



**A COMPENDIUM OF LAWS, REGULATIONS
AND POLICIES GOVERNING CIVIL SOCIETY
ORGANIZATIONS IN ZANZIBAR**

A Compendium of Laws, Regulations and Policies Governing Civil Society Organizations in Zanzibar

Writers:

1. Dr. Hashil T. Abdallah (Ph.D)
2. Dr. Ali Ahmed Uki (Ph.D)

Researchers:

1. Faraji Murshid Rushagama
2. Saphy Bullu

Reviewer:

Awadh Ali Said, Esq

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Contents:

Preface	vi
Acknowledgement	viii
Executive Summary	ix
Foreword.....	x
List of Acronyms and Abbreviations:.....	xi
List of Legal Instruments:	xiii
a. List of Constitutions	xiii
b. List of Legislations.....	xiii
c. List of Regulations.....	xiv
d. List of International Legal Instruments.....	xiv
e. List of International Resolutions.....	xv
f. List of Regional Legal Instruments (Africa).....	xv
g. List of Cases / Precedents.....	xvi
h. List of Reports.....	xvi
i. List of Policies.....	xvi
j. List of Visions.....	xvi
Chapter 1	1
General Introduction and Background Information.....	1
1.0 Introduction.....	1
1.1 Meaning.....	2
1.2 Genesis and Historical Background of Civil Society Organizations in Zanzibar	3
1.3 Categories of Civil Society Organizations in Zanzibar.....	5
1.4 Role Played by Civil Society Organizations on the Socio-Economic Development in Zanzibar.....	6
1.5 Nature and Salient Features of Civil Society Organizations in Zanzibar.....	7
1.6 Authenticity of Civil Society Organizations in Zanzibar.....	8
1.7 Answerability of Civil Society Organizations in Zanzibar	8
1.8 Intelligibility of Civil Society Organizations in Zanzibar	9

1.9	Values of Civil Society Organizations in Zanzibar.....	9
1.10	Monetary Values.....	9
1.11	Programs and Planning Standards.....	10
1.12	Governance Standards.....	10
1.13	Essence, Objectives, Rationale and Justifications of this Compendium.....	10
1.14	Objectives of the Compendium.....	11
1.15	Terms of Reference.....	12
1.16	Methodology of the work.....	13
1.17	Structure of the Compendium.....	13
1.18	Limitation.....	13

Chapter 2 14

The International And Regional Legal Framework Governing Civil Society Organisations In Zanzibar..... 14

2.0	Introduction.....	14
2.1	International Legal Framework.....	16
2.2	Universal Periodic Review (UPR).....	24
2.3	Participation on the UPR Sessions.....	25
2.4	Human Rights Complaint Methods.....	25
2.5	Protection of Civic Space at International Level.....	25
2.6	Regional Legal Structure.....	26
2.7	The African Charter on Human and People’s Rights of 1981.....	28
2.8	Human Rights Observer Status.....	30

Chapter 3 31

Legal Instruments Governing Non Governmental Organizations In Zanzibar31

3.0	Introduction.....	31
3.1	The Zanzibar Non-Governmental Organization Policy.....	31
3.2	The Growth of Non- Governmental Organizations in Zanzibar.....	32
3.3	Lack of Non Governmental Organization Policy.....	32
3.4	The Need of Having an Institution Responsible for Non-Governmental Organizations.....	33

3.5	Vision and Objectives of the Non-Governmental Organization Policy	34
3.6	Structure	35
3.7	The Legal Framework.....	36
3.8	The Partnership Between Government and Non-Governmental Organizations.....	36
3.9	Exchange of Information and Reporting.....	37
3.10	Accountability And Transparency	38
3.11	Policy Implementation	39
3.12	The Societies Act	39
3.13	Subsidiary LegislationS made under The Societies Act.....	40
3.14	The Zanzibar Business and Property Registration Agency.....	42
3.15	Basic Functions of the Business and Property Registration Agency.....	50
3.16	The Zanzibar Business and property registration Agency.....	54

Chapter 4 57

Laws Governing Information, Research And Publications In Zanzibar	57	
4.0	Introduction.....	57
4.1	The Universal Declaration of Human Rights	57
4.2	The Regional Instruments.....	59
4.3	The Constitution of the United Republic of Tanzania, 1977	60
4.4	Policies	61
4.5	Other Applicable Laws to the Media in Zanzibar.....	63

Chapter 5 70

Penal Laws And Civil Society Organizations In Zanzibar	70	
5.0.	Introduction.....	70
5.1	The Societies Act	70
5.2	Suits by Consent of the Attorney General.....	76
5.3	Criminal Proceedings Aagainst Civil Societies.	77
5.4	Place of Suit (Jurisdiction).....	78

Chapter 6 79

Other laws related to governance and operation of civil service organizations in Zanzibar.....	79
6.0 Introduction.....	79
6.1 Tax Laws.....	80
6.2 Labour Related Laws.....	83
6.3 Laws Related to Land Matters in Zanzibar.....	84

Chapter 7 88

The Legal and Regulatory Framework Governing other Civil Society Organizations.....	88
7.0 Introduction.....	88
7.1 The Domestic Legal Aid Framework.....	89
7.2 Constitutional Guarantee for Legal Aid Provisions:.....	89
7.3 The Zanzibar Law Society	91
7.4 The Trade Unions Act of Zanzibar:.....	93
7.5 International Instruments Recognising Trade Unions:.....	93
7.6 Domestic Laws:	95

Bibliography..... 103

A: Books :	103
B: Journals	103
C: Seminar Papers	103
D: Websites	104

Appendices 105

1. List of People Consulted.....	105
Organizations Policy 2009	106
2. About Writers : Dr. Hashil T Abdallah AND Dr. Ali Ahmed Uki.....	107
Dr. Hashil T Abdallah.....	107
Dr. Ali Ahmed Uki	107
3. About Researchers	108
Faraji Murshid Rushagama.....	108

Preface

The Tanzania Human Rights Defenders Coalition (THRDC) is honoured to coordinate the compilation of laws, policies and regulations governing CSOs in Tanzania in the form of a compendium. THRDC is the first and only Human Rights Defender organization which addresses rights of Human Rights Defenders (HRDs)/CSOs in specific and comprehensive ways. THRDC was established in 2012 specifically to address the rights of HRDs in Tanzania through advocacy, capacity building and protection of HRDs by providing legal aid and counselling.

Human Rights Defenders and the Civil Society sector have recently witnessed a bad trend in which their operational scope in the country has continued to shrink. There have been attempts to crack down Civil Society Organizations and creating environments not conducive for their work. One of the constraints is the fragmented and complicated legal and policy framework governing CSOs in the country. This makes it difficult for CSOs to comply as most of grass root CSOs' awareness is still low and there is not much awareness programs on the same.

Because of lack of awareness of the laws and regulations governing the sector, CSOs have found themselves in constant challenges. These challenges range from coordination, regulations (compliance issues), funding, and sustainability of the sector, harmonious working relationship, management and succession plans. Others are skewed accountability, reporting, lack of transparency and promotion of objectives contradicting government's policies rules and regulations.

Therefore, for the past five years, THRDC through its advocacy program has been working for the improvement of the legal and policy framework addressing HRDs as well as fostering solidarity among HRDs. The Coalition has conducted several programs on improvement of HRDs rights and widening of the civil society space. These programs have been conducted in the form of dialogues, meetings, trainings, round table discussions and sometimes engaging with the government in implementing issues affecting CSOs space.

The idea to have this compendium was suggested and endorsed on the 13th and 14th of October 2017 when Civil Society Organizations in Tanzania celebrated 30 years of operation. More than 70 Civil Society Organizations representatives from Tanzania Mainland and Zanzibar gathered at the Mount Meru Hotel, in Arusha for a two-day CSOs Self Reflection Meeting regarding three decades of operation. During this meeting, CSOs directors, veteran

CSOs directors, representatives from government, academicians and other stakeholders held a joint self-reflection session by setting aside time to quietly and honestly review the CSOs sector after 30 years of full operation.

During that meeting, various recommendations were made for the smooth operation of the sector. One of the recommendations was the need to compile a compendium of all laws, policies, regulations and rules governing the operations of the CSO sector in Tanzania. The THRDC has already developed a Compendium of Laws Governing CSOs in Tanzania mainland. Through the support of Sweden International Development Agency (SIDA) the Coalition engaged consultants for the development of this compendium which analyses and documents various laws governing CSOs in Zanzibar.

Sources and Methodology used in developing this compendium included thorough desk review of national, regional and international laws relevant to CSOs, formal and informal consultations with lawyers, leaders of prominent CSOs in Zanzibar, state officials, visiting important libraries including the Attorney General Chambers library and soliciting of inputs, ideas and improvements through stakeholders meetings.

This Compendium therefore consolidates CSOs laws in Zanzibar, regulations, policies, rules and highlights on international standards and commitments relevant to civil society. It is expected that the Compendium will be a useful tool for raising CSOs awareness on various aspects of the Legal Framework through which CSOs are registered and the operation guidelines they are required to comply with thus creating a vibrant, stronger, unified, coordinated and sustainable CSOs sector.

Acknowledgment

This is the first ever document containing all laws, regulations and policies governing Civil Society in Zanzibar. Prior to the publication of this document, the laws, regulations and policies regarding the formation of Civil Society were scattering in different government documents. It was not easy to collect and read them. The idea of preparation and publication of this Compendium was brought up by the Tanzania Human Rights Defenders (THRDC) and was well received by the Civil Society in Zanzibar.

In writing this technical work, the writers and researchers have in fact benefitted a lot from the intellectual contributions, experiences and observations of a number of people who have been approached for consultation in different ways. The list of the people who had been consulted is long but we must take this special opportunity to thank them for their efforts and encouragement in developing this work which was very involving and needed patience. However, we would like to mention Zanzibari Senior Advocate Awadh Ali Said, who took much of his precious time to review this work and give suggestions. We would also like to thank Mr. Onesmo Olengurumwa, the overall in charge of THRDC and his entire team for their moral and technical support.

We would also like to take this opportunity to thank all who had devoted their time in one way or another to give out their ideas and suggestions in shaping this important document for the present and future times. In the event of any technical mistakes, we would like to take this opportunity to make an apology in advance.

We would also like to take this opportunity to thank the Sweden International Development Agency (SIDA) for funding this mission and whose generous support helped and made it possible to publish this Compendium.

Executive Summary

This is the Compendium of laws, regulations and policies governing Civil Society in Zanzibar. The objective of this work was to collect all legislation, regulations and policies governing Civil Society in Zanzibar and put them together in a single document. This Compendium will help the people in Zanzibar and outside Zanzibar especially the key players in Civil Society to know and understand the rules of the game. The document will also stand as a reference materials for researchers.

In developing this work, the writers used purely doctrinal method. This has included reading and analysing legislation, regulations, policies, international conventions, books, journals and seminar papers. In addition, the writers got an opportunity to consult the key players of Civil Society in Zanzibar with the main purpose of getting their practical experiences, observations and contributions towards development of this document.

This Compendium has seven chapters. Each chapter stands on its own. The first chapter focus on general introduction and background information. The second chapter concentrates on international and regional legal framework governing Civil Society in Zanzibar. Chapter three explains about legal instruments governing Civil Society in Zanzibar. The fourth chapter is about laws governing information, research and publications in Zanzibar.

Chapter five explains on Penal Laws and Civil Society in Zanzibar. Chapters six and seven respectively focus on other laws related to governance and operation of Civil Society in Zanzibar and the Legal and Regulatory Framework governing other Civil Society.

Prior to the publication of this Compendium, there was a yawning gap of knowledge and information about laws, regulations and policies governing Civil Society in Zanzibar. However, the gap has been filled by providing this Compendium which will serve as a source of information and documentation of the laws, regulations and policies governing Civil Society in Zanzibar. It is our expectations that disputes and confrontations between Civil Society and law enforcers will be minimised keeping in mind that ignorance of law is not an excuse.

Foreword

I am very grateful to get this opportunity to write the foreword of this Compendium of Zanzibar's policies, applicable laws and regulations in respect to operation of Civil Society Organizations. When I was invited to write foreword of this Compendium, I have without the slightest hesitation accepted to do it for the two main reasons. Firstly, the authors of this Compendium - Dr. Ali Uki and Dr. Hashil Abdalla were my best law students in the undergraduate programme in the Faculty of Law at the Zanzibar University (ZU). Fortunately, both of them have opted to work as academicians. They have taken serious self-advancement efforts to attain the qualifications of Doctorate in Law. Dr. Uki is now teaching law at ZU and was for the last six years consecutively, from 2012, working with the Law Review Commission of Zanzibar as a Commissioner. He was appointed by the President of Zanzibar, Dr. Ali Mohamed Shein. On his part, Dr. Hashil is now teaching law in the Faculty of Law at the Open University of Tanzania (OUT) and published several law articles.

Secondly, this Compendium is the first fundamental document putting together all the applicable laws in respect to CSOs in Zanzibar. This document shall, without any form of shadow of doubt, add the number to the collection of local legal literature. I am sure this document shall primarily be used as one of the main references to law and non-law students. In Zanzibar, we are short of locally developed scholarly works. As a result, we are lagging behind and entirely depending on external reading materials which I must admit that they lack the Zanzibar flavor. Since the operation of CSOs during pre-revolution and post revolution era, a number of laws with regards to CSOs were enacted by the respective law making bodies (legislature) of the time. The fact remains that the legislation in connection to CSOs are many as listed in this Compendium. It is extremely difficult task not only to CSOs members but even to lawyers, members of the bar and members of the bench to get sufficient time to make a thorough legal research work of all the applicable laws in respect to CSOs. I found time to get a bird's view of the chapters. They are well structured and focused. They provide sufficient light to the laws in respect to the CSOs. Finally, I do understand from the outset that this work was done in consideration of the terms of reference. I have, however, noted that there is a legal gap that needs to be addressed. The authors have reviewed the laws to CSOs and made a compilation of the laws. That is not enough. There is a need to make a deep analysis of the CSOs laws and if possible propose the way forward. I would like to congratulate the authors for a job well done.

Judge Mshibe Ali Bakar,

Chairman of the Law Review Commission of Zanzibar,
Zanzibar.

List of Acronyms and Abbreviations:

ACHPR	African Charter on Human and Peoples' Rights
ANGOZA	Association of Non-Governmental Organization of Zanzibar
AU	African Union
CAT	Committee Against Torture/ Court of Appeal of Tanzania
CBO	Community Based Organization
CD	Compact Disk
HC	High Court of Tanzania
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIVICUS	is the Global Network dedicated to enhancing the Rights, Freedom, Health and Vitality of Civil Society in general.
CMW	Committee on Migrant Workers
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSO	Civil Society Organization
DAZ	Diabetes Association in Zanzibar
DPP	Director of Public Prosecutions
DR	Doctor
DVD	Digital Versatile Disk
ECOSOC	Economic and Social Council
ESRF	Economic and Social Research Foundation
EU	European Union
FBO	Faith Based Organization
HDV	High Definition Video
HIV/AIDS	Human Immunodeficiency Viruses/Acquired Immunodeficiency Syndrome
HRD	Human Rights Defenders

IBID/IBIDEUM	(in the same place-used in foot note)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
NGO	Non Governmental Organization
NHRIs	National Human Rights Institutions (NHRIs)
NUTA	National Union of Tanganyika Association
NO	Number
OAU	Organization of African Union
UNHCR	Office of the United Nations High Commissioner for Human Rights
OP-CAT	Optional Protocol to the Convention against Torture
OUT	Open University of Tanzania
REPOA	Research on Poverty Alleviation
SPT	Subcommittee on Prevention of Torture
THRDC	The Tanzania Human Rights Defenders Coalition.
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
VAT	Value Added Tax
ZAMELSO	Zanzibar Association for Medical Laboratory Scientific Officers,
ZANA	Zanzibar Nurses Association
ZAPHA+	Zanzibar Association of People with HIV/ AIDS
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre

List of Legal Instruments:

a. List of Constitutions:

The Constitution of the United Republic of Tanzania of 1977

The Constitution of Zanzibar of 1984

b. List of Legislations:

The Acquisition of Land (Assessment of Compensation) Decree of 1949

The Arbitration Decree Chapter 25 of the Laws of Zanzibar

The Broadcasting Commission, Zanzibar (Act No. 7 of 1997)

The Censorship and Cinematographic Exhibition, Zanzibar (Act No. 1 of 2009)

The Children's Act (Act No 6 of 2011)

The Constitution Decree No. 10 of 1963.

The Cooperative Society Act, (Act No.4, of 1986)

The Criminal Procedure Act, Zanzibar (Act No. 7 of 2018)

The National Arts Council Act, Zanzibar (Act No.6 of 1983)

The Education Act, Zanzibar (Act No. 6 of 1982)

The Elections Act, Zanzibar, 2018 (Act No 4 of 2018)

The Electoral Law of the Legislative Council, 1957 (Chapter 89)

The Employment Act (Act No. 11 of 2005)

The Exercise Duty Act (Act No. 8 of 2017)

The Hotel Levy Act (Act No. 1 of 1995)

The House of Representatives (Immunities, Powers and Privileges (Act No 4 of 2007)

The Zanzibar Investment Promotion Act (Act No. 11 of 2004)

The Labor Relations Act (Act No. I of 2005)

The Land Acquisition Decree Zanzibar of 1964

The Land Transfer Act of 1994

The Land Tenure Act (Act No. 12 of 1992)

The Legal Practitioners Decree, (Chapter 28) of the Laws of Zanzibar

The National Security Act (Act No. 3 of 1970)

The Nationality Law of 1952 (Chapter 39)
The Office of The Chief Government Statistician, Zanzibar (Act No. 7 of 2007)
The Penal Act of Zanzibar, Act No. 6 of 2018
The Petroleum Levy Act (Act No. 7 of 2001)
The Political Parties Act (Act No.5 of 1992)
The Port Service Charge Act (Act No. 2 of 1999)
The Preventive Detention Decree of 1964
The Public Enterprises Decree (No.4 of 1978)
The Registration of News Agents, Newspapers and Books Act (Act No. 5 of 1988)
The Registration Law of 1954 (Chapter 42)
The Registration Voluntary Law, (Act No. 2, 1963)
The Zanzibar Revenue Board Act, Zanzibar (Act No. 7 of 1996)
The Societies Act, Zanzibar (Act No. 6 of 1995)
The Stamp Duty Act (Act No 6 of 1996)
The Tax Administration and Procedures Act, (Act No. 7 of 2009), Revised 2013
The Town and Country Planning Decree, of Zanzibar of 1955
The Trade Union Act (Act No. 4 of 2001)
The Value Added Tax Act (Act No. 4 of 1998)
The Zanzibar Industrial Court Act (Act No 2 of 1994)
Acts of the Union of 1964

c. List of Regulations

The Anti-Sexual Harassment and Anti Gender Discrimination Regulations of 2013.
The Societies Rules of 1995.

d. List of International Legal Instruments:

The Convention Number 87 of 1948 on Freedom of Association.
The ILO Convention 98 Right to Organize and Collective Bargaining Convention, 1949.
The UN adopted a landmark resolution on Protection of Women Human Rights Defenders adopted on 29/11/2013.
The ILO Conventions number 87 of 1948 on Freedom of Association bears duty to safeguard the workers' rights to freedom of association.
The International Montevideo Convention of 1933.

The International Covenant on Civil and Political Rights of 1966.

The Universal Declaration of Human Rights of 1948.

The United Nations Charter of 1945.

The Vienna Convention on the Law of Treaties 1969.

e. List of International Resolutions:

The UN General Assembly Resolution 217 A (III) of 10 December, 1948 Text: UN Document A/810, p. 71 (1948).

The UN Charter and the ECOSOC Resolution 1996/31.

The General Assembly Resolution 48/141 of 20 December, 1993.

The General Assembly Resolution 60/251.

The 2005 World Summit Outcome Document (General Assembly Resolution 60/1 of 16 September 2005).

The UN General Assembly Resolution 13 (I) of 1946).

f. List of Regional Legal Instruments (Africa):

AU (2016) Guidelines For The Submission Of Communications Organization Of African Unity Fact Sheet No. 2.

AU Constitutive Act, OAU Doc. CAB/LEG/23.15 (2001).

OAU: African Commission 'Resolution on the Criteria for the Granting and Maintaining of Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa' adopted at 59th Ordinary Session Held from 21 October-4 November 2017 in Banjul, The Gambia, (Preambles paragraphs 8 & 9.)

OAU: African Commission on Human and Peoples Rights: Information Sheet No. 3.

Statutes of the Economic, Social and Cultural Council of the African Union (2004) .

The African Charter on Human and People's Rights of 1986.

g. List of Cases / Precedents:

Attorney General for Canada v. Attorney General for Ontario [1937] A.C. 326.

Emmanuel Marangakise v. The Administrator General; Civil Case Number 1 of 2011, (HC) Dar Es Salaam (Unreported)

Gharib Abdallah Juma v. Kay Mlinga; Civil Appeal Number 10 of 2001; (CA) (Unreported)

Mtumwa Saidi Haji and 49 Others v. The Attorney General. Civil Case No. 2 of 1995, High Court of Tanzania at Dar es Salaam, (Unreported).

Rev. Christopher Mtikila v. The Attorney General (1995) TLR 31.

The School of St. Jude Ltd v. The Commissioner General; Tanzania Revenue Authority, Appeal No 21 of 2018 (CA) At Dodoma (Unreported)

h. List of Reports:

Shire Hassan (Undated) Good Practices for CSOs Participation at The African Commission on Human and People's Rights. .

The Centre for Civil and Political Rights (2010) UN Human Rights Committee. Participation in the Reporting Process, Guidelines for Non-Governmental Organizations (NGOs).

The Guide for NGO Reporting to the Committee of the Rights of the Child (CRC).

The National Population and Housing Census, 2012.

The Nyalali Commission Report, 1991.

The Public Guidelines of the Foreign Ministry of Finland on the Implementation of the European Union Guidelines on Human Rights Defenders 2015.

The Reports of the Human Rights Council and Commission on the Status of Women. The Tanzania Human Rights Report 2007. (Incorporating Specific Part on Zanzibar.)

THRDC Report on the Situation of Human Rights Defenders of 2017.

i. List of Policies:

The Zanzibar Broadcasting Policy of 2008.

The Zanzibar Good Governance Policy of 2011.

The Zanzibar Information Policy of 2006.

The Zanzibar NGO Policy of 2009.

j. List of Visions:

The Zanzibar Development Vision (Vision 2020)

Chapter 1

General Introduction and Background Information

1.0 Introduction

Thoughts and contemplations on dealing with Civil Societies are not new. The issues have been multi-sectorally argued differently from different Philosophies, Political, Sociology and Social Theory for hundreds of years. Some elites are of the views that the core of the Civil Societies ideas is that individuals are prepared to associate with each other and to subject themselves to the Authority of that Society in the pursuit of achievements of a form of equality based on the systematic reciprocity of strangers.¹ It is argued by different International and Local Scholars that Civil Societies have been a core of Social Theory for centuries and an escape from cruder hierarchical states of nature and achievement of social order as an antidote to uncertainty and insecurity². The emphasis on knowledge has largely been lost in current discussions.³ While it is maintained that thoughts and contemplations on Civil Societies are not new, it has been established that what is new is the increasing emphasis on the concept recently.⁴ Therefore, 'Civil Society' has become a slogan within national and international development.⁵

While there has been a great heap of literature on Civil Societies in International Development, there is a remarkably little systematic work on the existing laws governing and dealing with Civil Society Organizations (hereinafter to be referred to as CSOs), generally and particularly in Zanzibar (composed of Unguja and Pemba islands) which is an integral part of the United Republic of Tanzania. Therefore, this Compendium will stand out as a point of reference on laws, regulations and policies governing CSOs in Zanzibar.

1 Gordon, S. The Impact of Multinationals on the Thickening of Civil Society: Current Development in the Economy of China, article in Peter, B and Ann B; (1998) (Editor) Business and Democracy: Cohabitation or Contradictions?, Continuum Publishers, London at p. 93.

2 Ibid, quoting Locke's treatise on Civil Government.

3 For leading thinkers, from Aristotle, Hobbes and Locke through to Rousseau, Tocqueville and Gellner,

4 Amy Pollard and Julius Court, How Civil Society Organizations Use Evidence to Influence Policy Processes: A literature review, Working Paper 249, How, July 2005, Overseas Development Institute 111 Westminster Bridge Road, London, SE1 7JD.

5 Ibid, for example, this is not a surprise, since the sector has seen unprecedented growth. CSOs in Ghana, Zimbabwe and Kenya now provide 40% of all healthcare and education; networks such as Sarvodaya in Sri Lanka provide services to 7,000 villages (Edwards, 2004). Bolivia saw the number of registered NGOs rise from 100 in 1980 to over 1,000 in 1999 (Kohl, 2002). It is said that NGOs reach 15–20% of the world's poor (Fowler, 2000). Development NGOs have an annual global budget of some US\$5.5bn. Unsurprisingly, they have attracted increasing policy and research attention.

Certainly, being the first Chapter to this Compendium, this Chapter has been dedicated for expounding the fundamental facts on CSOs in Zanzibar. It provides for general understanding, meaning, categories, nature and historical perspectives of CSOs in Zanzibar. Furthermore, albeit briefly, it provides the rationale behind and justifications towards development of this Compendium. To make proper thread on presentations, this Chapter will also describe briefly on Legitimacy, Accountability, and Transparency of CSOs, together with their Financial, Programmatic and Governance Standards. The main gist is to equip the reader with a general understanding on recognized standards of CSOs operations in Zanzibar.

1.1 Meaning

There are several attempts in place to define what exactly is meant by the phrase Civil Societies and Civil Society Organizations. According to CIVICUS⁶ the phrase Civil Society Organizations is defined to mean “an arena outside of the family, the state, and the market which is created by individual and collective actions, organizations and institutions to advance shared interests”. Reading between lines from this definition one may come to the conclusion that CSOs includes Non- Governmental Organizations, Societies, and Cooperatives, Community Based Organizations, Faith Based Organizations, Trade Unions and informal groups (those without constitutions).⁷

Furthermore, The European Union (EU) defines the phrase CSOs to mean any non-state, not-for-profit, non-partisan and non-violent organizations that are active in political, cultural, social or economic areas.⁸ From this EU constructive and connotative meaning of the CSOs some scholars have come to the conclusion that the Non-Governmental Profit Making Organizations (NGO’s) are the ones which have taken over the direct and straight meaning of CSO as per the EU interpretation.⁹

In the mainland Tanzania, the phrase NGO attracts both policy and statutory attentions. Therefore, NGO as a term, it is defined to mean nothing than thea voluntary grouping of individuals or organizations which is autonomous, non-partisan, non-profit making. It is organized locally at the grassroots, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment, lobbying or advocating on issues of public interests of a group of individuals or organizations. This also includes a Non-Governmental Organization, established under the auspices of any religious organization or faith based organization.;

6 CIVICUS is the global network dedicated to enhancing the rights, freedom, health and vitality of civil society as a whole, See <https://www.civicus.org>, (Accessed on 28/9/2018).

7 Ibid.

8 https://eeas.europa.eu/sites/eeas/files/20160411_02_en.pdf, (Accessed on 25/9/2018).

9 Mogella, C; Policy Dialogue Seminar on: 'Is there a Gap between Policy Makers and CSOs'; A paper presented at the ESRF policy Dialogue Seminar University of Dar Es Salaam; 2007.

In Zanzibar, according to the Second Chapter of the Zanzibar NGOs Policy¹⁰, the phrase NGO is construed to mean a non-governmental organization or a voluntary and unprofitable organized group, associations, institutions or community based unions that are mainly established and registered for social, economic, cultural or environmental development. The definition does not include the political parties, trade unions, cooperative unions, company, religious sects or any private organization that provides social services such as social clubs or entertainments. The piece of legislation dealing with NGOs in Zanzibar does not provide statutory definition of an NGO.¹¹ For the purposes of this Compendium, the definition of NGO as provided for under the Zanzibar NGO Policy will be used and acted upon mutatis mutandis so as to connote what CSO is. Meaning that the definition of NGO will be used synonymously to refer CSO in the context of this Compendium only.

1.2 Genesis and Historical Background of CSOs in Zanzibar

The evolution of CSOs in Zanzibar has a long history. Evolution of the CSOs in Tanzania and Zanzibar is a biblical phenomenon. They are said to be as old as colonialism in Africa. As the CSOs have a root to the rise of colonial civic movement, a number of social movements, cut across linguistic and ethnic lines and thus did to sports clubs and dance societies¹². The Africans were barred from joining these societies by the colonialists for fear of political activities as they developed a well-organized network with branches in all major towns¹³. Along with that, urban migrants also formed ethnic associations to endow with them communal services and loans.¹⁴ Other CSOs continued to be established for political view such as labor association, which as well established different branches and were successful.¹⁵ By 1965, CSOs were absorbed with trade unions into the Ruling Party following the transition of Tanzania into One Party State¹⁶. The suppression of the Civil Society Associations arose after the Tanganyika Independence where such Societies started to go against the New Government. This state of conflict is said to have caused some Federations to be replaced with others, which could be controlled under the single party system.

It is stated that Tanganyika Federation of Labor was banned and replaced by the Trade Union going by the name of National Union of Tanganyika Workers (NUTA)¹⁷. Some other

10 Zanzibar NGO Policy 2009.

11 The Zanzibar Societies Act No. 6 of 1995.

12 Lange,S; Et al; (2000) Civil Society in Tanzania, Chr. Michelson Institute, Bergen, Norway.

13 Ibid.

14 Ibid.

15 Ibid.

16 Manara, K; (2012), The instrumental versus the Symbolic: Investigating members' Participation in Civil Society Networks in Tanzania; Special Paper 12/2 REPOA Dar Es Salaam.

17 Ibid Langes, S.

associations were formed while others appearing to be with ethical queries were banned. The bureaucratized politics of Tanzania eroded enthusiastic development and growth of the autonomous CSOs¹⁸. The categorical disasters, which entangled Tanzania in 1970s such as collapse of the East African Community, the Kagera War, World Oil Shock, led the State into bankruptcy and poverty to its people.¹⁹ The Government, therefore, had to start a reform of political, economic and social reform hence new liberal policies, which started with creation of CSOs with different routes. Other literature state that for the case of Tanzania, the historical development of Civil Societies reflects the changing social, economic and political environment that has taken place from the colonial period to the present day.²⁰ It is however important to note that during the colonial period the emergence and formation of the civil society/NGOs was influenced by an attempt by the colonial masters to engineer significant changes in the economic roles of their colonies while exerting control over social and political processes in the colonies.²¹

Following the donor community service need in 1980s, the NGOs were encouraged whereby they could be tools in which the sponsors could channel through their aids without bureaucracies.. It was believed that NGOs were less corrupt and operated closely with the poor. It was there from, the government is said to use regional officials to secure some control over them.²² The NGOs were so growing on the concern of the donors to assist the society in different ways.

In 1990s, the transition period of political parties from single to multiparty system, also stimulated the CSOs more freedom while donors driven policies stimulating their roles hence government holding them close since then.²³ From the above, it is seen that NGOs also mushroomed into networks. A network has been differently scholarly defined. Lambright et al²⁴ defines a network as structures of independence involving multiple organizations. They are governance mechanisms for those organizations that belong to it²⁵. However, an organization is also considered a network by itself basing on pure structural perspective of the CSOs on authenticity, answerability, intelligibility, monetary yardstick, Programmatic standards and control values.

18 Ibid Manara; K..

19 Ibid.

20 Kiondo, A. & Mtatifikolo, F. (1999). *Developing and Sustaining NGOs in Tanzania: Challenges and Opportunities in the New Millennium*. Dar es Salaam: Political Science and Economics Department, University of Dar es Salaam.

21 Ibid.

22 Ibid Langes; S.

23 MacQuinn, M; (2011) *The Re creation of Civil Society in Tanzania by Western Donors following the end of the Nyerere Regime: How NGOs have come to Rule the Roost AND Indigenous forms of Associational Life have been Marginalised*: A paper presented at ECAS-4, Uppsala, Sweden 15 to 18 June 2011.

24 Lambright, K. et al (2010) 'Building trust in public and Non Profit Networks: Personal Dyadic and third party influences' In the *American Review of Public Administration*, Volume 40(1), 64-82.

25 Kimberley, I; (2005); 'A model of Operational Inter-organizational Network Formation,' A paper presented at the National Public Management Research Conference, Los Angeles, California; 30th September, 2005.

In Zanzibar, the history of CSOs can be traced way back before the 1964 Revolution that toppled down the Sultanate oligarch as well before colonialism. For the purpose of this Compendium, the history of Zanzibar CSO is explained five years before the enactment of the Societies Act of 1995.²⁶ Some writers had established that CSOs in Zanzibar had mushroomed and formed into networks in 1990s but they have not been able to influence the policy decision yet.²⁷ The said networks are categorized as vertical, horizontal and village networks. They are village networks in the sense that they are available at the village levels and operate most often seasonally. They contribute labor and time to each other rather than monetary fee.²⁸ Those considered horizontal are so in the sense that they enjoy social communication and desire to serve the community but they rely on an un-formalized system of governance²⁹. Those networks with formalized governance structure are known as vertical networks. They thus have structured office bearers, written regulations and mission statements. They further enjoy decentralized systems of decision-making; sustainability and ownership of such networks have no decentralized systems of decision-making.³⁰ It was in 1995 when the House of Representatives of Zanzibar enacted a specific law to regulate the affairs and conducts of CSOs in Zanzibar.³¹

1.3 Categories of CSOs in Zanzibar

As it is in other parts of the world, CSOs are established for free cooperating individuals of institutions which lie between individuals and the states, equally, their establishment and operational terms differ depending of the functions thought of by the establishers.³² Basing on that proposition, as clearly stated above, there have been different attempts and definitions, which have been proclaimed for the phrase CSO as well as NGO. Considering the Zanzibar legal system and the CSOs legal framework, CSOs that encompasses a number of groups outside government-based entities, from the above meaning of the CSOs, definitions or meanings supplied to it, the CSOs can be membership based organizations, Trusts, NGOs and CBOs; Voluntary and self-help groups, community based groups and societies; Social movements and networks of organizations, professional associations, foundations and non-profit companies; faith based organizations; research institutes working in economic and policy analysis; and Non-profit Media Organizations. As seen from various perspectives

26 Zanzibar Societies Act, 1995.

27 Alloo; F.(2000) Tanzania Networks and the Vulnerable; The Role of Civil Society (In Selected Studies of Civil Society in Tanzania: Policy, Social Capital and Networks of the Vulnerable, FID).

28 Ibid.

29 Ibid.

30 Ibid.

31 NGOs in Zanzibar are registered under the Societies Act No. 6 of 1995.

32 Op cit Gordon.

that the nature and category differs depending on the need objectives and perhaps the laws under which the entity is to be registered, there are some CSOs whose registration are exempted from the Societies Act.³³

Relying on to the above categories of the CSOs of every kind which may rise and get registered in Zanzibar, the Societies Act³⁴ under section 2(1) ³⁵ of the Act³⁶ a number of CSOs are not subject to this Law. According to the stated provision, exempted entities which this Act does not apply include Political Party registered under the Political Parties Act³⁷ company to which Companies Decree,³⁸ applies; public enterprise constituted under the Public Enterprises Decree³⁹ and registered trade union to which trade unions legislation for the time being in force applies. Others are firms or partnerships formed and maintained for the sole purpose of carrying on any lawful business, cooperative society to which Cooperative Society Act,⁴⁰ applies, school registered under the Education Act,⁴¹ cultural, athletic, sports; or similar group registered under the National Arts Council Act,⁴² international organization of which the United Republic of Tanzania or where appropriate, the Government of Zanzibar is a member or has allowed the conduct of its activities in Zanzibar and any branch, section or organ of such organization and any combination or association which the Minister may declare not to be a society for the purpose of this Act.⁴³

This Compendium touches exemplified entities and laws governing them as it is going to be witnessed in the next chapters. The said entities fall in different categories of CSOs as it shall as well be noticed.

1.4 Role played by CSOs on the Socio-Economic Developments in Zanzibar

Roles played by CSOs are different depending on the objectives with which an NGO was established for. Notwithstanding their different objectives, CSOs/NGOs have a number of roles but all inclined on Social-Economic and community awareness empowerment. Following that end, roles played by the Zanzibar Legal Services Centre may not necessarily be similar to the Zanzibar Law Society and many others. Although some services or roles are

33 Op cit.

34 Act No 6 of 1995

35 Op cit.

36 Act No 6 of 1995

37 Act No.5 of 1992

38 Zanzibar Decree Cap. 153

39 Zanzibar Decree No. 4 of 1978

40 Act No.4, of 1986

41 Act No. 6 of 1982

42 Act No.6 of 1983.

43Act No 6 of 1995

not directly connected to the economic activities, they establish essential environments with which one can participate effectively or responsibly in production. Say the legal aid service, to enable one to quickly obtain his rights, litigation supports, activate the government services and responsibilities, and contribute indirectly to the production services.⁴⁴ Furthermore there are specific CSOs dealing with health issues only.

Further, the CSOs which directly provide services such as production education/training or seminars services also contribute indirectly in such social economic services, land use and planning for rising its value and get used as securities for loans and so on; have as well indirect and in the other hand direct social economic roles as some are performed and or enabled by the CSOs⁴⁵. Therefore; only to say, the roles by the CSOs in social economic in Zanzibar shall much depend on the nature of the established NGO and the reasons thereto for their establishment.

1.5 Nature and Salient Features of CSOs

It is important to note that all NGOs are CSOs but not all CSOs are NGOs in the eyes of the Laws establishing each entity.⁴⁶ It is therefore worth to note here that the CSOs should have specific and distinguishable characteristics, which differentiate them from other organizations or other registered private entities. . From the definition, which has been adopted by this Compendium as provided for under Chapter two, is in relation to the only and therefore characteristics taken pursuant to the Zanzibar NGOs Policy.⁴⁷ The following may be grouped and stated as salient features for any CSO in Zanzibar. The NGO according to paragraph 2.2 of the Policy, distinguishes the NGO from other entities by characteristics which are:

- i. Structure which must be well established and abide by the due procedures proved for under the law;
- ii. Voluntariness whereby an NGO must be formed freely, willingly, and spontaneously by individuals, groups of people or organisations with an element of voluntary participation,
- iii. Autonomous to the effect that the NGOs must operate according to the municipal laws and within their established objectives as stated in their respective constitutions

44 Op cit Gordon

45 A good example in Zanzibar is the Zanzibar Legal Service Centre and Zanzibar Law Society dealing with legal services, seminars and sometimes trainings.

46 It should therefore be noted that before registration of the NGO/CSO, its constitution in which objectives are set out is submitted to the registrar along with other required instruments so as to assess them. Once they don't qualify therefore a CSO cannot be registered. And once they qualify and the CSO is registered, if it operates against them then it raises legal queries which may as well jeopardises its operation.

47 The Zanzibar NGOs Policy of 2009

or any other laws and regulations.

- iv. Not for profit making in the sense that NGOs must not function in the manner which suggest that they are geared towards making profit as for any profit or benefit accrued are not for personal or private gain by members or leaders but for the purposes of fulfilling the mission and objectives of the organisation.
- v. No political affiliation as the NGOs must not target political empowerment or assisting any political party but they can lobby and advocate for issues of human rights and fundamental freedoms of the people.

1.6 Authenticity of Zanzibar CSOs

One of the roles of CSOs in the country is to demand authenticity or accountability and expose abuse of power by public officials. In exercising this duty, CSOs face critical challenges which include hatred and personal attacks to individuals, directly and/or indirectly. Some politicians have developed negative attitude towards CSOs. Politicians usually refer to CSO member as activists, “wanaharakati,” in a mockery manner, to water down their reliable information and views. For instance, during one parliamentary session, one legislator was quoted as saying that:

‘The legitimacy of a Civil Society Organization can be defined as the perception by other stakeholders of a CSO’s actions as being “justifiable and appropriate.’⁴⁸

Legitimacy needs to be distinguished from ‘representativeness,’ with which an organization can be deemed legitimate enough to speak about an issue without necessarily being elected or appointed as a representative. Legitimacy is mainly derived from a CSOs’ compliance with the laws of the land in terms of registration or incorporation and living up to its embedded ideals and objectives. Transparency refers to the level of openness and the disclosure and dissemination of information concerning a CSO’s values, processes and procedures.⁴⁹

1.7 Answerability of Zanzibar CSOs

Answerability means accountability of the CSOs, i.e the CSOs’ willingness and its ability to answer and take responsibility for its actions, activities and messages. It also indicates the justification for each of the CSO’s activities and communications to all stakeholders. Four levels of CSO accountability have been defined; each one is based on the different

48 David L. Brown, Jagadananda, (2007) “Civil Society Legitimacy and Accountability: Issues and Challenges”, Scoping Paper, Hauser Center and CIVICUS, p. 43.

49 Naidoo, K (2004) “The End of Blind Faith? Civil Society and the Challenge of Accountability, Legitimacy and Transparency”, Accountability Forum 2, p.14-25; CIVICUS (2010). Turning Principles into Practice – A guide to Legitimacy, Transparency and Accountability, p. 44.

stakeholders to whom a CSO must be accountable: upward to donors and regulators; downward to beneficiaries; outward to peers, members and partners; and inward accountability to staff, board and volunteers.⁵⁰

1.8 Intelligibility of Zanzibar CSOs

Intelligibility of the CSOs means that when decisions are made, they are made in a way that those involved observe the rule of law and the regulations that are put in place to regulate such processes. In addition, those who are to be affected by decisions need to be kept fully informed. Furthermore, such information on decision making process needs to be easy to be understood by all parties concerned.

1.9 Values of Zanzibar CSOs

Values are standards, which are specific norms or models, which serve as guidelines to attain a set of principles and a means to measure how well they are being accomplished.⁵¹ They can be considered as the actual actions, which need to be undertaken in order to fulfill the principles of accountability and transparency. Standards are very often introduced through a breakdown of key dimensions that need to be addressed. Typically, standards will address three main domains: the CSOs' financial practices, its programmatic work and its governance.⁵²

1.10 Monetary values

The monetary or financial values involve responsibility standards which can be divided into general standards that are basic standards used to evaluate an entity's financial health. And, the performance and affiliation standards which are used to evaluate an entity past performance and to evaluate individuals affiliated with the entity, obligations and compliances to the value of the finance utilized or to be utilized and reporting. Financial standards will seek to increase levels of transparency on how funds are managed and used by CSOs. The most and common monetary standard in relation to financial control include safety keeping whereby it is believed and has been a custom that a bank account is the best safe area to keep moneys. Other matters of financial control include book keeping, stock taking, financial report, internal and external check and balances or auditing, budgetary, requisition for use and retirement of the used moneys.⁵³

50 Ibid.

51 CIVICUS, (2014): Accountability for Civil Society by Civil Society: A Guide to Self-Regulation Initiatives.

52 Ibid.

53 Retirement is a financial term and process used to control finance whereby the amount used to discharge a certain duty is bound to reveal that duty performance, if payment is for travel then tickets receipts and other expenditures acknowledgements should be submitted, if purchased goods, inspection of the purchased goods, entering them in books of accounts/store ledgers and dispatching them to the user in writings and so on. The system has been common in Government offices which can as well be adopted and has been adopted by some CSOs.

1.11 Programs and Planning Standards

Programs need to be planned, budgeted and implemented pursuant to the guiding manual. The planned activity or project shall always show who is to do it, when, how and sometimes its impact and source of fund. Moral or principles of standard may be set by the CSO itself, the CSO in conjunction with the beneficiaries, funders and other stakeholders.⁵⁴ In many cases, the reality has been as it stands in some of the government programs in which some donors participate in their funding under what has been commonly known as conditional loans or grants under which the providers sometimes provide for conditions so as to access it. That is to say, they in one way or another participate in programming some matters under which their funds ought to be utilized.

1.12 Governance Standards

CSOs need to be registered. The governance values regulates how entities are run in order to cater for the categorical compliances. Some standards accrue to the CSO before and during registration while others rise after registration⁵⁵. Some of them are such as leadership, Constitution setting, publication, conflict resolution, trustees, finance and so on.

1.13 Essence, Objectives and rationale behind and justifications of this Compendium

The CSOs in Zanzibar and the Society itself deserve empowerment on the whole and friendly registration and control of the CSOs basing on the relevant laws and policies⁵⁶. Following this end, THRDC intended to write this Compendium of laws, regulations and policies for Zanzibar. This compendium will be used as a tool to improve CSOs legal understanding and compliance capacity in Zanzibar. Following Tanzania 30 years of operation by the CSOs' effected on 13th and 14th of October 2017, in which more than 70 CSOs participated in Arusha, representatives from government, academicians and other stakeholders had a joint self-reflection meeting. During the meeting, various recommendations were made for the smooth operation of the sector. One of the recommendations was the need to compile

54 It has been a custom to many CSOs that donors are controlling them in terms of program and planning so as to access their funds failure of which a CSO may not be funded or get its activities sponsored. Therefore, the nature of programs and planning has never been common. In a number of the Government sponsored programs, the reality has been the same. In a known language they say Conditional loans or grants.

55 No CSO can be registered without having a constitution and leadership. While the Leaders and constitution are made available before registration, the constitution is assessed and confirmed during registration. Other matters of governance might rise in the cause of business and others subject to registration. For example; the change of the CSO/ NGO objectives, constitution, establishment of branches must be registered.

56 The Societies' empowerment's essence is to bring about good environments under which the CSOs can be registered, administered controlled and fulfil its objectives under which they are established without unnecessary interference and limitations or obstacles from political regimes and threats or elsewhere.

a compendium of all laws, policies, regulations and rules that govern the operations of the CSO sector in Tanzania. Consequently, the Tanzania Human Rights Defenders Coalition (THRDC) in collaboration with the Foundation for Civil Society (FCS) engaged Consultants for the development of this Compendium, which analyses and documents the laws governing CSOs in Zanzibar.

The CSOs composition in Zanzibar is not yet well defined and there is yet to be an up to date list of CSOs in Zanzibar.⁵⁷ Organizations can be registered under various bodies of the Revolutionary Government of Zanzibar depending on the intention of their establishment but others are compelled to be registered or be re-registered under the Societies Act.⁵⁸ Similarly, laws, regulations and policies governing establishment/registration and operation of CSOs in the country are diverse and there are fears that at times it may be uncertain as to which particular law, regulation or policy is applicable in a given situation. Thus this Compendium provides for the particular laws, regulations and policies that shade some light on freedoms and other fundamental guidelines in the CSOs registrations and operations.⁵⁹

1.14 Objectives of the Compendium

This compendium is therefore the first attempt to consolidate CSOs state laws and decrees, regulations, policies, rules and highlights on international standards and commitments relevant to civil society. It is a work in progress, for the main idea is to develop a comprehensive compilation of all laws, policies, and regulations and rules that govern the operations of the CSO sector in Zanzibar. It also identifies challenges faced by the sector and proposes necessary legal reforms. The current Compendium, which is considered as Volume One, is limited to identification, collection and analysis of the Laws, Policies, Regulations and Rules governing the CSOs Sector in Zanzibar.

It is expected that the Second Volume will focus on the identification and discussion of the challenges facing the CSOs in Zanzibar and propose the necessary legal reforms. From the above mentioned interventions, engagements and undertakings, it has become clear that the CSOs constituency needs more clarity and guidance around a number of issues relating to the establishment and operations of CSOs in Zanzibar as addressed in this Compendium. To achieve this, the Compendium in its current form addresses the following issues as the case shall allow, among which are International legal frameworks relevant to CSOs, Regional and

57 Under Section 2(1) of the Societies Act Number 6 of 1995 as seen above provides for exempted entities which are not registered under it. There is no any explanation as to whether or not the itemised entities are CSOs or not. As it should be remembered that not all CSOs are NGOs while all NGOs are CSOs.

58 Op cit.

59 Although this collection does not touch on all laws in relation to the CSOs registration scattered as they are found but to identify some basing on the available challenges so as to create an avenue for the better point to the best start of creation of new and convenient environments for the newly CSOs environments.

Sub-Regional legal frameworks relevant to CSOs, selected constitutional provisions relevant to CSOs in Zanzibar and legal framework for the registration, operation and regulation of CSOs in Zanzibar including provisions of the Societies Act and provisions of other intrusions with CSOs nature but registered under other laws other than the Societies Act.

Further, selected Economic and Administrative Legislations applicable to CSOs which include but not limited to Land Laws; Penal Statutes; Tax Laws statutes; Labor related legislations and other subsidiary legislations; and information, research and publications regarding CSOs in Zanzibar. The salient features of the CSOs at hand which will as well reflect Salient Policies (example the NGOs policy of 2009) and Regulations relative or ancillary to CSOs and references will be accorded the importance they deserve.⁶⁰

Briefly, this Compendium serves as a comprehensive guide for CSOs actors and stakeholders in Zanzibar by providing guidance on the laws, policies, regulations and rules that govern registration and operations of CSOs in Zanzibar.

1.15 Terms of Reference

The task ahead is to review and analyze policies, laws and institutional frameworks governing CSOs operations in Zanzibar; to develop a detailed document containing all Laws, Policies and Regulations which govern CSOs in Zanzibar.⁶¹ This may as well come out with other separate laws under which some services may be regulated depending on their nature so as to extend their freedom and independence of their operations.⁶² A legal profession is a good example that had no legal organization for so long stated to be because of the suppression of the legal activities in the post revolution period as one factor and a small number of professionals themselves.⁶³

60 Some statutes are chosen not because they are superior to the others but to represent others to give this work legs upon which to stand. It is because as the statutes are made for legal persons, they are as well extended to artificial or legal persons since they are given legal personalities once registered. And, once some matters cannot be accomplished by the entity as a legal person in its capacity, then depending on the nature of the same issue, the laws or the court deserve rights to pierce veil of their incorporation.

61 In the cause of working under the given terms of reference, the work is extended on different matters so as to justify some arguments and concept as they appear to other users or the user understandings.

62 A good example under which some professions deserve separate legal registration requirements include the Zanzibar Law Society that discharges its activities under the NGO registered under the Societies Act.

63 Twaib,F;(2008) The Legal Profession in Tanzania: Law and Practice, Law Africa Publishers, Nairobi Kenya.

1.16 Methodology of the Work

The writing of this Compendium due to its urgency nature has applied purely a doctrinal legal study. Documents related to policies, laws and institutional frameworks governing CSOs operation in Zanzibar were reviewed and analyzed. However, consultation of leaders and stakeholders in Zanzibar was as well given an opportunity due to the essence and importance of this work itself.⁶⁴

1.17 Structure of the Compendium

This Compendium is divided into seven Chapters. Chapter One provides for general introduction and background information of the CSOs in Zanzibar. Chapter Two is dedicated for explanation on the international and regional legal framework governing CSO in Zanzibar.⁶⁵ Chapter Three presents the legal and Policy Framework governing CSO in Zanzibar. Chapter Five discusses the Penal Laws in relation to the CSOs in Zanzibar.⁶⁶ Chapter Six is for other Laws relating to governance and operation of CSOs in Zanzibar. Lastly, Chapter Seven, which has been dedicated for the legal and regulatory framework governing other civil society organisations in Zanzibar. Some statutes, policies as well as regulations dealing with the CSOs in Zanzibar have been appended at the end of the textual materials of this Compendium.⁶⁷

1.18 Limitation

The study has covered the policies, regulations and laws dealing with CSOs in Zanzibar. For supplementary purposes, the International and Regional legal frameworks on CSOs have also been referred and presented herewith⁶⁸. Failure to cover more issues of CSOs in Zanzibar was due to the required terms of the study and time constraints.

64 In the cause of developing this compendium, at least 14 leaders of different NGOs from Zanzibar (Pemba and Unguja Islands) were consulted on various matters arising in the NGOs.

65 Much as Zanzibar for the purpose of International instruments is part of the United Republic of Tanzania; an International instrument which Tanzania is a member has adopted, ratified, reserved and so on is extended to Zanzibar since this is a union matter however, if it is to be domesticated, Zanzibar reserves its own procedures to go about it.

66 Penal laws for the purpose of this work include all provisions which establish criminality to the NGOs and a person under the umbrella of the NGO or so purported to be under its umbrella.

67 Selected and discussed statutes do not mean that they are superior to others but the essence of their selection is mainly to establish authenticity of discussion, position of the law on the discussed point, exemplification and clarity.

68 It is because the CSOs have international Eyes and may so be registered as they deserve such rights. Furthermore, a number of the SCOs at the national and international levels have international congruencies, establishments and protection.

Chapter 2

The International and Regional Legal Frameworks Governing Civil Society Organisations in Zanzibar

2.0 Introduction

A prologue point to note here is that Zanzibar is one of the two countries forming the United Republic of Tanzania.⁶⁹ She merged with the then Tanganyika to create the United Republic of Tanzania on 26th April, 1964 barely three months after the Revolution that toppled the Sultanate Oligarchy in Zanzibar⁷⁰. However, Zanzibar has exclusive jurisdiction over Non-Union Matters on its territory and has its own Executive, the Legislature (House of Representatives) and the Judiciary⁷¹. Issues pertaining to freedom of associations, formation of CSOs and NGOs is among Non-Union Matters⁷². Therefore, each part of the Union has its own laws dealing and regulating the conduct and affairs of the CSOs as well as NGOs. It should be noted further that Tanzania has a dualistic system⁷³ in relation to international agreements⁷⁴ requiring the state to incorporate international treaties to which it is a signatory into domestic law. The Union Government by signing an international treaty commits its two governments to a particular set of values and principles.

The interesting point to pin point here is that, Tanzania and Zanzibar, international and regional treaties are not part of the domestic laws and therefore cannot directly be invoked in the Tanzania or Zanzibar legal system automatically. It is therefore upon the authorities in Zanzibar to identify international principles and standards that are desirable for application

69 Article 2 of the Constitution of Zanzibar, 1984. See also Article 1 of the Constitution of the United Republic of Tanzania which provides that Tanzania is a one Sovereign Republic.

70 Zanzibar refers to the State of Zanzibar made up of the Unguja, Pemba and surrounding Islands.

71 Article 4 of the Constitution of United Republic of Tanzania 1977 as amended. See also Article 5A of the Constitution of Zanzibar, 1984.

72 See the First and Second Schedule of the Constitution of the United Republic of Tanzania of 1977.

73 Dualistic system in this context means that Tanzania as a sovereign state signs international conventions and treaties but are not automatically applicable. In order to have a legal force at the municipal level, they must go through the parliamentary process for ratification and Tanzania has the power either to accept or not accept part or whole of the conventions.

74 Tanzania Human Rights Report 2007 incorporating Specific Part on Zanzibar, pg 127.

in Zanzibar. This kind of consideration is recognized and expressly stated under section 10(i) of the Constitution of Zanzibar, 1984, which provides to the effects that all Government's organs and its servants shall adhere and follow the international treaties on human rights and good governance. Then the concern is how far the issues dealing with CSOs has been dealt with under the provisions of international legal instruments. Indeed providing explanations on the international and legal frameworks governing CSOs is of paramount importance so as to see how Zanzibar CSOs may become a member and utilize beneficial profit and advantages from different regional and international CSOs laws, organizations as well as Networks.

The main justification for providing this background to this Chapter is to highlight the fact that Zanzibar CSOs are not directly affected by International Legal Instruments dealing with the CSOs. Furthermore, this background shows how CSOs may engage and get benefits of both international legal instruments as well as organisations so as to ensure that CSOs in Zanzibar regardless their meagre resources, are still capable of accessing, importing and domesticating international legal instruments standards and principles in order to generate as bigger impact and domestic change as possible. Therefore, CSOs must be conversant with how to strategically cast eyes on a particular treaty body on a right issue, at the right time and in the right way. The number of CSOs engaging with these International Mechanisms in Tanzania is extremely low. Majority of CSOs are not conversant on how and when to access such extra-territorial mechanisms.⁷⁵

Therefore, this Chapter seeks to provide members of CSOs in Zanzibar some key information on available regional and international mechanisms relevant to CSOs. The Chapter briefly outlines the different types of mechanisms that are available in the UN and Regional systems and how they may be relevant to CSOs in Zanzibar. This section accordingly collates and consolidates various commitments made by national governments-both regionally and at the UN level as a way of safeguarding space of civil society. It is intended to be a reference point for Civil Society Organisations and human rights defenders in their efforts to realize such rights, commitments and watch against infringements.

The International and Regional legal frameworks governing CSOs operations both at a regional and international levels are protected by a wide range of international and regional agreements, conventions, charters and other legal instruments. International agreements

⁷⁵ A number of the citizens contradict the use and parameters under which Zanzibar applies international Instruments. Further, some do think that Zanzibar may at any cost opt out not to be a member to the instruments at international level. It might be a misconception or an approach but what should remain clear to the society of Zanzibar and Tanzania at large is that, entering international agreements and or instruments is the authority of the United Republic of Tanzania where by Zanzibar is a party but, applying the said instruments that is adherence to the principle of *Pancta sunt servanda* passes through different stages under the mandate and or authority that Zanzibar has.

are treaties, bilateral agreements, and sometimes customary international rules in the context of International Law⁷⁶. Depending on the nature and purpose of a treaty, it can also be referred to as a covenant, convention, charter, accord, protocol or agreement⁷⁷. A treaty is generally a legally binding instrument meaning that the implementation of the obligations undertaken by its State parties can be enforced by international law.⁷⁸ Nevertheless, this engagement must have the express consent of the parties to the Treaty and being a signatory does not take away a state's sovereignty⁷⁹. A state can become a party to a treaty by ratification, adoption, negotiation, signing or succession⁸⁰. By negotiations simply means that the delegation of various countries is involved⁸¹. Adoption means adopting a text of the agreement once agreed by the negotiating team⁸². Signing means setting the signing date on the agreed adopted international instruments⁸³. While ratification is a process of following the signing involving confirming signatures so as to let the states confirm if they are ready to be bound by the instruments, accession is more or less ratification on that it is done by the States which cannot sign on the right time hence allowed to be party of the agreement through accession.⁸⁴ States can also make reservations to a treaty by not accepting to be bound by specific provisions in the legal instrument⁸⁵. This can be done only if the reservations do not defeat the purpose or the objectives of the treaty.

Core Civil Society freedoms of expression, association and assembly are also found in other international instruments that are not inherently legally binding, such as international declarations, proclamations, standard rules, guidelines, recommendations and principles. Nevertheless, States are expected to adhere to them as a moral obligation to the International Community and to their own populations.

2.1 International Legal Framework

International legal framework for the intention of this Compendium refers to all UN legal appliances relevant or governing CSOs operations at International level. This structure

76 Pearson,F; and Rochester,J; (1988), International Relations: The Global Condition in the Late Twentieth Century, 2nd Edition, Rondon House Publishers, New York

77 Shivji,I; et al, (2004) Constitution and Legal System of Tanzania: A civic Sourcebook, Mkuki na Nyota Publishers,,Dar Es Salaam.

78 See Article 2, Vienna Convention on the Law of Treaties 1969 ;Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. – ratified by the United Republic of Tanzania on 12 April 1976.

79 Ibid Pearson and Rochester.

80 Ibid Shivji et al.

81 Ibid.

82 Ibid.

83 Ibid.

84 Ibid.

85 Mashamba,C; (2017), Litigating Human Rights in Africa: Institutions, Laws, Procedures and Practice, Law Africa,Nairobi, Kenya.

includes International Instruments that warrants the rights of CSOs. This part outlines both binding and non-binding global instruments and provisions significant to CSOs.

2.1.1 The United Nations Charter of 1945

The United Nations Charter⁸⁶ is the UN founding papers that guides all the activities of the UN performance and affairs of UN member. There is only single provision of the UN Charter which talks of CSOs participation in UN activities and meetings. This is Article 71⁸⁷ of the Charter, which reads;

“The Economic and Social Council may make suitable arrangements for consulting with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organisations after consultation with the member of the United Nations concerned.”⁸⁸

Currently UN legal instrument has laid down a good foundation for the current space and CSOs partaking in the UN mechanisms⁸⁹. Therefore, the UN Charter was an entry point for more CSOs engagement with UN activities from 1960s up to date. To the recent position, the United Nations has been the only global organization to enshrine NGO relations in its founding Charter.⁹⁰ The Department of Public Information was also charged with regard to NGOs as amongst its clients since its creation in 1946 (General Assembly Resolution 13 (I))⁹¹ and has an NGO Section for this purpose.⁹²

Since 1960 to 1980s, NGOs have increased numerically. The increase is noticeable significantly in various UN meetings and forums explained and or reported. This increment went together with expansion of the roles of CSOs in those forums from observers only to important members with specific roles to play such as report presentations, panel discussions and regular briefings. To wit, this gradual role-expansion led Secretary General Boutros Boutros-Ghali to say (in September 1994) that NGOs:⁹³

86 1945.

87 Ibid.

88 Article 71 of United Nations Charter 1945.

89 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16.

90 Ibid.

91 1946.

92 Accreditation to “consultative status” with ECOSOC and can be admitted into one of three categories: General Status (large international NGOs whose interests extend to most of ECOSOC’s agenda); Special Status (those with “special competence in a few of the fields of activity of the Council”) and Roster NGOs (those primarily concerned with one or more specific issues who can be consulted on an ad hoc basis).

93 On 25th July of 1996, ECOSOC adopted Resolution 1996/31 implementing Article 71.

“ are a basic form of popular participation in the present-day world. Their participation in international organizations is, in a way, a guarantee of [their] political legitimacy”.

Due to global service therefore, the Office of the United Nations High Commissioner for Human Rights (OHCHR) is responsible for leading the United Nations Human Rights programme and for promoting and protecting all human rights established under the Charter of the United Nations and International Human Rights Law. The OHCHR struggles to achieve the protection of all Human Rights for all people, to empower people to realize their rights and to assist those responsible for upholding such rights in ensuring that they are implemented.⁹⁴ OHCHR is head-quartered in Geneva, Switzerland.

OHCHR as part of the Secretariat of the United Nations was created in 1993. It collaborates with Governments, National Human Rights Institutions (NHRIs), Non-Governmental Organizations (NGOs) and other CSO actors.⁹⁵

2.1.2 Universal Declaration of Human Rights (UDHR) 1948

The United Nations General Assembly adopted the UDHR in 1948 later than the end of the Second World War.⁹⁶ The UDHR was adopted as a common standard of achievement for all peoples and all nations.⁹⁷ Apart from core social civilization rights of expression, association and assembly, the UDHR guarantees essential human rights to all people, civil and political as well as economic, social and cultural rights⁹⁸. The UDHR is the source of the expansion of various human rights treaties and other instruments. Although conceived as a Declaration as opposed to a Treaty, today, the UDHR is widely regarded as part of International Customary law.⁹⁹ International Customary law in the sense that, UDHR's practices and livelihood in addition to the objectives under which it was established are globally accepted and binding on States over a period of time as evidenced by repeated usage¹⁰⁰.

94 UN (2008) Working with United Nations Human Rights Program. A Handbook for Civil Society, pg 1.

95 See General Assembly Resolution 48/141 of 20 December 1993. The work of OHCHR is also guided by the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, including the 1993 Vienna Declaration and Program of Action and the 2005 World Summit Outcome Document (General Assembly Resolution 60/1 of 16 September 2005).

96 UN General Assembly Resolution 217 A (III) of 10 December 1948. Text: UN Document A/810, p. 71 (1948).

97 Ibid.

98 Ibid Shivji et al.

99 See Office of the High Commissioner for Human Rights, United Nations Staff College Project, and Human Rights: A basic handbook for UN staff, United Nations (2000), p.11. Available at <http://www.unhchr.ch/html/menu6/handbook.pdf>.

100 According to Ibid Pearson and Rochester, Customary International laws are practices widely accepted as binding by the states over a period of time as evidenced by repeated usage.

The embracing of the Human Rights Declaration represented the first major impact of NGOs on the newly created UN primarily involving the NGOs consultative included in the United States' designation and their involvement shaped the later 'consultative' arrangements that ECOSOC adopted for civil society engagement (Korey: 1998).¹⁰¹ The declaration of the UDHR outlines freedoms of association and assembly which UN member states must adhere and respect. Article 20 of the Declaration points out that; "Everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association."

2.1.3 CSOs and UN Human Rights Mechanisms

The grounds as set in Article 71¹⁰² and the ECOSOC Resolution¹⁰³ 1996/31 have endorsed numerous NGOs to successfully enter into the key platform for human rights protection and development of relevant legal standards. Today, a number of Civil Society Organizations (CSOs) participate actively in major UN conferences and in the UN system, as active participants, and not just as observers. CSOs have become both a source of knowledge and expertise and a potential partner in the decision-making process. One of the UN mechanisms mostly engaged by CSOs is human rights mechanism broadly divided into charter-based (political) and treaty-based (expert) bodies.

Main actors politically are member states of the UN while in the expert bodies, are private individuals who are expected to be independent of any government, and experts in the issues addressed by the respective groups. For so long CSOs have been engaging with these two interconnected groups in categorical capacities.¹⁰⁴ NGOs so far play very important role in the worldwide coordination by monitoring State actions, performing fieldwork, advocacy and presentation of their findings. While helping to deliver reliable information and form standards and rules of human rights protection, NGOs are considered the prime engine of the human rights movement.¹⁰⁵

Their influence is significant and desirable, as expressed by many governmental delegations as well as international organizations, especially the United Nations, and treaty bodies.

101 UN System and Civil Society - An Inventory And Analysis Of Practices Background Paper For The Secretary-General's Panel Of Eminent Persons On United Nations Relations With Civil Society (May 2003).

102 UN Charter.

103 1996/31.

104 Engaging with UN Human Rights Mechanisms: An Introduction 2013 © International Rehabilitation Council for Torture Victims.

105 S. Hobe, Human Rights, Role of Non-governmental organizations, Max Planck Encyclopedia of Public International Law (Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2012) 1; accessible at: (University of Pennsylvania Press Philadelphia 2001) 151.

Human rights Non-Governmental Organizations are freely created entities for the sole purpose of helping the governments and governmental entities at the international and national level in the fight against human rights violations and assisting groups of people affected by those violations.¹⁰⁶ The former UN High Commissioner for Human Rights had this to say:

“Civil society actors’ contribution has also enriched the work of the independent experts that belong to other long-established human rights mechanisms, such as the human rights treaty bodies and special procedures. Crucially, their weight and knowledge have also been brought to bear in the operations of the Human Rights Council, the new intergovernmental body that, in June 2006, replaced the Commission on Human Rights. Human Rights Defenders, non-governmental organizations and all other civil society stakeholders carry out their human rights work in a variety of ways: they share information; advocate and scrutinize implementation of human rights; report violations, assist victims of abuses; and campaign for the development of new human rights standards. They do so by taking the pulse of their communities and constituencies. They give voice to the powerless in venues that may, otherwise, be out of the victims’ reach, including international human rights forums and mechanisms. Clearly, there is a need on the part of civil society actors to deeply understand and master the modus operandi of national, regional and international human rights institutions.”¹⁰⁷

CSOs can access the main two levels of human rights mechanisms at UN level as it is going to be explained later. It should as well be noted that CSOs have human rights obligations under both UN treaty bodies and under UN charter based mechanisms.

a) Obligations of the CSOs under UN Treaty Mechanism

Various global instruments create the CSOs’ obligations. The key roles established by treaties are connected to the “human rights treaty bodies” which are various committees of independent experts that monitor the implementation of the United Nations human rights treaties by States parties. They work by reviewing reports periodically submitted by State parties and CSOs on steps taken to implement human rights treaty obligations. Most human rights treaty bodies are competent to receive and consider individual complaints, while several do conduct inquiries.¹⁰⁸

¹⁰⁶ Ibid; .See also infra, Reports of the Human Rights Council and Commission on the Status of Women, and documents referenced in Appendix I.

¹⁰⁷ Navanethem Pillay; United Nations High Commissioner for Human Rights.

¹⁰⁸ UN (2008),page 31.

b) Procedures by CSOs to connect with the UN Treaty Bodies

The treaty body system of the United Nations plays an essential role in promoting and protecting Human Rights. Most committees, in carrying out their activities, interact with civil society on a regular basis for information, contacts, and thematic expertise. CSOs can engage with treaty bodies to promote ratification of a treaty; participate in the treaty body reporting process, monitor a State Party's compliance with its treaty obligations and submit shadow (or "parallel") reports as part of the State reporting process¹⁰⁹. The other means used or that may be used is for the CSOs to participate in treaty body sessions; follow up on a treaty body's concluding observations for a State Party; participate in General Discussion Days and submit an individual complaint/communication¹¹⁰. Further, to provide information to prompt a confidential inquiry into grave or systematic violations of human rights. Depending on the rules of each human rights treaty body, CSOs may also participate in human rights treaty body sessions as observers or through oral submissions; providing information to generate confidential inquiries (Committee against Torture and Committee on the Elimination of Discrimination against Women); providing information for early warning and urgent procedures (Committee on the Elimination of Racial Discrimination); and making submissions to the annual inter-committee of the human rights treaty bodies.¹¹¹ The reporting process consists of a number of stages, some of which provide opportunities for a CSO engagement.

2.1.4. How CSOs can engage with States in Reporting Process

In a number of countries, the contribution of CSOs in the drafting process is a challenge and their views may not be fully taken into account in state reports. In this circumstance, CSOs need to be prepared to contribute in the exposure process on their own. If the Committee is to carry out a complete and effective review, it therefore needs information, which fills these gaps in the State Report. CSOs are often able to provide this information, as well as presenting a view from outside the government and administrative systems.¹¹²

CSOs have a major role to play throughout reporting processes of the Human Rights Committee. In order to do this, it is crucial that they get organized and be ready to participate in all the stages of the process.¹¹³ The President invites CSOs to deliver brief statements, then

109 Ibid.

110 Ibid.

111 Op Cit. Mashamba.

112 Centre for Civil and Political Rights (2010) UN Human Rights Committee. Participation in the Reporting Process, Guidelines for Non-Governmental Organisations (NGOs).

113 See the CCPR website for deadlines: www.cprcentre.org/en/next-sessions.

Committee members ask questions and finally the CSOs reply.¹¹⁴ Therefore, as illustrated above, CSOs have obligations to participate in various UN treaty bodies' mechanisms and present shadow reports. Below is the list of the up to date UN Treaty Bodies that CSOs may partake in their reporting mechanisms. They are discussed as here under:-

a) The List of UN-Treaty Bodies:

- (i) The United Nations Human Rights Committee watch over functioning of the ICCPR and receives individual communications relating to States parties to the First Optional Protocol to the ICCPR¹¹⁵.
- (ii) The Committee on the Elimination of Discrimination against Women (CEDAW Committee): Monitors compliance with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and may receive individual communications relating to States parties to the Optional Protocol to CEDAW¹¹⁶.
- (iii) The Committee on the Elimination of Racial Discrimination (CERD). This forum oversees implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and may receive individual complaints against States parties that have made the relevant declaration under Article 14 of the ICERD¹¹⁷.
- (iv) The Committee Against Torture (CAT), Oversees implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention against Torture) and may accept individual complaints against States parties that have made the relevant declaration under Article 22 of the CAT¹¹⁸.
- (v) The CESCR monitors conformity with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and receives individual complaints relating to States parties to the Optional Protocol to the ICESCR (that came into force in 2013)¹¹⁹.
- (vi) The Subcommittee on Prevention of Torture. It was established pursuant to the Optional Protocol to the Convention against Torture (OP-CAT), to visit places of detention and advise States and National Preventive Mechanisms on best practices to prevent torture and ill-treatment.

114 "A Guide for NGO Reporting to the Committee of the Rights of the Child (CRC)".

115 Op cit, Mashamba.

116 Ibid.

117 Ibid.

118 Ibid.

119 Ibid.

- (vii) The Committee on the Rights of the Child (CRC): Monitors compliance with the Convention on the Rights of the Child and its two Protocols. It began to accept individual complaints against States parties that have ratified the Third Optional Protocol on Communications Procedure on April 2014.
- (viii) The Committee on Migrant Workers (CMW): Oversees implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (ICMW). An individual complaints mechanism is pending and will begin operating when 10 States parties have made the relevant declaration pursuant to Article 77 of the CMW.
- (ix) The Committee on the Rights of Persons with Disabilities (CRPD) is a committee responsible for monitoring compliance with the International Convention on the Rights of Persons with Disabilities (ICRPD) and may receive individual complaints against States parties to the Optional Protocol to the Convention.
- (x) The Committee on Enforced Disappearances (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and may consider individual complaints against States parties that have recognized the Committee's competence pursuant to Article 31 of the Convention.

b) CSOs Obligations Under UN Charter Based Mechanisms

The United Nations Human Rights mechanisms that derive their power from the UN Charter include the Human Rights Council and Special Procedures. Global human rights bodies have the authority to review human rights practices of all members of the United Nations, whether the State has ratified a particular human rights treaty or not. The Global or Charter based mechanisms are established to address human rights issues provided in general within the UDHR, 1948. They include the Human Rights Council and the how to access and work with the Human Rights Council.

The Human Rights Council is the principal UN intergovernmental body responsible for human rights. It was established by General Assembly Resolution 60/251 replacing and assuming most command, mechanism, purposes and responsibilities previously entrusted to the Commission on Human Rights. The Office of OHCHR is the Secretariat for the Human Rights Council as the Commission on Human Rights was. The HRC is made up of 47 Member States and it is based in Geneva. Its meeting is hardly 10 weeks a year. While the Commission was a subsidiary organ of the Economic and Social Council (ECOSOC), the Human Rights Council is a subsidiary organ of the General Assembly. The role of the HRC includes addressing violations of human rights and the promotion of effective coordination

and the mainstreaming of human rights within the United Nations system.¹²⁰ One year after its first meeting, that was on 18th June, 2007, the Human Rights Council agreed on a package that established the procedures.

On the other hand, in Resolution 60/251 the General Assembly acknowledged the important role played by Non-Governmental Organizations (NGOs) and other CSO actors nationally, regionally and internationally in the promotion and protection of human rights.¹²¹ The participation of observers, including NGOs, in the sessions of the Council is based on arrangements and practices observed by the former Commission. These practices and arrangements continue to develop and evolve, with the Council required to ensure “the most effective contribution” of observers. While advice-giving status with ECOSOC is necessary for NGOs to be accredited as observers to the Human Rights Council’s sessions, NGOs lacking such status and other civil society actors can supply to the overall work of the Human Rights Council and its mechanisms in a number of ways. Besides, its meetings are broadcast live on an OHCHR webcast, and a broad range of records and information is accessible on the Council’s homepage and Extranet. Reliable information are normally posted on the homepage two weeks before each regular session.

2.2 Universal Periodic Review (UPR)

The Universal Periodic Review (UPR) is a new human rights mechanism and was established by the General Assembly¹²². It is a cooperative mechanism aiming to complement duties of the human rights treaty forums¹²³. The UPR operates on a four-year cycle and consists of several stages, for instance, following the HRC Resolution 5/1/. Among other things, it deals with the preparation of information for review basis, compilation of United Nations information on the State under review prepared by the Office of the United Nations High Commissioner for Human Rights and synopsis of information submitted by other sources, the CSO actors inclusive. The UPR working group is composed of the 47 member States of the Council. Its processes also take forms of an interactive discussion between the State under review, the members and observer States of the Council. The Group meets in three groups that works in a period of two week sessions each group per year. The review of each State group is facilitated by a group of three rapporteurs (“troika”), drawn from among the Council’s member States¹²⁴.

120 UN (2008) Page 75.

121 Ibid.

122 It was established through Resolution number number 60/25.

123 Op cit, Mashamba.

124 Ibid.

2.3 Participation on the UPR Sessions.

Participation of all relevant stakeholders in the process is established by the Resolution 5/1¹²⁵. Participants such as the intergovernmental and regional institutions, the NHRIs, Human rights defenders, research and other institutes the ECOSOC etc, are mandated to attend the UPR, Civil Society actors may participate, through consultations held by Governments to prepare their national reports on the human rights situation in their countries, preparing submissions on the human rights situation in States under review for potential inclusion in the summary of stakeholders' submissions prepared by OHCHR and contributing to the follow-up of the implementation of review outcomes. Often, the working group matters are posted on the OHCHR web-cast.

2.4 Human Rights Complaint methods

The human rights system provides for mechanisms to enable individuals and groups seeking the UN action on human rights situations when they are aggrieved of. The complaint procedures therefore are mechanisms for bringing actions of the purported human rights violations to the attention of the forum. The mechanisms used usually are individual complaints under the international human rights treaties which is an optional measure¹²⁶, communications under the special procedures of the Human Rights Council; and the complaint procedure of the Human Rights Council¹²⁷. Needs, merits and obstacles against each procedures are noted. The individual complains can be submitted under any of five treaties depending on the complaint and the subject matter¹²⁸. Before complaints, there are some matters that a complainant needs to justify as the CSO/NGO whereby the individual who has suffered violation can submit complaints under each of these procedures or third parties on his behalf may submit a complaint by an NGO that has fulfilled requirements¹²⁹. Consent by the third party for complaining on his behalf is essential¹³⁰. Each specific need per the selected procedure must be adhered to, otherwise the complaint may end nowhere.

2.5 Protection of Civic Space at International Level

In December 1998, Human Right Defenders were accorded with recognition and protection after a long period of years' negotiations¹³¹. The struggle for recognition has never been easy, despite the world marking 50 years ever-since the Universal Declaration of Human

125 Op cit,

126 Op cit, Mashamba.

127 Ibid.

128 Ibid.

129 Op cit Mashamba.

130 Ibid.

131 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms on December 9, 1998 (Declaration of Human Rights Defenders)

Rights in 1948. The legal recognition and protection of human rights defenders is crucial to ensure that they can work in a safe, supportive environment hence unreasonable legal restrictions.¹³² The UN has continued dealing with the HRDs, to wit, UN has adopted a Resolution on Protection of Women Human Rights Defenders¹³³. The Resolution requires States to enact specifically gender laws and policies protecting women human rights and ensure their involvements in the design and implementation of these measures.¹³⁴

2.6 Regional Legal structure

2.6.1 CSOs Space and Obligation at the African Union

The first African instruments establishing Organizations of African Unity (OAU) CSOs related regularisation provisions.¹³⁵ The African Union Constitutive Act¹³⁶, later on raised the CSOs recognition through the Economic Social and Cultural Council (ECOSOCC), established under the Constitutive Act to provide a permanent space for civil society to advise African governments collectively via the AU. This was the first CSO outlet to persuade AU policy processes and inclusion in its membership. Another chance by the CSOs in participation in AU affairs is via African Commission on Human and People's Rights established under the African Charter on Human and People's Rights of 1981.

Documents exhibits that the pre-Summit Forum of the CSOs met on the fringes of the bi-annual AU Summit, and was considered by many to be an important space to influence continental policy.¹³⁷ Before an inaugural session of the AU, a second OAU Civil Society conference took place in Addis Ababa to anthropomorphize the mechanisms and modalities for CSO engagement with the AU.¹³⁸ At this juncture, the second conference succeeded to cause the establishment of a Working Group made up of members of CSO and the OAU Secretariat to develop the ECOSOCC statutes which spelt out the composition, procedures for election and accreditation, and ECOSOCC structures¹³⁹. The Working Group aimed at coming up with a plan for expanding the ECOSOCC as an idea most of the African countries, if

132 See more at: <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqgcKj.dpuf> (Accessed on 23rd December 2017).

133 On 29/11/2013, see UN Resolution on Protection of Women Human Rights Defenders See more at: <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders#sthash.NJ12LaQH.dpuf>.

134 Ibid, Ms. Bjerler said, the 'Effective implementation of such measures by States will be key to enabling women human rights defenders to carry out their important and legitimate work.

135 Charter of the Organization of African Unity (1963/1963).

136 AU Constitutive Act, OAU Doc. CAB/LEG/23.15 (2001).

137 Statutes of the Economic, Social and Cultural Council of the African Union (2004) -ECOSOCC, See Civil society and the African Union: Towards a continental Strategy for World Vision. https://sarpn.org/documents/d0002580/CSO-AU_Africa_Report_Apr2007.pdf.

138 https://sarpn.org/documents/d0002580/CSO-AU_Africa_Report_Apr2007.pdf.

139 Articles 5 and 22 of the Constitutive Act.

not all, will support.¹⁴⁰ A group made up of twenty members including three representatives from each sub region of Africa, sectoral experts and Diaspora representatives, was given mandate of advising the way forward , for the duration that started on July 2002¹⁴¹. Hence a CSO established for coordinating CSOs issues at the African Union. Its duties include to work with member states and partners to create and strengthen social integration system by ensuring that the contributions of civil society are main-streamed through all aspects of the AU principles, policies and programs, to map CSOs on the continent by developing a database of African CSOs for serving as a repository of information on these organizations.

Along with the above, the division also facilitates the identification and utilization of expertise that abounds within civil society organizations across the continent enabling the development of this database also supports the process of ECOSOCC elections by identifying key CSOs that qualify for membership and help them to harness the expertise of the civil society to the demand of the African Union and to ensure effective participation of civil society in the activities of the African Union by organizing relevant workshops on understanding the African Union. This helps to facilitate the understanding of the African Union, its organs, key structures and decision making process by key civil society across the continent.

Others are having sectoral dialogues- AU/OATUU Trade Union Partnership forums and African Union interfaith dialogues to promote serious and critical interactions with key sectoral groups in support of Africa's integration and development agenda¹⁴² and to encourage the support for inter-continental consultation partnership: AU-EU, FOCAC, etc

2.6.2 Objectives of ECOSOCC

The objectives of the ECOSOCC are based on promoting the participation of African civil society in the implementation of the policies and programmes of the Union, forging partnerships between governments and all segments of the CSO in particular women, the youth, children, the diasporas, organized labour, the private sector and professional groups, promote continuous dialogues between all segments of the African people on issues concerning Africa and its future and support policies and programmes that will promote peace, security and stability in Africa, and foster development and integration of the continent. Others are to promote and strengthen the institutional, human and operational capacities of the African civil society to promote and defend a culture of good governance, democratic principles and institutions, popular participation, human rights and freedoms as well as social justice and promote, advocate and defend a culture of gender equality.

140 Adopted in Addis Ababa, Ethiopia in July 2004 by the AU Assembly, under article 22(2) of the AU Constitutive Act. ECOSOCC is intended to provide a voice for civil society in the AU. The Council held its first meeting in March 2005 in Addis Ababa, Ethiopia. Full text available at www.au.int. Statutes of the Economic, Social and Cultural Council.

141 World Vision (2007). Civil Society Organizations African Union towards a Continental advocacy strategy for World Vision.

142 <https://au.int/en/civil-society-division> . Accessed on 13th April 2018.

2.6.3 Membership with the ECOSOCC

According to Article 6¹⁴³ eligibility for CSOs to join or become members of ECOSOC are that it must be national, regional, continental or African Diaspora CSO, without restriction to undertake regional or international activities with objectives and principles that are consistent with the principles and objectives of the Union as set out in Articles 3 and 4 of the Constitutive Act. The CSO must meet the general conditions of eligibility for the granting of observer status to Non-Governmental Organizations, registered in a member State of the Union and have a minimum of three years proof of registration as either an African or an African Diaspora CSO prior to the date of submission of application, including proof of operations for those years.

2.6.4 Makeup of ECOSOCC

In the light of Article 3¹⁴⁴ the Statutes provides for the composition of the ECOSOCC as an advisory organ of the AU. It brings together members of CSOs which include Social groups such as those representing women, children, the youth, the elderly and people with disability and special needs. Therefore, from the Statute, memberships are reserved for professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups, Cultural organisations; NGOs, Community Based Organizations, voluntary organizations and social and professional groups in the African Diaspora, others may be accredited with the membership as per the discretion of the Executive Council.¹⁴⁵

2.7 The African Charter on Human and People's Rights of 1981

The African Charter¹⁴⁶ is also known as the Banjul Charter as it was born in Banjul Gambia. It protects and promotes human rights in the African Continent. It existed under the auspices of the Organization of African Unity, and today the African Union. The CSOs are associated with the African Commission on Human and People's Rights, 'the ACHPR'¹⁴⁷, which is comprised of 11 Commissioners tabled by member States and approved by heads of States and Governments of the African Union¹⁴⁸. All representatives serve in their private capacity.¹⁴⁹

143 Statutes of the Economic, Social and Cultural Council of the African Union (2004).

144 Ibid.

145 It is therefore meant that some membership and composition of the ECOSOCC even if not established by the Statutes, the Executive Council may resolve as to include any of their choice.

146 1981

147 The ACHPR was created by Article 30 of the African Charter on Human and People's Rights in 1986.

148 Appointees serve for a duration of 6 years.

149 International Service for Human Rights (2011) Road Map for Civil Society Engagement State Reporting Procedure of the African Commission on Human and Peoples' Rights, September /2011.

Civil Society Organizations (CSOs) with observer status at the African Commission have a wide range of ways to engage with the Commission.¹⁵⁰ The ACHPR has capacity to protection, promotion and interpretation of the rights enshrined in the Charter. The examination of State Reports is an important element of the Commission's mandate. It is crucial to note that the ACHPR develops other activities including state tours for the promotion of the Charter, participating in public fora in Member States, consideration of communications submitted by African Union States, CSOs or individuals; and undertaking fact finding missions. Public assertion is one of the mechanism used by the Commission in drawing attention to a particular issue for a particular country¹⁵¹, another and common one is working groups and special rapporteurs on the underpinning matter falling within their capacities or duties to deal with.

The NGO/ CSOs engages with the Commission in accordance with Rule 75 and 76 of the Commission's Rules of Procedure via direct consultation with the Commission on various human rights issues, participating in the public sessions of the Commission and its subsidiary bodies and by submitting communication/complaint with respect to violation of human rights under Rule 93 of the Commission's Rules on CSOs. The easiest means is for the NGOs with observer status to engage via them and State parties to propose the adoption of items into the agenda through formal communication with the Commission at least ten weeks in advance of the session do not focus on the State reporting procedure. The procedures for complain by the NGO to the Commission is by filing a communication in accordance with the manner set forth under the Rules of Procedures of the Commission¹⁵². As stated before, if the NGO is acting on behalf of the other person, his consent must be obtained .¹⁵³ The NGO must have a quality of the Human rights observer and or defender status¹⁵⁴. The Secretariat will acknowledge receipt of the complaint by sending the author a standard letter enclosing any vital information about the functioning of the Commission including the text of the Charter.¹⁵⁵

Article 56¹⁵⁶ of the African Charter outlines seven conditions that must be met before a communication can be considered by the Commission, which are:¹⁵⁷

150 Shire Hassan (Undated) Good Practices for CSOs Participation at The African Commission on Human and Peoples Rights.

151 Ibid.

152 Op Cit, Mashamba.

153 Ibid.

154 Ibid.

155 OAU: African Commission on Human and Peoples Rights: Information Sheet No. 3.

156 ACHPR

157 http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf.

- i. The communication must include the author's name even if the author wants to remain anonymous;
- ii. The communication must be compatible with the Charter of the OAU and with the present Charter;
- iii. The communication must not be written in insulting language directed against the state or the OAU;
- iv. The communication must not be based exclusively on news from the media;
- v. The complainant must have exhausted all available domestic legal remedies;
- vi. The communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies; and
- vii. The communication must not deal with a matter which has already been settled by some other international human rights body.

2.8 Human Rights Observer Status

In the light of Criteria for Granting and Maintaining Observer Status to NGOs working on Human and People's Rights in Africa adopted by the Commission at its 59th Ordinary Session held from 21 October to 4th November, 2016 in Banjul, the Commission subjects the granting of Observer Status to a set of criteria.¹⁵⁸ NGOs seeking for observer status with the Commission submits application to the Secretariat of the Commission to show their willingness and capability to work in accordance with the African Charter on Human and Peoples' Rights plan. A number of matters arise in the application for s consideration. They are such as declaration of the NGO pecuniary capacity, list of board members, objectives and activities in consonance with the fundamental principles and objectives enunciated in the African Union (AU) Constitutive Act, the preamble to the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) and letters of application and certification of the legal registration status in the mother country of the applicant. Others are such as the sources of funding of the NGO, the latest independently audited financial statement of the NGO; and the latest Annual Activity Report of the NGO. Proof for the applicant to work in the field of human rights in Africa, three months prior to the Ordinary Session, the following documents and a signed and authenticated Constitutive Statute of the NGO are vital.

¹⁵⁸ AU (2016) Guidelines For The Submission Of Communications Organization Of African Unity Fact Sheet No. 2. See Also THRDC Report on the Situation of Human Rights Defenders of 2017.

Chapter 3

Legal Instruments Governing nonGovernmental Organisations in Zanzibar

3.0 Introduction

Although it is a custom and practice in legal drafting that the common procedure is to have a policy with which laws for its implementations are enacted, this has not been the case on NGOs matters in Zanzibar. The practice is that Zanzibar has NGO policy¹⁵⁹ which is not implemented yet due to the absence of the law under which it can be implemented.

Currently both NGOs and CSOs are registered and regulated by the Societies Act¹⁶⁰ and rules made there under. In a nutshell, the Societies Act¹⁶¹ does not implement the contents of the Zanzibar NGOs Policy¹⁶² despite the fact that the NGOs instruments may conform with the policy contents. For the purpose of reflection on the practice in relation to establishment, growth and other treatments on the NGOs in Zanzibar and the brief contents of the Policy, Law and subsidiary legislation made under the law i.e the Societies Act¹⁶³ provide for a practical picture below.

3.1 The Zanzibar NGO Policy

This policy is made up of chapters divided in sub titles covering different matters. With regard to the importance of what are all stated in the chapter, it is worthy to provide each part seriatim.

3.1.1 Policy Introduction

Civil Society Organizations, particularly NGOs are recognized by the Government as important instruments in strengthening economic and social development. These

159 The Zanzibar NGO Policy of 2009

160 Act No. 6 of 1995

161 ibid

162 Zanzibar NGO Policy, Op Cit.

163 Act No 6 of 1995

organizations exercise an eminent force in the promotion of democracy and they contribute largely to the growth of national income and poverty reduction. In order to reach the objectives classified in the Zanzibar Development Vision (Vision 2020) and in the Strategy for Economic Growth and Poverty Reduction there should be taken specific strategies that will ensure cooperation with the Government to meet the target by the year 2020.

3.1.2 The Need for Having Non-Governmental Organizations

For the best service delivery in development processes, the Government of Zanzibar has noticed the importance of having NGOs as they address diverse issues ranging from lobbying, advocacy, promoting and educating, as well as develop strong and critical community to their direct work. NGOs justify that the country protects the freedom of having community-based organizations as stipulated in the Constitution of Zanzibar that:

“Every person is entitled to freedom, subject to ones free choice to freely and peaceably assemble, associate and cooperate with other persons and more specially to form or join association or organizations formed for workers, human rights organization or other organization”¹⁶⁴

3.2 The Growth of Non- Governmental Organizations in Zanzibar

Since mid-1980's when major political, social and economic reforms were introduced, activities of NGOs have steadily increased and their numbers have grown tremendously. According to statistics obtained from the Registrar General's Office, by 2007, in Zanzibar, about 510 organizations deal with a wide range of issues including gender, environment, HIV/AIDS, and other development activities were registered under the Societies Act.¹⁶⁵

Furthermore, according to the Ministry of State, Constitutional Affairs and Good Governance, there are more than 50 unregistered village development associations or committees and other forms of grassroots social organizations. This is clear evidence that the NGOs sector is growing in Zanzibar.

3.3 Lack of Non Governmental Organization Policy

Despite the burgeoning of the civil society sector, lack of information and a commonly agreed legal definition of what really constitutes civil society organizations have somewhat limited their activities in extent and effectiveness. Thus contributed as compelling factor to have into place a document in terms of policy statement that ought to define what an NGO is.

164 Article 20 of the Constitution of Zanzibar, 1984.

165 Act No 6 of 1995

3.4 The Need of Having an Institution Responsible for Non-Governmental Organizations

The need for good coordination, an efficient network, promotion of ability of the different actors, as well as the exchange of information among and between NGOs, the government and other institutions, have led to the establishment of an institution which will work with all Non-Governmental Organizations.

The above prevailing circumstances such as the growth and lack of proper directives of NGOs and the need of having improved and effective information sharing between organizations have resulted in a huge cry and call for a comprehensive policy. The policy, will not only solve the immediate problems of NGOs, but also assist in the promotion and development of the NGO sector in Zanzibar. The Policy reiterates and retains all the fundamental principles of FBOs/NGOs that are managed and controlled within the framework of liberties and constraints provided for in the laws.

3.4.1 The Meaning of Non-Governmental Organizations

For the purpose of this policy, the following meaning of Non-Governmental Organization shall be used in Zanzibar:

A non-governmental organization or NGO is a voluntary and unprofitable organized group, associations, institutions, or community based unions that are mainly established and registered for social, economic, cultural or environmental development. This definition however, excludes all political parties, trade unions, cooperative unions, company, religious, sects or any private organization that provides social services such as social clubs or entertainment.

3.4.2 Policy Declaration

NGOs shall have characteristics that distinguish themselves from Government organizations and other registered or non-registered private sector organizations.

3.4.3 Characteristics of Non-Governmental Organizations

The term Non-Governmental Organization (NGO) refers to organizations that possess the following characteristics:

- i) Structural

For the entity to be considered as NGO in Zanzibar it should be well established and abide by the due procedures.

- ii) Voluntariness
All NGOs in Zanzibar must be formed freely, willingly and spontaneously by individuals, groups or people or organizations with an element of voluntary participation.
- iii) Autonomous
Non-Governmental Organizations must operate according to the municipal laws and within their established objectives as stated in their constitution or any other regulations.
- iv) Not for Profit
NGOs must not function in a manner, which suggests that they are geared towards making profit. Any profits or benefits accrued are not for personal or private gain by members or leaders but for the purposes of fulfilling the mission and objectives of the organization.
- v) No Political Affiliation
NGOs must not target political empowerment or assisting any political party, but they can lobby and advocate for issues of human rights and fundamental freedoms of the people.

3.5 Vision and Objectives of the Non-Governmental Organization Policy

3.5.1 Vision of the Policy

The vision of this policy is the existence of strong, vibrant and sustainable Non-Governmental Organizations, which are guided by high degree of integrity and ethical conduct, transparency and accountability, in order for them to contribute effectively to national development.

3.5.2 Policy Objectives

The overall objective of this Policy is to have an enabling environment for NGOs to operate efficiently and effectively in social and economic transformation of the country. Specific Objectives of the Policy are:-

- i. To provide an operational definition of NGOs.
- ii. To provide a broad framework for legal and institutional arrangements that will facilitate the operations of NGOs in Zanzibar.
- iii. To implement registration procedures, that are transparent and facilitate better coordination of NGOs while safeguarding the freedom of association.
- iv. To strengthen the relationship between the government and non-state actors.
- v. To enhance liaison between NGOs, the Government, funding and international agencies and other stakeholders;

- vi. To facilitate information sharing on NGOs activities in order to develop utilization of resources and also share experiences, expertise or research findings;
- vii. To establish legitimacy of Civil Organizations existence as an important aspect in the issue of good governance.
- viii. To encourage participatory self-help entrepreneurial spirit.

3.6 Structure

3.6.1 Institutional Framework

Policy Statement to the effect that an appropriate institutional framework and mechanisms at national level shall be established to facilitate the registration, public reporting by NGOs, communication and consultation between Government and NGOs.

3.6.2 NGOs Board

There shall be established a Board to be known as the NGO Coordination Board and which shall be conferred with legal personality.

3.6.3 Composition of the NGOs Board

The composition, tenure of office, proceedings at meetings of the Board and other matters relating to the Board shall be elaborated in the NGO legislation.

The Board shall consist of members appointed by the Minister on the recommendation of the body representing the diversified areas of NGOs' interests and those appointed by virtue of their knowledge or experience in development and welfare management representing the Government. However it is required that the composition should consider a fair representation.

3.6.4 Functions of the Board

All the functions, duties and responsibilities or any other matters related to NGOs have to be mentioned in the NGOs Laws.

3.6.5 NGOs Coordination Unit

There shall be NGOs' Coordination Unit in the Ministry responsible for NGOs, which shall facilitate coordination and interaction between the different government ministries and NGOs. The Unit will serve as a link between the Government, NGOs and other development partners.

3.6.6 Registrar of Non-Governmental Organizations

The Revolutionary Government of Zanzibar will appoint a Government official as the Registrar of Non-Governmental Organizations. His/Her duties and responsibilities will be stipulated in the NGO Law.

3.6.7 Cooperation with the NGOs Networks

NGOs may form coalitions and networks to present their interests. This will assist NGOs in presenting their different concerns to the public, Government and International community.

3.6.8 National NGOs Umbrella Body

For the purpose of networking and building coalitions among NGOs, NGOs shall form a self-regulatory body, which will determine its own structure, rules and procedures for the efficient administration of its activities. There shall be a National NGO umbrella body that shall be a collective forum of NGO for purposes of coordination and networking of all NGO operating in Zanzibar. The National NGO umbrella body shall develop and cause to be adopted a code of conduct and such other regulations, which shall facilitate self-regulation of NGOs; and shall facilitate information sharing and provide guidelines for networking between NGOs.

3.7 The Legal Framework

3.7.1 Policy Statement

An effective registration mechanism for NGOs shall be put in place to enable the streamlining of NGOs registration.

3.7.2 The New Non- Governmental Organizations Law

A new single law for NGOs shall be enacted, to cater for the current deficiencies in NGOs registration, deregistration, appeals and termination/dissolution. The new law shall include the definition of NGOs and provide for a single registration process, which will include the incorporation of NGOs to give them legal personality by conferring on them legal status upon registration. A local registered NGO or that works with International NGO as associate must meet all the legal, regulatory and operational requirements in place in respect of local NGOs.

3.8 The Partnership between Government and Non-Governmental Organizations

3.8.1 Policy Statement

The Revolutionary Government of Zanzibar recognizes the significant role and contributions of NGOs in the society and considers them as important partners in the development process. It is therefore to ensure, that their cooperation with the Government for public interest is fully utilized.

3.8.2 Partnership in Service Delivery, Preparation and Implementation of the Policy and Development Plans.

The Government shall work in partnership with NGOs in the delivery of public services and programs and shall therefore be free to subcontract NGOs to undertake programs, where NGOs have comparative advantages and expressed interest. In order to further the development work the Government shall develop partnership with NGOs in all sectors.

3.8.3 Tax Exemption

The government may exempt NGOs from taxes under the tax and/or revenue laws.

3.9 Exchange of information and reporting

3.9.1 Policy Statement

There shall be an exchange of information and discussion among NGOs, the public, the government and international organizations with the objective of promoting better use of resources, information sharing and reducing misunderstanding.

3.9.2 Information Sharing

The Revolutionary Government of Zanzibar shall provide information relevant to NGO activities so as to promote fair information sharing between the Government and NGOs.

3.9.3 Reporting Procedures

According to the law, all local and international NGOs shall prepare annual financial reports, progress reports as well as reports on contributions collected and taxes paid. They will further be required to ensure that annual financial and/or audited reports are presented to the Registrar of NGOs and other stakeholders. They shall by laws be required to produce annual reporting of finances and activities, reporting on fund-raising activities, and annual tax filings to the extent appropriate. All NGOs, local and International shall publish and disclose all of these reports to the public, the government and to any interested person, and shall also be required to make available annual financial and/or audited reports to the Registrar's Office, and other stakeholders.

3.9.5 NGOs Address

Each NGO shall have a physical address, a sign post and wherever possible, a notice board displaying its name and activities.

3.10. Accountability And Transparency

3.10.1 Policy Statements on Accountability

The NGO council shall issue national guidelines for networking and cause to be adopted a code of conduct for all. Each registered NGO shall have its own code of conduct developed along the lines of the national guidelines for underpinning accountability and transparency.

3.10.2 NGO Governing Documents

The constitution and other instruments issued under the authority of the Constitution of an NGO will be the governing documents. In carrying out their operations and in communicating information about their work, International NGOs operating in Zanzibar will be required to:

- a) Abide by the laws of Zanzibar,
- b) Respect religions, cultures and traditions of the people and communities in Zanzibar,
- c) At all times act, foster and promote the capacities and abilities of local NGOs including participating in relevant NGO networks and avoiding actions which may cause rivalry or competitions among local NGOs.

3.10.3 Fund Raising

NGOs shall be allowed to engage in all legal fund raising activities. In the interest of financial sustainability and in order to diversify sources of income, NGOs should be permitted to minimum charges for their services and engage in income generating activities provided that the NGO is organized and operated principally for the purpose of carrying out non business activities and all profits are used for public benefit purposes and not for sharing.

3.10.4. Government Assessment of NGO Resources

All NGOs, Local and International shall be required to make available annual financial and/ or audited reports to the Registrar's Office and other stakeholders.

3.10.5. Gender Sensitivity

In carrying out their operations and in delivering their services to their targeted beneficiaries, NGOs are required, under this Policy, to be extremely gender sensitive. This includes, among others, mainstreaming gender participation, equity and rights to all NGOs' programs.

3.10.6. Sustainability and Resources

In carrying out their functions, NGOs are required to consider the need for uphold of their programs, by promoting program sustainability; enhancing financial sustainability; strengthening organizational sustainability; building and consolidating resource base sustainability.

3.11 Policy Implementation

3.11.1 Policy Statement

The implementation of the NGO Policy will require the participation of all actors at different levels.

3.11.2 Key Players for Implementation

All local and International NGOs, the Ministry responsible for NGOs coordination, NGO network body, Government Ministries, regions, local government authorities private sectors shall work together to ensure the effective implementation of the NGO Policy.

3.12 Policy Adoption

Government Ministries, Parastatal Organizations, Regional and Local Government Authorities shall adopt policies, practices and guidelines which are in line with this Policy. They will also maintain up-to-date and accurate information about NGOs operating in their fields of interest and/or geographical areas with which they are concerned.

3.12.1 Policy Revision

This Policy Document may be reviewed from time to time for the purpose of updating it to match with fast-changing social, political and economic context of Tanzania. The revision, whenever deemed necessary, shall be made through a participatory and democratic process.

3.12.2 Government responsibilities

1.1.3 The Ministry Responsible for Coordination of NGOs

- i. To strengthen coordination of NGOs and supervision of policy implementation.
- ii. To increase awareness for the involvement of NGOs in national plans.
- iii. To collect, review and provide NGOs records to the stakeholders.
- iv. To find resources for the NGO policy implementation.
- v. To lobby donors for the policy implementation.

3.12.3 The Ministry Responsible for Local Government

- i. To provide conducive working environment with NGOs for development processes.
- ii. To support NGOs in all level.

3.12.4 The Ministry Responsible for Water, Construction Energy and Land

- i. To cooperate with NGOs in developing and raising the services delivery from the concerned sectors.
- ii. To ensure the continuance of procedures which will encourage resources utilization relates to their activities.
- iii. To provide technical consultation to NGOs.

3.12.5 The Ministry Responsible for Finance and Economy

- i. To establish conducive environment that will encourage NGOs participation in national development plans.
- ii. To set conditions, that support tax exemption for any device used by NGOs with the objective discharging their responsibilities.
- iii. To conduct statistical information, and aid coordination.

3.12.6 The Ministry Responsible for Information and Culture

- i. To provide education concerning the organizations' responsibilities and the real situation in conducting its activities.
- ii. To strengthen public awareness on the NGOs policy implementation.
- iii. To ensure that Zanzibar ethics are recognized and respected.

3.12.7 The Ministry Responsible for Health and Social Welfare

- i. To establish effective mechanism that enable NGOs to implement their daily activities in public health sectors efficiently.
- ii. To enhance cooperation among the NGOs and the Ministry on related objectives.
- iii. To establish procedures that encourages and enables sharing expertise.
- iv. To support and provide guidance to NGOs in their daily activities to meet deadlines.
- v. To compare the health policy needs with the NGOs performances.

3.13 The Ministry Responsible for Constitution and Good Governance

- i. To ensure existing laws and principles provide definite opportunities for NGOs.
- ii. To establish conflicts resolutions practices in all NGOs.

3.13.1 The Ministry responsible for Youth, Development of Women and Children

- i. To facilitate good participation of NGOs in all related sectors within the Ministry.
- ii. To ensure that the implementation of NGOs' activities is carried out according to the concerned policy and law.
- iii. To broaden awareness on NGOs activities to people with different ages and gender.

3.13.2 The Ministry Responsible for Agriculture, Animal Husbandry, Fishing and Environment

- i. To provide effective participation and special involvement of NGOs in encouraging agricultural and environmental protection sectors.
- ii. To ensure that there is a good relationship between the Ministry and NGOs.

3.13.3 The Ministry Responsible for Education

- i. To create conducive environment for NGOs to perform their duties in the education sector.
- ii. To provide opportunities to particular organizations that will assist their activities in educational sectors.

3.13.4 The Ministry Responsible for Tourism, Trade and Investment

- i. To provide effective cooperation and relationship to NGOs dealing with the tourist, trade and investment sectors.
- ii. To mobilize creation of partnership between investors and NGOs that will provide support to the community.
- iii. To ensure, that tourism and investment contributes and support generosity in strengthening of NGOs.

3.13.5 The Ministry Responsible for Communication and Transport

- i. To provide cooperation with NGOs dealing with the infrastructures facilities.
- ii. To prepare good environment for NGOs to implement their duties to the sectors that fall under the Ministry.

3.13.6 Monitoring and Evaluation

Monitoring and Evaluation is an integral part in implementing any plan. Monitoring enables the relevant institutions and main stakeholders to assess the implementation results of the program and policy. In addition, they guarantee the opportunity of attaining timely implementation reports and apprehend clearly the prevailing circumstances. Moreover, Monitoring and Evaluation provide the opportunity to adjust implementation for the most favorable outcomes.

3.13.7 Implementation Procedures

The concerned Ministry on coordinating NGOs will exercise the authority of monitoring and examine implementation of this Policy. Just once in a year the Ministry will release Monitoring and Evaluation Report.

3.13.8 Implementation

There shall be established an Action Plan by the responsible Ministry for the policy implementation.

Generally the Revolutionary Government of Zanzibar recognizes 'the potentials of NGOs particularly in enhancing development with a human face especially in this era of Globalization.

This Policy creates an effective and efficient institutional and legal framework, which would streamline and simplify the NGOs' registration process. Its implementation will hopefully promote efficiency, transparency and accountability of NGOs and make a maximum contribution to Zanzibar's development process.

This Policy reiterates and retains all the fundamental principles of NGOs, that is, they are formed, run, developed, terminated or dissolved by members, trustees or directors independent of government but within the framework of liberties and constraints provided for in the Constitution and laws of the country.

3.14 The Societies Act

As said earlier, the Societies Act¹⁶⁶ is the law that regulates the NGOs presence and conducts. Its operation is not congruent to the policy simply because its legislation was not for an implementation of the policy above mentioned; therefore, a number of the policy aspects are accidental to be found in this law. The law works shoulder to shoulder with the subsidiary legislations made there under as we are going to see. It is worthier to reproduce some parties of the statute considered crucial to this part.

166 Act No 6 of 1995

3.14.1 Anatomy of the Act¹⁶⁷

According to Section 2 (1) it has been expressly stated that this Act¹⁶⁸ shall not apply to a :

- a) Political Party registered under the Political Parties Act,¹⁶⁹
- b) Company to which Companies Decree,¹⁷⁰ applies;
- c) Public enterprise constituted under the Public Enterprises Decree¹⁷¹
- d) Registered trade union to which trade unions legislation for the time being in force applies;
- e) Firm or Partnership formed and maintained for the sole purpose of carrying on any lawful business;
- f) Cooperative Society to which Cooperative Society Act¹⁷², applies;
- g) School registered under the Education Act,¹⁷³
- h) Cultural, athletic, sports; or similar group registered under the National Arts Council Act,¹⁷⁴
- i) International organisation of which the United Republic of Tanzania or where appropriate, the Government of Zanzibar is a member or has allowed the conduct of its activities in Zanzibar and any branch, section or organ of such organisation;
- j) any combination or association which the Minister may declare not to be a society for the purpose of this Act.

The law as provided for under section two, it is to be noted that in Zanzibar, there are a number of CSOs, some of which are registered under this Act some under other parliamentary legislations. Therefore, during registration of the society, the objects of the same shall usually depict the law under which it is to be registered. A number of the CSOs are registered under this Act due to lack of laws regulating their conducts. For instance, the Zanzibar Law Society is registered under the Societies Act as an NGO while its businesses are regulated under the Legal Practitioners Decree.¹⁷⁵

167 The Societies Act no. 6 of 1995

168 *ibid*

169 Act No.5 of 1992

170 Companies Decree Cap. 153

171 Public Enterprises Decree Number 4 of 1978;

172 Act No.4 of 1986

173 Act No. 6 of 1982

174 Act No.6 of 1983

175 Cap 28 of 1941.

According to section 4.(1) a Society shall for the purposes of this Act, be deemed to be established in Zanzibar, although it may be organised and have its headquarters or chief place of business outside Zanzibar, if any of its officers or members resides in Zanzibar or is present therein, or if any person in Zanzibar manages or assists in the management of the society or societies or collects money or subscriptions on its behalf.

Provided that no society shall be deemed to be so established, if and for so long as:-

- i. it is organised and is operating wholly outside Zanzibar;
- ii. no office, place of business or place of meeting is maintained or used in Zanzibar by the society or by any person on its behalf; and
- iii. no register of all or any of the member of the society is kept in Zanzibar; and
- iv. no subscription is collected or solicited in Zanzibar by the society or by any person on its behalf.

2). No society registered, organised or established outside Zanzibar shall operate or undertake its activities in Zanzibar unless –

- a) if a society intends to establish permanent office whether by itself, through agent or where it intends to open a branch, it obtains certificate of operation issued by the Registrar on such conditions as may be prescribed by the rules made under this Act, or where no such Rules have been made under the conditions prescribed by the Registrar;
- b) if a society intends to undertake any temporary activities under its direct and physical supervision, a permit is issued by the Registrar on such conditions as he may prescribed.

According to section 5(1) The Minister may, when he considers it to be essential in the public interest, by order declare to be unlawful any society which in his opinion :

- a) is being used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good governance; and
- b) is being used for purposes of tribalism;
- c) is being used for any purpose at variance with its declared objects.

(2). The Minister may in his discretion at any time revoke or vary an order made or deemed to be made under this section.

(3). Every society against which an order under this section is made or deemed to be made shall be an unlawful society.

(4). Where an order is made under this section in respect of a society, such order shall operate immediately to cancel such registration or rescind such exemption as the case may be.

(5). No society against which an order under this section is made or deemed to be made shall be registered under this Act or be entitled to make application for registration.

According to section 10; every society shall, in the prescribed manner and within twenty eight days after the formation thereof, make application to the Registrar for registration under this Act.

Section 11.(1) of the Act¹⁷⁶ provides, inter alia, that every application for registration under this Act shall be in writing and shall be accompanied with the following:-

- (a) constitution of a society;
- (b) rules of a society so far made;
- (c) statement signed by the existing members of a society that they are such members of the society;
- (d) any other relevant particulars as the Registrar may direct to be furnished.

(2) Upon application being made in the prescribed manner for registration of a society, the Registrar shall, subject to the provisions of this Act, register the society by entering in the register of societies kept for the purpose the prescribed particulars and the date of the entry.

(3) Upon registering a society the Registrar shall issue to the society a certificate in the prescribed form which shall be conclusive evidence of registration.

12.(1) The Registrar may refuse to register a society where –

- (a) he is satisfied that such society is a branch of, or is affiliated to or connected with, any organisation or group of a political nature established within or outside Tanzania;
- (b) he is satisfied that the objects or purposes of the society are substantially the same as those of any other society which, within the year preceding the application for registration, has been refused registration under paragraph (a) of subsection (2) of this section or cancelled under paragraph (a) or (b) of subsection (1) of section 13 of this Act.¹⁷⁷

(2) The Registrar shall refuse to register a society where –

- (a) it appears to him that the society is being used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good governance; or

¹⁷⁶ Act No 6 of 1995

¹⁷⁷ Ibid

- (b) the terms of the constitution or the rules of the society are in any respect repugnant to or in consisted with the provisions of any law for the time being in force in Zanzibar; or
- (c) he is satisfied that the application does not comply with the provisions of this Act or of any rules made thereunder; or
- (d) he is satisfied that the society does not exist; or
- (e) the name under which the society is to be registered –
 - (i) is identical to that of any other society which either is existing or of any society whose application for registration has been refused under this section;
 - (ii) so nearly resembles the name of any other society as, in the opinion of the Registrar, to be likely to mislead the public or the members of either society as to its nature or identity; or
 - (iii) is in the opinion of the Registrar, repugnant to or inconsistent with the provisions of any law for the time being in force in Zanzibar, or is otherwise undesirable.

According to the provisions of section 13.(1) of the Act¹⁷⁸ which states that where, in respect of any registered society, the Registrar is satisfied that it is expedient so to do on the ground that –

- (a) the society has in his opinion among its objects, or is, in his opinion, likely to pursue, or to be used for any lawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Zanzibar, or any purpose which, in his opinion, is likely to engender racial hatred in Zanzibar; or
- (b) the society is being used for any purpose prejudicial to, or incompatible with, the maintenance of peace, order and good governance; or
- (c) the terms of the constitution or of the rules of the society are, in his opinion, in any respect repugnant to or inconsistent with the provisions of any law for the time being in force in Zanzibar; or
- (d) the society has willfully, and after notice from the Registrar, contravened any of the provisions of its constitution or of its rules, or has, in contravention of any of the provisions of section 19 of this Act, done any of the things specified in subsection (1) thereof and has been convicted thereof; or
- (e) the society has failed to comply with an order made under section 28 of this Act within the time referred to in subsection (2) of that section and has been convicted thereof; or

178 ibid

- (f) the society has dissolved itself; or (g) the executive of the society is constituted otherwise than in conformity with its constitution and rules; or
- (g) the society has failed to furnish one of the documents required in section 27 of this Act and has been convicted thereof; or
- (h) the society concerned is or has become, a branch of or affiliated to or connected with, any organisation or group of a political nature established inside or outside Zanzibar whereupon the Registrar shall give written notice in the prescribed form to the society calling upon the society to show cause, within such period as is specified in the notice, why its registration should not be cancelled; and, if the society fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel the registration of the society.

(2) The Registrar shall cancel the registration of any registered society which has ceased to be a society within the meaning of this Act.¹⁷⁹

According to section 14.(1) of the Act¹⁸⁰ the Minister may, when he considers it to be essential in the public interest, by order, revoke registration of any society. Provided that in exercising these powers the Minister shall –

- (a) give twenty one days notice to the society against which revocation order is to be issued to show cause why registration of such society should not be revoked;
- (b) have taken sufficient effort to cause the reason for which revocation order is to be issued, rectified or remedied by the society.

(2) The Minister shall not revoke registration of any society where the ground of revocation falls under section 12 and 13 of this Act.

(3) Except where the Minister has misdirected himself in law in issuing revocation order, the revocation order shall be final and not capable of being removed by any court of law.

(4) Where the Minister has misdirected himself in issuing revocation order the society may, within fourteen days, appeal against the order to the High Court.

Section 15.(1) of the Act¹⁸¹ provides expressly that in case the Registrar has reason to believe that any registered society has ceased to exist, he may publish in any newspaper of regular circulation in Zanzibar a notification calling upon such society to furnish him, within a period of three months from the date of the notification, with proof of its continued existence.

179 *ibid*

180 *ibid*

181 Act No 6 of 1995

(2) If at the expiration of such period the Registrar is satisfied that the society has ceased to exist, he shall cancel the registration or rescind the exemption, as the case may be, of the society, and shall thereupon publish in the Gazette a notification of such cancellation or rescission.

According to section 16 of the Act¹⁸² any society which is aggrieved by the Registrar's refusal to register it, or by his decision under section 13 of this Act, to cancel its registration, may, within a period of twenty-one days, or such extended period as the High Court in any particular case may allow, from the date of such refusal, or cancellation, appeal against such decision to the High Court and, where the society does so and is not a society of one of the kinds specified in section 3 of this Act, it shall not, pending the decision on the appeal, be deemed to be an unlawful society.

According to section 17.(1) every society shall have an office and a postal address, and notice of the situation of such office and of the details of such address shall be given to the Registrar in the prescribed form on application for registration.

(2) All communications and notices required or authorised to be sent under or for the purposes of this Act may be sent by post addressed to the postal address of a society.

(3) Notice of every change of the situation of the office, or of the postal address, of a society shall be given to the Registrar in the prescribed form not later than fourteen days after such change has occurred.

(4) Every society which :

- (a) operates without having an office, or without having a postal address, or without having notice of the situation of its office or the details of its postal address as hereinbefore required; or
- (b) operates at any place to which its office may have been removed without having given notice of the change in the situation thereof to the Registrar as herein before required; or
- (c) fails to give notice of any change of its postal address as hereinbefore required, shall be guilty of an offence.

According to section 19(1) of the Act¹⁸³ the constitution of every society shall provide, to the satisfaction of the Registrar, for all the matters specified in the Schedule to this Act, and shall not be amended so that it ceases to contain such provision.

(2) Notwithstanding the provisions of subsection (1) of this section, the Registrar may, if he thinks fit, by order, require any society which, is registered under this Act to amend its constitution or rules within three months after the date of the order to provide for all or any of the matters specified in the said Schedule, and, notwithstanding any of the provisions

182 ibid

183 ibid

of the constitution or rules of such society, the society, for the purpose of complying with such order, shall convene a meeting of the same kind as is required by its constitution or rules or if the constitution or rules make no provision for such amendment then the society concerned shall convene a general meeting of members for the purpose.

(3) Where there has been a failure to comply with the whole or any part of an order given under subsection (2) of this section, the society concerned and every officer thereof shall each be guilty of an offence, and the society shall be liable to a fine not exceeding fifty thousand Shillings, and every officer shall be liable to the like fine or to imprisonment for a term not exceeding one year or to both such fine and imprisonment;

Provided that an officer shall not be convicted of the offence if he establishes to the satisfaction of the court that he exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his control.

According to section 20.(1) of the Act¹⁸⁴ no registered society shall :

- (a) amend its name, or its constitution or rules; or
- (b) become a branch of, or affiliated to or connected with, any organisation or group of a political nature established inside or outside Zanzibar; or
- (c) dissolve itself, except with the prior consent in writing of the Registrar obtained upon written application to him signed by three of the officers of the society;

(2) An application by a society to do any of the things specified in subsection (1) of this section shall be accompanied by a copy of the minutes of the meeting at which the resolution to do that thing was passed, certified as a true copy by three of the officers of the society, and the application shall be delivered to the Registrar within fourteen days after the day on which the resolution was passed.

(3) A registered society which contravenes any of the provisions of this section shall be guilty of an offence.

According to section 21.(1) of the Act¹⁸⁵ it is clearly stated that any registered society may establish such number of branches as it may deem appropriate. Further more it is statutory directives that no such branch mentioned above shall be established without approval of the registrar.¹⁸⁶ On the same basis it is the statutory requirement that application to establish a branch shall be submitted to the registrar.¹⁸⁷ Lastly, application to establish a branch shall be submitted to the Registrar with the following particulars:¹⁸⁸

184 Act No 6 of 1995

185 Act No 6 of 1995

186 Subsection 2 of section 21 Act No 6 of 1996

187 Subsection 3 of section 21 Act No 6 of 1996

188 Subsection 4 of section 21 Act No 6 of 1996

- (a) place where the registered office of a branch is situated;
- (b) respective posts of the officers of the branch;
- (c) internal rules governing the branch if so provided.

Other requirements for the establishment of the branch shall include but not limited to particulars of office bearers of a branch which shall be submitted to the Registrar within twenty one days of their election, A requirement that a society shall keep registry of members of the society in every branch and shall submit the same to the Registrar. Upon compliance with the provisions of this section and upon payment of the prescribed fees the Registrar shall issue a certificate of approval to establish a branch. And lastly the registrar may cancel approval to establish a branch if he is satisfied that a branch or its holding society has ceased to comply with the provisions of this section. ¹⁸⁹

Section 39.(1) provides that any dispute between members of a society qua members arising out of the affairs of a society including, but not limited to, interpretation of constitution or rules or any instrument pertaining to the activities of a society, excluding this Act and Rules made under it, shall, where a society fails to amicably settle it, be referred to the Registrar.

(2) The Registrar shall, in respect of such dispute, act as arbitrator or where he deems it appropriate, appoint any person or such number of persons to act as arbitrators and anybody acting as such arbitrator and arbitration proceedings shall, save as is herein otherwise provided, be subject to Arbitration Decree Chapter 25 of the Laws of Zanzibar.

(3) The cost of arbitration shall be paid to the Registrar and such cost shall be recoverable from a society in respect of which arbitration is conducted and the Registrar may exercise any of his powers to recover such cost notwithstanding any procedure or conditions of exercising such power.

3.15 Subsidiary Legislation made under The Societies Act

These are rules made under section 57 of the Societies Act.¹⁹⁰The rules provide for procedural compliance on the statutory provisions of the principal laws. As its name denote, they supplement and elaborate the principal and substantive law that is statutory provisions of the

189 Subsection 8 of section 21 of the Societies Act No 6 of 1995

190 Section 57 of the Societies Act number 6 of 1995 provides that the Minister may make rules for prescribing anything which by this Act is required to be prescribed and generally for the better carrying out of the provisions of this Act. Subsection 2 of section 57 prescribes further that without prejudice to the generality of the powers conferred by subsection (1) of this section, rules thereunder may provide for all or any of the following matters, (a) prescribing fees and forms; (b) prescribing the forms of accounts to be used by such societies as shall be named from time to time by the Minister by notice in the Gazette; (c) securing the submission to the Registrar of periodical returns relating to the constitution, rules, membership and management of societies; and (d) prescribing penalties for the breach of any rules, not exceeding in any case a fine of one hundred thousand shillings and imprisonment for a term of one year.

Act¹⁹¹. All provisions of the rules are important and need to be observed but for the purposes of this Compendium, some of them are touched for the purposes of explaining them.

Rule 4:

It is concerned with application for registration of the Civil Society. According to the rule; an application for registration of the local society shall

- a) Be made in duplicate in the forms SA 1 and SA 2,¹⁹²
- b) be signed by two of the office bearers, where there are two or more and the sole office bearer in the other case,
- c) be accompanied by two copies of the constitution and rules of the society,
- d) statement signed by the existing members of the society.

Rule 7:

This rule is to the effect that the registrar may refuse to Register a local society and the refusal shall be accompanied with the registrar's notification of refusal done in a prescribed form SA.5

Rule 8:

This rule relates to processing appeals to the High Court which may rise from section 13 of the Act¹⁹³ covering the cancellation of the society by the Registrar and section 16 that enables the Registrar's power to refuse to register the society and it provides remedies of appeal to the High Court. The rules is reproduced as here under:

8. Any appeal to the High Court under section 16 of the Act¹⁹⁴ against the Registrar's refusal to register or cancellation of registration of a society and any application for an extension of time within which to lodge such an appeal shall:

- a. be in writing signed by two of the office bearers of the society where there are two or more and by sole office bearer in other cases
- b. Set out the grounds upon which the appeal or application is based, and
- c. be sent to the registrar of the High Court

Rule 11:

This rule relates with the keeping of books of account in relation with all moneys received and spent and establishing an offence to the officer responsible in violation of the requirement in relation to keeping books of accounts.

191 Societies Act No 6 of 1995

192 Annexed from the 1st schedule of the rules.

193 Act No.6 of 1995

194 Act No.6 of 1995

Rule 15:

This rule is to the effect that once a society is registered, it can not change its name, any provision of its constitution or rules, objects or become a branch or get affiliated to or connected with any other organisation of any nature in or outside Zanzibar without a prior permission from the Registrar.

The permission is applied for to the Registrar as per prescribed form SA. 9 and 10. The Registrar is at liberty to accept or refuse an application.

Any refusal to grant any permission as to the enlisted matters above is appealable to the Chief Minister within twenty one days or such duration extended as the minister may allow according to Rule 15(7).

Rule 21:

This rule provides for procedures of appeal to the Chief Minister. The rule reads as follows:

Any appeal to the chief minister under the act or under the rules and any application for an extension of time within which to lodge such appeal shall:-

- a) be in writing signed by two office bearers of the society;
- b) set out grounds upon which the appeal or application is based;
- c) be sent to the principle secretary to the chief minister's office.

Rule 23:

This rule sets out various fees chargeable on several matters vide application before the Registrar.¹⁹⁵

Generally, these Rules made under the Societies Act apart from elaboration on procedural compliances, they are to some extent replica of the principle law in a summary form on several provisions. Important as the Rules stand, they are user friendly as all matters are applicable in prescribed forms made under different provisions depending on what is to be tabled to whom from both the societies and the Registrar. In short, the annexed Rules for perusal as covered under the First Schedule of the Rules are:

195 See an extract from the 2nd schedule on fees.

Prescribed Forms given under the rules	Enabling provisions (Society Rules)	Form use
Forms SA. 1	4	Application for registration of the society/ NGO
Forms SA. 2	4	Statement of Particulars in support of an application for registration
Forms SA. 3	5	Certificate of Registration
Forms SA. 4	6	Certificate of Exemption
Forms SA. 5	7	Notification of refusal to register the society
Forms SA. 6	12	Notice of change of office bearers
Forms SA. 7	13	Notice of change of registered office
Forms SA. 8	13	Notice of change of Postal Address
Forms SA. 9	15(2)	Application for permission to change the name of the Society
Forms SA. 10	15(2)	Change of the registered office of the NGOs
Forms SA. 11	15(8)	Notice of change of name
Forms SA. 12	15(8)	Notice of change of constitution
Forms SA. 13	17	Notification of rescission of exemption
Form SA. 14	18	Notification of Cancellation of registration of the society (NGO)

NOTE: All entities registered as societies under this Act are bound by these rules but it is worth to remember as discussed before that all NGOs are CSOs but not all CSOs are NGOs.

3.16 The Zanzibar Business and property registration Agency

Business and property registration in Zanzibar is regulated by the specialized agency for Zanzibar which is Business and Property Registration Agency 'the BPRA' which is as well a Government Institution based in Zanzibar¹⁹⁶. It was established by the Zanzibar Business and Property Registration Agency Act¹⁹⁷ in order to replace the functions of The Registrar General's Office¹⁹⁸. BPRA works under the Ministry of Trade and Industry and is responsible for registration activities ranging from registration of commercial or business entities as well as property registrations and the Civil Societies in accordance with the manner set forth under the laws establishing them¹⁹⁹. All registrations are done under the provision of their respective legislations²⁰⁰. Following the need to register some matters arising from the cause of the availability on the CSOs in Zanzibar therefore, governing laws are likely to subject any CSO to compulsorily get the service of the Agency. It is jurisprudentially stated that a number of laws are involved depending on what is to be registered and reason behind. A good example is that; when a legal entity is to be registered then the Societies Act²⁰¹, the Companies Decree²⁰² and the Business Names Registration Decree²⁰³ that regulates procedures cannot be escaped. Other transactions may involve needs to be registered under the categorical laws depending on the subject matter.

Essential as the BPRA stands, the scattered authorities under which different registration matters were discharged were, after the birth of BPRA, brought under its control. Following amendments of Act No. 13 of 2012, the Offices changed from Registrar General's Office to Zanzibar Business and Property Registration Agency²⁰⁴.

3.16.1 Basic functions of the Business and Property Registration Agency

The functions of the BPRA are established under section 4²⁰⁵. According to the section, the BPRA is authorised to ensure effective and efficient administration and enforcement of the relevant laws concerning business and property registration in Zanzibar and any other law or Regulations concerning registration that may be assigned to the Agency by a Ministry, department or any other authority which administers such legislation or Regulations. The procedures laid down to ensure that duty is by the Minister to, by notice published in the Gazette. amend, vary or replace the laws and or regulations under the law²⁰⁶.

196 <http://www.bpra.go.tz/index.php/component/content/article?id=35> (accessed on 30/9/2018).

197 No. 13 of 2012

198 Ibid.

199 Section 18 of the Property Registration Agency Act.

200 Ibid.

201 Op cit.

202 Chapter 153

203 Chapter 168

204 Ibid.

205 Ibid.

206 In the other word, the functions of the Agency are the functions of the Authority under the Laws to which the

According to Section 4(3)²⁰⁷ the Agency discharges its obligations by abiding to the principles which involve provision of services to its customers and the public in general in the most efficient and effective manner while managing its affairs in a businesslike and cost-effective manner and in accordance with modern management practices and techniques and, in particular, to apply to its operations the best standards of financial management and accounting it must ensure that its operations are designed for the provision of the best service to its customers and to maintain a high degree of responsiveness to their needs.

The schedule to the law²⁰⁸ establishes what it calls the relevant laws to it. These laws include The Secured Transaction Act²⁰⁹, the Zanzibar Industrial Property Act²¹⁰, The Societies Act²¹¹, The Transfer of Properties Decree²¹², the Companies Decree²¹³, The Business Names Registration Decree²¹⁴, and The Registration of Documents Decree²¹⁵. The essence is that, any entity be it a CSO or not, cannot escape from transaction under the stated laws either by the legal compulsion or in the cause of discharging its duties. Therefore, the CSOs cannot as well keep distance from these laws on both its registration and operation.

More often than not, CSOs whether or not are business element oriented along with their other activities, have exclusive rights in relation to Intellectual property 'the IP'. It could be even exclusive use of registered names. The service as to this effect that is regularization and protection of the CSOs such exclusive rights, shall in no way be accessed anywhere but from the BPRA. In so doing therefore, other domestic and municipal laws governing the IP matters come into use. Before going beyond to elaborate little on the issue of IP, it is a little bit important to know what IP mean. The IP is defined by the Black's Law Dictionary²¹⁶ to mean a category of intangible rights protecting commercially valuable products of the human intellect. The category includes primarily the trademark, copyright and patent rights. Further, trade secrets rights, publicity rights, moral and rights against unfair competition²¹⁷. In the light of Oxford Dictionary of Law²¹⁸ intellectual property is an Intangible property that includes patents, trademarks, and copyright and registered and unregistered design

entity for our case, the CSO is established. Therefore, for the purpose of the CSOs in relation to this compendium, the functions of the agency are as wide as the Societies Act establish.

207 Ibid.

208 Ibid.

209 Act No. 4 of 2011.

210 Act No 4 of 2008.

211 Act No 6 of 1995.

212 Chapter 150.

213 Op cit.

214 Op cit.

215 Chapter 99.

216 8th Edition at p. 824.

217 Ibid.

218 5th Edition at p. 257.

rights. Along with that, and as a reminder, these rights arising from the IP may be protected at national and global levels. Zanzibar being part of the United Republic of Tanzania has signed different Intellectual Property-related Agreements and become a member of those agreements²¹⁹. Therefore, shortly, let it be made as a reminder that Tanzania became a member of the TRIPS Agreement (1994) in 1995, the Paris Convention for the Protection of Industrial Property (1883) in 1963, the Convention establishing the World Intellectual Property Organization (WIPO) (1967) in 1983, Berne Convention for the Protection of Literary and Artist Works (1886) in 1994, Nice Agreement (1957) in 1999, Patent Cooperation Treaty (PCT) (1970) in 1999 and Harare Protocol for the Protection of Patents and Industrial design (1982) in 1999²²⁰. By so saying, Zanzibar in one way or another carries the burden to respect the said instruments in accordance with the manner and procedures it does as part of the United Republic of Tanzania but under its procedures it which put them into enforcement. It should be noted that, domestically, Zanzibar already had its IP legal regime prior to Union and during colonial era the same existed²²¹. According to Saleh²²², the history of the IP in Zanzibar is said to have been written since 1932 through Trademarks Decree²²³ the Patents Decree²²⁴ and Industrial Design (Protection) Decree²²⁵.

It is as well argued that the above instruments appears to have not been exhaustive and therefore were antiquated as some of them did not touch on important matters²²⁶. It is evident that while the Trade Marks Decree did not provide for registration or protection of Service Marks the Patent Decree allowed the Registration of Patent to be effected in the United Kingdom before being registered in Zanzibar²²⁷. The above instruments were repealed and replaced by the new law going by the name of the Zanzibar Industrial Property Act²²⁸ which came into force in July 2008, which protects intellectual property

219 It should be remembered that Zanzibar does not sign international instrument as Zanzibar but through the United Republic of Tanzania in accordance with the manner and authority already discussed above.

220 Saleh, S.I; BPRZ Zanzibar Country Report: Regional Training Workshop On Data Quality Management, Exchange, And Online Services Maputo, July 11 to 15, 2016.

221 Ibid.

222 Ibid.

223 Chapter 159.

224 Chapter 157.

225 Chapter 158.

226 Op Cit, Saleh

227 Ibid.

228 Act No 4 of 2008

Chapter 4

Laws Governing Information, Research And Publications In Zanzibar

4.0 Introduction

In order to ensure smooth performance of their activities, NGOs have either directly or indirectly work with mass media. It is not a matter of choice but it is a must, NGOs programmes which are meant for public consumption have to be communicated to the people at the right time. The simplest means to reach a large number of people is through mass media available in a country. Mass media especially electronic media is an effective channel to reach out the Zanzibar's population of 1,303,569²²⁹ and convey the intended messages. After all, the right to information is one of the fundamental rights enshrined in international, regional and local legal instruments. It should be understood right from the beginning that fundamental rights (including the right to information) are not created by the respective country constitutions or legislation, but are gifts from God.²³⁰ The fundamental rights have been put in constitutions to assist their enforcement in the courts of law when a person seeks legal redress from the court. Some legal experts argue that it would have been almost impossible to enforce a right which is not recognized in the country's constitutions or legislation. This chapter, therefore, seeks to provide a Zanzibar legal media framework as well as other laws relating to research and publications. This information may be very useful for NGOs to understand and get a bigger picture of the media operations and applicable laws in order to work within the parameters of the laws.

4.1 International Instruments on Media Operations

International instruments can be defined as the declaration, treaties, conventions and others which are passed by international organizations and are supposed to be applicable to all the member states after the signing of the documents and in some cases after ratification by the national legislatures. There are a number of international instruments regarding the operation of mass media. However, in this context, the two basic international instruments

229 National Population and Housing Census, 2012.

230 Rev. Mtikila v. Attorney General (1995) TLR 31.

which cannot escape the attention are; the Universal Declaration of Human Rights²³¹ which has no binding force to the member states and the International Covenant on Civil and Political Rights²³² which is binding to the member states.

4.1.1 The Universal Declaration of Human Rights²³³

UDHR is the first international instrument which has an article on the right to freedom. Despite the fact that this declaration is not binding but it provides for the freedom of speech which is one of the basic rights and is an essential in search of truth and democracy. Article 19 of the UDHR provides that:

‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’

Article 19 warrants some discussion because so many elements of the right to freedom of expression are contained in these few lines.²³⁴ This right is granted to everyone; there are no qualifiers, such as citizenry or age;²³⁵ it confirms the basic right to freedom of opinion and expression. In other words, not only is everyone entitled to hold their opinions on any issue (clearly encompassing thoughts, ideas and beliefs), they are also entitled to express them,²³⁶ that is freedom of expression. This is broader than speech as it encompasses non-verbal, written and non-written expression, such as dance, mime, art, photography and other non-verbal actions.²³⁷

Specifically, it includes the right to seek, receive and impart information and ideas. This is a critical aspect of the right as it means that everyone has the right to obtain information. Thus, States that deny media freedom also trample upon the rights of their citizens to receive information freely,²³⁸ which include the right to seek information and ideas through any media. This is a critically important statement for the press and media because it makes it clear that newspapers, radio, television and the internet, for example, are all clearly encompassed within the right;²³⁹ and exists regardless of frontiers. In other words, this is internationally recognized as a universal right that is not dependent upon, or determined by, national borders.²⁴⁰

231 UDHR 1948.

232 ICCPR 1966.

233 UDHR 1948 supra

234 Limpitlaw, Justine, MEDIA LAW HANDBOOK FOR EASTERN AFRICA, Volume 1, Konrad-Adenauer-Stiftung Regional Media Programme, Johannesburg, 2016, pg 7.

235 Ibid.

236 Ibid.

237 Ibid

238 Ibid

239 Ibid

240 Ibid

4.1.2 The International Covenant on Civil and Political Rights

This is another international instrument providing the right to freedom of speech. Unlike UDHR, this is a binding document to the Member States after the signing of the document at international level, the function which is done by the countries presidents. Again, it is article 19 which, among other things, explains on a number of provisions of UDHR. This article provides that:

1. Every one shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are

1. necessary:
 - (a) for respect of the rights or reputations of others;
 - (b) for the protection of national security or of public order, or of public health or morals.

4.2 The Regional Instruments

In some cases, regional instruments are referred to as zonal instruments. In this context, the regional instrument is meant the African Charter on Human and Peoples' Rights 1981.²⁴¹ Article 9 of the African Charter²⁴² provides that:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Some media critics have complained about this article as it does not give sufficient cover to media on the ground that the article does not talk about the right to impart information and that there is a claw back saying that the rights must be done within the law.

241 The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. It should be noted and emphasized here that oversight and interpretation of the Charter is the task of the African Commission on Human and Peoples' Rights, which was set up in 1987 and is now headquartered in Banjul, Gambia. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into effect on 25 January 2005.

242 Ibid.

It is on record that the African Court of Human Rights has in 2014 interpreted that the reasons for possible limitations must be based on legitimate public interest and the disadvantages of the limitation must be strictly proportionate to and absolutely necessary for the benefits to be gained.

4.3 Constitution of the United Republic of Tanzania

Constitutions mean the supreme document of the land. All laws in a country are subjected to the constitution. In case of conflict between a law and the constitution, the constitution prevails and the law shall be null and void. In the United Republic of Tanzania, there are two constitutions. There is the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time) and there is the Constitution of Zanzibar, 1984 (as amended from time to time). Both Constitutions provide for the right of freedom of expression. The Constitution of the United Republic of Tanzania of 1977 has provided for the freedom of opinion and expression of ideas. Article 18 of the Constitution provides that:

“Every person has a freedom of opinion and expression of his ideas, has right to seek, receive and or disseminate information regardless of national boundaries; has the freedom to communicate and a freedom with protection from interference from his communication.”

4.3.1 Constitution of Zanzibar

The Constitution of Zanzibar, 1984 is argued that it is at par with the Constitution of the United Republic of Tanzania. However, the Constitution of Zanzibar has power over non union matters that are falling under the sphere of Zanzibar. The Constitution of Zanzibar of 1984 has incorporated a section of the right of freedom of expression as a clear indication of the defense of this right.

“Every person shall have the enjoyment of his freedom of expression, freedom to hold opinion without interference with his correspondence; every citizen shall be entitled to receive information at any time in respect of national and international events which are important to the lives and functions of the peoples and also on matters of public interest.”²⁴³

There are different scholars and academicians who attempted commenting on the above cited constitutional provision. It should suffice to mention here that the obvious question which most of the authors have attempted to answer is whether the freedom of press is incorporated in the freedom of expression. Othman Masoud,²⁴⁴ in his paper “Legal and Regulatory Framework of the Media in Zanzibar” having cited several decided authoritative and persuasive precedents within and outside the Zanzibar jurisdiction concluded that

243 18 (1) of the Constitution of Zanzibar, 1984.

244 Othman M, “Legal and regulatory framework of the Media in Zanzibar”, pg. 1 and 2, a paper presented in the Media Council of Tanzania (Zanzibar Office) on the Occasion of World Press Freedom Day 3rd. May 2008.

freedom of speech and right of information enshrined in the Zanzibar Constitution 1984 cover also the right to free press.²⁴⁵ It is not within the scope of this work to examine the freedom of expression in Zanzibar, rather to navigate on laws governing information, research and publication due to the facts that most of the CSOs are engaged on the task of research and disseminations of the research findings, hence they should be acquainted with laws into place on the area of information, research and publications.

4.4 Policies

Policy can be described as a set of principles, rules and guidelines which are formulated by an organization to reach its long term goals. After the formulation of a national policy, a law is enacted to enforce the policy. There are three policies explaining about the right to information in Zanzibar which have been enacted at different times. Two of the policies specifically detail about the information and the third one is about the good governance but has incorporated an element of mass media in Zanzibar.

4.4.1 Zanzibar Information Policy

The Zanzibar Information Policy is a policy dealing with information. It was passed by the House of Representatives of Zanzibar in 2006. Among other things, the Information Policy regulates and controls the behavior and operation of the mass media as well as acts of irresponsible journalism. Among others the policy has the following features and policy statement:-

Policy statement regarding the professional codes of ethics - the Policy²⁴⁶ provides that the professional codes of ethics one among them is to protect peace and build unity between citizen and the foreigners.²⁴⁷ In the light of the freedom of expression this is not the obligation of the journalists, provided that he or she is not infringing peace and unity. The stipulated ethic is a social or moral obligation. It is recommended the mentioned obligation to be reviewed or the Policy should expressly state that this obligation should not have legal effect, but is intended as encouragement measure.

It is argued by UK²⁴⁸ that the goodness of Zanzibar Information Policy provides for the non-disclosure of the sources of information as the journalist responsibility under the code of ethic. However it fails to provide it as a right and also it limits non-disclosure for the true information only.²⁴⁹ This limitation is contrary to the international standard which imposed very strict conditions on limiting the human rights based on 'necessity' and 'proportionality'.

245 Othman M, "Legal and Regulatory Framework of the Media in Zanzibar"

246 Zanzibar Information Policy of 2006.

247 (Section 8.3 (xi)) of the Zanzibar Information Policy.

248 Uki A A et al, A Study on the Policies and Laws Relating to Freedom of Press and Expression in Zanzibar, 2009.

249 See section 8.3 (v) of the Zanzibar Information Policy.

It is recommended that the Policy shall explicitly provide for the protection of confidential sources of information as a journalist and media outlets right and commit itself for the legislative protection of the confidential source of information and review law which is contrary to this right.

4.4.2 Zanzibar Broadcasting Policy

This Policy is dealing with only broadcasting matters excluding the print issues. The print issues, as explained above, are dealt under the Information Policy. This policy was passed in 2008. Among other things, the Policy states clearly that the government is responsible of running the government media and it is the sole authority which can decide the manner in which the government electronic media should be managed. In a nut shell it can be asserted that the policy directs for the establishment of the independent Public Service Broadcasting manned with experts and which shall be responsible to the public and ensure that broadcasted programs satisfy the intended public.²⁵⁰ It should be noted here that the Policy provides some restrictions such as prohibition of provocative language²⁵¹ and censorship of programmes before being broadcasted for the protection of customs, values and culture.²⁵² This is a good thing to have in the policy. The experience shows that political parties are not given equal right in government broadcasting. The Policy unsatisfactorily rectifies the same but recognizes the realization of this right during the General Elections only.²⁵³

Generally, the Zanzibar Broadcasting Policy to some extent is in line with the International Standard as far as the establishment of the Public Service Broadcasting is concerned. It contains a number of positive provisions on freedom of press and expression although it includes some provisions which are incompatible with International Standards and Zanzibar Constitution which guarantee the freedom of expression. It recognizes the undisputed reality that government controls broadcasters. The policy is silence on the issue of the independence of broadcast regulatory body. It should conform with the African Commission on Human and People's Rights which adopted a Declaration of Principles on Freedom of Expression in Africa, as well as the African Charter for Broadcasting ,2001 which require any public authority that exercises powers in the areas of broadcast or telecommunications regulation be independent and adequately protected against interference, particularly of a political or economic nature.

250 Section 3.1 of the Zanzibar Broadcasting Policy of 2008.

251 Paragraph 5.1(a) (Strategy).

252 Paragraph 5.2 (a).

253 Paragraph 4.1: Policy objectives.

4.4.3 Good Governance Policy

Generally, good governance means the way the public institutions manage their affairs and public resources. Good governance has a number of principles including the rule of law, respect of human rights and democracy, participation of people in running of the country affairs and the way the government responds to the public needs. The Policy of Good Governance has included an issue of media as part of good governance. This Policy was issued by the President's Office, Public Service and Good Governance by the Revolutionary Government of Zanzibar in 2011.

In the Policy, there is a key issue regarding operation of media. It provides that:

“Both the public and private media have the responsibility to inform the public on important issues, policies and public campaigns that are part of the good governance and the media is also tasked with assessing the performance of the government and report on any confirmed instances of mismanagement, corruption or other forms of bad governance.”

4.5 Other Applicable Laws to the Media in Zanzibar

There are a number of applicable laws in relation to the operation of mass media in Zanzibar. There are laws which have direct connection to media operation and there are laws which have an indirect connection to media. All of the laws aim at regulating the behaviour of mass media to ensure they operate within the parameters of the laws. However, this law may affect the interests of Civil Societies when they want to start the print or broadcasting services.

4.5.1 Laws Which Have Direct Connection to Media

4.5.1.1 The Registration of News Agents, Newspapers and Books Act²⁵⁴

This law regulates all activities concerning registration of news agents, newspapers, books and accreditation of journalists. It is one of the 40 oppressive laws cited by the Nyalali Commission which was responsible for collecting opinions on whether Tanzania should adopt multi-party politics²⁵⁵. The law has positive and some negative sections which are incompatible to international standards. Section 30 of the law empowers the Minister

254 Act No. 5 of 1988.

255 The Nyalali Commission of February 1991 was a Presidential Commission set up under the leadership of then Honorable Chief Justice of the United Republic of Tanzania Francis Nyalali to collect the views of Tanzanians and make appropriate recommendations on whether the country should adopt a multiparty or single party system. It sat during the term of President Ali Hassan Mwinyi, second president of the United Republic of Tanzania after the founder of the nation the late Julius Kambarage Nyerere. Based on the reports given by the Commission, the Constitution of Tanzania was gradually modified in the following years to accommodate a multi-party system.

responsible for information to suspend the publication of any newspaper if he/she is of the opinion that it is in the public interest of peace and good orders to do so.

It is on record that some Civil Societies in Zanzibar have launched newsletters with the main purpose to popularise their activities to a large number of people. By the law, all these newsletters by the societies must be registered under the above cited law which was passed by the House of Representatives. By the power bestowed on the Minister responsible for information, the newsletters may be suspended or cancelled in the opinion of the minister that they behave contrary to the public interest of peace and good order. It is another law to watch as it may affect the interests of Civil Societies.

As that was not enough, some Civil societies spend much of time to do researches and make publication on different issues ranging from the rule of law, human rights and democracy. By this law, the book may be banned if it is in the opinion of the Minister is against public interests and orders.

4.5.1.2 The Zanzibar Broadcasting Commission

Another law dealing with information issues in Zanzibar is the Zanzibar Broadcasting Commission Act²⁵⁶ which regulates broadcasting (electronic media) activities. All broadcasting media must be registered under this law. The law gives powers to the Commission which has the Board of Directors to issue and cancel the permit to any institution if it deems to violate the applicable rules. The regulations control operation of social media.

It is a matter of time, some powerful Civil Societies may think of launching broadcasting services to articulate their objectives and policies so as to reach a large number of population in urban and rural areas. This means a Civil Society which is considered as a threat to the government interests may not easily get a permit to start the broadcasting services. In addition, a Civil Society may be given a permit to start the broadcasting services. But the Commission at the same has the powers to cancel the permit when it appears to them that the society's conduct is contrary to the laid down procedures or policies. This may be considered as an obstacle to enjoyment of the basic rights of freedom of expression and association.

4.5.2 Laws Which Have Indirect Connection to Media

There are a set of laws which control media operation indirectly. The media have to respect these laws, short of that they may find themselves in legal problems and may be taken to the court of law.

256 Act No 4 of 2018

4.5.2.1. The Elections Act²⁵⁷

This is the new law replacing the old Elections Act of Zanzibar.²⁵⁸ The new law was assented to by the Zanzibar President Dr. Ali Mohamed Shein on 12th January, 2018. This law deals with all election matters right from registration of voters to the announcement of the election results in Zanzibar. It is the law giving the powers to the Zanzibar Electoral Commission to conduct and supervise all Zanzibar elections and referendums – the elections of the Zanzibar President, the elections of the members of the House of Representatives and the councillors' elections. It has no power on the elections of the president of the United Republic of Tanzania, members of the National Assembly and councillors for the Tanzania mainland as they are conducted and supervised by the National Electoral Commission.

Section 127 of the Act²⁵⁹ prohibits announcement of the elections result by any means of communication prior to the official announcement of the Zanzibar Electoral Commission.

Section 127 (1)²⁶⁰ provides that:

“It is prohibited for a candidate, a political party, election institution or any person to announce the election results through any means of communication before the official announcement by the Commission”

Section 127 (2)²⁶¹ provides that:

A candidate, political party, institution or any person who will announce the election results or demanding the Commission to announce the results before the expiry of the time set for the announcement of the results, shall commit an offence and if is convicted shall be liable to one of the following punishments:

- (a) If a candidate, shall be liable to the imprisonment for the period not less than five years or a fine of not less fifty million shilling and shall not be allowed to contest for the elections for the period of ten years;
- (b) If a political party or institution, shall be liable to a fine of not less than hundred million shillings;
- (c) If any person, shall be liable to imprisonment for the period of not less than thirty months.

257 Act No 4 of 2018.

258 Ibid.

259 Act No 4 of 2018.

260 Ibid.

261 Ibid.

Section 127 (3)²⁶²

“The Commission or any person who deems that the conditions stated in subsection (1) or (2) of this section are contravened, shall give the information to the police station in order for the legal action to be taken against the person concerned.”

Under the Elections Act, all persons and in this connection, Civil Societies are strictly required to adhere to the Act. It has been a practice since the 1995 multi-party elections, Civic Societies request for a permit from the Zanzibar Electoral Commission to work as observers. Observers are the persons who are allowed by the electoral body to observe the election matters right from the registration of voters, campaign, voting exercise, counting exercise and announcement of election results. On top of that, Civil Societies are allowed to write an independent report over the way they have observed the elections process. However, in connection of the Elections Act, Civil Societies must perform their functions in respect to the elections matters within the parameters of the law or risk legal actions. This means members of Civil Societies have to be made aware of the Act and it is fundamental to take extra care to observe the sections of the Elections Law.

4.5.3 The National Security Act²⁶³

Security matters are referred to all issues regarding the country and its citizens. Under the Security Act, there is a special section under this law which creates a sedition offence. Sedition is explained as incitement of resistance to or insurrection against lawful authority. There is a distinction between sedition and defamation. Sedition is an offence against the state while defamation is most of the time referred to as tortious liability against a person. However, in some cases, defamation falls under the penal laws.

In the performance of their routine functions in line with their respective objectives, Civil Society as an artificial person must put a watchful eye on the National Security Act. In the event of violation of the sections stipulated in the National Security Act, Civil Society may risk legal action. It is understood that a number of members of Civil Societies in the neighbouring countries have been charged with sedition especially towards the count-down to the General Elections. Inclusion of section of sedition in the National Security Act serves as a warning to Civil Societies to exercise an extra care in the performance of their functions. Any form of a mistake, Civil Societies may find themselves in conflict with the National Security Act.

262 Ibid.

263 No. 3 of 1970

4.5.4 The Penal Act

The Penal Act²⁶⁴ is the substantive criminal law statute in Zanzibar. A new Penal Act was passed by the House of Representatives in 2018. In the Penal Act which creates an offence and punishment did not spare Civil Societies in Zanzibar. The law creates an offence relating to defamation as well as an offence relating to promoting enmity between different groups. As stated earlier, defamation may be under the Penal Act or under the Private Law, the Law of Torts. In this context, Civil Societies are required to observe the law of the country. In the event of violation of the section in respect to defamation, they may risk a legal action. At the same time, there is an offence relating to promoting enmity between different groups. This is a very risk exercise to Civil Societies. The objectives of most of the Civil Societies include an advocacy role and conduct of outreach programmes to the people particularly at rural areas. Members of Civil Societies must take precautions on the statement they intend to make. If it is established beyond reasonable doubt that a statement issued by a Civil Society has an element of promoting enmity between different groups, it may risk a legal action. As a matter of fact, members of faith based associations which are registered under the Societies Act No. 6 of 1995 have to be responsible on their statements to avoid causing enmity among different groups. The section was made part of the Penal Law with the purpose of ensuring peace and unity among the members of the society.

4.5.5 The House of Representatives (Immunities Powers and Privileges) Act

As the case of other legislatures, members of the House of Representatives are given a kind of special legal immunity on the statement they make. This aims at giving legislators an opportunity to speak out their minds in the performance of their legislative functions without fear. It is argued that non-inclusion of a section of Immunity, Powers and Privileges; it would have been a difficult task for the legislators to perform their legislative functions for the interests of the electorates. Section 32 of the House of Representatives (Immunities Powers and Privileges) Act²⁶⁵ makes it an offence to publish any false or scandalous libel on the proceedings of the House or any Committee which wilfully misrepresents in any way proceedings of the House or any Committee. In addition, the same section prohibits publishing save by the general or special leave of the House a report of any proceedings of the House or any Committee whose proceedings were not held in public. This section of the law also covers Civil Societies. In the performance of their functions especially the societies dealing with the rule of law, promotion and defence of human rights and labour organizations must also exercise care on this section of the law. Any form of false statement or scandalous libel by a Civil Society can attract legal action. This means Civil Societies are

264 Act No 6 .of 2018.

265 Act No. 4 of 2007.

not allowed to make any comment on report of the proceedings of the legislature which were not held in public. It appears that this section may negate the performance of some functions of Civil Societies especially on labour and human rights issues. At the end of the day, Civil Societies may not be active in advocacy roles.

4.5.6 The Censorship and Cinematographic Exhibition Act²⁶⁶

Censorship is the famous word especially in the media houses. It is the duty of editors to edit the contents of an article to ensure that it does not include any materials or unwanted information. Technically, censorship is explained as the suppression of speech, public communication or other information on the basis that such information is considered harmful or sensitive by a government.

Section 4 (a) of the Act²⁶⁷ provides for censorship of films, video cassettes (CD, DVD, HDV) and other publicity materials such as banners or posters or in magazines before they come into use by or shown to the public. This again means that the law insists that any information must be edited before it is shown to the public. It is the duty of an organization or for this context, a Civil Society which carries out educational programmes either falling under agriculture and fisheries, health, women or human rights issues to assign a responsible person to edit out any information which is contrary to the law. In the performance of their functions, most of Civil Societies use posters, electronic gadgets such as CDs, DVDs and HDVs to educate the targeted groups and the public in general. By this law, it means a Civil Society wanting to use these methods must apply a kind of censorship to edit the contents of materials before they are allowed to go to the public. It is a control of information and it means that not every type of information is for public consumption. Some of the information should be treated under the carpet.

4.5.7 The Prevention Detention Decree of 1964

Section 2 of the Decree²⁶⁸ provides power to the President to issue detention orders whenever he is satisfied that a person is conducting himself so as to be dangerous to the peace and good order in any part of Zanzibar or is acting in a manner prejudicial to the defence of Zanzibar or the security of the Republic. Some activists of Civil Societies may fall under this trap. This section may create a state of fear to some activists to perform their functions as they are not so sure under which circumstances they may be considered as dangerous to the peace and good order. Does it mean that Civil Societies would have to seek legal consultation for each move? This sounds as a risk to Civil Societies especially

²⁶⁶ Act No. 1 of 2009.

²⁶⁷ Ibid.

²⁶⁸ Prevention of the Detention Decree of 1964.

those charged with the duty of human rights promotion and faith based organizations. This appears to be an outdated law and provide much powers to the executive to control natural and artificial persons from performing some of their constitutional rights such the right to freedom of expression.

4.5.8 The Office of Chief Government Statistician Act²⁶⁹

The law controls publication and distribution of statistical information. Section 12 of the Act provides:

“The Chief Government Statistician shall have the power under this Act to publish and distribute any statistical information relating to social, economic and any other specific statistics as he deems necessary.”

Section 2, of the Act²⁷⁰ i.e Interpretation Clause of the Act, defines statistics as information in connection with or incidental to, any census or survey of all or any of the matters specified in the Schedule of this Act and includes information derived from records of administration kept by Ministries, Government Departments and Statutory Bodies.

Generally it can be established here that the Zanzibar NGOs are not treated as exception. They are subjected to all the country applicable laws, right from registration to operation. This means ignorance of law does not afford a defence. To ensure smooth running of their respective organizational activities, they need to familiarise themselves with the applicable laws. There have been times some NGOs have found themselves falling under unnecessary frictions with the administration. The root of the problem was either ignorance of all the laws of the land or some members have taken it lightly and thought that it was not necessary to abide by the laws. This Compendium serves as a working document to escape legal risks. NGOs have a lot of things on their shoulders to serve the society at different levels and places. Their contribution is significant in all social, economic and cultural aspects.

²⁶⁹ No. 7 of 2007.

²⁷⁰ Ibid..

Chapter 5

Penal Laws and CSOs in Zanzibar

5.0 Introduction

Civil Societies Organizations like any other entities are not excluded from Criminal Liabilities. The burden may be on the Organization or for the individual working with a certain organization. That is to say, the liabilities may be personal or corporate. Therefore, general criminal laws or penal provisions apply to individuals involved with CSOs when they commit offences. On the other hand, the penal sanctions and liabilities may belong to an entity itself or the leaders collectively; this is where the veil of incorporation is lifted. Besides, offences prescribed under specific laws discussed in this Compendium, some of the main criminal/penal laws that provide for offences relevant to CSOs in Zanzibar are as follows:

5.1 The Societies Act²⁷¹

The Act as seen above establishes different matters of procedure and general compliances. In the wordings of the law, criminal liabilities may be upon the Society itself or an individual person. Within the same law, upon prosecution some offences require the consent of the Attorney General while others may take ordinary procedure to prosecute. Some of the sections establishing criminality to the entity and an individual persons are discussed below.

Section 6 relates with managing unlawful Society. It reads as here under:

“Any person who manages or assists in the management of an unlawful society shall be guilty of an offence and shall be liable to a fine of two

hundred thousand shillings or to imprisonment for a term of six months or both such fine and imprisonment.”

Section 7 of the Act²⁷² prohibits being a member of unlawful society and conducts a participation in the same unlawful society: The section reads as follow:

²⁷¹ Act no. 6 of 1995

²⁷² ibid

Any person who, knowing or having reasonable cause to believe a society to be an unlawful society:

- (a) is a member, or attends any meeting of that society; or
- (b) allows a meeting, which he knows or has reasonable cause to believe to be a meeting, of that society, or of any members thereof, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence, and shall be liable to a fine of two hundred thousand shillings or to imprisonment for a term of six months or both such fine and imprisonment.

Section 8 of the Act²⁷³ covers prohibition of specified acts by or on behalf of certain Societies. It reiterates as here under:

8.(1) Where any society has been refused registration under section 11 or has had its registration cancelled under section 12 of this Act the Minister may, where it appears to him to be in the public interest, by order published in the Gazette, prohibit any act specified therein :

- (a) by any person on behalf of or in relation to any society associated with such society; or
- (b) by any person on behalf of or in relation to any society which in the opinion of the Minister has objects similar to the objects of such society, in the area of Zanzibar specified therein, being the area in which it appears to him that such society carried on or, as the case may be, proposed to carry on its activities, or in any part of such area.

(2) Any person who contravenes an order made under subsection (1) of this section shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Section 11 referred to covers application of the Civil Society whereas section 12 provide for refusal of registration.

Section 19 of the Act²⁷⁴ relates with compliance matters. While Section 19(2) establishes compliances, section 19(3) is punitive in nature by failure to comply with subsection 2.

19.(1) The constitution of every society shall provide, to the satisfaction of the Registrar, for all the matters specified in the Schedule to this Act, and shall not be amended so that it ceases to contain such provision.

273 Act No 6 of 1995

274 ibid

(2) Notwithstanding the provisions of subsection (1) of this section, the Registrar may, if he thinks fit, by order, require any society which, is registered under this Act to amend its constitution or rules within three months after the date of the order to provide for all or any of the matters specified in the said Schedule, and, notwithstanding any of the provisions of the constitution or rules of such society, the society, for the purpose of complying with such order, shall convene a meeting of the same kind as is required by its constitution or rules or if the constitution or rules make no provision for such amendment then the society concerned shall convene a general meeting of members for the purpose.

(3) Where there has been a failure to comply with the whole or any part of an order given under subsection (2) of this section, the society concerned and every officer thereof shall each be guilty of an offence, and the society shall be liable to a fine not exceeding fifty thousand Shillings, and every officer shall be liable to the like fine or to imprisonment for a term not exceeding one year or to both such fine and imprisonment;

Provided that an officer shall not be convicted of the offence if he establishes to the satisfaction of the court that he exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his control.

Section 25 of the Act²⁷⁵ relates with the requirement of the society to keep books of accounts failure of which, the liabilities are raised under Section 25(2) of the Act.²⁷⁶ The provisions read as here under:

25.(1) Every society shall keep one or more books of account in which shall be entered details of all moneys received and payments made by the society.

(2) A society which fails to comply with the provisions of this section shall be guilty of an offence.

Section 26(3) of the Act²⁷⁷ relates with compliance in relation to accounts to be rendered by the Treasurer. According to the section, the provision stands as follows.

Subject to the constitution or rules of a registered society every treasurer and every officer thereof who is responsible for the accounts of the society or for the collection, disbursement, custody or control of the funds or money thereof shall, upon resigning or vacating his office and at least once in every year at such time as may be specified in the constitution or rules of the society and at any other times at which he may be required to do by a resolution of the members of the society or by the rule thereof, render to the society and its members

275 ibid

276 ibid

277 ibid

a just and true account of all moneys received and paid by him during the period which has elapsed since the date of his assuming office or, if has previously rendered an account, since the last date to which such previous account related, and of the balance remaining in his hands at the time of closing such account and of all bonds, securities or other property of the society entrusted to his control.

(2) After the account has been rendered the treasurer or other officer or if required by him to do so, forthwith hand over to the succeeding treasurer or officer, as the case may be, such balance as appears to be due from effects, books, paper and property of the society in his hands or otherwise under his control.

(3) Any treasurer or officer referred to in subsection (1) who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or both such fine and imprisonment.

Section 27 of the Act²⁷⁸ relates with Inspection of accounts by any member of the society without any impediment. The proviso to section 27 reads as bellow:

(1) The books of accounts and any documents in relation thereto of every society, and a list of members thereof, shall be available for inspection by any officer or member of such society at such times as may be provided for in the constitution or rules of such society, and by the registrar, or any person authorised in that behalf in writing by the Registrar, at any reasonable time.

(2) Any person who opposes, obstructs or impedes any person authorized by or under this section, in the carrying out of an inspection as aforesaid, shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two months, or both such fine and imprisonment.

Annual Returns are covered under section 29 of the Act²⁷⁹. The criminality for failure to comply with the section is established under section 29(4) of the Act.²⁸⁰ The contents of section 29(4)²⁸¹ is as seen bellow:

“Any person who willfully makes or orders or cause or procures to be made any false entry in or omission from any return, account or other document furnished under this section shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.”

278 ibid
279 ibid
280 ibid
281 ibid

According to section 30 of the Act²⁸² the Registrar may require information and accounts. Where the Registrar has reasonable cause to believe that circumstances have arisen which render it expedient for the proper performance of his functions under this Act²⁸³ so to do, he may, by notice under his hand, order any society to furnish him with information ordered or requested whatever and other orders with which the addressee must comply, failure of which the society shall be liable. The requested information and there form under section 30 are as follows:

- (a) a true and complete copy of its constitution and rules;
- (b) a true and complete list of its officers and members;
- (c) a true and complete return of the number of meetings held by the society in Zanzibar within the period of six months immediately preceding the date of the order, stating the place or places at which such meetings were held;
- (d) Duly audited accounts of the society covering such period as he deems necessary for the purposes for which the order is made;
- (e) Such other accounts, returns and other information as may be prescribed.

Further, Section 30(2) (3) and (4) of the Act²⁸⁴ reads as follows:

(2) An order given under subsection (1) of this section shall specify the period (not being less than twenty one days in respect of the matters contained in paragraphs (a), (b), (c) and (e) and not less than sixty days in respect of the account referred to in paragraphs (d) of that subsection) within which the documents or information referred to in the order shall be furnished; Provided that the Registrar may, on application made to him, grant an extension of any such period as aforesaid.

(3) Where the Registrar has made an order for duly audited accounts under paragraph (d) of subsection (1) of this section the cost of the audit shall be paid out of the funds of the society in respect of which the order is made, unless the Registrar otherwise directs.

(4) A society which, on the ground of its failure to comply with an order to furnish duly audited account under this section has had its registration cancelled under section 13 of this Act, shall not again be registered, and no society which, in the opinion of the Registrar, is the successor of such a society, shall be registered unless in any such case the application for registration is accompanied by the duly audited account required by the said order.

282 ibid

283 ibid

284 ibid

Section 30(5) of the Act²⁸⁵ establishes offence reads as follows:

(5) Where there has been a failure to comply with the whole or any part of any order given under this section, the society concerned shall be guilty of an offence.

(6) If any information or document furnished to the Registrar in pursuance of an order given under this section is false, incorrect or incomplete in any material particular there shall be deemed to have been a failure to comply with such order.

(7) For the purposes of this section, the expression “duly audited” means audited by a person approved by the Registrar.

Other offenses may rise from the Registrar’s powers of investigation as may be contravened by the responsible person in accordance with section 40 of the Society’s Act. According to the section, the Registrar may, in writing, require the attendance before himself of any person who he has reason to believe is able to give any information of any unlawful society, or suspected unlawful society, or as to the operations of any registered or exempted society. Any person required to attend to the Registrar and fails to do so, or attends but refuses to give his correct name and address, to answer truly all questions that may be lawfully put to him, produce all documents in his custody, possession or power relating to such society or suspected society which he has been required to produce, shall be guilty of an offence and shall be liable to a fine exceeding fifty thousand shillings.

That person may as well be sentenced to imprisonment for a term not exceeding three months or both such fine and imprisonment provided that no person shall be required to say anything which or to answer any question the answer to which, may tend to expose him to criminal charge, penalty or forfeiture.

Section 40(5) of the Act²⁸⁶ provides: “Any person who fails to comply with an order given under subsection (4) of this section, or who obstructs compliance with such order, shall be guilty of an offence and shall be liable to a fine of fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment”

Section 40(5) referred in the above section provides that : “Any person who has been required to attend as provided in subsection (1) of this section, without lawful excuse fails to comply with any obligations imposed upon him by subsection (2), or gives information which the Registrar believes to be false, the Registrar may, if he considers it advisable to provide for the future identification of such person, order that a photograph and impressions of the fingerprints of such person be taken at such time and in such place and manner as the Registrar or such officer may think fit.”

285 ibid

286 ibid

Section 40(1) and (2) of the Act²⁸⁷ provides for the details explained at the very beginning of this section's details.

5.2 Suits by Consent of the Attorney General

As it is known that criminal proceedings have their own procedures laid down by the Criminal Proceedings Acts of a particular jurisdiction, among which include consents of the Attorney General or Director of Public Prosecutions (DPP). The Societies Act provides for various directives. By virtue of section 43 of the Act, offences that may arise from non-compliances under section 17 governing office and postal address, notification of change of officers or title of office covered under section 18 an inspection of account and documents covered under section 27 shall need the consent of the Attorney General so as to establish prosecutions against the accused. As noted; there are some offences which need no consent so as to prosecute. Apart from that, other preliminary procedures in relation to the criminal processes are not subject to the consent of the Attorney General. The said section 43 provides for as follows:

" A prosecution for an offence against this Act, other than an offence against any of the provisions of section 17, 18 and 27, shall not be instituted except by or with the written consent of the Attorney General.

Provided that:

- (i) a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained;
- (ii) the consent of the Attorney General shall not be required to any prosecution for an offence under section 6 or section 7 of this Act in respect of a society declared, in accordance with the provisions of subsection (1) of section 5 of this Act to be unlawful society."

The provisions to section 5(1) of the Act²⁸⁸ referred to by the above section mainly under section 40(ii) reads thus:

287 ibid

288 ibid

“The Minister may, when he considers it to be essential in the public interest, by order declare to be unlawful any society which in his opinion:

- (a) is being used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good governance; and
- (b) is being used for purposes of tribalism;
- (c) is being used for any purpose at variance with its declared objects.”

5.3 Criminal Proceedings Against Societies (NGOs/CSOs).

Criminal investigations as well as cases in respect to CSOs/NGOs differ from other criminal trials against a natural person²⁸⁹. Likewise, the punishments may as well differ especially when the offence attracts imprisonment punishment as a legal entity cannot be imprisoned. Following that state of affair, section 44 of the Societies Act provides for how to treat offences committed by the legal person that is treatment of the criminal proceedings against societies. The provision to section 44 of the Act²⁹⁰ makes requirements for the society’s procedure as where a society is charged with any offence under this Act or any rules made there under, the society may enter in writing by its representative .i.e a person whom the court is satisfied to have been duly appointed in writing by the society to represent it entering a plea of guilty or not guilty; and if either the society does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the society had duly entered a plea of not guilty. For the purpose of this section; a person so appointed shall not by virtue of such appointment be qualified to act on behalf of the society before any court for any purposes other than those specified in this section. A representative may on behalf of a society make a statement before the court in answer to the charge. Where a representative appears, any requirement of law that anything shall be done in the presence of the accused or shall be read or said to the accused shall be construed as a requirement that the thing shall be done in the presence of the representative, read, or said to the representative. Where a representative does not appear, any such requirement shall not apply.

289 CSO once registered becomes a legal person. It should be noted here that personality refers to the lawful characteristics and qualities of an entity ought to be possessed so as to be recognized as a person. From this, the CSO being an entity its legal capacity and status is determined in the jurisdiction or society’s legal order. In a nutshell it should be emphasized here that a legal personality is what grants a person or organization rights and responsibilities under the law. Since legal systems are built for use by human beings, humans are usually automatically assumed to have a legal personality. In the modern world, the concept is frequently a part of discussions about the rights or legal responsibility of entities such as CSOs and NGOs that cannot be defined by a single person.

290 *ibid*

5.4 Place of Suit/Jurisdiction

All courts of law in Zanzibar having criminal jurisdictions are entitled and vested with powers to entertain criminal proceedings against the CSOs depending on the law governing such criminal act. Rules and procedure dealing with criminal justice administration in Zanzibar shall apply mutatis mutandis on all criminal acts committed by CSOs in Zanzibar. There is neither privilege nor favoritism as far as criminal justice is concerned. All people are equal before the law in Zanzibar.²⁹¹

Generally, it has been witnessed that after this Act had come into force, a number of CSOs were obliged to re-register themselves under this Act.²⁹² Thus every CSO/NGO registered under this Act²⁹³ is the victim of all likely offences to rise under it as covered above. This law does not bar other penal statutes to be involved where it is revealed that members of the NGOs have committed offences triable under them. The penal Act and other provisions shall as well play their roles in relation to criminal offences done by the CSOs in the manner and procedures they establish. Together with the above general note; other CSOs registered under other statutes shall as well be governed by the statutes establishing them on the issue of offences in particular.

291 Article 12 of the Zanzibar Constitution 1984

292 *ibid*

293 *ibid*

Chapter 6

Other Laws Related to Governance and operation of CSOs in Zanzibar.

6.0 Introduction

CSOs just as other entities have matters to transact between them and other parties. This being the case, they cannot be away from other laws that may come across them to regulate some conducts or other transactional relationships. That being the case, some laws are covered in a nutshell to check possible relationships which may arise there in. In some instances, CSOs may be exempted from taxes/levies yet they conduct or they are assumed to have conducted themselves beyond the exemption parameters hence unnecessary adversaries between them and the public. A good example can be learnt in the decision of the Court of Appeal of Tanzania in the Appeal of The School of St Jude Ltd v The Commissioner General ;Tanzania Revenue Authority²⁹⁴. The appellant is a nonprofit making organization registered under the Companies Act of Tanzania as a company limited by guarantee. Being aggrieved by the decision of the decision of the Tax Revenue Appeal Tribunal in Tax Appeal number 29 of 2016, the appeal was preferred. Among other things, it was found that even though the appellant was tax free and was not making business, yet it was generating income as free education provided by the appellant was paid by the third party and thus the surplus shown in the appellant's bank is the profit and thus subjected to tax. This came about by the observation of the court basing on set ground of appeal asking itself :

'If at all the appellant Company is not a business or doing business and it is not charitable organization under section 64(8) of the Income Tax Act then what is it'

294 Civil Appeal No. 21 of 2018 (CA) at Dodoma, Unreported

6.1 Tax Laws

The CSO may be exempted from various taxes while some other taxes may rise because of the businesses of the CSOs. Businesses under this discussion mean day-to-day transactions. Being the case and depending on the nature of the matters at table, some taxes may be waved from the CSOs upon procedural requirements. Following that end, some of the matters are discussed as hereunder. As going to the discussion, it is relevant to know the available tax laws administered by the Zanzibar Revenue Board itemized bellow. They include:-

- i. Zanzibar Revenue Board Act²⁹⁵
- ii. The Tax Administration and Procedures Act²⁹⁶
- iii. The Value Added Tax Act²⁹⁷
- iv. The Stamp Duty Act²⁹⁸
- v. The Hotel Levy Act²⁹⁹
- vi. The Port Service Charge Act³⁰⁰
- vii. The Petroleum Levy Act³⁰¹
- viii. Exercise Duty Act³⁰²

This discussion shall touch on some of the above laws, which in one way or another may not be escaped.

- i. The Tax Administration and Procedures Act
According to the provisions of section 1 of the Tax administration and Procedures Act³⁰³ which provides for categorically, it merely deal with the Tax administration and procedures in Zanzibar and applicable to the taxable entities. For that matter, whenever the CSOs have such matters taxable then matters in relation to registration and taxing procedures are laid down under this Act. This Act³⁰⁴ applies in conjunction with other tax laws depending on the subject matter. Therefore questions such as who is taxable, why and how have their answers first under this law and thereafter under the law governing the subject matter.

295 Act No. 7 of 1996

296 Act No. 7 of 2009, (RE, 2013)

297 Act No. 4 of 1998.

298 Act No 6 of 1996.

299 Act No. 1 of 1995.

300 No. 2 of 1999.

301 Act No. 7 of 2001.

302 Act No. 8 of 2017

303 Act No. 7 of 2009 R E 2013

304 Ibid

ii. The Value Added Tax Act

According to the statutory provisions of the Value Added Tax Act³⁰⁵ the Minister is given powers to provide procedures and regulations for payment of Value Added Tax for the supply of goods imported in Zanzibar from Mainland Tanzania. As seen under the provisions above; the CSO may on one way or another involved in such transactions or services, which may not be exempted. The law serves as a tool to know what is to be levied by who and under what procedures if the services or goods are imported from Tanzania Mainland or elsewhere. It should be noted that CSOs are legal entities and may be liable upon failure to adhere to these laws; knowingly or unknowingly, since in some areas such problems arise as CSOs work under sham or umbrella of non-making profit recognition while in fact found not so. A note may be put on the provisions to section 5 of the Act³⁰⁶ for the purpose of emphasis and a reflection by the CSOs on what they may be on the legal need to be levied.

“5.(1) For the purpose of this Act, and unless otherwise provided in this Act or regulations made under it, “taxable supplies” means any supply of goods or services made by taxable person in the course of or furtherance of his business after the start of the VAT and includes-

- (a) The making of gifts or loans of goods;
- (b) The leasing or letting of goods on hire;
- (c) The appropriation of goods for personal use or consumption by the taxable person or by any other person;
- (d) Barter trade and exchange of goods.

(2) Where a person produces goods by processing or treating the goods of another person the supply shall be regarded as a supply of goods.

(3) The supply of any form of power, heat, or ventilation shall be regarded as a supply of goods.

(4) Unless otherwise provided in this Act or regulations made under it, anything which is not supply of goods, but is done for a consideration, including the granting, assignment or surrender of all or part of any right is a supply of services.

(5) The Minister may make regulations providing for any description of transaction to be treated as:-

305 section 3(2) of Act No. 4 of 1998 R E 2017

306 ibid

- (a) a supply of goods; or
- (b) a supply of services; or
- (c) Neither a supply of goods nor a supply of services.

(6)Where-

- (a) goods are neither supplied by a person to another person nor incorporated in other goods produced in the course of the business of the first person but are used by that person for the purpose of furtherance of his business;
- (b) a person in the course of his business does anything for the purpose of or furtherance of his business which is not supply of services but, if done for a consideration, would be a supply of services; the goods or services are regarded for the purposes of this Act as being both supplies to him for the purpose of the business and supplied by him in the course of that business.

(7) The Minister may make Regulations for collection and calculation of Value Added Tax in the supply of financial services.

It should be noted that the law recognizes exemptions which must not be misused. Section 10(1) of the Act³⁰⁷ establishes the third Schedule of exemptions. According to the section, a supply of goods or services is in an exempt supply if it is of a description specified in the Second Schedule to this Act.³⁰⁸ Further, VAT is not chargeable on an exempt supply, and deduction or credit of input tax is not allowable on purchases made in respect of the exempt supply. The third Schedule of the law is annexed for perusal.

iii The Stamp Duty Act

The Stamp Duty Act³⁰⁹ on the other hand, covers transactions such as conveyance and or disposition of any kind on the land which attracts levies in the form of stamp duties. According to section 3 of the Stamp Duty Act,³¹⁰ stamp duty is imposed on goods or services on a taxable person on the supply of goods and services. Such taxable goods or services are specifically provided for under the second Schedule of the Value Added Tax Act.³¹¹ Therefore any CSO whose service fall short of the Schedule of goods and or services must be subject to this levy. This levy as seen above is as well levied on every instrument mentioned under the first schedule of this Act. It is here from, CSOs must be conversant with the parameters of this law.

307 ibid

308 ibid

309 Act No. 6 of 1996

310 ibid

311 Act no 4 of 1998

iv The Exercise Duty Act

The Exercise Duty Act³¹² is another law that the CSOs must be aware of. It is because as for the today's global life, it is difficult for any person or entity to be free from exercisable goods or services. Exercise duty or services are defined under section 3 of the Act. It is an area of taxation or levies touching natural and artificial persons in day to day lives. The law under section 4 establishes the Schedule of exercisable good as annexed to this Compendium. . Other matters could much depend on the exemptions and the nature of the services while some other services may not be exempted for being levied.

Although the CSOs may be a non-business and non-profit making in nature, it is not barred from owning businesses. It is there from such businesses or unexempted services shall be treated separately from the CSOs itself hence be answerable to the laws of revenues and of the State. It is as well to be noted that while a CSOs is or may not be a profit making organ, once it has established businesses, such businesses shall be distinguished from entity.³¹³

6.2 Labour Related Laws

The Labour Relations Act³¹⁴ which deals with the employer/employees relationships are as follows:

- i. The Employment Act³¹⁵
- ii. The Trade Union Act³¹⁶
- iii. Children's Act³¹⁷
- iv. The Zanzibar Industrial Court Act³¹⁸

These are laws under which questions as to who is an employer, employee and what are their entitlements, who can be employed and how are answered. Further, issues of protection and enforcement of the rights are found under the same laws. CSO may employ and may on the other hand utilize volunteers. Upon determining as to who is who, why and other questions that may need answers, the above laws are sufficient tools in response there to. Apart from labour matters, some compliance may go as far as the landed property and ownership are concerned.

312 Act no 8 of 2017

313 Refer the jurisprudential concept of legal personality.

314 Act No. I of 2005.

315 Act No. 11 of 2005

316 Act No. 4 of 2005

317 Act No 6 of 2011

318 Act No. 1 of 2005

As stated above, once CSOs is duly registered it becomes legal personnel. The direct connotation for being acquired legal personality entails among others the legal status to own properties, one of them being landed properties. Therefore all laws, rules as well as policies dealing with land matters directly affects the CSOs. The CSOs ought to know them so as to make proper strategies once intended to use and apply them. For that purposes, the preceding part of this Compendium will present Zanzibar laws related and regulating land matters.

6.3 Laws Related to Land Matters in Zanzibar

- i. The Land Transfer Act.³¹⁹
- ii. Acquisition of Land (Assessment of Compensation) Decree,³²⁰
- iii. Land Acquisition Decree³²¹
- iv. Land Tenure Act,³²²
- v. Town and Country Planning Decree,³²³
- vi. Investment Acts³²⁴

6.3.1 Land Ownership

As the position stands in Tanzania Mainland, a non-Citizen of Tanzania cannot occupy land unless and until the same is for investment³²⁵; in Zanzibar, the land ownership is reserved for a Zanzibari only in accordance to section 7 and 8³²⁶. A Zanzibari is defined under Section 2³²⁷ to include or mean any person who is a citizen of Tanzania in accordance with the laws relating to citizenship and that he was born or has been residing in Zanzibar before and up to the 12th of January 1964 or any person who, as from the 26th day of April, 1964 is a citizen of Tanzania and was born in Zanzibar with both of his parents being Zanzibaris or either his father or mother being Zanzibari in accordance with the Zanzibari Act, 1985. Further, the law considers any person who is a citizen of Tanzania and was born or has been residing in Zanzibar before the 26th day of April, 1964; and any person who is a citizen of Tanzania with both of his parents being Zanzibaris or either his father or mother being Zanzibari is to be a Zanzibari.

319 Act No 8 of 1994

320 Decree of 1949

321 Decree of 1909

322 Act No. 12 of 1992

323 Decree of 1955

324 Act no 5of 1985

325 Tenga R.W and Mramba S.J; (2017) Conveyancing and Disposition of Land in Tanzania: Law and Procedure ,Law Africa Publishing Kenya Ltd

326 Land Tenure Act No. 12 of 1992

327 ibid

Land ownership can accrue to a person by inheritance, purchase, allocation/grant by the minister, gift from the owner or as by the result of law (adjudication) and hence recognition of the ownership of the interests there in.³²⁸ Out of that, a non-Zanzibari can only enjoy interests in land but not ownership as it was decided by the High Court of Zanzibar and confirmed in appeal between the same parties in the case of Gharib Abdallah Juma v Kay Mlinga³²⁹. There have been a professional discussion as to whether acquisition by succession to non-citizens is a statutory bar to land ownership reached in the Case of Emmanuel Marangakis v The Administrator General.³³⁰ The wit discussion being touching the ownership decision in Tanzania mainland, the High Court of Tanzania had reached a decision that interests of land ownership which goes to a non-citizen does not mean allocation and or ownership and therefore the title can shift to the heir of non-Tanzanian citizen through succession. The same jurisprudence is what was decided in Gharib Abdalla Juma cited above. In so far as the above position of the law is concerned, the CSOs in Zanzibar since one of the effect of their registration include to have a status of legal person with capacity to own, enter contract, buy, sale, sue, being sued and so on, they may be subject to land ownership rights and interests and other binding laws arising from land related matters of ownership.

6.3.2 Termination of Land Ownership and Possible Acquisition by the Legal Entities

On the other hand, According to the Constitution of Zanzibar³³¹ 1984, the Land Tenure Act³³² 1992 and the Land Acquisition Decree³³³ 1909 which introduces concepts of 'acquisition' however conflicting and 'termination' the land acquisition officers are faced with difficulties in selecting the right approach.³³⁴ The guiding procedures among other things include notice of termination of ownership and inquiry and paying compensation. However, the acquisition appears to be a government reserved processes that is invoked for the public interests³³⁵. Although the position stands so, The Constitution of Zanzibar³³⁶ under article 17 prohibits the government to acquire any private belongings. Fair and adequate compensation must be paid in matters of land acquisition, this is pursuant to the provisions

328 Land Tenure Act, Section 7 and 8

329 Civil Appeal Number 10 of 2001 (CA) of Tanzania

330 Civil Case Number 1 of 2011, (HC) Dar Es Salaam

331 1984

332 1992

333 1909

334 Othman, A et al; (2015) Legal Issues of Land Acquisition in Zanzibar; International Conference on Advanced Research in Business and Social Sciences; September, Kuala Lumpur Convention Centre, Malaysia.

335 Ibid

336 Ibid

of the Zanzibar Land Tenure Act.³³⁷ Acquisition can as well be done by the company by virtue of 32 of The Land Acquisition Decree³³⁸ if so sought for investment. Likewise, acquisition can be effected by the private entity for investment under section 19 of the Zanzibar Investment Promotion and Protection Act³³⁹. Depending on the nature of the CSO therefore, duties and its prospects; the laws may favorably entitle it to acquire land or purchase one depending on its uses.

6.3.3 The CSOs and Land Ownership in Zanzibar

As to whether or not CSOs can qualify to own land in Zanzibar is a simple question but deserves strong legal response. As it was seen before, CSOs are categorical and registered under different laws in Zanzibar. Although they are so registered, they also differ in objectives under which they are established much as they are registered under distinctive laws.

In a very strict sense it should be noted that by virtue of the provisions of section 2(1)³⁴⁰ of the Societies Act,³⁴¹ it is clearly stated that the Societies Act does not apply to several social organizations duly registered in other laws within the Zanzibar jurisdiction. Some of these organizations include but not limited to the following : Political parties registered under the Political Parties Act,³⁴² companies to which Companies Act³⁴³ applies; public enterprise constituted under the Public Enterprises Decree ³⁴⁴, registered trade union to which trade unions legislation for the time being in force applies; firm or partnership formed and maintained for the sole purpose of carrying on any lawful business; cooperative society to which Cooperative Society Act, No.4, of 1986 applies and schools registered under the Education Act, No. 6 of 1982. Further, cultural, athletic, sports; or similar group registered under the National Arts Council Act³⁴⁵ international organization of which the United Republic of Tanzania or where appropriate, the Government of Zanzibar is a member or has allowed the conduct of its activities in Zanzibar and any branch, section or organ of such organization and any combination or association which the Minister may declare not to be a society for the purpose of this Act.³⁴⁶

337 Ibid Othman

338 ibid

339 2004

340 Op Cit

341 Act No 6 of 1995

342 Act No.5 of 1992

343 Cap. 153

344 Decree No .4 of 1978

345 Act No.6 of 1983

346 ibid

In Zanzibar a number of mentioned CSOs are registered under separate legislations, statutes under which they are registered state categorically on their rights to own property. Property include lands. Section 32 of the Societies Act³⁴⁷ entitles the CSO to own property and the manner under which the said properties must be administered. According to Section 32(2) of the Act³⁴⁸ all property belonging to a society whether acquired before or after a society is registered, shall vest in the trustees of the society, for the use and benefit of a society and the members thereof and subject to all rights and obligations of trust property according to the constitution and rules of the society.

There is no doubt that some CSOs may invest in land pursuant to the laws governing them. For example according to section 34(c) and (d) of the Society Act,³⁴⁹ the trustees of a society may, if the constitution or the rules of the society so allows, or, in the absence of such provision in the constitution or rules of the society, with the consent of two third of the members, invest the funds of the society in purchasing or developing real property or in any other investment which the constitution or rules of the society may expressly provide or which two third of the members may approve. It is here from, the doubt as to land ownership by the CSOs in Zanzibar has no any doubt under the CSOs Act point of view.

In the final analysis it can be argued and presented here that from the position of Land Laws as seen before, private entities especially companies are entitled to acquire and own land in the manner and procedures set forth under the laws,³⁵⁰ equally the Land Tenure Act³⁵¹ does not bar CSOs to occupy/own land.

347 Op cit

348 ibid

349 Act No 6 of 1995

350 Othman Op Cit.

351 Act No. 12 of 1992

Chapter 7

The Legal and Regulatory Framework Governing other Civil Society Organizations

7.0 Introduction

This chapter provides for the legal and regulatory framework governing other types of organizations grouped under CSOs not covered in the second and third chapters of this Compendium. The Chapter therefore covers the framework of laws and policies governing the Zanzibar bar association that is the Zanzibar Law Society (hereinafter to be referred to as ZLS), Legal aid Providers that is Zanzibar Legal Services Centre in particular (hereinafter to be referred to as ZLSC), labour organizations, in particular the trade unions and labour federations, Cooperative Societies, as well as an umbrella organisation for Zanzibar NGOs abbreviated as ANGOZA.

It should be noted that there is a large number of non-governmental organizations in Zanzibar. Some NGOs operate in a professionally way and some have been experiencing a lot of difficulties including having permanent offices. Some NGOs have been off and on. Financial problem has been cited as the main hindrance. Almost all NGOs are donor driven. They have to fundraise to convince donors to allocate operating funds. It has become an open case like a moon in the sky that some NGOs have been implementing donor designed programmes and NGOs designed programmes as per their respective Strategic Plans. There are reports that donors have changed areas of their priorities as a result some NGOs have found themselves in difficult situation to operate. The focus of attention of this Chapter is to encourage NGOs to work as per their legal and regulatory framework governing their activities. All NGOs have to be registered under the Societies Act No 6 of 1995. Some NGOs that were established before the Societies Act came in place, had to re-register to get legitimacy. Some NGOs have been picked as a show case of good legal and framework of running their daily activities. The argument is to stick to the framework irrespective of pressure from different corners.

7.1 The Domestic Legal Aid Framework

At the domestic level, various steps have been taken to ensure access to legal services by all. These are divided among various stakeholders including the Government, the Judiciary and Civil Society Organizations notable of them being provision of the legal aid to ensures access to legal aid for the poor and the marginalised in Zanzibar. The domestic legal framework governing the provisions of the legal aid in the country is governed by the Constitution of Zanzibar of 1984.

7.2 Constitutional Guarantee for Legal Aid Provision:

The Constitution of Zanzibar provides for the right of equality before the law.³⁵² It is further provided that the civic rights, duties and interests of every person shall be protected and determined by the courts of law, state organs and other organs established by law.³⁵³ Apart from this provision the Constitution of Zanzibar, generally guarantees people the right to legal representation.³⁵⁴ Article 12 guarantees equality and prohibits discrimination which is defined to mean an attempt to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications. This right is interrelated in the ambit of interpreting the right to fair trial, equality, and protection before the law as proclaimed under article 12 of the Constitution.

The content of section 12 is as given below:

12 (1) All persons are equal before the law and are entitled equality without any discrimination, to protection and equality before the law.

(2) No law shall make any provision that is discriminatory either of itself or in its effect.

(3) The civic rights, duties and interests of every person shall be protected and determined by the courts of law, state organs and other organs established by the law.

352 Article 12(1) of the Constitution of Zanzibar 1984 as amended from time to time.

353 Article 12(3) of the Constitution of Zanzibar 1984 as amended from time to time.

354 Article 12(5) ibid

(4) No person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions of any state office or by any management of any party and its organs.

(5) For the purposes of this Article the expression discrimination means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications.

(6) To ensure equality before the law, the government shall make procedures which are appropriate or which take into account the following principles namely;

(a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned;

(b) no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence; .

(c) no person shall be punished for any act which at the time of its commission was not an offence under the law, and also no penalty shall be imposed which is heavier than the penalty in force at the time the offence was committed;

(d) for the purposes of preserving the right of equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of a sentence;

(e) speedy hearing of the criminal cases and delivering of judgment;

(f) the accused in criminal cases has the opportunity of being defended by the advocate of his choice.

7.3 The Zanzibar Law Society

This is the Bar Association of Zanzibar founded in 1999. It was registered as an NGO under the Societies Act³⁵⁵ with Registration No 89. ZLS was established with several statutory objectives including but not limited to maintaining and improving standards of conduct and learning of the legal profession of Zanzibar, facilitating the acquisition of legal knowledge by members of the legal profession and others, assisting the government and courts in all matters affecting legislation and administration and practice of the law in Zanzibar, representing, protecting, and assisting members of the legal profession in Zanzibar as per regards to conditions of practice and otherwise, protecting and assisting members of the legal profession in Zanzibar in all matters touching ancillary or incidental to the law.³⁵⁶ Generally the ZLS as a distinguished NGO serves the interest of advocates in Zanzibar. But its members are strictly working under the Zanzibar Practitioners Decree of 1941. As per its Constitution, it depends on annual subscriptions from its members as well as donor funds to run some activities. As per its Constitution, it has an Annual General Meeting which is the apex decision making organ ; it has a Board of Trustees which advises the management, and it has a Governing Council.

7.3.1 Annual General Meeting (AGM) Of ZLS

This is the apex organ which is the final decision making authority. It is the first organ in command. It meets on annual basis unless there is an emergency issue which needs the AGM attention. All the ZLS members are also members of the AGM. It is the authority which also votes to elect the president and other office bearers. It is part of the ZLS organizational structure.

7.3.2 Board of Trustees of ZLS

As other organizations, the ZLS Board of Trustees is caretaker of the organization. The Board meets on quarterly basis. It has the duty to advise the Governing Council. It receives quarterly reports of activities and implementation of its Strategic Plan. It has the power to question the Governing Council which is the responsible organ of implementation of daily activities of the organization.

7.3.3 Governing Council of ZLS

This is the responsible organ for implementation of the Strategic Plan and daily activities. The Governing Council which is under the Organization's Secretary performs all the office functions. Technically, it acts as the Secretariat of the Board of Trustees. There are some staff including an administrative officer supporting the activities of Governing Council.

355 Act No. 6 of 1995. Among others the objective of the society is to maintain the honor and dignity of the professional of law. to promote the observance of the rule of law and independent administration of justice and the judiciary and the bar, to promote the administration of justice, to establish and maintain relations and exchanges between the members of the bar and to co-operate with or join with a similar organization of similar objectives, national or international.

356 ZLS Constitution.

7.3.4 Zanzibar Law Society operations, Rules and Regulations

Along with the Objectives of ZLS which are to promote the observance of the rule of law and independent administration of justice and the judiciary and the bar, to promote the administration of justice, to establish and maintain relations and exchanges between the members of the bar and to co-operate with or join with a similar organization of similar objectives, national or international, the society works under the requirements of the Legal Practitioners Decree,³⁵⁷ and rules of the conduct made there under and known as the Legal Practitioners Rules made thereunder.

ZLS being the professional and membership based Society can engage actively in facilitating access to justice to the public through legal aid provisions, pursuing human rights and constitution litigations in order to protect the bill of rights and preserve the rule of law in the country.

For the management of the affairs of the society, the ZLS Constitution establishes the Governing Council which is assisted by the Secretariat. The Council has powers to make regulations binding on members of the Society over various matters prescribed in the Constitution and the Society Act . All decisions concerning the Society are made and endorsed by the resolution in general meeting. It can therefore be stated in summary that, for the purposes of registration and administration of the ZLS as an entity, the Societies Act and subsidiary legislations made there under apply along with the entity Constitution and rules registered with it. The professional conduct is governed and regulated by the Professional rules and laws enshrined in the Legal Practitioners Decree, Cap 28 and rules made there under. Other laws may as well regulate its activities. Such laws may be research and statistics and publication related laws.

7.3.5 Cessation/Deregistration of the Law Society

As seen above in previous chapters, the statutory provisions on cessation, cancellation, revocation and so on apply to all entities registered under the Societies Act,³⁵⁸ likewise to ZLS since this is also registered under the same Act.³⁵⁹

357 Cap 28

358 Act No. 6 of 1995

359 Act No. 6 of 1995

7.4 The Trade Unions Act of Zanzibar:

Section 3 of the Zanzibar Trade Union Act³⁶⁰ defines the trade union as an association of employees whether registered or not having among its objectives the representation and promotion of the interests of employees and the regulation of relations between employees and employers. The trade union as per the same provision include a federation of trade union unless it is clear from the context that only the first level association is intended, but does not include an association that is dominated by an employer and it does not include employers association.

Literary, a trade union may be referred to as a union or association composed of workers of the same or of several allied trade. According to regulation 3 of the Anti- Sexual Harassment and Anti- gender discrimination Regulations³⁶¹, in a nutshell, it can be asserted that the trade union means employees' organization registered to represent employees and defend their rights and obligations in a given country.³⁶² The trade union and employers organizations, their representatives and members are obliged to ensure respect for and promotion of equal remuneration opportunity and treatments and promote gender equality within the union³⁶³.

Trade union has a long historical background in Zanzibar; it was formerly regulated by the Trade Union Act³⁶⁴ that was later on repealed by the Trade Union Act³⁶⁵ after the former reflecting the employment and labour related matter to be union matters while they were not. In Zanzibar, Trade unions are registered and regulated under the Zanzibar Trade Union Laws.

7.5 International Instruments recognising Trade Unions:

7.5.1 The ILO Convention No. 87 of 1948 on Freedom of Association

Tanzania having ratified ILO Conventions number 87 of 1948 on Freedom of Association bears duty to safeguard the workers' rights to freedom of association. The convention provides for the States obligations as follows:

Article 1

Each Member of the International Labour Organization for which this Convention is in force undertakes to give effect to the following provisions.

360 Act No 4 of 2001

361 Regulations 2013

362 The same definition is also provided for under regulation 2 of the Leave without Pay Regulations of 2013 and regulation 2 of the Special Categories of Employment Regulations of 2013.

363 Section 47 of Anti Sexual Harassment and Anti Gender Discrimination Regulations of 2013

364 Act No 4 of 2001. o

365 ibid

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorisation.

Article 3

(1) Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

(2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

7.5.2 ILO Convention 98 Right to Organise and Collective Bargaining Convention, 1949

This instrument has as well been ratified by Tanzania. It has provisions safeguarding the workers' rights to organise and collective bargaining. The Convention provides for states obligation as follows:

Article 1

(1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

(2) Such protection shall apply more particularly in respect of acts calculated to :

(a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employees 'organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

7.6 Domestic Laws:

7.6.1 The Constitution of Zanzibar

The Constitution of Zanzibar, 1984 entitles every person freedom, free protection, freedom to freely and peaceably assemble, association with other persons, and more specially to form or join associations or and, organizations formed for workers human rights organizations or other organizations for his benefit and which are established in accordance with the laws of the land.³⁶⁶

The Constitution under section 20 reads as follows:

"20.(1) Every person is entitled to freedom, subject to one's free protection of freedom to freely and peaceably assemble, associate and co-operate of assembly with other persons, and more specially to form or join associations or and organizations formed for workers human rights organisations or other organisations for his benefit and which are established in accordance with the laws of the land.

(2) Nothing provided for by or carried out in accordance with any law of the land shall be construed as being in conflict with or in contravention of this Article to the extent that principal legislation provides:

- (a) Matters related to the interests of defence and security of the citizens, health aspects and those of society;
- (b) Matters related to the preservation of rights and freedoms of other persons;
- (c) Matters related to certain limitations for Government officials, military personnel or any other persons appointed on their free will.

7.6.2 The Trade Union Act³⁶⁷

Literary, a trade union may be referred to as a union or association composed of workers of the same or of several allied trade. In other words, Labour union, a craft union or multi craft union, industrial union and vertical union. The Zanzibar Trade Union Act of 2001 under

³⁶⁶ Article 20 of the Constitution of Zanzibar of 1984 R.E 2010

³⁶⁷ Act No 4 of 2001

section 3 defines the trade union as an association of employees whether registered or not having among its objectives the representation and promotion of the interests of employees and the regulation of relations between employees and employers. The trade union as per the same provision include a federation of trade union unless it is clear from the context that only the first level association is meant, but does not include an association that is dominated by an employer and it does not include employers association.

Zanzibar Number 1 of 2005 which interprets the trade union to mean number of employees associated together for the purpose, whether by itself or with other purposes of regulating relations between employees and their employers or the employers' associations to which the employers belong. This means a trade union is an association of workers with exclusion of employers' association or organization.

Trade union has along historical background in Tanzania. The history of trade unions can be traced from the colonial period especially during independence struggles to post colonial and liberalisation period especially when freedom of association was constitutionally guaranteed in the Bill of Rights part of the Constitution of Zanzibar. In Zanzibar, Trade unions are registered and regulated under the Zanzibar Trade Union Laws.

Section 6 of the Law establishes the basic workers' rights which are taking part in formation of the trade unions and become their members, take part to run the unions' activities, hold the trade union's office, participate in electing or being elected a representative of the union, be appointed or work as a representative in the area he works and exercise any other right under the trade union act.

7.6.3 Registration of the Trade union under the Trade Union Act

Application for registering a trade union is provided for under Section 14. For it to be registered, it must be comprised of at least 50 and more members and an application may be sent to the Registrar of the trade unions in prescribed forms.

The application shall be accompanied by the following:

- i. Two copies of the union constitutions,
- ii. Statements of particulars which are: the name of the trade union or association and its postal address, the name of the postal address of its Chairman, Secretary and Treasurer, name and address of at least signature of minimum number of members,
- iii. Prescribed fee.

7.6.4 Cancellation of the Registration

According to section 22, the registration may be cancelled by the Registrar at the request of the trade union or association upon its dissolution that shall be verified by the Registrar or if it ceases to exist, if it appears that the objectives of the trade union or association or if the object for which the trade union or association are actually carried on are such that had they been declared as objects of the Constitution of the union or association at the time of application for registration, the registrar could have refused registration.

For effecting cancellation of the trade unions' registration and certificate, the Registrar must under section 22(2)³⁶⁸ satisfy himself that any of the principal objects of the trade union or association is unlawful, the constitution of an entity and or its executive committee is unlawful, or that the trade union or association is used for unlawful purposes. Further that, the trade union has contravened any provision of the Act, failure of the trade union to keep its accounts properly in accordance with this law and its Constitution, that the trade union or association was at the time of registration or has subsequently become a branch of a trade union or association other than the a registered trade union or association.

7.6.5 The Labour Relations Act³⁶⁹

Part two of the Law covers fundamental rights of the employees. Among rights covered, include freedom to form and or join trade union and enjoying other entitlements arising there from. Section 4 of the Law provides as follows:

4. (1) Every employee shall have the right to:

- (a) take part in the formation of a trade union or federation of trade union;
- (b) be a member of a trade union, subject to its constitution;

(2) Every member of a trade union has the right, subject to the constitution of that trade union:

- (a) To take part outside working hours, or with the consent of the employer within working hours, in the lawful activities of a trade union of which he or she is a member;
- (b) to seek and hold office in a trade union of which he or she is a member, subject to its constitution;
- (c) to take part in the election of workplace representatives where provision is made for such election;

³⁶⁸ ibid

³⁶⁹ Act No 1 of 2005

(d) to be elected or appointed and serve as a workplace representative where provision is made for this;

(e) To exercise any other right conferred by this Act.³⁷⁰

(3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation :

(a) To participate in its lawful activities;

(b) To participate in the election of any of its office bearers or officials; and

(c) To stand for election and be eligible for appointment as an office bearer or official and, if elected or appointed, to hold office.

Therefore, it is of no doubt that the Employment Act³⁷¹ of Zanzibar establishes such trade union's rights and protection in the light of the above legal position.

On the other hand, Trade unions may form and join federations with the employers' organization. Section 9 of the Labour Act³⁷² states in relation to the above that trade unions and employers' organizations, respectively, may form and, in accordance with their constitution, be members of and take part in the activities of federations of trade unions and employers' organizations.

7.7.6 Registration of Trade Union under the Labour Relations Act

According to Section 14 of the Labour Relations Act,³⁷³ a trade union ought to be registered. This legal requirement is extended to both unregistered organizations before the commencement of this law or afterward. The union newly formed must effect its registration six months of its formation without fail. The Law under section 14 of the Act³⁷⁴ provides for as hereunder:

“(1) Every trade union or organization not registered before the commencement of this Act shall either apply to be registered or be dissolved, within a period of six months from the commencement of this Act or the date of its formation, whichever is the later.

(2) Every trade union or organization formed after the commencement of this Act shall within six months of its formation apply for registration, failure of which shall be dissolved.

370 ibid

371 ibid

372 ibid

373 Act number 1 of 2005

374 ibid

7.6.6 Requirements and Procedures for registration:

The registration compliances of the trade union are statutory. Section 15 of the Law provides for the procedures and other matters of compliances.

According to section 15 of the Act³⁷⁵ any unregistered trade union composed of twenty (20) or more members; which complies with this Act may apply to the Registrar for registration within six months of its formation. Application for registration of a trade union or employers' organization shall be accompanied by a prescribed form that has been properly completed; two certified copies of the constitution and rules, if any, of a trade union or organization; any other information that may assist the registrar to determine whether or not the trade union or organization meets the requirement for registration and prescribed fee³⁷⁶. Along with the above, a federation of such trade unions or employers' organization; employers' organization composed of five or more members; which complies with this Act may apply to the Registrar for registration within six months of its formation.

7.6.7 De-registration or Cancellation of the Registration.

As this entity is registered in accordance with the law, it may be de-registered as well in accordance with the Law. Section 22 of the law provides for cancellation of registration. According to section 22(1)³⁷⁷ the registration of a registered trade union or organization may be cancelled by the Registrar :

- a) At the request of the trade union or organization upon its dissolution, to be verified in such manner as the Registrar may require;
- b) If he or she is satisfied that the trade union or organization has ceased to exist.

However, Section 22 (2) of the Act³⁷⁸ goes on providing that:

"Before exercising the powers under subsection (1) of this section the Registrar shall issue three months' notice in the gazette and media.

(2) The Registrar may apply before the Court to cancel the registration of a registered trade union or organization if he or she is satisfied :

- (a) that in the case of a trade union, it has ceased to be independent of employer or employers' organization;

375 ibid

376 Section 15(2) Labour Relations Act. No 1 of 2005

377 Ibid

378 ibid

- (b) that the objects for which the trade union or organization that are actually carried on are such that, had they been declared as objects of the constitution of the union or organization at the time of application for registration, the Registrar could have refused registration;
- (c) that any of the principal objects of the trade union or organization is unlawful;
- (d) that the constitution of the trade union or organization or of its executive committee is unlawful;
- (e) that the trade union or organization is being used for any unlawful purpose;
- (f) that the trade union or organization has willfully and after notice from the Registrar contravened any of the provision of this Act or allowed any rule to continue in force which is inconsistent with any provision of this Act, or has rescinded any rule providing for any matter, for which provision is required by the Act³⁷⁹ to be made;
- (g) that the accounts of the union or organization are not being kept in accordance with the provisions of this Act and of its constitution;
- (h) That the trade union or organization was at the time of its registration, or has subsequently become, a branch of a trade union or association other than a registered trade union or association.

(4) Except in a case falling within subsection (1) of this section, not less than one month previous notice in writing specifying the grounds on which it is proposed to apply for cancellation of the registration shall be given by the Registrar to a trade union or organization before such application for cancellation is applied.

(5) A trade union or organization served with a notice under subsection (3) of this section may at any time within a period of one month show cause in writing against the proposal to apply to cancel of its registration, and if such cause is shown, the Registrar shall hold such inquiry as he or she may consider necessary in the circumstances.

(6) The Registrar may, after the expiration of the period of one month referred to in subsection (4) of this section, file application for cancellation of the registration of any trade union or organization which has failed to show cause under that subsection or which having so shown cause, has failed to satisfy him or her that its registration should not be cancelled.

7.6.8 Consequences of Cancellation

Consequences of cancellation of registration are stipulated under section 24(1) which are:

- (a) the trade union or organization, its officials and members shall cease to enjoy any of the rights, immunities, or privileges of a registered trade union, but without prejudice to any liabilities incurred or to be incurred by the trade union or organization which may be enforced against the union and its assets;
- (b) the trade union or organization shall be dissolved and its funds shall be disposed of in accordance with the constitution of the union or organization or in the absence of such constitution under the directions of the Registrar;
- (c) the trade union or organization shall within 60 days of cancellation deliver to the Registrar its certificate of registration for cancellation;
- (d) no person shall, except for the purpose of defending or bringing legal proceedings or dissolving the union or organization and disposing of its funds in accordance with its constitution, take any part in its management or organization, or act or purport to act on behalf of the union or as an officer of the union or organization.

7.6.9 The Cooperative Societies:

Cooperative Societies are defined under Section 3 of the Cooperative Societies Act of Zanzibar of 1986 as amended by the Cooperative Societies Act of 1998 to mean an association of persons who have joined together with an object of promoting the economic and social welfare of its members.

7.6.10 Structure and Formation and operation boundaries:

According to Section six, a society can be formed under a three structured movement. Section 6 provides for three structures of cooperative movement which shall comprise of three systems itemized as the primary society, the secondary and the apex organization. The formation according to section 7, a primary society may be formed with a branch or in an area at which it is economically viable. It may be formed by at least five persons. A union may on the other hand be formed for a region, district or districts by the approval of the Minister where it is economically viable.

7.6.11 Registration and Registerable Societies.

According to section 11 any society with objects in promoting economy in its area is by application registrable. This registration by the Registrar may be in rural or urban so long as they are producers, consumers, housing cooperative societies, fisheries, building construction, multipurpose, saving and credit and industrial cooperative societies.

7.6.12 Effect of Registration:

According to section 24, a registered cooperative society becomes a body corporate. Being a body corporate therefore:

- i. It is capable of suing or being sued.
- ii. Enjoy perpetual succession
- iii. Have a common seal of the society
- iv. Have powers to enter contract
- v. Acquire and dispose movable and immovable properties
- vi. Receive or give loans
- vii. Borrow or lend money

However, without prejudice to the above, powers to make a loan to any person other than that within the society is reserved for the society registered as the saving and credit society only.

7.6.13 Dissolution, Cancellation and Winding up of the Cooperative Society:

The registrar may bring the society to an end on the grounds set forth in the Act. Section 38 is to the effect that dissolution may be possible under the following grounds:

- i. Application by $\frac{3}{4}$ of the members of the society to dissolve it
- ii. He/She is of the opinion that the society ought to be dissolved
- iii. If the inspection or enquiry by the registrar on the society's constitution, activities and financial affairs find that they are contrary with the laws and constitution of it as an entity.

7.6.14 Cancellation of Registration of the Society

On the issue of cancellation of registration of the cooperative society in particular, The Cooperative society Act provide for under section 39 that cancellation of the registration may rise as a result of:-

- i. Where the number of the members has fallen below the required or conditional number of members
- ii. Non commencement of the registered society or has commenced but has ceased to carry on business
- iii. If the registrar's enquiry prove that the primary society which was a member of the secondary society is expelled or withdrawn from membership

Upon cancellation of the registration of the society under any section of the act, the Registrar may appoint any competent person to be a liquidator of the society and all assets and liabilities of the society shall vest in the liquidator as from the date when cancellation took place³⁸⁰.

380 Section 40 Of the Cooperative Societies Act

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Appendices

1. List of People Consulted:

Hassan Khamis Juma

Mkurugenzi Mtendaji
ANGOZA
P.O.BOX 4666
E.mail: hassani1956@yahoo.com
Mobile: 0773306664.

Salma Said

Executive Secretary
JUMUIYA YA WAANDISHI WA HABARI ZAMAENDELEO ZANZIBAR (WAHAMAZA)
E.mail: salmahamoud@gmail.com
Mobile: 0777477101

Salama Ahmada Majaliwa

Executive Secretary
TUDOPE
E.mail:Tudope2014@hotmail.com
Mobile: 0778862376/0774486878

Jamila Mahmoud Juma

Director
Zanzibar Female lawyers Association - Zafela
Zanzibar
E.mail:jamilasimai@yahoo.co.uk/zafelamember@yahoo.com
Mobile:0777475405

Mwalimu Shapandu Shariff

Director
Micheweni Islamic Development Environmental Conservation and AIDs Control (MIDECAC)
Micheweni Pemba
E.mail:midecac938@yahoo.com/shariff.mwalimu@yahoo.com
Mobile: 0713690988/0778933935

Khamis Suleiman Massoud

Director
E.mail:nyukiwakufuga@hotmail.com
Mobie: 0777431376

Abdallah Ali Abeid

ZAFAYCO

E.mail: abdalla.abeid12@gmail.com

Mobile: 0773165549

Mussa Kombo Mussa

Executive Director

Pemba Environmental and Malaria Control (PEMCO)

P.O.Box 153 Wete Pemba

SIMU NO.+255714227610/+255777650281

Email:wamatale@hotmail.com/ wanaowahami@hotmail.com

Nassor Bilal Ali

CHAPU/PEMBA

E.mail: nassorbilal1@gmail.com

chakeparacenter@gmail.com

Riziki Muhammed Makame

E.mail:jukuwamkozi@yahoo.com

rizikimohd@gmail.com

Mob: 0773419744/06560398842

Juma Khamis Ali

Zanzibar Business and Property Registration Agency – BPRA

NGOs Registration Officer

Jumakipara1986@gmail.com

0776459893

Khamis Said Khamis

National identification Authority – Zanzibar Office

District Registration Officer – DRO

Khamis.khamis@nida.go.tz

Phone: 0777904627

Nuhu Machano Ali

Administrative Secretary – ANGOZA

Nuhuali1978@yahoo.com

Phone: 0773695298

The Societies Act, Act 6 of 1995

The Business and property Registration Agency Act 13 of 2012

2. About Writers – Dr. Hashil T Abdallah and Dr. Ali Ahmed Uki

Dr. Hashil T Abdallah .

Dr. Hashil T Abdallah , is holding PhD in law from the Ruaha Catholic University. This was possible after a background started from Diploma in Law - Institute of Judicial Administration, Lushoto Tanga, LLB with SHARIAH - The Zanzibar University, Post Graduate Diploma in Legal Practice - Law School of Tanzania and Masters in Intellectual Property (ARIPO, WIPO AND AFRICA UNIVERSITY). Currently Dr. Hashil is the Law Lecturer and the Head Of Civil and Criminal Law Department, Faculty of Law The Open University of Tanzania. Dr. Hashil is also an Advocate of the High Court of Tanzania and all courts subordinate thereto save for the Primary Courts. Dr. Hashil acted as part time Lecturer in law at Azania College of Management – Dar es Salaam, as well as Muslim University of Morogoro in different seasons.

As advocate he is a member of Tanganyika Law Society as well as East Africa Law Society. He has prosecuted both criminal law cases as well as civil law cases from all courts in which he has locus to appear. In His eleven years of teaching law experience he supervised a number of LLB, and LLM law students' dissertations and currently there are fourteen Ph.D candidates under his supervision from vast of disciplined courses. He has authored and also presented a number of papers in different national and international seminars, workshops as well as conferences.

Dr. Hashil has participated as international moot court participating as a judge in the preliminary rounds during the African Human Rights Moot Court Competition organized by the Centre for Human Rights University of Pretoria- South Africa in different African Countries in different years since 2009.

Dr. Ali Ahmed Uki

Dr. Ali Uki is the Lecturer at the Faculty of Law at the Zanzibar University. He is also the Head of Common Law Department. He was born in 1964 in Zanzibar. He received his early and Secondary Education in Zanzibar. He joined the Teachers' Training College for a two year Certificate from 1982 to 1984. He rejoined the same College for a two year Ordinary Diploma in teaching. He quit the teaching profession in 1990 and joined the Tanzania Standard Newspapers (TSN) publishers of the Daily News and Sunday News. He worked with the newspaper for 17 years. He did a four year degree in law at the Zanzibar University before proceeding for Master Programme in Intellectual Property Law in the School of Law at the Turin University in Italy in 2007/2008. He served as a Board of Directors in different Non-Governmental Organization including the Kituo cha Katiba cha Afrika Mashariki – KCK- (the Eastern Africa Centre for Constitutional development) with its headquarters at Kampala in Uganda. He also one time served as a chairman of the KCK. Dr Uki was also appointed by the President of Zanzibar and Chairman of the Revolutionary Council, Dr. Ali Mohamed Shein as a Commissioner of the Law Review Commission of Zanzibar from 2012 to 2015 and was re-appointed from 2015 to 2018. He was also in 2014 appointed to be a member of the Constituent Assembly as well as a member of the Drafting Committee of the Proposed

Constitution in Dodoma. Dr Uki is currently a member of the Council of the State University of Zanzibar (SUZA). In 2014, Dr Uki was appointed a Trustee of the Board of Trustees of the Benjamin Mkapa Foundation (retired President of the United Republic of Tanzania). He holds the Trusteeship post to date. In the meantime, he serves as a member of the Board of Directors of the government owned Zanzibar Journalism Mass Communication College. He is also a consulting editor of the newsletter "Shahidi" published quarterly by the Office of Director of Public Prosecutions in Zanzibar.

Dr. Uki is an extensive traveler. He presented papers at many conferences. He also published more than ten articles in Tanzania and outside Tanzania.

3. About Researchers

Mr. Faraji Murshid Rushagama

Mr. Faraji Murshid Rushagama is a male aged 34 being born on 21-2-1984 in Karagwe District of Kagera Region within the United Republic of Tanzania. He is a student at the Open University of Tanzania pursuing a Legum Magister (LL.M) majoring in Private International and Labor Laws. He also has a Post Graduate Diploma in Laws, Mediation and Arbitration of the Institute of Social Works Dar Es Salaam (2012), preceded by a Bachelor of Laws in Law of the Tumaini University Dar Es Salaam College (2008). These academic potentials are built on an Advanced Certificate of Secondary Education Examinations (2005), Certificate of Secondary Education Examinations (2002) and Primary School Leaving Certificate (1999).

Along with the above credentials; Mr. Rushagama has exhibited several trainings; only to mention; they include Education Administration and Planning Seminars and Workshops conducted and sponsored by Kisanga and Ebonite Teachers Colleges-Dar Es Salaam (2009), Education administration, planning and assessments workshop sponsored by Kisanga Teachers College (2010), Education Evaluation and Assessments Seminars and Workshops sponsored by the National Examination Council of Tanzania African Muslim Agency-Dar Es Salaam (2011), Village Land Use Planning and Administration sponsored by Ujamaa Community Resource Team-Arusha (2012) and many others.

To Social economic and community labour returns side, Mr. Rushagama has worked as education administrator with Matangini and Al-Hikma Schools in Dar Es Salaam (2009- 2012), owned separately by the Kimara Islamic Centre and Al-Hikma consecutively. He is currently working with Karatu District Council on the Post of the District Land Officer cum Council Legal Officer discharging categorical land and Legal Council duties since 2013 to date.

Following leadership potentials which include Integrity, loyal, transparency and accountability, diligence, ethical conduct, tolerance and good listener, third party opinion, vision and advice assessor in addition to his ability to work hard and meeting employees set objectives, Mr. Rushagama was promoted to hold different leadership positions which are; Acting Head of Legal Section (2014-2016) and Acting Head of Department of Lands, Natural Resources (2016-2017) before joining his further studies early in January 2018.

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-  **TANZANIA HUMAN RIGHT DEFENDERS COALITION (THRDC)**
Mikocheni B, Eyasi Road, Po.box 105926, Dar Es Salaam, Tanzania
 -  **+255 769 642208/+255657 043191**
 -  **thrddefenders@gmail.com**
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