforms. This Commission should be facilitated to undertake periodical studies, make recommendations and follow-up of the implementation of its recommendations made.

²¹⁸ Act No. 16/1986.

²¹⁹ Under Section 3 of the Law Review Commission of Zanzibar Act of 1986.

5.1 CONCLUSION

This report has presented key findings, analysis and recommendations of the assessment survey which was conducted in March and April 2022 in Unguja and Pemba. The assessment mainly sought to identify gaps and needs in the Judiciary of Zanzibar for the purpose of coming up with specific recommendations that will kindle strategic reforms of the justice delivery system and access to justice in Zanzibar, particularly at the Judiciary level. At least 280 individual persons were consulted of whom 42% were females. Those consulted included the judiciary service workers, government officials, law enforcers, civil society organizations and the general public.

It is generally established that, the Zanzibar's legal sector, of which the Judiciary forms a large part of it, has been in constant reforms for so many years and that, there are a number of positive changes happening including enactment as well as amendment of several laws in support of civil, criminal and constitutional reforms. At institutional level, there has been a constant but unsystematic improvement of human resources especially on increase of all levels of the judiciary service workers. Currently, the judiciary has more than 470 workers, of whom, 13 are Judges of the High Court; 105 are judicial officers (including Magistrates and Kadhi); and, 363 are non-judicial officers. Females Judges; other judicial officers; and non-judicial officers are 31%, 37% and 45% respectively. For the first time in history of Judiciary of Zanzibar, 1 Judge is stationed in Pemba as in-charge of that side of the country. The public budget allocation to the Judiciary has increased from TZS 5,036,700,000 in 2014/2015 Financial Year (FY) to TZS 17,363,600,000 in 2022/2023 FY. The rate of disbursement of funds to the Judiciary is also fairly good (above 70%).

Despite such impressive improvements, the administration of this Judiciary is engulfed by a number of challenges main ones being insufficient funds to support its intended development; delayed increments of salaries and other entitlements; and, some weaknesses on its case management systems attributed to the use of manual services.

Going forward, the Judiciary of Zanzibar wishes to align its justice delivery services with the country's national development policies, particularly, the Zanzibar Development Vision 2050 e.g. on areas of improving the capacities and performance of its officers; digitalization of services; and, eventually swift delivery of services where the clients (litigants) will be highly satisfied and confident to seek legal redress through the judicial process. Moreover, the Judiciary of Zanzibar plans to associate itself with the international legal standards governing an administration of justice. The Judiciary will devise a Strategic Plan in order to systemize implementation of all these aspirations in a results-based approach.

5.2 GENERAL RECOMMENDATIONS

In order to address the identified challenges of the Judiciary of Zanzibar in performance of its mandate as bastion of justice, various specific recommendations for strategic reforms have been proposed in each section of this report. Below are general ones:

- i) It is of essence that Zanzibar justice system exhibits dynamism and changes for better so as to keep in touch with the needs of the society and contribute to the aspired economic development of the country by discharging its mandate effectively. In this regard, it is proposed that its Strategic Plan should align with the Zanzibar Development Vision 2050.
- ii) The Judiciary of Zanzibar should ensure efficiency and effectiveness of its interventions by complying with the principles of good governance such as transparency and accountability, adopting sound judicial managerial and administrative systems e.g. M&E mechanisms, digitalization of its operations (especially on case management), enhancing accessibility of its services and aligning to international human rights obligations.
- iii) Specialization or enhancement of skills for judicial officers is highly recommended e.g. understanding and acquiring the arbitration skills, maritime laws, tourism, blue economy, etc.
- iv) Remuneration of non-judicial staff and lowest cadre of judicial staff should be streamlined to remove the existing discrepancies.
- v) The use of Information Technology in justice delivery be given prominence at all levels to address the challenges brought about by manual case management system among others.²²⁰

220 Comprehensive adoption and institutionalization of ICT in case management system and judicial operations generally. This need a specific and sufficient budget line. The ICT should be designated as an independent division or department coordinated by the director and supporting units on (a) software development; (b) information security; and, (c) network plus business support.

- vi) Financing of the Judiciary should be relooked into to enable the Judiciary of Zanzibar enjoy financial guarantee in the implementation of the programs and activities which are usually budgeted for. The effective operationalization of the judiciary fund is highly recommended.
- vii) The need to relieve the High Court from being a court of original jurisdiction even for trivial matters. Instead, the judicial eco-system should be encouraged by creating or empowering lower courts especially on land, Kadhi, etc. matters. The High Court should remain to be an organ of highest level of specialty of critical matters only.
- viii) In the same vein, the need to embrace mechanisms of handling human rights cases e.g. establishing constitutional court and grounding the judiciary hierarchy to the grassroots e.g. establishment of lower Kadhi and land courts below district courts level and devising procedures of handling small claims.
- ix) The need to enhance further the capacities of the judiciary service officers through the induction training and continuous legal education programs. Moreover, the judiciary should have the capacity to produce homemade precedents and records e.g. ZLRs, Year Books, Legal Digests, scholarly researches, etc.
- x) Effective operationalization of disciplinary mechanisms for all judiciary service workers and the assessors. Also, convenient ways for the judiciary service users to lodge complaints against the conduct of such workers.
- xi) There is a need for holistic reforms of the entire legal sector that will also cover other actors who are involved in the administration of criminal and civil justice. This has reference to the Kadhi's courts, Police, Prison, Attorney General Chambers, Tax Tribunals, Land Tribunals, Law Review Commission of Zanzibar among others.
- xii) A need for Zanzibar to formulate and implement comprehensive legal sector policy framework e.g. to link justice delivery systems with national development strategy (at micro and macro levels).
- xiii) Implementation of all other specific recommendations (actions points) indicated in enclosed herewith as Annex II.

APPENDENCE

ANNEX I: REFERENCE MATERIALS

National Laws (Zanzibar and Other Jurisdictions)

- o Administration of the House of Representatives Act of 2019.
- o Advocates Act of 2020 (No. 1/2020).
- o Anti-Money Laundering and Proceeds of Crimes (Amendment) Act of 2022 (No. 1/2022).
- o Attorney General's Chambers (Discharge of Duties) Act of 2013 (No. 6/2013).
- o Basic Rights and Duties Enforcement Act, Cap. 4 (Tanzania Mainland).
- o Certain Leaders Retired Benefits Act of 2003 (Act No. 5/2003).
- o Children's Courts Rules of 2015. Zanzibar Government Gazette Vol. CXXIV No.6574 of 10/7/2015.
- o Civil Procedure Decree, Cap. 8.
- o Civil Resolution Tribunal Act, Cap. 25 (UK).
- o CJ's Circular No. 1/2018.
- o Code of Conduct for Court Broker and Process Servers of 2017. Mainland Tanzania.
- o Commission for Human Rights and Good Governance (Extension) Act of 2003 (No. 12/2003).
- o Commission for Human Rights and Good Governance Act of 2001. Mainland.
- o Constitution (Consequential, Transitional and Temporary Provisions) Act of 1984.
- o Constitution of the United Republic of Tanzania of 1977.
- o Constitution of Zanzibar (Amendment) Act of 1985 (Act No. 9/1985).
- o Constitution of Zanzibar of 1984.
- o Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules of 2017 (G.N. No. 363 of 2017). Mainland Tanzania.
- o Criminal Procedure Act of 2004. Repealed.
- o Criminal Procedure Act of 2018 (No. 7/2018).
- o Criminal Procedures (Amendment) Act of 2004 (No. 7/2004).
- o Election Act of 1984 (Act No. 11/1984). Repealed.
- o Establishment of the Office of Controller and Auditor-General Act of 2003 (Act No. 11/2003).

- o Establishment of the Office of Mufti Act of 2001 (No. 9/2001).
- o Establishment of the Zanzibar Electoral Commission Office of 2017 (No. 1/2017).
- o Evidence Act of 2016 (Act No. 9/2016).
- o Government Proceedings Act of 2010 (Act No. 3/2010).
- o Guidelines for the Court Broker and Process Servers of 2019. Mainland Tanzania.
- o High Court Act of 1985 (Act No. 2/1985).
- o Judiciary Administration Act of 2018 (Act No. 11/2018).
- o Kadhi's Court Act of 1985 (Act No. 3/1985). Repealed.
- o Kadhi's Court Act of 2017 (Act No. 9/2017).
- o Labour Relations Act of 2005 (Act No. 1/2005).
- o Land Tribunal (Amendment) Act of 2008 (No. 8/2008).
- o Land Tribunal Act of 1994 (Act No. 7/1994).
- o Law Review Commission of Zanzibar Act of 1986 (Act No. 16/1986).
- o Law School of Zanzibar Act of 2019 (No. 13/2019).
- o Legal Aid Act of 2018 (No. 13/2018).
- o Magistrates Courts Act of 1985 (Act No. 6/1985).
- o Offenders Education (Amendment) Act of 2007 (No. 3/2007).
- o Office of A.G Chambers (Discharge of Duties) Act of 2013 (No. 6/2013).
- o Office of Director of Public Prosecutions Act of 2010 (No. 2/2010).
- o Office of the Grand Mufti of Zanzibar of 2021 (No. 4/2021).
- o Penal (Amendment) Decree Act of 1985 (Act No. 10/1985).
- o Penal Act of 2018 (No. 6/2018).
- o Penal Decree (Amendment) Act of 1984 (Act No. 10/1984).
- o Penal Decree (Amendment) Act of 2004 (No. 6/2004).
- o Persons with Disabilities (Rights and Privileges) Act of 2006 (Act No. 9/2006).
- o Political Leaders Retirement Benefits Act of 2012 (Act No. 2/2012).
- o Presidential Affairs Act of 2020 (No. 3/2020).
- o Public Finance Management Act of 2016 (Act No. 12/2016).
- o Public Procurement and Disposal of Public Assets Act of 2016 (Act No. 11/2016).
- o Public Service Act of 2011 (Act No. 2/2011).
- o Records and Achieves Management Act of 2002 (Act No. 3/2002).
- o Road Transport Act of 2003 (Act No. 7/2003).
- o Sheriaya Mabadiliko ya Kumina Moja ya Katibaya Zanzibar ya 2016 (No. 8/2016).
- o Sheriaya Mabadilikoya Kumiya Katibaya Zanzibar ya 2010 (No. 9/2010).

- o SheriayaMabadilikoyaNaneKatikaKatibaya Zanzibar ya 2001 (No. 2/2001).
- o SheriayaMabadilikoya Tisa KatikaKatibaya Zanzibar ya 2002 (No. 8/2002).
- o Small Claim Act, Cap. 430 (UK).
- o Tax Revenue Appeals Act, Cap. 408. Mainland Tanzania.
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- o Zanzibar Anti-Corruption and Economic Crimes Act of 2012 (Act No. 1/2012).
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ANNEX II:

EVALUATION INTERVIEW GUIDE

NEEDS ASSESMENT SURVEY OF THE JUDICIARY OF ZANZIBAR

General Interview Guides of all Interviewees [For Qualitative Data Collection]

1. INTRODUCTION

As part of ensuring that there are advancements in the whole justice delivery system in and promotion of human rights, the Judiciary of Zanzibar has initiated the judicial reform processes. In order to have informed decisions on planning and implementation of the same, the Judiciary of Zanzibar in collaboration with the Tanzania Human Rights Defenders Coalition (THRDC) have hired the services of Prof. John Ruhangisa (Rtd. Judge of Tanzania) and Adv. Clarence Kipobota (Legal Consultant) to conduct an institutional appraisal of the said Judiciary. The duo will, holistically, assess the Judiciary of Zanzibar in terms of its structural arrangement and management e.g. human resources of the Judiciary of Zanzibar. Broad as it is, the evaluation will also consider the way in which the Judiciary operates in terms of delivering services to the service seekers as well as its collaboration with the other State and non-state stakeholders.

You are asked to participate in this process through interviews which the two experts are going to guide you.

Kindly note and be ensured that, your opinions, views, suggestion or any comment will be strictly confidential and that, there is no way that your name or position will be revealed to others during and after this assessment. As an interviewee, you have the right to withdraw from this consultation at any time.

An interview with you will take around 60 minutes. We will be writing and recording your responses. Where necessary, we will ask you to take some photos for internal use (record purposes).

1. INTERVIEWS – BROAD QUESTIONS

2.1 General Information: The Context

- a) Understanding about your institution, organization/ area? E.g. history, vision, mission, mandates, functions, governing laws, regulations, policies, etc.
- b) Situation on the ground? E.g. nature and types of civil and criminal matters, trends, attributing factors, etc.
- c) Overview of the progress or efforts to redress the adverse trends, if any?
- d) Geo-political situations generally.

2.2 Institutional and Operational Aspects

The ordinary institutional appraisal criteria have been used here. The broad questions to guide the discussion are indicated in the table below:

1	Relevancy/ Cohesion	Broad discussions on the Zanzibar's judicial system, structures, procedures and operations in terms of, inter alia: a) Overview of the structure of the Judiciary of Zanzibar – from lower to supreme level(s) plus other judicial organs e.g. on land, rent restriction, labour, fair competition, taxation, juvenile, Kadhi, etc. b) Overview of the systems e.g. internal policies, administrative organs, coordination, machineries available, etc. c) Overview of the operations (transaction of the judicial business) e.g. engagement with clients and other stakeholders. NOTE: These broad questions will be discussed further below under other evaluation components. d) Relevancy to international standards e.g. on judicial administration including independence of judiciary and its officers, security of tenure of Judges, etc. e) Relevancy to the national policy and legal frameworks e.g. investments, tourism, clove industry, etc.
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		f) Relevancy to the current contexts e.g. civil and criminal justice needs (field data to respond on this). g) Relevancy of the current judicial structure e.g. duality of ordinary and <i>Kadhi</i> court – areas for further improvements. h) Recommendations on relevancy/ cohesion of the judicial system, structure and operations.
2	Availability	Seek to understand (on judicial services): a) Physical availabilities of court premises in all administrative units e.g. districts of Unguja and Pemba. b) Alternative judicial services available in lieu of physical premises e.g. mobile courts. c) Accessibility of court buildings e.g. by PWDs. d) Accessibility of judicial services e.g. in terms of procedural requirements (technicalities); presence of specialized services e.g. sign language interpreters; etc.
3	Accessibility	e) Other barriers (social, environmental, institutional, etc.) which would hinder availability and accessibility of judicial services. f) Recommendations on viable ways of making the judicial services more available and accessible to everyone.
4	Affordability	Further to ‘accessibility’ inquire more on affordability of judicial-related services: a) Filing and other fee-structures e.g. by the judiciary, private advocates, etc. b) Presence of legal aid service schemes e.g. paralegals and <i>Vakils</i>. c) Presence of pro-bono service at trial level e.g. of capital offences. d) Waiver of filing fees in some instances. e) Waiver of monetary awards in some instances e.g. constitutional petitions. f) Recommendations on affordability of judicial services (ordinary and <i>Kadhi</i> courts).

5	User-ability/ Manageability	Ask whether the judicial services are friendly in terms of: - Technicalities e.g. requirements of pleadings, prescribed forms, etc. - Court rules and regulations. - Request for information and other services e.g. copies of judgments. - Lodging complains against - Feedback mechanisms from the ‘clients’ of the judiciary.
6	Innovation	Digging deeper on the question of relevancy. Interrogate more on: - Presence or use of ICT e.g. trial, e-library, e-documentation, etc. - Expedition of adjudication of some cases e.g. on tourism and investments – types of skills needed. - Need or presence of special divisions of the High Court e.g. on commercial or tourism (e.g. lesson from Singapore) or industrial divisions, etc. - Use of mobile courts. - Recommendations on innovations to be adopted in order to enhance judicial administration and operation generally.
7	Organization/ Effectiveness	Presence and gaps on: - Operational policies including on:- - Human resources. - Financial resources. - Use of ICT. - Gender/ diversity. - Resource mobilization. - Stakeholders’ engagement. - Code of conduct of judicial officers. - Clients’ service charter. - Skills development e.g. in-service trainings. - Strategic plans. - Researches and documentation systems. - M&E systems/ frameworks. - X

8	Efficiency, Effectiveness and Sustainability	Understanding and asking views on: a) Periodical appraisals/ goal setting including self-appraisal e.g. OPRAS model. b) Quantity of human resources e.g. Judges, Magistrates and administrators/ support staff. c) Quality of service deliverance: - Capacity building initiatives of all judicial officials e.g. training and continuous education. - Capacity development e.g. acquisition of specialized skills. d) Feedback mechanisms. e) Financing of Judiciary. f) Contents and application of specific law governing judicial administration e.g. appointments, retirement benefits, etc. g) Presence of disciplinary organs within the Judiciary. h) Reliability of services to all groups including the investors and tourists. i) Sustainability strategies in place e.g. of innovated initiatives.
9a	Adjudication, sentencing and incarceration	Trial of cases: a) Views on procedural laws (civil and criminal). b) ADR e.g. possibility of Civil Procedure Act to address issues on ADR if being amended? c) Establishment of mediation, reconciliation, arbitration, etc. outside the court/ judicial procedure? d) Affirmative measures e.g. rules on vulnerable groups. e) Witness protection. f) Court-prison arrangements of inmate transfer. g) Special tribunals on land, tax, tourism, clove, etc. h) <i>Kadhi</i>-normal court engagements. i) Minimum and alternative sentencing. j) Bail. k) Legal representation of capital offences. l) Legal aid services for the inmates. m) Appeal procedures.

		n) Judicial awards – reflecting the ability of a party to comply.²²¹ o) Challenges of handling and adjudicating sexual harassment related cases. p) Technicalities of delaying cases e.g. needed guideline on this.
9b	Kadhi's Courts	Inquire more deeply on Kadhi courts: a) Composition. b) Trail of cases – capacity gaps of Kadhi. c) Execution of its decisions. d) Guiding rules.
10	Collaboration	Inquiring 'how' and areas to improve on: a) Case management generally. b) Referral systems generally. c) Judiciary and <i>Vakils</i>. d) Judiciary and Paralegals. e) Judiciary and DDP/ State Attorneys. f) Judiciary and ZLS. g) Judiciary and Others. h) Presence of stakeholders' engagement strategy.
11	Gender/ diversity mainstreaming	Discussions on access to justice by vulnerable groups e.g. women, children and PWDs: a) Handling of juvenile cases. b) Barrier-free judicial environments for PWDs e.g. SLIs. c) Procedures of handling cases involving needy women, elderly, PWDs, etc. d) Gender/ diversity mainstreaming policy/ guidelines. e) Recommendations on gender mainstreaming into the judicial administration.

²²¹ Note: Possibility of adopting kind of 'search' of capacity of the party to pay (?) – how about this being used as a shadow to avoid liability (?).

12	Others	Miscellaneous issues: a) Conflict of laws generally e.g. custodian of children when Zanzibar and other jurisdiction are involved. b) Challenges of debt collections – perceived growing concern. Is it legally regulated? c) Small claims – handling mechanisms. d) Status of implementation of previous recommendations of the Study on Case Management System for Zanzibar (undated). e) Any other recommendations on the judicial administrations generally (institutional and operational sides).
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